HRTorQue Reporter
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Should you need any further information on these topics please contact us at info@hrtorque.co.za.

1. Dismissal gone wrong: The cost of using the wrong legal grounds

Author: Nicky Hardwick

Mr. Ntholeng, a security officer placed by Securiforce at a Shoprite Checkers site, was dismissed after failing a polygraph test. Following the test, he admitted to accepting small amounts of money from customers to ensure their bicycles or wheelbarrows of beer weren't stolen, conduct which was clearly not permitted. He also mentioned noticing damaged stock disappearing, which he assumed was being consumed by staff, but which he did not report.

Based on the contractual agreement between Securiforce and Shoprite, he was immediately removed from the client's premises. Securiforce attempted to find him alternative placement, but none was available. He was then dismissed.

Interestingly, Securiforce did not pursue a dismissal for dishonesty, despite his admissions. Instead, they dismissed him for incapacity due to operational reasons, a hybrid ground not recognised under the Labour Relations Act (LRA).

At arbitration, the Commissioner held that the dismissal was procedurally fair but substantively unfair because incapacity cannot be dealt with under operational requirements. These are two distinct legal processes. Importantly, if the dismissal had been handled under *operational requirements*, Mr. Ntholeng would have been entitled to severance pay. To address this, the Commissioner awarded him two months' remuneration. The Labour Court upheld this decision.

Lessons for employers

1. **Contractual obligations to clients can trigger operational requirements**

Because Shoprite refused to allow Ntholeng back on site, Securiforce was faced with an *operational requirement*. When no alternative placement was found, termination followed. This is a textbook operational requirements dismissal, not incapacity.

2. **Don't conflate incapacity and operational requirements**
   - *Incapacity* refers to illness or poor performance.
   - *Misconduct* refers to dishonesty, theft, or breach of rules.
   - *Operational requirements* refer to business or client demands that make continued employment impossible.

   Mixing these categories leads to procedural unfairness, as happened here.

3. **Polygraphs are not decisive**
   A failed polygraph cannot stand alone as proof of dishonesty. What mattered here were Ntholeng's own admissions. Yet despite clear evidence of wrongdoing, the employer didn't pursue the misconduct route. Why not? We can only speculate.

4. **Severance obligations matter**
   The Commissioner and the Court agreed that once the dismissal was correctly characterised as an operational requirements dismissal, severance became payable. Employers cannot avoid severance by re-labelling the dismissal as incapacity.

Key takeaways

- This case is a strong reminder that dismissal labels matter. It's imperative that employers select the correct legal ground and follow the right process.
- Contractual client demands often create operational requirements situations, which come with severance pay obligations.
- Even when dishonesty is admitted, employers must think carefully about whether to proceed under misconduct or operational requirements. Choosing incorrectly risks a finding of substantive unfairness.

Ultimately, the Court emphasised that fairness in process is just as important as the employee's wrongdoing.

We're here to assist should your organisation be facing a dismissal challenge. Contact our HR team today on info@hrtorque.co.za.

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2. Sexual harassment in the workplace: Lessons from the Nedbank v Olwage Judgment (12th September 2025)

Author: Nicky Hardwick

Nedbank dismissed a manager, Mr. Olwage, after a colleague alleged sexual harassment and harassment. The charges stemmed from persistent, unwanted comments about her appearance and an incident where he told her to sit on his lap, despite her making it clear the behaviour was unwelcome. She also alleged he deliberately slammed a recycling bin to frighten her.

At arbitration, the CCMA Commissioner rejected the claims, finding the complainant unreliable and suggesting her accusations were exaggerated or motivated by personal dislike. He ordered Nedbank to pay Mr. Olwage backpay of over R400,000.

Nedbank took the award on review to the Labour Court. The Court found the arbitrator had erred seriously in law and process:

- He failed to apply the Code of Good Practice on the Elimination and Prevention of Harassment in the Workplace (2022).
- He downplayed the comments as "compliments" instead of testing them against the Code's victim-centred standard.
- He ignored non-verbal signs (such as walking away) that indicated the conduct was unwanted.
- He relied too heavily on credibility attacks rather than applying the objective test.
- He criticised the delayed reporting, overlooking the fact that victims often need time to process harassment.

The Labour Court overturned the award, confirming the behaviour did amount to sexual harassment and harassment, and held that Nedbank's dismissal of Olwage was substantively fair.

This judgment highlights the importance of applying the Code correctly:

1. **Unwanted conduct can be shown in many ways:** Silence, withdrawal, or walking away all count.
2. **Victim-centred approach:** Harassment must be judged from the complainant's perspective, not the perpetrator's intent.
3. **"Compliments" can cross the line,** if they are persistent, sexual in nature, and unwanted.
4. **Power dynamics matter:** Harassment often occurs in contexts of authority or influence.
5. **Delayed reporting is common,** and it does not invalidate a complaint.

How we can help

At HRTorQue we regularly support employers in creating harassment-free workplaces. We assist with:

- Training managers and employees on what constitutes harassment, how to prevent it, and how to respond appropriately.
- Policy updates to ensure compliance with the latest Code of Good Practice and alignment with the Employment Equity Act.
- Advisory support in handling harassment complaints fairly, consistently, and lawfully, minimising legal and reputational risk.

Cases like *Nedbank v Olwage* show that harassment issues are complex and can expose organisations if mishandled. With the right tools, policies, and training, employers can protect their staff and their businesses. Contact us today for all your HR and IR needs.

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3. Trust: The cornerstone of the employment relationship

Author: Nicky Hardwick

On the 29th August 2025, the Labour Court confirmed the dismissal of an employee who had misused petty cash to buy chocolates for personal consumption. While the value involved was minimal, the Court emphasised that the true issue was the breach of trust. This judgment cements the long-standing principle in our law that trust is the cornerstone of the employment relationship.

What the Courts have said about trust and dishonesty:

- In Standard Bank SA Limited v CCMA and Others [1998] 6 BLLR 622 (LC), the Labour Appeal Court made it clear:
  "It was one of the fundamentals of the employment relationship that the employer should be

able to place trust in the employee… A breach of this trust in the form of conduct involving dishonesty is one that goes to the heart of the employment relationship and is destructive of it."

- In JDG (Pty) Ltd t/a Hi-Fi Corporation v Shear and Others (JR1014/18), the Court reinforced that even where losses are small, dishonesty fundamentally undermines the trust relationship and dismissal may be justified.
- In Kalik v Truworths (Gateway) and Others [2008] 1 BLLR (LC), the Court held that an employment relationship "*…broken down as a result of an act of dishonesty can never be restored by whatever amount of mitigation. The underlying reason for this approach is that an employer cannot be expected to keep dishonest workers in his/her employ. The other reason for this is to send an unequivocal message to other employees that dishonesty will not be tolerated."*
- In SAPPI Novoboard (Pty) Ltd v Bolleurs (1998) 19 ILJ 784 (LAC) at para 7, the Court underlined the fiduciary duty of employees to act in good faith:
  "It is an implied term of the contract of employment that the employee will act with good faith towards his employer and that he will serve his employer honestly and faithfully…. The relationship between employer and employee has been described as a confidential one. The duty which an employee owes his employer is a fiduciary one 'which involves an obligation not to work against his master's interests'… If an employee does 'anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him'…."

The latest 2025 petty cash case is not about the price of chocolates; it's about whether an employer can continue to place trust in an employee who has been dishonest. South African jurisprudence makes it clear: once trust is broken, dismissal will often be the only appropriate sanction.

The recently gazetted Code of Good Practice on Dismissals (September 2025) reflects this same principle. It provides employers with more flexibility, particularly smaller businesses, but it also requires that dismissals are fair and defensible. Dishonesty is consistently recognised as conduct that undermines the employment relationship itself. No amount of mitigation or explanation can cure the breach of trust.

Key takeaway

Whether it's a case of large-scale fraud or a few rands from petty cash, trust and integrity lie at the heart of the employment relationship.

Employers are entitled to act firmly where dishonesty occurs, and the courts have confirmed time and again that dismissal may be fair, even where the monetary value is small.

Lessons for employers

- **Trust is central**: Even minor acts of dishonesty can justify dismissal, because they destroy the foundation of the employment relationship.
- **Process matters**: Always follow fair procedure, even when the evidence of dishonesty appears obvious. A flawed process can still render the dismissal unfair.
- **Consistency counts**: Apply your disciplinary code consistently, so employees understand dishonesty will not be tolerated in any form.
- **Document the breakdown**: In every case, show how the act of misconduct damaged the trust relationship – this will be critical at the CCMA or Labour Court.

At HRTorque, we specialise in all employment relationship matters. Email us for more information.

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4. New Code of Good Practice on Dismissals: What employers need to know

Author: Nicky Hardwick

The Department of Employment and Labour has gazetted a new Code of Good Practice on Dismissals (effective the 4th September 2025). This single Code replaces both Schedule 8 of the Labour Relations Act (Dismissal) and the Code of Good Practice on Dismissal based on Operational Requirements.

For the first time, all rules on dismissals, whether for misconduct, poor performance, incapacity, probation, incompatibility, retrenchments, or strikes, are consolidated in one binding framework.

Key changes at a glance

- **One code for all dismissals:** Employers now have one Code that deals with every type of dismissal.
- **Flexibility for small businesses:** The new Code recognises the practical constraints faced by small employers, allowing more flexibility in how procedures are applied, provided the principles of fairness are respected.
- **Misconduct:** Progressive discipline remains the norm, but dismissal for serious misconduct can be fair even where discipline has not always been applied consistently, as long as the employer can show the sanction was justified.
- **Probation and performance:** It's now easier to dismiss probationary employees if their performance falls short, provided they have been given feedback and support. For permanent staff, performance standards must be reasonable and suited to the role, with higher expectations for managers and specialists.
- **Incapacity:** Employers must still consider alternatives before dismissal. The Code now also recognises incompatibility with workplace culture or colleagues as a form of incapacity.
- **Industrial action:** The rules on unprotected strikes have been expanded, requiring employers to consider the legitimacy of demands, employee conduct, and the strike's impact before dismissal.
- **Operational requirements (retrenchments):** Retrenchment rules are clearer, with structured guidance on Section 189(3) notices and disclosure requirements, while retaining the need for fair selection criteria and severance pay.

What this means for employers

The new Code brings some welcome flexibilities, especially for smaller businesses and in managing probation. However, it also raises the bar. Employers must prove both substantive and procedural fairness in every dismissal. Alternatives to dismissal should always be explored and documented. Consistency, transparency, and respect for employees' rights remain the cornerstones of fair process.

Labour laws are shifting

Hot on the heels of the new Code of Good Practice on Dismissals, comes the proposed amendments to the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA). If you look at both developments side by side, a theme becomes clear: government is trying to encourage businesses, especially smaller ones, to employ more people without living in constant fear of lengthy CCMA disputes or hefty claims.

So, what's on the table?

- **Dismissals and remedies:** High-earning employees would be limited to compensation only (except for automatically unfair dismissals), which reduces the stakes for businesses in these cases.
- **Probation and qualifying periods:** The LRA may soon include a three-month "qualifying period" (or reasonable period*)* where new employees have reduced unfair-dismissal protections. This mirrors

the Code's more flexible approach to probation, giving employers time to assess new hires properly.

- **Retrenchments:** The proposed amendments simplify the retrenchment process, cutting out urgent procedural challenges and allowing cases to move more quickly.
- **Start-ups and small employers:** Exemptions are proposed for new start-up businesses (under two years old, with fewer than 50 employees) from certain bargaining council agreements. Again, the emphasis is on relief for small employers.
- **New categories of workers:** The BCEA amendments will bring on-call and gig workers (such as platform-based workers in ride-hailing, delivery, and freelance digital services) into clearer focus, requiring written terms and minimum guarantees. For small businesses, this could be significant. Many rely on casual or freelance workers to stay flexible and manage costs. These changes mean those arrangements will need clearer contracts and possibly minimum commitments, which adds a layer of compliance but also reduces the uncertainty that often causes disputes.

The bigger picture

Taken together, the new Code and the proposed amendments reflect a shift in tone. The message is that compliance with fairness and procedure remains non-negotiable, but government also recognises that overly rigid rules can discourage job creation. By carving out flexibility for small businesses and by making processes more streamlined and predictable, the law is creating a space where employers can hire with more confidence.

Editor's Note

For employers, this means two things. First, you have more room to make practical decisions, especially during probation, retrenchments, or when using casual or gig workers. Second, the responsibility to prove that your processes are fair and transparent is greater than ever.

At HRTorQue, we see these changes as an opportunity for our clients. They reduce unnecessary red tape, but they also make it essential to get the fundamentals right.

Whether you need quick advice over WhatsApp, structured support through a retainer, or a fully outsourced HR partner, we offer cost-effective solutions to meet your every need. Contact us today.

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5. Off-duty conduct: When private becomes public

Author: Nicky Hardwock

Where does the boundary between private life and work life begin and end? For employers, this is not an abstract question but a practical challenge that arises more often than many realise. The simple truth is that private conduct is not always private, and in certain circumstances, it becomes an employment issue.

Recent events, such as the much-discussed "Coldplay controversy", highlight how behaviour outside of the workplace can quickly spill into the public domain. What may have started as a personal choice or off-duty incident became a matter of public debate and, more importantly, a reputational risk for the employer.

The courts have long recognised this reality. In Edcon Ltd v Cantamessa and Others (2019), the Labour Court upheld the dismissal of an employee for racist remarks made on Facebook outside of working hours. Although the conduct occurred in a private capacity, it was publicly visible and directly associated with the employer's brand and values. The case illustrates a vital principle: when private behaviour becomes public and undermines the employment relationship, employers may be justified in taking action.

The rise of social media has made these boundaries even more blurred. Platforms like Facebook, X, Instagram, TikTok, and whatever comes next are not private spaces. Even when employees believe they are speaking to friends or followers, the reality is that content can be shared, screenshotted, or amplified far beyond the intended audience. In the eyes of the public, and often the courts, employees remain representatives of their employers, even outside office walls.

This does not mean that employers can or should police every aspect of an employee's private life. The law requires a clear link between the off-duty conduct and the workplace. That link may arise through reputational harm, a breakdown of trust, or the impact on workplace relationships. But once that link is established, employers are within their rights to investigate and, where appropriate, discipline.

For employers, the key lies in ensuring that policies are clear and employees understand them. A well-drafted code of conduct should spell out expectations around social media use, off-duty behaviour, and reputational risk. Training and awareness sessions can reinforce that "private" posts are not immune from workplace consequences. And when issues do arise, employers must act proportionately, following due process and ensuring fairness at every stage.

In the end, fairness is about balance. Employees do not surrender their personal lives when they accept employment, but neither can they expect their actions in the public eye to carry no consequences. Employers who respond fairly, consistently, and lawfully to off-duty misconduct protect both their businesses and their workplace cultures.

Email our team today for any HR-related queries you may have.

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6. Employee transport and the tax implications thereof

Author: Dave Beattie

An employer paying for an employee's daily commute to and from work is generally a taxable benefit for the employee. However, there are circumstances where this practice is regarded as a 'no-value' fringe benefit.

SARS issued Binding General Ruling 50 on the 18th March 2019 to confirm that the transport service provided to employees for travel between home and the workplace can be a non-taxable fringe benefit if it meets specific requirements. This "no-value" provision applies under these conditions:

- The transport is provided directly by the employer, using a vehicle and driver on its payroll.
- If the service is outsourced to a third-party transport provider, the contract must be between the employer and the service provider, not the employees.
- The transport must be offered exclusively to employees along pre-determined routes and cannot be requested on an individual or ad-hoc basis. This means that pick-up and drop-off points are established and employees are required to get to and from those points to take advantage of the transport provided.

- The transport must be available to employees in general. This includes situations like shift work requiring travel outside of standard hours.

If the transport that is provided by employers does not meet with the above criteria, then the employee will be receiving a taxable benefit. Examples include:

- **Paying for public transport:** If an employer reimburses or pays for public transport, such as bus and train tickets or taxis fares, it is a taxable benefit.
- **Providing a transport allowance:** A transport allowance given to employees to use for public transport is a taxable fringe benefit.

Employers must be able to differentiate between the 'no value' travel fringe benefit and the taxable options. A misinterpretation may result in tax being short-paid and there being additional tax, a late payment penalty, and interest levied by SARS.

Got a tax-related query? Contact us today.

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7. On the Case: A calculated breach – When a trusted employee manipulates the system

Author: Nicky Hardwick

This month, we examine a complex case of sustained and deliberate dishonesty involving a senior employee whose knowledge of internal systems became a tool for significant financial misconduct. Despite years of good service, a trail of falsified overtime claims, manipulated data, and ignored instructions exposed deep-rooted fraud, and triggered summary dismissal.

The situation

A senior manager at a healthcare facility, responsible for vetting overtime claims and overseeing staff operations, was found to have manipulated payroll and patient records over a prolonged period. The issues came to light following a tip-off and internal review. The resulting investigation uncovered more than 27 incidents of dishonesty, including:

- Falsified overtime submissions
- Duplicate and retro-dated patient entries
- Payment claims for procedures he did not perform
- Manual adjustments to Excel spreadsheets using hidden white-font entries
- Ignoring clear managerial instructions

Despite a clean disciplinary history and a decade of service, the scale and premeditation of the fraud left the employer with little room for leniency.

The impact

- Estimated direct losses of over **R525,000** from December 2023 to April 2024, with additional losses still being quantified
- Breach of trust at leadership level
- Risk of reputational harm had the fraud been externally exposed
- Damage to internal morale and systems accountability

The defence

The employee claimed:

- The call logging system was insecure and could be accessed by others
- He wasn't aware of discrepancies in his own claims
- Any mistakes were unintentional and systemic
- He believed he had implicit authorisation for certain practices

However, the evidence didn't support these claims. For example, the hidden white-text entries in spreadsheets showed deliberate concealment. Cross-checks of other employees' records showed no such anomalies. Witnesses, including those brought by the employee, failed to back his version of events.

Lessons learned

- **Trust is not a policy, it's a practice:** The employer's greatest mistake was trusting one person with sole oversight over key financial processes. Separation of duties and cross-checking mechanisms are essential, even for long-serving, "trusted" team members.
- **System access = system vulnerability:** Employees with knowledge of your processes and loopholes are best positioned to exploit them. Regular audits and role-based access reviews are critical.
- **Documentation trumps defence:** Despite his claims, the evidence – call sheets, patient records, and spreadsheets – painted a clear picture. Employers should always prioritise thorough digital documentation in investigations.
- **Excuses don't erase impact:** While personal pressures, length of service, or claims of misunderstanding may soften perception, they don't negate financial loss or the breach of fiduciary responsibility, especially for those in senior roles.

The outcome

The employee was found guilty on all charges of gross dishonesty, fraudulent conduct, and insubordination. The recommended sanction: summary dismissal. The Chairperson noted that while personal and tenure-based mitigating factors existed, the scale and intention of the misconduct broke the trust beyond repair.

Key takeaways for employers

- **Create layered approval structures:** No one employee should handle both submission and verification of claims.
- **Perform regular system audits:** Audit logs, timestamps, and access control are your frontline defence.
- **Define clear callout and overtime protocols:** Avoid grey areas by ensuring policies are written, communicated, and enforced.
- **Investigate before assuming intent:** However, once dishonesty is proven, act decisively.

How we can help

We support employers in:

- Drafting fraud-resistant policies and claim procedures
- Conducting independent and fair disciplinary hearings
- Auditing internal systems for vulnerabilities
- Rebuilding controls after trust breaches

Need help safeguarding your workplace from internal risks? Contact us at info@hrtorque.co.za

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8. This month's highlights

Author: Candice Zulu

1. **Mid-year tax certificate submission due the 31st October 2025:** Employer's Interim Reconciliations are part of the filing season. Please remember that there are no employee certificates produced for the interim run, only a submission to SARS that has a reconciliation of the certificates and EMP201's paid for the period March 2025 to August 2025.

2. **Employment Equity:** South Africa's Employment Equity reporting period runs from the 1st September 2025 to the15th January 2026, which is the first reporting cycle under the new Employment Equity Amendment Act. Online submissions are from the 1st September 2025 to the 15th January 2026, while physical submissions can be made between the 1st September and the 1st October 2025.

3. **Income tax return filing dates**
    - Filing season opened for non-provisional taxpayers who were not auto-assessed: 21st July to the 20th October 2025
    - Provisional taxpayers: 21st July to the 19th January 2026

4. The ins and outs of HR can sometimes feel like navigating a maze. That's why we've put together our **HR Managers' Pocket Guide**, a powerful resource designed to simplify your HR journey. Find it here.

5. **Income tax number:** We can assist you with the registration of your employees for income tax purposes, managing the process from start to finish. Our consultants will obtain the employee's personal information from your payroll administrator and complete the necessary applications. The turnaround time for this process is 24 hours and the cost per application is R300 plus VAT. A volume discount will be negotiated in cases where there are more than 20 applications at a time. Should you need assistance please contact Dave Beattie on 031 564 1155 or dave@hrtorque.co.za

6. HRTorQue hosts weekly, online **HR-focused mini workshops**, assisting and guiding your managers to perform better. View our list of trainings here or email us for more information.For our latest recordings from our **Wednesday webinars**, take a look at our YouTube channel, filled with informative HR, payroll, and legislation tips and tricks. If you're not receiving our weekly invites, please subscribe here.

7. **Employment Equity Reporting made simple:** Create a clear 5-year plan, track your progress, and achieve your transformation goals with confidence. Our user-friendly app guides you step by step — helping your business stay compliant and on target. Start building your plan today: [Insert Link]

8. **Unlock Potential with Online, Self Paced, Learning:** At HRTorQue, we believe that learning should be as dynamic and adaptable as the world around us. That's why we offer a diverse range of courses designed to empower individuals and teams. Every organisation is unique, and so are its learning needs. Our courses are crafted to reflect real-world challenges, ensuring that the skills you gain are immediately applicable in your environment.

Contact us today for all your HR, payroll, tax, and accounting needs.

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