

MAY 2024 NEWSLETTER

WWW.LEOLAW.CO.ZA



LABCO
EMPLOYERS ORGANISATION



Top News

Do you know what services are included in your membership?

Labour Appeal Court Ruling:
Private use of Cannabis, how
does that influence employers?

You asked and we delivered!

We are thrilled to present the inaugural edition of our monthly newsletter, specially crafted to cater to your needs and interests. Your feedback has been invaluable, and we're excited to deliver content that addresses the latest developments in labor and labor law matters.

In today's dynamic business environment, staying informed about labor-related issues is crucial for both employers and employees alike. Whether you're a seasoned HR professional, a business owner, or an employee wanting to understand your rights better, our newsletter aims to provide you with timely and relevant information to navigate the complexities of the modern workplace.

Each month, you can expect a curated selection of articles, updates, and insights designed to keep you informed and empowered.



01/03

Visit our website at
www.leolaw.co.za

Here is what you can look forward to in the coming editions

Feature Articles: Dive into in-depth analyses of current labor trends, emerging challenges, and best practices in human resources management.

Legal Updates: Stay abreast of the latest developments in labor laws, regulations, and court rulings that could impact your organization or your employment.

Upcoming Events: Stay informed about workshops, webinars, and networking opportunities relevant to the labor and employment community.

Inside The Issues

Do you know what services are included in your membership?

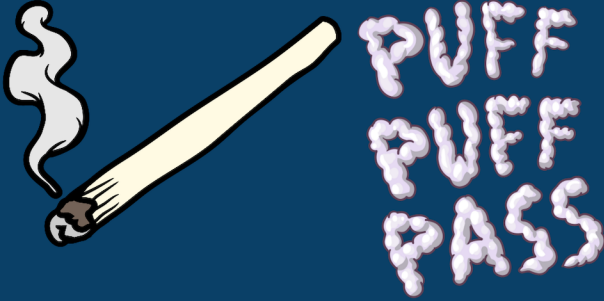


We believe that informed individuals make better decisions, create healthier work environments, and contribute to a more equitable society. Through this newsletter, we aim to empower you with knowledge and resources to navigate the ever-evolving landscape of labor and employment.

We encourage you to actively engage with us by sharing your feedback, questions, and suggestions for future content. After all, this newsletter is for you, and your input will shape its direction and relevance.

FOCUS ARTICLE

PRIVATE USE OF CANNABIS, HOW DOES THAT INFLUENCE EMPLOYERS?



In the recent case of *Enever v Barloworld Equipment South Africa, a Division of Barloworld South Africa (Pty) Ltd* (JA86/22) [2024] ZALAC (23 April 2024), the Labour Appeal Court (LAC) set aside the order of the Labour Court where it was held that the dismissal of an employee who tested positive for cannabis in the workplace was fair.

It is a known fact that it is **not** a criminal offence for adults to cultivate, possess and use cannabis in the privacy of their homes.

However, what happens when the private use of cannabis at home results in an employee presenting themselves in the workplace and testing positive for cannabis?

As cannabis stays in the body much longer than for example alcohol, the only way for an employee to comply with an employer's zero-tolerance policy against drugs and alcohol, would be by not smoking cannabis at all. This, however, infringes on the employee's rights (right to privacy) and could be seen as unfair and discriminatory.

Currently alcohol and cannabis users are subjected to the same treatment by being sent home if they tested positive, alcohol users could return to work the following day and test negative. However, this would not be the case for cannabis users as cannabis has been found to stay in the body for a longer period. A positive cannabis result thus does not address the sobriety of the cannabis user and whether they are impaired from carrying out their duties.

In the matter stated above the Labour Appeal Court found that whilst employers may have justifiable occupational health and safety reasons to bar certain conduct of its employees, this was not a justifiable reason for the infringement of the employees' right to privacy.

Therefore, employers need to reconsider their substance abuse policies and ensure that they are drafted in a manner that will not be seen to be infringing unjustifiably on the right of their employees. A practical approach to this will be required and not an overall reliance on a zero-tolerance policy.

A similar jurisprudence should develop in relation to the known symptoms of cannabis consumption and their effect compared to the duties associated with the nature of the employee's job.

Ultimately, of importance for employers, is that when relying on a substance abuse policy, intoxication must be proven, unless it can be shown that a zero-tolerance approach is an inherent requirement of the job for the particular employee/s concerned.

The contents here above does not constitute legal advice.
Source:
<https://labourguide.co.za/misconduct/dismissals/lac-finds-that-an-employee-who-was-dismissed-for-recreational-cannabis-use-at-home-was-unfairly-discriminated-against>