

## 1.7. RESIGNATION

In a work environment, “resignation” could have different meanings. The following points need to be kept in mind pertaining to resignations:

- ❖ An employee gives notice of termination of employment in terms of the contract of employment or in terms of the provisions of the applicable legislation.
- ❖ An employee terminates employment without giving proper notice in terms of the agreement of service.
- ❖ Resignation is a unilateral act by an employee that amounts to a breach of the agreement of service (i.e. if an employee gives the required notice of termination it is not resignation).
- ❖ A resignation is also voluntary.
- ❖ An employee cannot be forced to resign. Where an employee resigns due to pressure by the employer, e.g. where the employer makes continued employment intolerable for the employee, this will amount to a so-called “constructive dismissal” and will not be regarded as resignation.

### 1.7.1. The procedure for dealing with resignation

In order to avoid a situation where a resignation is challenged, it is recommended that an employer deals with a resignation as follows:

- ❖ Insist that the resignation be put in writing.
- ❖ Call the employee in and determine the reasons for the resignation. Minutes should be kept and the reasons must be noted. It is advisable that a third person is present during the interview.
- ❖ Ensure that the employee is serious about resigning.
- ❖ Point out that the employee has not given proper notice of termination in terms of the agreement of service. Give the employee an opportunity to give proper notice.
- ❖ Ensure that the resignation is voluntary.
- ❖ Inform the employee that the resignation is accepted. (It means that the employer waives notice and agrees that the employee can leave. The employer does not have to accept the resignation, though. Not accepting resignation means that the employer insists that the employee continues working for the notice period, or that if the employee fails to do so the employer reserves the right to claim damages for breach of contract, or, in the case where an employee resigns in the face of pending disciplinary action, the employer wishes to continue with the disciplinary process in the employee’s absence.)
- ❖ The employee may be requested to sign the minutes.
- ❖ After acceptance of the resignation the employee should also be informed of where any moneys, which are due to him/her, may be collected. The same administrative arrangements that apply in the case of a dismissal for misconduct, by and large also apply here. However, an important difference is that it is not necessary for the employer to pay the employee any moneys in lieu of notice. The contrary is true. In view of the fact that a resignation amounts to a breach of contract by the employee, it is the employee who is really obliged to pay the employer in lieu of notice if this is provided for in the contract of employment.

### 1.7.2. The procedure to follow in case resignation is withdrawn

It sometimes happens that an employee resigns impulsively in a moment of weakness or anger, but later regrets the decision and wishes to withdraw the

resignation. Unfortunately the Labour Relations Act, 1995 has not provided any clarity in this regard. It would however be advisable to observe the following guidelines when interviewing a former employee who wishes to withdraw his/her resignation:

- ❖ It is preferable that the same person, who were present during the interview when the resignation was accepted on behalf of the employer, should also attend the interview regarding the withdrawal of the resignation. Minutes should be kept.
- ❖ Determine the reasons why the employee wishes to withdraw the resignation.
- ❖ If less than two days have passed since the resignation and the employee alleges that it was done in a moment of weakness or anger, it may be decided to re-engage the employee. If the employer is not willing to re-engage the employee, it would be advisable to obtain professional advice on how to deal with the matter.
- ❖ If more than two days have passed since the resignation, the pleas of the employee can be heeded with less sympathy. Depending on the circumstances, the employee may simply be informed that he/she is no longer an employee and that his/her re-engagement will not be considered.