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LABOUR NEWS

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Employment Contracts Under the Microscope: Clauses That Can Cost You

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INTRODUCTION: THE DOCUMENT THAT DECIDES YOUR DISPUTE

Employment contracts are often filed away and forgotten until something goes wrong. That is usually too late. When disputes reach the CCMA, the contract becomes a primary document of scrutiny - often determining rights and obligations regardless of intent or explanation. What exposes employers is not always what they did wrong, but what their contracts say (or fail to say). This month we examine the clauses that create unnecessary risk.

WHY CONTRACTS MATTER MORE THAN POLICY

Policies guide behaviour, but contracts create enforceable rights and obligations. In disputes, the contract carries significant evidentiary weight as the foundation of the employment relationship. It is therefore a binding legal instrument, not merely an administrative document.



GET THE BASICS RIGHT: LABELLING AND REALITY:

Whether an employee is appointed as permanent, fixed-term, or project-based matters - but so does the reality of the role. The CCMA looks beyond labels and considers the nature of the work, operational purpose, and duration. The commencement date is equally important, affecting length of service, notice periods, and retrenchment principles such as “last in, first out” (LIFO). Poorly labelled or vaguely drafted contracts create risk from the outset.



FIXED-TERM CONTRACTS AND THE RISK OF PERMANENCY



Fixed-term contracts provide flexibility but cannot be renewed indefinitely. Under the Labour Relations Act (LRA), repeated renewals without a valid operational reason may result in the employee being deemed permanent, particularly where core functions continue beyond three months. Renewals also risk creating a reasonable expectation of continuation. The issue is not using fixed-term contracts - it is renewing them without justification and documentation.

DISCRETIONARY BENEFITS THAT BECOME ENTITLEMENTS

Bonuses and allowances often start as discretionary but evolve into perceived entitlements when paid consistently without clear conditions. This can generate disputes. Use precise wording, define conditions, and apply discretion consistently so expectations remain aligned with operational reality

RESTRAINT OF TRADE PROVISIONS

Restraint clauses must protect legitimate business interests and be reasonable in duration, geographic scope, and restricted activities. Overly broad restraints risk being unenforceable. Draft restraints proportionally to safeguard genuine interests rather than restrict fair competition.

OUTDATED OR MISALIGNED REFERENCES

Contracts that refer to obsolete procedures or policies create confusion and disputes. Consistency between contract, policy, and practice is essential. Regular updates and amendments - supported by employee acknowledgement - reduce ambiguity and strengthen compliance.

THE HIDDEN RISK: PRACTICE VS DOCUMENTATION

Even well-drafted contracts can be undermined by inconsistent workplace practice. Informal warnings, undocumented performance issues, or inconsistent allowances weaken contractual clarity.

Contracts and conduct must align.

The Basic Conditions of Employment Act (BCEA) sets minimum standards for working hours, overtime, leave, and remuneration. Contractual provisions that conflict with these standards are unenforceable. Employees cannot contract out of statutory protections, making outdated agreements a source of non-compliance risk.

Practice vs Documentation



Practice



Reality



HR meeting

ARE YOUR CONTRACTS WORKING FOR YOU?

ASK YOURSELF:

- ➔ When last were contracts reviewed?
- ➔ Do they align with legislation and operational practice?
 - ➔ Are discretionary terms clearly defined?
 - ➔ Are fixed-term arrangements justified?
- ➔ Do managers understand contractual obligations?

If unsure, risk may already exist

PRACTICAL STEPS

- ➔ Conduct annual contract reviews
 - ➔ Align contracts with policies
 - ➔ Clarify discretionary terms
 - ➔ Document role changes
 - ➔ Train management
- ➔ Keep signed acknowledgements

Preventative compliance is always less costly than reactive defence.



FINAL THOUGHT

Contracts should reduce risk and provide clarity. Misalignment with practice or outdated references invites disputes. Regular reviews and updates ensure agreements remain fit for purpose.

Contact Labour (Pty) Ltd can assist with contract compliance and amendments.

If examined line by line tomorrow, would your contracts withstand scrutiny? If you would save this newsletter as a compliance resource, the small print has done its job.



DID YOU KNOW?

Under the Labour Relations Act, employees on fixed-term contracts for longer than three months may be deemed permanent if there is no justifiable reason for the fixed term. Simply renewing the contract repeatedly is not considered a valid operational justification.



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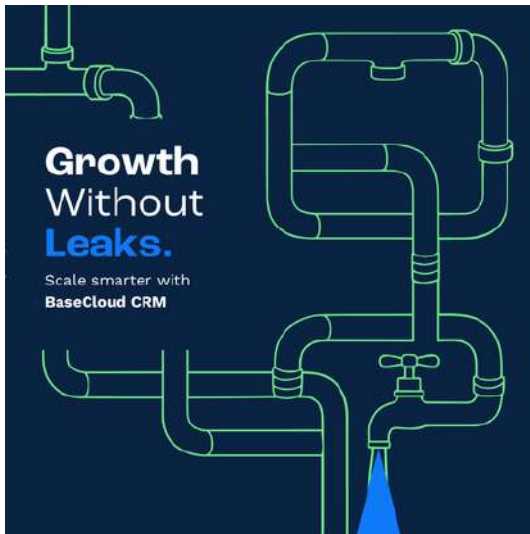


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