**DISMISSED: THE BUTCHER WHO WENT TO WORK WITH COVID-19**

*“The facts of this case are indeed extraordinary. They are indicative of the need for more to be done at both the workplace and in our communities, in ensuring that employers, employees, and the general populace are sensitised to the realities of this pandemic, and to further reinforce the obligations of employers and employees in the face of, or event of an exposure to COVID-19” (extract from judgment below)*

The COVID-19 pandemic has exposed both employers and their employees to a whole new slew of risks. One of the more serious is the danger of infected employees coming to work and by doing so endangering the lives of not just their colleagues, but also customers and anyone else unfortunate enough to come into contact with them.

A new Labour Court decision confirms that our courts will not hesitate to act decisively where employees disregard health and safety protocols.

**The butcher who tested positive but went to work**

* An Assistant Butchery Manager employed by a national butchery business, despite testing positive for COVID-19, reported for duty for three days, walked around the workplace without a mask, and even hugged a colleague with a heart condition.
* He was charged with gross misconduct and negligence, firstly for not disclosing that he had been tested for COVID-19 and was awaiting the results, and thereafter for endangering the lives of his colleagues by failing, after receiving a positive test result, to self-isolate, to follow the workplace health and safety protocols, and to adhere to social distancing.
* The employer had constantly reminded all employees of its COVID-19 policies, procedures, rules, and protocols. Moreover the employee was a member of his workplace’s “Coronavirus Site Committee” responsible for putting up posters throughout the workplace, informing all employees what and what not to do in the event of exposure or even if they suspected that they may have been exposed to COVID-19, and the symptoms they must look out for.
* Dismissed, the employee approached the CCMA (Commission for Conciliation, Mediation and Arbitration) which although finding him guilty held that the dismissal was substantively unfair and that the employee should instead be reinstated retrospectively, without back-pay, and a final written warning placed on his record.
* On review to the Labour Court it upheld the dismissal as being substantively fair, commenting that “[his] conduct was not only irresponsible and reckless, but was also inconsiderate and nonchalant in the extreme. He had ignored all health and safety warnings, advice, protocols, policies and procedures put in place at the workplace related to COVID-19, of which he was fairly aware of given his status not only as a manager but also part of the ‘Coronavirus Site Committee’.”
* He had acted dishonestly, had caused “monumental harm, anxiety and strain” to his co-employees and their immediate families, as well as to his employer’s operations, he had shown no contrition, and his conduct had rendered unsustainable the trust and working relationship with both his employer and his fellow employees.

**The Court’s warning to employers**

The Court also rapped the employer over the knuckles for allowing business to continue as usual in a deadly pandemic without social distancing, allowing “mask-less ‘huggers’” to walk around on the shop floor, despite “having all of these fancy COVID-19 policies, procedures and protocols in place”.

As the Court put it “…the facts of this case in my view clearly compels the need for serious introspection by the applicant and all other employers in the light of the above questions posed, in regard to whether existing health and safety measures and protocols in place are being taken seriously by everyone affected. It is one thing to have all the health and safety protocols in place and on paper. These are however meaningless if no one, including employers, takes them seriously.” (Emphasis supplied).