

# When employee suspensions go wrong

Employers need to think twice before they simply suspend an employee. If the suspension turns out to be unfair, the employer may need to fork out more money than bargained for.



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Strata-g Legal Director, Adv. Tertius Wessels, says there are two types of suspensions in the workplace, namely precautionary suspensions and punitive suspensions. “A precautionary suspension is usually implemented when the employer embarks on an internal investigation or anticipates disciplinary action against an employee.”

The purpose of the precautionary suspension is to avoid interference in an ongoing investigation or disciplinary process. “Employers often suspend employees when they suspect there may be intimidation of witnesses or tampering with evidence.”

A punitive suspension, on the other hand, is normally imposed as a sanction (punishment for misconduct). By way of example, an employer may opt to suspend – rather than dismiss – an employee who has already received a final written warning but commits the same offence again.

The main difference, however, between precautionary and punitive suspensions is that in the case of precautionary suspensions, employees are suspended with full pay and benefits. The reverse applies to punitive suspensions, with employees not receiving full pay or benefits.

So, where do employers get it wrong?

“Many employers think they can suspend someone if they feel like it, especially in the case of precautionary suspensions. The reality is that employers should not suspend employees without considering the consequences,” says Wessels.

“When employers want to suspend an employee pending the finalisation of an investigation or disciplinary hearing, they need to ensure the suspension is done according to a fair process and for a fair reason,” adds Wessels.

## **Fair reason**

“A suspension is only justified in cases where the employer has reasonable grounds to suspect that the employee is guilty of serious misconduct such as dishonesty, assault or sabotage and provided that there are reasonable grounds to suspect that the employee’s continued presence at the workplace may have a detrimental impact on the investigation or hearing,” explains Wessels.

## **Fair process**

Employers must allow employees the opportunity to make submissions or representations as to why he or she should not be suspended before a decision is made to suspend.

Wessels says when an employee is suspended, it has an impact on their dignity and inhibits the possibility of career advancement opportunities. “No-one wants to be suspended and suffer from the negative inferences that are drawn,” adds Wessels.

If suspension is affected without fair reason and process it amounts to an unfair labour practice. “The employee then has the right to refer the matter to the CCMA. The CCMA, in turn, may uplift the suspension and award the employee compensation. This can result in much heavier cost for the company than it would have if they had followed due process,” concludes Wessels.

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