



WITH COMPLIMENTS

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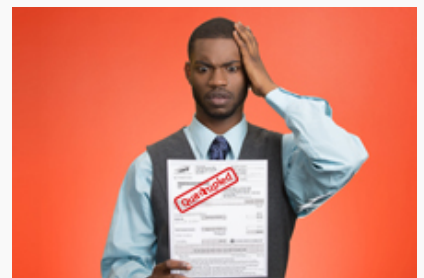
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Property Owners: Your Rates Could Quadruple for Unauthorised Land Use

“The said penalty ... was imposed due to the fact that the property was being used in contradiction to its zoning” (extract from judgment below)

Municipalities all have the right (and the duty) to regulate land use in their areas, and amongst other sanctions, properties that are used unlawfully or without authorisation can be subjected to rates and charges on a penalty tariff.

These penalties can be steep, and the Supreme Court of Appeal (SCA) has now held that they can be imposed without the municipality first having to change the property's category on its



valuation roll to “illegal or unauthorised” use. All it has to prove is that it acted in terms of a lawful rates policy.

The house whose rates bill quadrupled

- A house valued (on the municipality’s valuation roll) at R1,650,000 had its monthly rates bill quadrupled from R898-01 to R3,592-05.
- The municipality took this step after notifying the owners of their “wrongful and unlawful use of the property as a student commune, in contravention of the town planning scheme and zoning thereof without the necessary authorisation.” Authorisation was necessary, said the municipality, because the commune was a “commercial concern”.
- This after the owners had let out two of their five bedrooms to “students or young professionals” and had continued to do so despite two years’ worth of notices from the municipality to terminate the unlawful use, and despite a High Court interdict against the continued contravention.
- The legal challenge mounted by the property owners against the penalties was based on a series of legal arguments, and the Court’s analysis thereof (on appeal from the High Court) will be of great interest to property professionals.
- For property owners however, the practical punchline is that the SCA upheld the penalty charges, and the owners must pay them.

If your neighbour breaches land use laws...

That punchline is also important for neighbours, because in practice unlawful land usage of this nature will often only come to a municipality’s notice when a concerned neighbour blows the whistle.

So, if you think your neighbour is about to open up an unauthorised office, commercial or other non-permitted operation next door, and if you can’t settle the matter peaceably over a cup of neighbourly coffee, call in professional help immediately. Just the threat of a quadrupled rates bill could be enough to make the problem go away.

Different strokes for different municipalities

Property owner or neighbour, find out what your local authority’s land use and rates policies are. This particular case related to the City of Johannesburg Metropolitan Municipality, and your local municipality will have its own land use bye-laws, which could well be less or more restrictive than Joburg’s.

Check the zoning before you buy property

Perhaps the property owners in this case planned all along to let out rooms, and perhaps that extra income is what put this particular house within their financial reach. If so, the mistake they made was in not checking the local zoning upfront.

Knowing the zoning and building restrictions in your chosen area is also vital if you want to avoid unpleasant surprises, like a new neighbour opening up a guesthouse or building a triple story which cuts off your sea views. Ask your lawyer to check for you **before** you offer.

Workplace Harassment: The New Code in a Nutshell

“The criterion that harassment involves unwanted conduct distinguishes acts of harassment from acceptable conduct in the workplace” (extract from the Code, emphasis added)

With effect from 18 March 2022, a new “Code of Good Practice on the Prevention and Elimination of Violence and Harassment in the Workplace” came into effect. **Every** employer and employee should know about it.

The new Code has replaced the old “Code of Good Practice for the Handling of Sexual Harassment Cases in the Workplace”. It is much wider in every way possible because it “... is intended to address the prevention, elimination, and management of **all forms** of harassment that pervade the workplace” (extract from the Code, emphasis added).

Of necessity, what is laid out below is no more than an overview of an extremely complex topic so in any doubt seek professional advice specific to your circumstances!



In a nutshell...

There's a lot more detail below, but in essence –

- The Code applies to all employers, employees, and workplaces (office-based or remote)
- Its reach is extremely wide in prohibiting any and all forms of workplace harassment
- Employers have a raft of duties to comply with in relation to assessing workplace risks of harassment, and in formulating and applying procedures to prevent and deal with it
- Failure to comply risks substantial liability.

Who does the Code apply to?

In a nutshell, it applies to pretty much everyone involved in any business with one or more employees, the Code making it clear to start with that **all** employers and employees, in both the formal and informal sectors, are included.

Specifically mentioned as possible perpetrators and victims of harassment, in addition to employers and employees, are owners, managers, supervisors, job seekers and job applicants, persons in training including interns, apprentices and persons on learnerships, volunteers, clients and customers, suppliers, contractors, and (the very wide catch-all at the end) "others having dealings with a business".

When and where does it apply?

It applies virtually everywhere, including remote and out-of-office situations - "in any situation in which the employee is working, or which is related to their work", including the workplace itself (widely defined), "work-related trips, travel, training, events, or social activities", "work-related communications, including those enabled by information and communication technologies and internet based platforms", employer provided accommodation and transport, and "in the case of employees who work virtually from their homes, or any place other than the employer's premises, the location where they are working constitutes the workplace."

What must you as an employer do about it?

In broad terms you must –

- Take proactive and remedial steps to prevent all forms of harassment in the workplace
- **Conduct an assessment of the risk of harassment that employees are exposed to while performing their duties** (emphasized as this is probably the best place to start!)
- Apply an attitude of zero tolerance towards harassment
- Create and maintain a working environment in which the dignity of employees is respected
- Create and maintain a climate in the workplace in which employees who raise complaints about harassment will not feel that their grievances are ignored or trivialized, or fear reprisals
- Adopt a harassment policy, which should take cognisance of and be guided by the provisions of the Code
- Develop clear procedures to deal with harassment, which should enable the resolution of problems in a gender sensitive, confidential, efficient, and effective manner.

If you don't tick all of those boxes, you risk substantial liability not only under our employment laws but also under the general principles of "vicarious liability" in the form of liability for any employee misconduct causing harm to others.

What is "harassment"?

The following extract from the Code gives an idea of just how broad the general definitions of harassment are -

"Types of harassment

- 4.7.1 Harassment may be the result of physical, verbal, or psychological conduct.
- 4.7.2 Physical harassment includes physical attacks, simulated or threatened violence, or gestures (such as raising a fist as if to strike a person or throwing objects near a person).
- 4.7.3 Verbal bullying may include threats, shaming, hostile teasing, insults, constant negative judgment, and criticism, or racist, sexist, or LGBTQIA+ phobic language.
- 4.7.4 Psychological harassment in the workplace may be associated with emotional abuse and involves behaviour that has serious negative psychological consequences for the complainant(s) such as is often the case with verbal abuse, bullying and mobbing.

- A wide range of conduct in the workplace may constitute harassment. Examples of harassment include, but are not limited to:
- 4.7.5.1 slandering or maligning an employee or spreading rumours maliciously;
 - 4.7.5.2 conduct which humiliates, insults or demeans an employee;
 - 4.7.5.3 withholding work-related information or supplying incorrect information;
 - 4.7.5.4 sabotaging or impeding the performance of work;
 - 4.7.5.5 ostracising, boycotting, or excluding the employee from work or work-related activities;
 - 4.7.5.6 persecution such as threats, and the inspiration of fear and degradation;
 - 4.7.5.7 intolerance of psychological, medical, disability or personal circumstances;
 - 4.7.5.8 surveillance of an employee without their knowledge and with harmful intent;
 - 4.7.5.9 use of disciplinary or administrative sanctions without objective cause, explanation, or efforts to problem solving;
 - 4.7.5.10 demotion without justification;
 - 4.7.5.11 abuse, or selective use of, disciplinary proceedings;
 - 4.7.5.12 pressuring an employee to engage in illegal activities or not to exercise legal rights; or
 - 4.7.5.13 pressuring an employee to resign.”

What is “sexual harassment”?

Again, the definitions here are extremely wide and include any form of unwanted conduct of a sexual nature including physical, verbal, or nonverbal conduct, whether expressed directly or indirectly.

Specific examples that seem to have attracted the most media attention include sexual innuendos, comments with sexual overtones, sex related jokes, whistling of a sexual nature, sexually explicit texts, and “unwelcome gestures”, but there are many more.

What about “racial, ethnic or social origin harassment”?

Again, the definitions are wide here, including the concept that “Racial harassment is unwanted conduct which can be persistent or a single incident that is harmful, demeaning, humiliating or creates a hostile or intimidating environment” and illustrated by this extract from the Code -

“The forms of racial harassment may include:

- 6.6.1 Abusive language and racist jokes, cartoons, or memes, including communications that amount to hate speech;
- 6.6.2 Racially offensive written or visual material, including online harassment;
- 6.6.3 Racist name calling or negative stereotyping impacting on a person’s dignity;
- 6.6.4 Offensive behaviour in the form of open hostility to persons of a specific racial or ethnic group;
- 6.6.5 Subtle or blatant exclusion from workplace interaction and activities and other forms of marginalisation; and
- 6.6.6 Threatening behaviour, which intimidates a person or creates a hostile work environment.”

Bottom line: If you think something could possibly be classified as “workplace harassment”, it almost certainly will be!

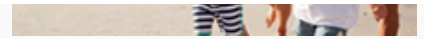
Don’t Just Leave Your Loved Ones Assets – Leave Them a Legacy!

“A Legacy Letter is a way for you to share your values, life lessons, cherished memories, hopes for your family’s future, and anything else that is really important to you.”

Estate planning is key to ensuring that your loved ones are properly catered for after you are gone. Ideally go beyond the practical and financial issues and also leave something personal, something of yourself.



Follow these three simple steps to ensure that you don't just leave behind assets, but also a lasting and valuable legacy –



1. Firstly, leave a valid and updated will (“Last Will and Testament”). It's the core and the foundation of your plan to protect the people you care for.
2. Next, address the financial and practical aspects. Will each of your loved ones have enough to support them? Will there be enough cash in your estate to ride out the inevitable delays in winding it up? Are children and any other vulnerable family members protected? Have you taken advice on setting up trusts? Do you have enough life insurance in place? Have you left a full “Important Information File” to help your executor and your family take control of and finalise your estate?
3. Now go one step further – don't just leave an estate, leave a legacy. Read “How to Preserve Your Life's Lessons for Future Generations” on [Mission Wealth](#) for ideas on how to share a meaningful “Legacy Letter” with your family. Follow the links in that article to “Leaving a Legacy” and “The New Way to Leave a Lasting Legacy”.

Let's close with these words of wisdom from that article: **“The golden rule of all estate planning is: Don't wait.”**

Beware The Badly Worded Bond Clause!

“The terms of the contract are the decisive criterion by which any potential expiry of a deadline has to be determined” (extract from the judgment below)

A recent High Court decision provides yet another reminder to have your property sale agreement drawn (or at least checked) by a professional. **Before** you sign anything!

As is the case in many such property sale disputes, it started with one of the parties – in this case the seller – looking for a way to escape the agreement after getting cold feet.



The seller tries to escape the sale

- The sale agreement in this case contained a bond clause, a very common “suspensive” clause giving the buyer an agreed period of time within which to obtain a bond, failing which the agreement would come to an end automatically.
- Bond clauses commonly specify a 30-day period from the date of the sale agreement, making it clear when exactly the period expires.
- The problem in this case was that the bond clause was worded somewhat differently, no doubt because of an issue with unlawful occupants on the property.
- This clause gave the buyer 30 days, not from the date of the sale, but from the date on which she was given “sole beneficial occupation”.
- For a variety of reasons the transfer was delayed for four years, and the seller – now keen to get out of the sale because she had decided that the agreed price was too low - argued that the agreement had fallen away automatically. The bond clause period, she said, expired 30 days after the buyer took possession and occupation (the date of the sale) and the buyer's failure to get her bond within that period put an end to the sale.
- The buyer on the other hand argued that the 30 days never started running at all, because even four years later there were still unlawful occupants on the property (the sale agreement authorised her to evict the occupants at her own cost, and she hadn't done so).
- The Court held that the sale agreement distinguished between “possession” and “occupation” – which had both been given to the buyer immediately on signature of the sale agreement - and “sole beneficial occupation”. In the context of this agreement, held the Court, “sole beneficial occupation” meant that the buyer, “to the exclusion of all others, was to enjoy the benefit of occupation of the property pending transfer.”
- Although the buyer had indeed been given “possession” and “occupation” four years ago, she had never been given “sole beneficial occupation”. The 30-day period had never started running and the seller is bound by the sale agreement.

For want of a well-drawn bond clause...

Badly drawn bond clauses have been the downfall of many a seller and many a buyer in the past. In this case the seller is not only stuck with an unsatisfactory sale price, she also loses four years' worth of income because the buyer is not liable for occupational interest until sole beneficial occupation is given. Plus of course the seller must now pay all the legal costs.

Website of the Month: 3 Things the Most Productive People Do Every Day

“Here’s how to expand your mind’s abilities to get more done”

Boosting productivity is one of the fundamentals of success in both our personal and our professional lives.

“Get more done in less time” is the perfect strategy for making the most of everything we do, but how to go about it in practice? Our challenge in the Online Age is being swamped by productivity tips of every shape and size – so how do we cut through the noise and get to the nub of what will work for us and what won’t?

For a quick and easy summary of three tried-and-tested ideas on cutting through to the essentials, read “3 Things the Most Productive People Do Every Day” on the Barking Up the Wrong Tree [website](#).



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