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EMPLOYMENT

An employer's obligation to comply with their own policies

8 February 2023 *3 min read*

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Issue

Whether an employer is obliged to comply with its own policies and procedures when these policies and procedures are incorporated into an employee's contract of employment.

POPIA, Employment Contracts and Policies and Procedures

Summary

In the case of *Penxa v Beaufort West Municipality and Others* [2022] ZALCCT 16 (LC), a Municipal Manager ("**the employee**") of the Beaufort West Local Municipality ("**Municipality**") was placed on precautionary suspension (referred to as "special leave" by the Municipality) and invited to make written submissions in relation to alleged misconduct, arising from his alleged breach of a code of conduct.

Clause 16 of the employee's contract of employment provided:

"16. PRECAUTIONARY SUSPENSION

The Municipality may in terms of and subject to the provisions of section 6 of the Disciplinary Regulations suspend the Executive".

Regulation 6(2) of the Municipality's Disciplinary Regulations ("**Precautionary Suspension**") provided that "[b]efore a senior manager may be suspended, he or she must be given an opportunity to make a written representation to the municipal council why he or she should not be suspended, within seven [7] days of being notified of the council's decision to suspend him or her."

The employee took issue with his suspension, arguing that he was not afforded an opportunity to make a written representation to the Municipality as to why he should not be suspended in accordance with Regulation 6(2) of the Disciplinary Regulations.

Conversely, the Municipality contended that the employee was afforded such an opportunity when he was invited to make written submissions in relation to his alleged misconduct and that he rejected this opportunity.

Labour Court findings

The Labour Court found that the invitation to make written submissions in relation to allegations of misconduct had nothing to do with the intention to suspend the employee.

The Court held that the employee and the employer contractually agreed (by way of the employee's contract of employment) to the process set out in Regulation 6(2). The Precautionary Suspension of the employee was not in line with Regulation 6(2) as he was not afforded an opportunity to make representations as to why he should not be suspended. His suspension was therefore unlawful.

Importance of case

When an employer elects to incorporate policies and procedures into an employee's contract of employment, the employer elevates those policies and procedures to terms of the agreement and has to comply with these policies and procedures as it has to comply with its contract with the employee. An employer who fails to do so may be found to have acted unlawfully, as opposed to unfairly.



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