

CCMA rules to reinstate employee dismissed for absence without permission

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The CCMA recently reinstated an employee who took leave without permission during the Covid-19 lockdown, in a ruling which delivers an important lesson for other employers.



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In November 2020, the Commission for Conciliation, Mediation and Arbitration (CCMA) reinstated an employee for being absent from work without permission for a period of 21 days during the country's level 5 Covid-19-related lockdown. The employee admitted to being absent without permission during this period. However, she took the decision to remain at home after her applications for annual leave and unpaid leave were denied. The employee decided that it was important for her not to attend work as she feared that she would have exposed her asthmatic child and elderly parent to the virus.

The company's reason for denying the employee's requests for annual leave and unpaid leave was that the company had cancelled all leave for its employees (except for pregnant employees and those with chronic illnesses and other underlying conditions). It had decided to deny further leave requests to ensure that all employees were at work to meet its production demands, since it had been declared an essential service.

The Commissioner was required to consider whether the employee's dismissal was fair. In coming to a decision, the Commissioner considered the evidence and stated that:

- the employee's dismissal occurred when President Cyril Ramaphosa had urged companies to take care of their workers in the exceptional circumstances created by the pandemic;
- it was odd that the company showed no willingness to consider the employee's requests for annual leave and unpaid leave, taking into account the duration that the employee needed to be away and the possible disruptions that her absence may have caused in the lab;
- it was trite in labour law that an employee may have a compelling reason to absent herself from work, even though

leave has not been granted; and

- the employer was more concerned with 'creating a possible precedent' than about its employee's personal circumstances.

In the circumstances, the Commissioner found that the employee had a reasonable excuse for her absence, even though she was contractually obliged to work. The Commissioner ruled that the employee's dismissal was substantively unfair and reinstated her employment, with back pay limited to one month's salary.

The takeaway for employers is that although they must be mindful that their actions may create precedents in the workplace, they also have a responsibility to manage the workplace by evaluating individual circumstances and not just performing a "tick box" exercise.

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