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FAILURE TO PREVENT CORRUPTION

Failure to prevent corruption in South Africa could have significant implications for businesses operating in the country. What does this mean and how may it affect businesses?

Expanded Liability

The introduction of a "failure to prevent" corruption offense expands the potential liability of businesses.

Previously, liability for corruption offenses primarily fell on individuals who engaged in corrupt activities.

However, with the new offense, businesses can be held criminally liable if they fail to prevent bribery or corruption by their employees, agents, or associated persons.

Corporate Governance

The new offense underscores the importance of robust corporate governance and compliance measures within businesses.

Companies may need to implement or strengthen anti-corruption policies, procedures, and controls to mitigate the risk of corruption and demonstrate that they have taken reasonable steps to prevent it.

Risk Management

Businesses operating in industries or regions with a high risk of corruption may need to reassess their risk management strategies.

This could involve conducting thorough due diligence on business partners, implementing enhanced monitoring and oversight mechanisms, and providing regular training to employees on anti-corruption compliance.

Legal Compliance

Companies must ensure that they comply with all relevant laws and regulations relating to anti-corruption, including the new offense.

This may require ongoing monitoring of changes to the legal landscape and adapting compliance programs accordingly.

Reputation and Trust

A conviction or even an accusation of failing to prevent corruption can damage a company's reputation and erode stakeholder trust.

Businesses should prioritize ethical conduct and transparency to maintain their reputation and foster trust with customers, investors, and the public.

Enforcement and Penalties

The enforcement of the new offense may lead to increased scrutiny from regulatory authorities and law enforcement agencies.

Companies found guilty of failing to prevent corruption could face significant fines, reputational damage, and even criminal prosecution, which could have far-reaching consequences for their operations and bottom line.

Remarks

Overall, the introduction of the "failure to prevent" corruption offense underscores the importance of corporate accountability and ethical business practices in South Africa.

Businesses must take proactive steps to prevent corruption within their organizations and mitigate the risks associated with non-compliance.



SICK LEAVE ABUSE AND THE LAW

Sick leave abuse is a concern for employers in South Africa, with estimates suggesting it impacts up to 33% of recorded sick leave.

It occurs when an employee calls in sick but is actually well enough to work.

- Taking a "sickie" for personal reasons.
- Obtaining a fraudulent medical certificate.

Consequences for Employees

- **Disciplinary Action:** Employers can take disciplinary action, potentially leading to dismissal, if they suspect abuse and have evidence.
- **Loss of Trust:** Dishonesty damages the employer-employee relationship.
- **Loss of Pay:** Employees may not be paid for sick leave days if they don't have available leave or a valid medical certificate.

Employer Strategies

- **Clear Policies:** Having a clear sick leave policy outlining expectations and consequences deters abuse.
- **Verification:** Employers can request medical certificates for specific durations or frequent absences. It's important to note that these certificates should meet the criteria laid out by the Health Professions Council of South Africa (HPCSA) to avoid complications.
- **Open Communication:** Encouraging open communication about legitimate absences fosters trust and reduces the need for "sickies".

Both employers and employees have a responsibility to ensure the fair use of sick leave.

By following clear policies and maintaining open communication, a positive and productive work environment can be fostered.

Employers in South Africa may dismiss employees for sick leave abuse, but there are legal guidelines to follow.

Dishonesty is Key

The main reason for dismissal is dishonesty. If an employee fakes illness or uses sick leave for non-medical purposes, it can be considered a breach of trust and misconduct.

Evidence Matters

Employers need concrete proof of abuse. This could include:

- Social media posts showing the employee engaging in activities while claiming to be sick.
- Inconsistent patterns of sick leave, like frequent absences on Mondays or Fridays.
- Documented instances where a fake sick note was used.

Fairness is Essential

Before dismissal, employers must follow a fair disciplinary process. This involves:

- **Investigating:** Gathering evidence and giving the employee a chance to explain.
- **Disciplinary Hearing:** Presenting evidence and allowing the employee to defend themselves.
- **Potential Outcomes:** A range of options exist, including a warning, final written warning, or dismissal depending on the severity.

Recent Case

Hans vs Montego Pet Nutrition (2024), highlighted this. An employee was dismissed for attending a social event while on sick leave.

The CCMA (Commission for Conciliation, Mediation and Arbitration) had to determine whether the dismissal was a fair sanction, and in doing so referred to the *Woolworths Pty (Ltd) v The CCMA and Others (2021)* case, in which the Labour Court held that sanction of dismissal is justified in instances of sick leave abuse (which is considered dishonest conduct) as an "employee is required to act with integrity and abide by the company policies, procedures and codes".

Key Takeaways:

- Employers can dismiss for sick leave abuse, but dishonesty is crucial.
- Strong evidence and a fair disciplinary process are essential.
- Employees shouldn't assume a sick note guarantees they can't be investigated.



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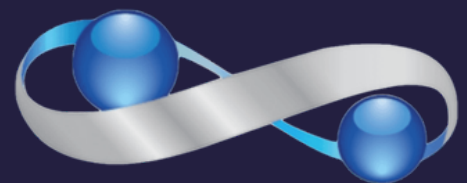
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AI & THE RAINBOW NATION: LEGAL CONSIDERATIONS FOR SOUTH AFRICA

South Africa does not have specific legislation addressing generative artificial intelligence (AI) and intellectual property (IP) rights. However, the existing IP laws, such as copyright and patent laws, may apply to creations generated by AI systems. Here's an overview of how IP laws in South Africa could potentially apply to generative AI:

Copyright Law

Copyright law protects original works of authorship fixed in a tangible medium of expression. In the context of generative AI, the question arises as to whether the output created by an AI system can be considered an original work deserving of copyright protection. South African copyright law does not explicitly address AI-generated works, but it typically grants copyright to the human author who creates the work. If a human's creative input is involved in training or guiding the AI system, they may be considered the author of the resulting work. However, if the output is purely generated by the AI system without significant human intervention, it may not qualify for copyright protection under current laws.

Patent Law

Patent law protects inventions or innovations that are novel, non-obvious, and industrially applicable. While patents are typically granted to human inventors, there have been discussions internationally about the patentability of AI-generated inventions. In South Africa, the Patents Act does not specifically address AI-generated inventions. Whether an AI-generated invention qualifies for patent protection may depend on factors such as the level of human involvement in the invention process and whether the invention meets the criteria of novelty and inventive step.

Trade Secrets and Confidential Information

Generative AI systems may be used to develop proprietary algorithms, datasets, or other confidential information that businesses seek to protect as trade secrets. South Africa does not have specific legislation governing trade secrets, but businesses can protect confidential information through contractual agreements, non-disclosure agreements (NDAs), and other means.

Data Protection and Privacy Laws

In the context of AI, data protection and privacy laws are also relevant, particularly concerning the collection, use, and sharing of data used to train AI systems. South Africa's Protection of Personal Information Act (POPIA) regulates the processing of personal information and imposes obligations on organizations handling such data. crucial for those going through these challenging life transitions.

Given the rapid advancements in AI technology and its implications for IP law, policymakers and legal scholars worldwide are grappling with how to adapt existing legal frameworks to adequately address the challenges posed by generative AI.

In South Africa, as in many other jurisdictions, there may be a need for legislative updates or judicial interpretations to clarify the application of IP laws to AI-generated creations.



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