



# Newsletter April 2004

Central Chamber

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## **LABOUR LAW: DISMISSAL ON REACHING RETIREMENT AGE**

(Item 625) Acknowledgements ICSA Corporate Governance Technical Newsletter

**Note: The Chamber has been advising members to implement this condition for many years, to avoid "post-retirement" disputes.**

Section 187 (2) (b) of the Labour Relations Act 66 of 1995 sanctions a mandatory retirement age.

The legal profession generally, and the Courts in particular, are concerned with this provision as individual cases, or as a concept generally, a mandatory retirement age could be considered to be unfairly discriminatory.

It would seem that the law is likely to be amended, in the course of time, to be less rigid in its provisions.

Accordingly, the spirit shown in Section 187 (1) (f) of the Labour Relations Act, which provides that in general it is unfair to discriminate against an employee on the basis of the latter's age, is likely to prevail.

It would seem that employers would be wise to provide, in individual employment contracts, for a retirement age. This would give a greater degree of certainty to the future implications of changes in the law.

**DEFECTIVE PRODUCT LIABILITY:  
NEED TO PROVE NEGLIGENCE**

(Item 623) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

In the case of Wagener v  
Pharmacare Ltd; Cuttings the  
Pharmacare Ltd 2003 (4) SA285  
(SCA) the Court considered the  
liability of a manufacturer of a  
product called Regiblock, which it  
was alleged, caused paralysis of  
the arm, to two claimants.

The trial Court and subsequently  
the Supreme Court of Appeal held  
that the manufacturer of a  
defective product could only be  
held liable in delict for  
unintended harm caused by its  
product if negligence on the part  
of the manufacturer could be  
proven.

The Court observed that it might  
in future become law that the  
onus of disproving negligence  
rested with the manufacturer, but  
it held that at the time of the  
ruling the law was clear, in that a  
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negligence could be proven.

Note: The loss of reputation in  
such a case may of course, spell  
the end of the manufacturing  
organization, but what about  
compensation for the paralysis to  
the limbs of the consumers!

**VISIT OUR WEBSITE:**  
[www.pifsa.org](http://www.pifsa.org)

**HIV:**  
**LABOUR COURT AWARD DAMAGES**  
(Item 624) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

On 3 December 2003 the Labour  
Court awarded damages of R62  
000 against an employer who  
treated an employee unfairly,  
upon discovering her HIV status.

## **ANNUAL REPORTS**

### **REPORTING ON HIV/AIDS**

(Item 626) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

The King II Report on Corporate governance recommends that Boards of directors should understand the social and economic impact of HIV/AIDS. The Board should adopt an appropriate strategy and regularly report to stakeholders on the impact of HIV/AIDS on their business and employees.

The JSE Securities Exchange South Africa has recently published a Sustainable Report Index, which includes HIV/AIDS.

It is evident that reporting on HIV/AIDS is becoming essential.

In this regard readers may wish to refer to a technical assistance guideline issued by the South African Department of Labour and to a report issued by the international labour organisation entitled "A Code of Practice on HIV/AIDS and the World of Work".

It is evident that the impact of HIV/AIDS on the people of Southern Africa is having an effect on the number of people who have to be trained to fill available positions and necessity to become a learning society. Business has a leading role to play in this task.

Amongst the indicators which it has been suggested should be reported to stakeholders are the following:

- A description of the company's HIV/AIDS policy;
- A strategy for managing the HIV/AIDS risk'
- Contingency planning;
- A description of how the HIV/AIDS is monitored;
- A report on the anticipated risk posed by HIV/AIDS;
- Describe what benefits and supports are supplied to employees who are sick or dying, or to their dependents upon their death from AIDS related conditions.

**FUDICIARY DUTIES:  
APPLIES TO EMPLOYEES AS WELL  
AS DIRECTORS AND AGENTS**  
(Item 627) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

In a recent action by Fieldstone Africa the Supreme Court of Appeal upheld a High Court ruling that the acquisition of secret profits by an employee constitutes a “breach of trust, faith, confidence and loyalty” and is tantamount to an outright betrayal by the employee.

The Appeal Court has pointed out that the company does not have to be able to use the information gathered by an employee or to have suffered loss or damage, for it to be an offence.



**GLOBAL WARMING**  
(Item 628) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

Ten USA pension funds, which administer US\$1 trillion, have launched a body called “Investor Network on Climate Research”.

The British have a body which administers US\$8 billion, called “The Institutional Investor’s Group on Climate Change”.

The abovementioned bodies are, together with the United Nations Secretary General and the former US Vice-President, Al Gore, headlining the question of risk posed by changes in the climate.

The American Investor Network on Climate Research is asking the Securities Exchange Commission to compel companies to report on climate risk, as a part of routine company reporting.

The British body has emphasized that climate change is a material long-term risk for the owners of shares.

**PROMOTION OF ACCESS TO  
INFORMATION ACT**  
(Item 629) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

Several authoritative bodies are suggesting that to burden the Human Rights Commission with receiving a copy of every manual, promulgated in terms of the Promotion of Access to Information Act, is meaningless. These parties are recommending that the requirement to lodge manuals be cancelled.

Several parties are also recommending that the requirement to publish in the Government Gazette should be completely removed, but that companies should be obliged to provide a copy of the manual to interested parties.

Finally, it is suggested that companies and close corporations with a turnover of less than 5 million, should be exempt from the requirement to prepare a manual.

**VAT:  
INVOICES TO CONTAIN CLIENT'S  
VAT REGISTRATION NUMBER**  
(Item 630) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

In the budget speech of 26 February 2003, the Minister of Finance announced that in future all invoices would be required to contain the VAT registration number of the recipient of the goods or services. This means that, in addition to invoices containing the VAT vendor's registration number, VAT invoices will require the VAT registration number of the client or customer. This is to apply in respect of tax invoices for in excess of R1000.

SARS, in their VAT Newsletter of May 2003, announced that the amendment would take place with effect 1 April 2004. This date has now been amended to 1 April 2005.

Readers are advised that they should commence the collection of all their clients'/customers'/patients' VAT registration numbers in order that they are able to correctly issue invoices before 1 April 2005.



## **FINANCIAL INTELLIGENCE CENTRE ACT**

(Item 631) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter  
The Financial Intelligence Centre Act, which was promulgated on 3 December 2001, reacts to the unprecedented global growth of organised crime and money laundering. The Act creates a statutory framework of financial intelligence center and a money laundering advisory council, in order to combat money laundering activities.

Money laundering is defined as “an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds.....”.

The Act requires any person who has knowledge or who suspects that a contravention has occurred, to notify the Financial Intelligence Centre, within fifteen days.

The Act specified that any person who carries on a business,

including any manager or employee, who reasonably ought to have known or suspect that a contravention has occurred and who negligently fails to lodge the requisite report shall be guilty of an offence.

The Financial Intelligence Centre Act specified that the act of lodging a report and the content of the report may not be disclosed to any person.

Failure to submit a report to the Financial Intelligence Centre carries a maximum penalty of fifteen years imprisonment or a R10 million fine.

Should a report not be submitted within the fifteen day period, the negligent party could face a fine of R100 000 or six months imprisonment, notwithstanding a late notification.

The need to educate all managers and employees in the provisions of the money laundering legislation is evident.

## **JOINT VENTURES**

(Item 632) Acknowledgements  
ICSA Corporate Governance  
Technical Newsletter

The question is frequently asked as to whether parties, who are to be involved in a joint venture, should form a joint venture company or operate as an unincorporated joint venture.

The disadvantage of an unincorporated joint venture is that parties have unlimited liability for the debts of the joint venture. This exposure cannot be limited in any way. It is accordingly a high-risk method of operating.

Unincorporated joint ventures may, of course have the advantage that a dissolution will be far less formal.

From a taxation point of view, a joint venture company is taxed at the normal company rates, which is effectively 38%. On the other hand, an unincorporated joint venture will be taxed at the rate of the partners. Should the joint venture parties be natural person, the taxation rate would be on a

sliding scale with a maximum rate of 40%.

South African Companies and individuals who enter into joint ventures to facilitate contracts with Governmental bodies should be aware of the risk of tendering as an unincorporated joint venture. Tenders should preferably make provision for the joint venture to become an incorporated company upon the contract being awarded.

## **MEMBERSHIP LOYALTY PROGRAMME**

The Executive Committee recently addressed an enquiry from a member firm about loyalty awards.

In discussion it was agreed to question members as to what they feel is a most appropriate milestone to recognise.

You are referred to the questionnaire which accompanies this newsletter and request you to complete and return it to Ms Nicky Pottow on fax no. (011) 699-3042 by Monday 17<sup>th</sup> May 2004.



## PIFSA FINANCE

PIFSA Finance will be running a competition for all members making use of their finance options from May 2004 - January 2005. Details will be mailed to all members shortly.

Mr Etienne Combrink from ABSA is the new PIFSA Finance Consultant and is now residing at the PIFSA offices in Honeydew. He can be contacted on (011) 699 3086 or alternatively on 082 443 4483.

## CENTRAL CHAMBER NEW TELEPHONE NUMBERS

TELEPHONE: (011) 699 3044

FAX: (011) 699 3042

ACCOUNTS: (011) 699 3047



## BUSINESS FOR SALE

Asking price: R450 000 –Owner Emigrating

Business has been established for 10 years. Situated in a secure business park in Wadeville, with good industrial type client base which includes Afrox, Nampak, Xacpet, Iveco and Scaw Metals.

Great potential to increase client base as there are many more large corporate type companies in the immediate area. These could include Distel, Macsteel, S.A.B., Air Liquide, N.C.P. etc. As will be noticed in the list of assets there are 2 A.B. Dick machines, currently only one is in use, the second machine was purchased in March 2003 and has never been used.

Staff consists of one press operator, one finisher, one D.T.P. operator and owner, whose main function is to generate work.

Rent: R3000.00 per month, which includes water & lights, security (24 hours) and shade port.

Premises are 145m<sup>2</sup> in extent and include 3 offices, workshop, store room and 2 toilets.

Any queries please phone The Director, Central Chamber on (011) 699 3044.

## TELEPHONE TECHNIQUES AND FRONT OFFICE SKILL WORKSHOP

Our next Telephone Techniques and Front Office Skills course is being held on 19 June 2004.

This hugely successful and well attended course is presented by Mr Geoff Warren of the Kwa-Zulu Natal Chamber .



*Mr Geoff Warren –*

All companies should realise the value of an efficient a motivated receptionist.

Course contents:

- Customer Service
- Grooming and Appearance
- The Reception Area
- Communication Skills
- Handling Appointment
- Greetings
- Messages
- Dealing with Complaints
- Telephone Technique
- Security and the Reception Area

The cost of this course to members is R820.00, which includes VAT, lunch, tea/coffee and course notes.

**PLEASE PHONE NICKY AT THE CENTRAL CHAMBER TO BOOK YOUR FRONT LINE LADY/GENTLEMAN ON THIS COURSE.**

## YOUNG PEOPLE IN PRINT

This organization, formerly known as Young Management Printers (YMP), has elected an Executive Committee, which is busy formulating plans to re-invent

itself and begin offering benefits to any individual below the age of 45 who wishes to make a career for him/herself in the broader printing, newspaper, packaging Industry.

thereby hopefully improve the quality of the general employment pool..

This initiative has the full support of the Chamber Executive Committee, who have been instrumental in assisting in the reformulating process.

It is anticipated that educational and motivation/instructional events will be arranged, which will serve to both improve the knowledge of the individual and raise the general level of ability and understanding in the Industry.

The annual subscription per individual is a meager R150.00 and the Executive Committee members have agreed that every staff member in their companies who join this organization will have their subscriptions paid by the company, provided the employee's attendance is sufficiently achieved.

The Executive Committee hereby challenges every PIFSA member to adopt the same philosophy and