

Can staff be dismissed for disregarding Covid-19 protocol after hours?

Employers are within their rights to discipline employees who flout Covid-19 regulations outside of work, which could even result in dismissals, says Justin Hattingh, Senior Legal Advisor at Strata-g Labour Solutions.



© rawpixel – [123RF.com](https://www.123RF.com)

“While employers are obligated under the Occupational Health and Safety (OSH) Act to provide a safe and healthy working environment, staff members must also comply to those regulations and ensure that they assist the employer in keeping everyone at the workplace safe and healthy,” explains Hattingh.

He says where employers can prove that someone has been reckless after hours and exposed other employees at work, then there could be a basis to act against them as that kind of conduct materially impacts on the employment relationship and the duties and responsibilities of both parties.

As for staff members who are considering using the invasion of privacy argument to conceal their positive Covid-19 status, Hattingh says employees have a right to not share their medical condition with their employers. However, should it come to light that an employee knowingly placed other staff members at risk of contracting the virus, that deception can amount to a criminal offence.



Can employees refuse to come to work for fear of the pandemic?

George Herbst 25 Feb 2021



“The possibility of disciplining staff for providing false or misleading information also exists. At the end of the day employees need to be reasonable, and they need to understand that their conduct not only affects themselves, but it can affect everyone else,” says Hattingh.

Importance of company policy

However, employers can only exercise these liberties if they have policies in place or even health and safety-related misconduct offences in their employment document. Employers cannot simply assume that employees will act by the law without being aware of what amounts to misconduct. Employers who dismiss employees on the grounds of flouting Covid-19 protocols, without the necessary policies in place, could possibly be found to have done so unfairly.

Most employers do not have any sort of occupational health and safety-related offences in their codes of conduct. These codes do not need to be specific to Covid-19 but need to explicitly state that any breach of occupational health and safety is not tolerated. Labour policies need to follow the relevant code of good practice in the Labour Relations Act and ensure substantive fairness by educating employees regarding the rules present in the workplace.



Are SA employers allowed to implement a compulsory Covid-19 vaccine policy? - Part 1

Jason Whyte 15 Jan 2021



“Short of disciplining employees, employers must explain to their staff that if they don’t comply with regulations and they then become ill, they won’t be able to work and could potentially be placed on unpaid leave. That would affect them from an economic point of view. Employers therefore, need to appeal to their employees’ humanity by reminding them that reckless behaviour could lead to a super-spreader event in the workplace, affecting everyone’s livelihoods and even placing their families at risk,” concludes Hattingh.

For more, visit: <https://www.bizcommunity.com>