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EMPLOYMENT

All beliefs are created equal – or are they?

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Did you know that your beliefs may be protected by labour laws? But how far do these protections extend – would you be protected for climate change denialism, veganism or being a flat earther?

Most South African citizens are well aware that their fundamental constitutional rights include the right of freedom of conscience, religion, thought, belief and opinion, and that these rights are valued so highly that ordinarily any infringement is a matter of constitutional law.

Labour laws are no exception. The Labour Relations Act recognises the application of these protected rights in the workplace by specifically creating a protected category of dismissal to ensure that if a person is fired because of their religion, belief, conscience, or political opinion, the dismissal is not just unfair, but automatically unfair, and the dismissed employee is entitled to double the usual compensation. The employee may also claim that he or she has been unfairly discriminated against in terms of the Employment Equity Act, and seek relief under this piece of legislation.

The question then is raised about what kind of beliefs are worthy of this protection. There will, of course, be a fair consensus that religious beliefs such as those formal, traditional theological systems such as Christianity, Judaism, Hinduism, Buddhism and Islam, should be protected. But what of more fringe beliefs. As an extreme example, adherents to the newly created religion of Pastafarianism, in which proponents appeal to the creation of the universe (albeit as an admitted parody of other religions) by the Flying Spaghetti Monster (look it up, we're not joking) would be unlikely to be protected in South Africa for their beliefs.

What of other belief systems, which may not necessarily be religious beliefs, such as pacifism, atheism, veganism, climate-change deniers, or believers in a flat earth?

The only case dealing with these kinds of issues in the workplace environment is a 2008 case, *Zabala v Gold Reef City Casino*, in which Zabala claimed that she was dismissed because she had expressed a negative opinion about her manager having an extra-marital affair. (It turns out she'd actually stolen a cell-phone, and was dismissed for this reason, so the court's thoughts on her opinion on extra-marital affairs isn't strictly binding on any future case law).

On this point though, the judge stated that Zabala's opinion about extramarital affairs was a belief and a belief, **whatever it may be about**, falls within the specified grounds of discrimination. This may be too wide an approach to adopt, as any belief, such as that of Pastafarianism or that we live on a Flat-Earth, may then be used as a ground to claim unfair conduct by the employer.

In Europe at least, a more nuanced test, which takes into account whether the belief is sufficiently cogent, serious, cohesive and important, is applied. In South Africa, although employers must be aware that acting against an employee because of their beliefs or opinions should be approached with caution, not all beliefs are equally worthy of protection.



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