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EMPLOYMENT

What does it mean to give a “months’ notice?

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Generally, a contract of employment states that an employee must give a month’s notice or calendar month’s notice when he/she wishes to terminate the contract. What does that mean: Is it any 30 or 31 sequential days, or is it the period from the 1st to the last day of one of the 12 months on the almanac?

The Basic Conditions of Employment Act, 75 of 1997 and Interpretation Act, No. 33 of 1957 both define a “month” as a “calendar month”. This is of limited assistance as there is no clear definition on what a “month” or “calendar month” constitutes. This uncertainty was clarified, to some extent, by court in the case of *SA Music Rights Organisation Ltd v Mphatsoe* (2009) 30 ILJ 2482 (LC) (*SAMRO*), where the Court considered the definition of a ‘calendar month’s notice’ and whether the employee, in that case, had given a calendar months’ notice to terminate his employment contract.

In *SAMRO,* the employee submitted a notice of termination on 8 January 2008 and ceased working when he believed his notice expired, on 7 February 2008. The employer held a different view than that of the employee and advised the employee that his notice of termination did not comply with his contract as the contract required notice to run from the first day of a month until the last day of the same month. Since the employee had given notice on 8 January 2008, the employer contended that notice was to start running on 1 February 2008 with its expiry date being on 29 February 2008, i.e. the end of the calendar month.

The Court in *SAMRO* case considered numerous cases including the case in *Edgars Consolidated Stores Ltd v Federal Council of Retail and Allied Workers Union* (2004) ILJ 1051 (LAC), where the Labour Appeal Court held that “one month” or a “calendar month” does not necessarily begin on the first day of the month any more than a calendar year necessarily begins on 1 January. Instead, what is required is to ascertain the intention of the parties by way of interpretation, an exercise in which the language and nature of the contract would be relevant.

The Court in *SAMRO* held that the above approach enjoins a court to focus primarily on the terms of the contract of employment entered into between the parties. Furthermore, that words in a contract should not be interpreted in isolation, instead they should be interpreted in light of the contract as a whole by considering the context in which the words are used.

The Court held further that where an employee is required to give a “month’s notice” for termination of employment, this indicates that the month need not necessarily run from the beginning of a month, but by using the word “calendar month” in a termination clause the parties intention is for the notice period to come into effect from the beginning of the new calendar month and to expire on the last day of the same month.

The Court found that the employee was obliged to give notice of termination of his employment on the first day of a month for it to take effect at end on the last day of the same month. As a result thereof, the employee was found to be in breach of the contract when he refused to work until 28 February 2008, being the last day of the notice period.

The problem with employment contracts of employment is that they often do not define the terms “month” or “calendar month” at all or properly within the agreement, making it difficult for the parties to determine or enforce these rights. Employers should specify whether notice can be given on any day of the month or whether it must be given on or before the 1st day of a calendar month.

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