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## DEALING WITH AN EMPLOYEE WHO IS A “MISFIT”

**Most employers know by now how to deal with employees who break the rules or don't meet performance standards. What should be done in the case of an employee with unusual personality traits or other qualities that cause the employee to be incompatible in the working environment is not so apparent.**

Normally the issue of compatibility arises when there is disharmony between the employee and management, or fellow employees. The employee might not be transgressing any rules and be perfectly competent to do the job. However, there could be personality differences, corporate culture, different approaches and several other causes of friction. Some organizations need a greater measure of conformity than others in order to function properly. The corporate culture in organizations does not always allow much leeway for the abrasive, self-asserting or eccentric personality.

Incompatibility has been described as “..... a nebulous concept and the effect of incompatibility often cannot be explained in clear and objective terms” (*Subrumuny v Amalgamated Beverages Ltd (2000) 21 ILJ 2780*). This is not helpful to the employer who is seeking guidance on what action should be taken when an employee appears to be a misfit.

In some environments it is important for an employee to be accepted by most, if not all of the people the employee encounters, even beyond the employment relationship. An example of this was apparent from a recent case involving the dismissal of a Minister of the church. In the CCMA case of *Wagenaar and the Uniting Reformed Church in SA* there was general dissatisfaction with the Minister amongst the members of the Kerkraad (church council) and congregation. Although there was no evidence of improper conduct, the commissioner found that “..... a Minister whose congregation is divided about him is compromised in his ability to properly conduct his calling”. The Minister's services were terminated after several attempts to resolve the matter.

The level of tolerance that an employer should exhibit is not easy to determine. For example, a manager who is expected to achieve results is bound to cause a measure of disharmony in the workplace, not only with fellow employees, but also with senior management. The merit of his or her hard-line approach might only be recognized after some time. However, the case of *Miyeni v Chillibush Communications (Pty) Ltd [2010] 11 BALR 1182 (CCMA)* is an example of where the commissioner found good grounds for termination of an employer's Creative Director based on incompatibility. There had been a host of complaints, including the effect of the employee's conduct on staff morale. Although some of the incidents on which the employer relied were petty, the overall impression was that the employee was abrasive, arrogant and insulting to his fellow directors. He was a senior employee, and the importance of interpersonal relationships at that level was difficult to evaluate. The commissioner found that the employee had been unable to supervise and motivate staff effectively, his interpersonal relationships with his fellow directors were poor and he seemed unable to fit into the employer's corporate culture. Dismissal was accordingly appropriate.

If there is sufficient justification for taking action based on an employee's incompatibility, how does the employer approach the matter? Our labour legislation provides guidelines only for dealing with misconduct, poor work performance, medical incapacity and retrenchment. Although no clear guidelines exist for dealing with incompatibility, there have been several arbitration cases providing valuable principles.

In the absence of clear guidelines, the following indicators should be helpful:

- Only harmful behaviour warrants action; an employer should show reasonable tolerance towards mild or harmless eccentricity.
- The employee must be counselled on the perceived causes of the disharmony, who is affected and the remedial steps to be taken to remove the disharmony.
- The employee must be informed of what the consequences would be if the disharmony cannot be resolved.
- Prior to dismissing an employee, the employee should be given a reasonable opportunity to state his or her case. It is advisable to arrange a hearing and to follow similar procedures to that of a disciplinary hearing.
- In order to justify dismissal the incompatibility must be entirely or substantially attributable to the employee.
- Dismissal must be a measure of last resort.

Whereas the problem would typically be entirely or substantially attributable to the employee, this does not necessarily mean that the employee is to blame. Where the blameworthiness of the employee is in doubt, the matter should be treated as a "no fault" dismissal. Employment should be terminated on notice in terms of the employment contract, or the employee should be paid in lieu of notice.

Incompatibility is not only a slippery concept, but it is also difficult to manage. In order to prevent an incompatibility problem arising in the first place, employers should be more diligent during the recruitment process.

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