

UNDERSTANDING POLICIES AND ACCOUNTABILITY

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Mlambo and Associates Inc.



2024 Empowered
Administrators
Conference

BACKGROUND OF NTOMBI MLAMBO & MLAMBO & ASSOCIATES

- Ntombi Mlambo is currently the MD at Mlambo & Associates.
- She was a Partner at a medium sized law firm prior to that for 8 years, where she headed up their Commercial and Litigation Department, with a department of staff reporting to her.
- Ntombi has done extensive employment law work and has assisted clients with HR consulting work and represented them at the CCMA, Labour Court and Labour Appeal Court.
- Ntombi thus has knowledge on issues that relate to employment law both from an internal and an external person. Internally, she has had to (and still does) ensure that company policies were understood and adhered to and that when they were not, the appropriate measures were taken to hold staff accountable.

WHAT ARE POLICIES?

- **Definition: Policies are guidelines that are written and that set out practices and procedures of a particular organization. They also provide the employee with a guide on what is expected of them in terms of their conduct, actions and practices in their roles.**
- **Policies are not legislated. They work alongside the law and are based on there being an agreement between the employer and the employee.**
- **Policies are not permitted to take away the rights of an individual as contained in our legislation. Policies are also based on the practices and procedures that a company must abide by from a legal perspective.**
- **Policies are not only applicable internally but also externally eg procurement policy, cyber security policy. While third parties are not directly required to be complaint with the policy, they are indirectly required to eg procurement policy.**

TYPE OF POLICIES

- **Occupational Health & Safety Policy;**
- **Social Media Policy;**
- **Cyber Security Policy;**
- **Leave Policy;**
- **Harassment;**
- **Code of Conduct Policy**
- **Disciplinary Policy;**
- **Privacy Policy;**
- **Travelling Policy;**
- **Grievance Policy;**
- **Substance Abuse Policy...**

WHY IS IT NB TO HAVE POLICIES ?

- **It is important for any type of organization to have policies in place.**
- **In the absence of policies, employees are not always aware of the expectations of the employer insofar as their conduct and behaviour is concerned. You cannot spell everything out in an employment contract. It would be onerous on the employer to customize it organization wide.**
- **It also assists managers to manage staff's conduct and have a reference point in terms of conduct that is acceptable in the workplace and conduct that is not.**

Disciplinary policy

- Sets out the process to follow when there is misconduct, non-adherence to the rules or policies of an organization or poor performance.
- It usually will define what constitutes misconduct. It also usually sets out that failure to adhere to rules or policies is disciplinable. It also usually sets out the process to follow where you face a situation of poor performance.
- Sets out the sanctions that can be issued for certain actions.
- Sets out that a disciplinary hearing can be chaired by an internal or an external party, and what the rights of the employee are in that regard.
- It will also normally state that the disciplinary process will commence with a notice to attend a hearing.

Code of Conduct

- This policy provides a guide on how the employees of an organization should conduct themselves or behave.
- It provides a guide on business practices, how to behave ethically and legally and also fosters a culture of a positive working environment, where there is mutual respect and productivity.
- Failure to behave or conduct yourself in an acceptable manner and that does not bring disrepute to an organization, will constitute a breach or non-adherence to this policy and will attract disciplinary action being taken against you.

Grievance policy

- Typically, a complaint lodged by one employee against another.
- Many reasons as to why a grievance can be raised and various ways to deal with it.
- Informal process.
- Formal process.

Cyber Security Policy

- Information and assets that must be protected.
- Protection against threats to the information and assets.
- SA most targeted country in Africa. Why are we targeted?
- Examples of cyber attacks.
- POPI Act.
- Film and Publication Act.
- Cyber Crimes Act.
- ENS case.
- Importance of Cyber Security Policy- create cyber resilience.

POPI Policy

- POPIA deals with the processing of personal information.
- It has some key role players: data subject, responsible person and operator.
- Processing personal information in tertiary institutions.
- Importance of governing the practice of personal information.
- POPI policy is NB in any organization and must align with the POPIA.

Leave Policy

- Policy that governs how and when leave can be taken.
- Leave provided for in our legislation. Employers can grant more favourable leave than what is contained in legislation.
- Organisations often have leave policies to govern and control leave, especially when more favourable. Eg “use it or leave it” policy.
- Examples of leave that can be tweaked are maternity leave, paternity leave, annual leave. Sick leave is as legislated and does not attract a financial obligation on employer.

Quality Assurance

- Organizations sometimes have a quality assurance policy in place.
- It governs how the service or product on offer is tested to ensure it is of the highest or sound quality.
- Without a policy that is water-tight governing quality assurance, an organization is at risk of eg financial obligation for poor quality work, or mistakes as a result of carelessness, reputational damage, may trigger insurance claims if covered and thus premiums increasing and affects an organization's claims history.
- Must be managed of course like any other policy. Employees failing to adhere to the policy are to be held accountable.

FAILURE TO ADHERE TO POLICIES

- Policies form part of one's employment contract. Often employment contracts mention them and refer the employee to them even if they are not attached, which is often the case.
- Even if your employment contract does not refer you to policies, it is important to familiarize yourself with the policies of an organization. You don't want to be caught with your pants down. Alleging you did not know or understand when you could've taken a proactive approach, will not necessarily save you.
- Policies are a risk management method for an organization. Should you fail to adhere to its policies, will attract some kind of sanction e.g. disciplinary action can be taken.
- They can be lengthy, so it is NB to familiarize yourself and ask HR to explain anything you do not understand to you.

Services offered by MLAMBO AND ASSOCIATES INC.

- HR Consulting for various organizations;
- Investigations to assist in pending HR processes;
- Policy Drafting and Reviewing;
- Training on employment contracts and any labour or HR issue;
- Drafting and reviewing employment contracts;
- Chairing disciplinary hearings;
- Facilitating poor performance hearings and assisting with coaching alongside HR and line managers;
- Representation in arbitrations at the CCMA;
- Representation in litigation at LC & LAC;
- General labour advice.

Other services offered

- Corporate commercial law;
- Family Law;
- Pension Fund Law;
- Insurance Law;
- Conveyancing/ Property Law;
- Tax Law.

Conclusion

Q&A



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