

## 2016 New Year's resolutions for employers

Top ten ideas for employers looking for some New Year's resolutions to adopt or to take careful note of.

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### Labour, Employment & Human Rights Bulletin

*This briefing has been published by [Melanie Hart](#) of [Fasken Martineau](#), Johannesburg, who has agreed to Simmons & Simmons making it available to elexica subscribers.*

January presents an ideal opportunity for employers to reflect and take stock of employment-related issues and resolve to improve during the year which lies ahead.

Employers are often tempted to resolve employment problems themselves, rather than incurring what is viewed as unnecessary legal expenses. However, sorting out the unintended consequences which may have arisen will always be more costly than getting it right from the beginning. We suggest that employers act prudently and seek advice on a proactive basis so that we may help to map out a legal strategy which aligns with your business imperatives.

Here are our top ten ideas for employers looking for some New Year's resolutions to adopt or to take careful note of:

#### 1. Implement a thorough recruitment process

A significant number of employment problems arise from poor recruitment decisions. Ensure that potential employees are thoroughly screened, in terms of not only technical competence but cultural and organisational fit. Check CVs thoroughly.

Be mindful of the provisions of the Protection of Personal Information Act (which is expected to commence shortly) as far as obtaining consent from job applicants to the various relevant, and necessary screening checks to be conducted and ensure that such checks are not arbitrary and discriminatory, are conducted fairly and applied consistently.

#### 2. Ensure that your contracts of employment and policy manual are current

Employers should conduct an annual review of their employment contracts and policies to ensure that they comply with current law, particularly with regard to the use of labour brokers and fixed term and part-time employment.

The amendments to the Labour Relations and Employment Equity Acts have been in force for some time. If your policies and contracts are outdated, this will not only pose risk to the organisation, but also present a missed opportunity to enforce managerial prerogative.

### **3. Review cases during 2015 and the handling thereof**

The lessons learnt from past cases are invaluable. Conduct a review of the employment issues which arose during 2015, the manner in which they were handled and the outcomes thereof. Such a review may prevent a re-occurrence of these issues in 2016 and identify trends which should be proactively addressed.

### **4. Pension law reform**

There has been much talk about pension law reform. The changes have been postponed once already but 01 March 2016 seems now to be a likely date.

Employers should watch this space carefully because the changes will require a review of remuneration and payroll practices. There may need to be a change in remuneration structures and at least some employees are likely to see their take home pay affected. This has the potential for dissatisfaction and employers should be anticipating and managing employee expectations.

### **5. Tackle disciplinary matters**

Disciplinary infractions should never be overlooked and an inconsistent approach to the enforcement of discipline in the workplace is fraught with problems.

### **6. Stamp out discrimination and promote diversity**

Remuneration, employment benefits, terms and conditions of employment as well as job classification and grading all constitute employment policies or practices in respect of which unfair discrimination is prohibited.

Employers should conduct a job evaluation and grading exercise which comprises a detailed analysis of the responsibilities and skills required of various roles within the organization, and analyze terms and conditions of employment between employees who perform the same or substantially the same or similar work or work of equal value.

### **7. Ensure that your organisation lives its policies and managers are the custodians thereof**

The implementation and enforcement of policies and procedures of an organisation rests with management. Train your managers on the provisions of the policies and procedures and instil upon them a commitment to implement and enforce such policies and procedures

### **8. Timeously address deficiencies in performance**

Address employee performance deficiencies as soon as they arise. All too often we have been consulted by employers who wish to immediately dismiss poor performing employees as they have reached the end of their tether. However, when questioned about what steps were taken to address the shortcomings, the response is often little if anything.

## 9. Debunk the myth that restraints of trade are unenforceable

Courts have come to appreciate that during the course of employment, the employee will become privy to confidential and proprietary information regarding the intricacies of a company and its strategies which information is not in the domain of public knowledge. It is commercially sound and reasonable for the employer to enforce certain post-employment restrictions so that the employee cannot use this information to compete with the employer upon termination of the employment contract.

Restraints of trade are thus enforceable provided that there is a protectable interest and, the restraint is not unreasonable. The reasonableness of a restraint of trade is assessed in terms of duration, geographical scope and the extent of the restrictions placed upon the employee.

However, a so-called “one size fits all” restraint of trade which is not individualised to the protectable interest being served and the employee’s unique circumstances, may not withstand scrutiny.

## 10. Lastly, avoid creating precedents which you cannot live with

This is probably the most significant resolution for employers. We caution employers to think carefully and seek advice before adopting a particular strategy or approach to any given situation, as this may create a problematic legal precedent going forward. If the businesses’ operational imperatives still outweigh the legal risks, the decision to proceed must be taken with this foresight. If not, employers should remember that “cowboys don’t cry”.

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