

Labour Court strikes urgent application to declare MVP unlawful off the roll

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In a judgment delivered by the Labour Court on 2 February 2022, an urgent application to declare an employer's mandatory vaccination policy unlawful was struck off the court roll for lack of urgency.



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In the case of *Solidarity obo Members & 2 Others vs Seesa (Pty) Ltd*, Solidarity approached the Court on an urgent basis on behalf of two of its members for an order declaring Seesa's mandatory vaccination policy and any other related policies to be unlawful. Seesa had adopted a policy titled *Covid-19 Admission to Premises Policy*, which seeks to prohibit unvaccinated employees from entering the workplace.

The two employees in this case were informed of Seesa's intention to adopt a mandatory vaccination policy during November 2021 and that they would be required to return to the office in January 2022. Employees who are not vaccinated as of 1 January 2022 are not permitted access to the employer's premises.

The two employees made it clear to the employer during December 2021 that they had no intention of getting vaccinated. Upon their return to work, the two employees were denied access to the workplace and were informed that they would not be paid. As a result, urgent proceedings were instituted in the Labour Court.

At the hearing of the matter, the employer indicated that the employees would be paid their salaries. Accordingly, the second employee withdrew from the matter.

Given the Court was approached on an urgent basis, the applicant had a duty to show that the matter is urgent and to ensure that the grounds for urgency are set out in the court papers in detail.

The Court found that the applicant's case lacked urgency for various reasons including that:

- The application was not brought at the earliest opportunity. The employee was aware of the employer's intention to adopt the policy on 19 November 2021 and the implications of such policy being implemented. The application should therefore have been launched at that stage.
- The applicant failed to provide detail in the court papers as to why the matter is urgent.
- There are no exceptional circumstances to allow the applicant to jump the queue and have the matter heard on an urgent basis as there is clearly an opportunity for redress in the ordinary course.

The matter was struck off the court roll for lack of urgency and the applicant was ordered to pay the costs of the employer. The applicant has the option to re-enrol the matter in the ordinary court to be heard at a later stage.



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Unfortunately, this case does not address the merits of the matter and has not provided guidance to employers regarding the implementation of mandatory vaccination policies. Employers should expect that any decision to implement a mandatory vaccination policy may be challenged by employees when facing consequences for their refusal to be vaccinated. In this regard, employers will have to justify the need for such a policy in line with their unique operational requirements taking into consideration the obligations under the Occupational Health and Safety Act of 1993 and the Disaster Management Act of 2002 and the regulations and directions published in terms thereof.

Employers are encouraged to seek legal advice when deciding to take disciplinary action against employees for their refusal to comply with mandatory vaccination policies.

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