



Dear Members

2024 is well on its way and can you believe, the first month of the year is almost over? We are very excited about 2024 and believe and trust from all of us here at HASEA that this year will be a Transformational year for you, your Employees, and your Organisation.

Not only Organisational, but also Individually and personally. It is therefore important to have the right mindset, be positive, be proactive and see every challenge or obstacle as an opportunity to grow! We also believe that through wisdom, understanding and knowledge you will recognise doors of opportunity that will create transformational growth!

To build on 2023 it is important to ask the right questions, as 2023's ceiling is the foundation or floor you continue to build in 2024. I have asked myself the following questions:

- What was my biggest challenges of 2023?
- What have I learned by overcoming the challenges?
- What do I foresee to be challenges this year and how am I going to overcome them?
- What am I going to do differently this year?
- What is my personal development plan for this year?
- What is important for me (what do I value) that is going to be part of my goal setting?

To assist and help you to make 2024 a transformational year, we are asking similar questions via this link: <https://bitly.ws/3bkiP> . We would appreciate it if you can give it good thought and answer the questions. We are also in the process of planning an Info/ Network Session on current workplace issues, as well as changes that are coming after the success of our previous one and feedback that we received, so be on the lookout for the date.

As we received a lot of questions regarding employees just absconding, we placed the following article from Labour Guide.

Abscondment

By Jan du Toit

Did the employee find another job or is the employee absent as a result of illness or other circumstances beyond his control? The truth is that the employer will not know and can therefore not assume that the employee has no intention to return to work. In such circumstances the onus rests on the employer to establish whether the employee will return to work or not before termination of employment may be considered.

The word 'abscond' is defined in the Oxford dictionary as leaving hurriedly and secretly. It can therefore be said that absconding means that one does not have the intention to return to work. In circumstances where the employer does not know whether the employee will return to work or not, the employer will have to establish this before the employee can be dismissed. It is therefore common practice that un-communicated absence for a period of more than 3 days will be dealt with as absconding in most disciplinary codes.

Communicated absence from work cannot be dealt with as abscondment since the employee indicated his intention to return to work by informing his employer of his whereabouts. In *Mtshinindo / Cashbuild, Hillfox (2009) 18 CCMA 8.17.2* the employee was dismissed for absconding. The employee was absent for 6 days from work and his wife called his employer to inform them that her husband was ill and visited a traditional healer.

The employer argued that the contract of employment automatically terminated in terms of its disciplinary code. The arbitrator rejected this and stated that in order to show that the employee's absence from work amounted to the employee terminating his employment contract; the employer will be required to show that the employee abandoned his job and had no

intention of returning to work. This the employer failed to do. The employer was unable to gainsay the employee's evidence that his wife phoned the employer to let them know that her husband was ill. The said phone call to the employer, together with the fact that the employee reported for duty later, is totally inconsistent with an intention by the employee to abandon his job. The employer never charged the employee with absenteeism, or any other misconduct for that matter, and it, instead, adopted the ill-considered stance that the employee had absconded and abandoned his job. It follows that the employee's dismissal was substantively unfair.

So how does one establish whether the employee intends to return to work?

Step 1

The onus will be on the employer to enquire about the whereabouts of the employee and to instruct the employee to return to work. This is normally done as follows:

Stop paying the employee. The employer does not have to pay the employee anything if the employee failed to report for duty without permission or justification. Employees are quick to make contact with the payroll office when they are not paid on the normal payday.

1. Call the employee on his cell phone. It is surprising that many employers fail to do this and skip straight to sending a letter by registered mail. Note the date and time of the call and when messages were left.
2. Enquire with friends at work and family members. Note their comments.
3. Send a letter to the employee by registered mail or deliver it to the last known address of the employee:

Dear Employee

You have been absent from work without permission since 5 January 2015 and failed to communicate your absence to the company. You are instructed to return to work immediately. Failure to do so will lead us to believe that you have no intention to return to work and may lead to your dismissal.

If you do not return to work on the 14th of January 2015 a disciplinary hearing will held which could lead to your dismissal.

**Signed,
The Boss**

1. Deliver the letter to the residential address of the employee or send it by registered mail. Make sure that proof of delivery is obtained.

The question now is what to do if the employee failed to report for duty on the 14th of January as instructed?

Step 2

The employer will have to follow-up the 1st letter with a notification to attend a disciplinary enquiry. The employee will be charged with abscondment or unauthorized absence from work for an extended period of time. The notification to attend the hearing can be delivered at the address of the employee or sent by registered mail but a reasonable period of time must be allowed between the 1st letter and this notification.

An important point to remember is to remind the employee of the consequences of non-attendance. If the employee does not attend the hearing it will continue in absentia. If the employee does appear at the hearing he will have to justify his absence from work.

Step 3

If the employee is dismissed in absentia, a third letter will have to be served on the employee confirming the dismissal and reminding the employee of the right to refer the matter to the ccma within 30 days from the date of dismissal.

Justifying the dismissal

But what does one do if the employee decides to return to work after the dismissal? Can one simply indicate to the employee that he was dismissed and wish him all of the best for the future? The answer is no; the employer must first give the employee the opportunity to be heard. It is not necessary to convene a fresh disciplinary hearing; the employee can just be given the opportunity to appeal against his or her dismissal, citing reasons for the extended period of absence.

This may pose a new problem for the employer since the employee may have valid and reasonable justification for staying away from work and not responding to the requests of the employer to return to work. The employer will now have to carefully evaluate the dismissal of the employee and must be able to prove that:

1. attempts were made to get the employee back to work,
 2. the employer waited a reasonable period of time before dismissing the employee, and
 3. the period of absence from work was unreasonable when weighed up against the operational requirements of the company, the importance of the position and the impact on other employees.
- It may prove to be a costly decision if the employer foolishly rushed the abovementioned process in order to make the most of the window of “opportunity” to get rid of a troublesome employee. The employer may face an award of reinstatement or compensation if the process was rushed without justification.

<https://labourguide.co.za/general/abscondment>

For more information regarding our services you can email us: admin@hasea.co.za