

LERASA NEWSLETTER

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LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

INSIDE THIS ISSUE:

Welcome to the third edition of LERASA's Newsletter for 2022, a publication that includes information highlighting important information relevant to Labour and Employment Relations in South Africa.

CASE LAW

National Union of Metalworkers of South Africa obo Aubrey Dhludhlu and 147 Others v Marley Pipes Systems (SA) (Pty) Limited

On Monday, 22 August 2022 at 10h00 the Constitutional Court handed-down judgment in an application for leave to appeal by NUMSA, the applicant, against a judgment and order of the Labour Appeal Court. That Court heard an appeal from the Labour Court regarding the dismissal of 41 employees of Marley Pipes Systems (SA) (Pty) Limited, the respondent, for the assault of another employee and participation in an unprotected strike. On the assault charge, the finding of guilt was based common purpose.

In July 2017 a wage increase agreement affecting the plastics industry was reached pursuant to sectoral level bargaining under the auspices of the Plastics Negotiating Forum. The respondent's business is within the plastics industry. On 13 July 2017 the respondent communicated the increase to NUMSA shop stewards. On that same day the shop stewards, in turn, communicated the increase to the respondent's employees who are NUMSA members. Unhappy with the increase, NUMSA members who worked on the morning shift embarked on an unprotected strike on the morning of 14 July 2017. They first gathered at the canteen waiting to be addressed by Mr Ferdinand Christiaan Steffens, the respondent's head of human resources. When he did not arrive, they moved towards the respondent's administrative offices carrying placards which called for the removal of Mr Steffens. When Mr Steffens came out the striking employees surrounded and assaulted him severely. As a result, he sustained injuries all over his body.

After a disciplinary process that took place during July to August 2017, the respondent dismissed 148 employees. An independent chairperson found the employees guilty of two counts of misconduct. One was the assault of Mr Steffens and the other was participation in the unprotected strike.

One hundred and thirty-six of the employees were convicted of assault on the basis of the doctrine of common purpose. The other 12 were found to have been involved in the actual physical assault of Mr Steffens. The respondent dismissed all 148 employees pursuant to a recommendation to that effect by the chairperson. Aggrieved by their dismissals, the employees, represented by NUMSA, referred an unfair dismissal dispute to the Metal and Engineering Industries Bargaining Council. After conciliation failed, a claim of unfair dismissal was referred to the Labour Court.

At the Labour Court the employees pleaded that no assault or unprotected strike took place. Based on that, they contended that the dismissals were unfair. The respondent filed a counter-claim for just and equitable compensation in terms of section 68(1)(b) of the Labour Relations Act 66 of 1995 for losses incurred as a result of the unprotected strike, and, in the alternative, damages. The Labour Court was satisfied that the employees were guilty of misconduct. It upheld the dismissals and awarded damages. NUMSA appealed to the Labour Appeal Court on behalf of only 41 of the 148 employees. The appeal was unsuccessful. The Labour Appeal Court ruled that common purpose had been established because none of the 41 employees had "intervened to stop the assault" and should have "dissociated themselves in [some] way from the assault before, during or after it" so as to escape liability.

Before the Constitutional Court NUMSA argued that the dismissals were substantively unfair. In particular, it took issue with the approach adopted by the Labour Appeal Court in its formulation of the doctrine of common purpose. In a unanimous judgment, the Constitutional Court took issue with the Labour Appeal Court's conclusion that the employees had not dissociated themselves from the assault. It held that mere presence and watching does not satisfy the requirements set out in its earlier judgment in *Dunlop* and in an earlier judgment of the Appellate Division in *Mgedezi*. There must be evidence, direct or circumstantial, that individual employees in some form associated themselves with the violence before it commenced, or even after it ended. The person concerned must have manifested their sharing of a common purpose with the perpetrators of the assault by themselves performing some act of association with the conduct of the other. Thus, employees cannot be required to intervene to stop the misconduct or dissociate themselves in some way from the misconduct when they never associated in the first place. The court further held that individual complicity in the commission of acts of violence must be established. If it were to be otherwise, the law would be a cruel instrument that attaches guilt and imposes sanction on the innocent. Association in complicity for purposes of common purpose must include having "the necessary intention" in relation to the complicity.

Finally, because the finding of guilt in respect of the count of participation in an unprotected strike was left intact, the Constitutional Court held that an appropriate order is remittal to the Labour Court for a reconsideration of an appropriate sanction in respect of that count. The Court took the view that, without the aggravating factor of a severe assault, the sanction might differ. This being a labour matter, costs were not awarded.



Social Dialogue Report 2022

Collective bargaining for an inclusive, sustainable and resilient recovery

Geneva: ILO, 2022
ISBN 978-92-2-036448-2 (web PDF)



PREFACE:

The world is still reeling from the social and economic crisis induced by the COVID-19 pandemic. Essential public health measures taken to contain the virus upended the world of work and jeopardized businesses. Millions of workers served on the front lines of the battle against the virus, putting their lives at risk. To maintain continuity, many workers shifted to telework. Hundreds of millions of others either had their work suspended or lost their jobs as a result of workplace closures. In addition to the significant income-support measures taken by many governments to cushion the effects of the crisis, for workers and employers what mattered most was whether the institutions governing work could serve as a source of resilience and mitigate the widening inequalities.

As the world looks to recovery, questions remain as to how we will ensure that the recovery is human-centred – restoring the social fabric weakened by fraying labour markets and revaluing work that is deemed essential to the functioning of our societies. Many changes that were under way before the pandemic have even accelerated, such as technological and environmental transformations, and it is critical that we make the most of the opportunities these transitions hold for sustainable enterprises and decent work.

First and foremost, we need to reaffirm the democratic principles and rights that give employers and workers a voice in the governance of work: freedom of association and the effective recognition of the right to collective bargaining. These founding principles of the ILO not only provide the democratic foundations of labour markets but they also reflect the democratic values of our societies. They enable the development of strong and representative workers' and employers' organizations that can shape the trajectory of recovery through effective social dialogue. Their actions and agreements can pave the way for a human-centred recovery that is inclusive, sustainable and resilient.



This first ILO flagship Social Dialogue Report focuses on collective bargaining. It stresses the importance of these democratic principles as the bedrock of stable and just workplaces, industries and societies. It describes the contribution that employers and workers can make to the inclusive and effective governance of work. Most importantly, it shows once again what is practically possible when the parties come together to negotiate and jointly agree on matters of importance to both, in periods of prosperity and during crises. It also demonstrates how collective agreements can be a source of resilience, of solidarity and inclusion and of transformative change, ensuring sustainable enterprises and decent work for all.

Our task ahead is to continue to promote these fundamental democratic principles and rights at work, in all parts of the world and for all employers and workers, recalling that, as stated in the Preamble to the ILO Constitution of 1919, “universal and lasting peace can be established only if it is based upon social justice”.

Guy Ryder
ILO Director-General



Read the full report published by the ILO here:

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Shattering The Glass Ceiling: Gender Equality, Diversity, And Inclusion In The Built Environment Professions



The Women Empowerment and Gender Equality Transformation Collaborative Committee (WEGE TCC), spearheaded by the Council for the Built Environment (CBE), promotes the participation of women in the built environment in the South African economy and fair treatment in their areas of work.

Despite the strong business case for gender diversity in the built environment, the gender representation, advancement, and retention of women in the sector remains an elusive dream with the latest figures released by StatsSA showing that women make up more than 50% of the South African population; however, only 13% of registered persons within the built environment professions were women in 2021.

“Like any other professions in the country, the built environment sector is facing serious challenges: Slow pace of transformation, ageing personnel, shortage of critical skills and high unemployment rates, especially amongst our youth. It is therefore important for the sector to take strides and develop strategies on how best to address crucial issues identified in the skills pipeline strategy for the built environment, especially gender representation, participation, and retention”, says Msizi Myeza, CEO at the Council for the Built Environment.

Various studies corroborate that while it is important to raise alarms about the slow pace of transformation, the gender gap in the built environment commences in primary school and that is where we must intervene. Moreover, a report by the African Academy of Science revealed that by primary school the belief of ‘girl jobs’ and ‘boy jobs’ are already entrenched, meaning that the gendered school curriculum also influences girls’ and boys’ future career choices. A growing body of evidence indicates that female attrition in built environment professions occurs increasingly at the point between tertiary education completion and career transition.

Globally, statistics show that women exit architecture, engineering and construction professions at a higher rate compared to their male counterparts and females leave within the first five years post-graduation. In 2014, the Engineering Council of South Africa (ECSA) reported that 70% of the women who graduated with engineering degrees left the profession after starting their careers because they felt isolated in their jobs. Numerous studies confirm that women who leave the professions had limited access to career advancement and were dissatisfied over remuneration than those who persisted. Other major obstacles that women encounter in the workforce include sexual harassment, inflexible work practices, lack of sanitary facilities on construction sites and the masculine culture of the industry.

“The CBE believes achieving gender equality in the built environment requires a multi-pronged approach, combining hard and soft laws, strategies, including setting of targets, that are enforced and monitored. Therefore, the alignment between South Africa’s economic, gender, and procurement policies becomes instrumental for the attainment of transformation in the built environment. CBE also believes that this can be achieved through the formulation of gender sensitive policy frameworks and interventions to improve the working conditions of women”, adds Myeza.

The work of the Women Empowerment and Gender Equality Transformation Collaborative Committee is anchored around creating a diverse and inclusive built environment, by building the pipeline of female talent throughout the skills pipeline, identifying support for female entrepreneurship, advocating and promotion of gender inclusive policy and procurement, facilitating the representation and participation of women in key decision-making structures, coordination of coaching and mentorship initiatives and through the creation of platforms for strategic partnerships and networking.

Interventions that bolder women’s feelings of belonging in the built environment are critical at post-secondary and early career levels, long-term career development, career re-entry programmes which encourage women to resume their careers after taking a break to start a family, mentoring professional coaching and professional development and flexible work practices are also critical for the development and retention of women.

In conclusion, Myeza says, “The Council for the Built Environment encourages built environment professionals and councils to champion transformation by positioning themselves as an agent for the change we desire to see in the profession.”

Written By:
Msizi Myeza



“Globally, statistics show that women exit architecture, engineering and construction professions at a higher rate compared to their male counterparts and females leave within the first five years post-graduation.”



Workplace Stress Management: Causes, Consequences, and Best Practices

How to manage stress in the workplace? This is one of the top concerns for organizations across the globe. The recent pandemic, emerging economic crisis, and the war in Ukraine have all been having a big impact on people.

The stress inevitably impacts employees' motivation and productivity at work. Even though some people have shaped better connections with their employers during these trying times, many have been laid off or are in fear of being laid off in the future.

While some prefer remote work, many have been struggling to cope with social isolation. While younger generations may prefer asynchronous communication, older generations are finding it hard to adjust to all the new technologies implemented in their organizations.

Hence, workplace stress management has become a priority for many organizations that care about their employees' experience and wellbeing.

So let's take a look at some of the main causes and consequences of stress in the workplace and how to properly manage it.

What Is Workplace Stress Management

APA's annual Stress in America survey has consistently found that work is cited as a significant source of stress by a majority of Americans. Moreover, 83% of US workers suffer from work-related stress, with 25% saying their job is the number one stressor in their lives. This fact is concerning and would not be neglected by employers.

When stress in the workplace is persistent, it can cause serious consequences which we will cover later in this blog.

Workplace stress management, therefore, consists of all the activities and initiatives an employer takes to discover and prevent the main causes of work-related stress. It usually consists of different types of programs to improve employees' experience in the workplace and to help them cope with stress.

This is why many organizations have been implementing formal employee wellbeing programs lately. They understand that their employees' well-being has a direct impact on their engagement and productivity at work.

Top 9 Causes of Stress In the Workplace

Many different things can cause stress at work. However, research has proved that there are some major causes to it.

1. Low salary

Compensation and benefits have a high and direct impact on various HR-related KPIs. Whether it's employee satisfaction, motivation, engagement, productivity, or retention, salary always plays an important role. This is no different when it comes to stress at work.

However, it is important to understand that higher-paying jobs which often bring more duties and responsibilities usually come with more stress.

2. Job insecurity

We live in an economy that is highly competitive, unstable, unpredictable, and volatile. This is especially true in light of the economic effects of the COVID-19 pandemic and the war in Ukraine.

These factors drive companies to lay off employees, creating job insecurity which results in higher levels of stress at work.

3. Poor workplace communication

When it comes to remote work, poor employee communication is one of the biggest struggles companies face. Inability to communicate synchronously makes employees feel like they are missing some critical company information.

Some are experiencing difficulties to collaborate efficiently with their team members which can lead to more stress at work.

4. Work overload and long working hours

Work overload and long working hours are often on the top of the list of causes of stress in the workplace.

The researchers at the City University of New York has discovered that long working hours are cited as the primary source of work-related stress by 21% of employees. This cause of stress is dangerous not only because of loss in productivity but it also tends to lead to stress-related illness and injury at work.

5. Lack of autonomy and empowerment

Imagine working in an environment where your skills and experience are not leveraged enough, where your ideas are not taken into consideration, and where your voice is not heard.

In workplaces with such characteristics, employees tend to feel stressed and dissatisfied with their jobs.

6. Bad relationships and poor company culture

Company culture is one of the prevailing causes of stress, according to almost half of senior HR professionals surveyed in a popular poll that suggests significant differences in the ways employees and businesses view mental health in the workplace.

According to that pool, 45% of HR professionals believed their organizational culture caused stress, al-

though 40% said they were working to create a 'caring and inclusive culture.

7. Inappropriate change management

Most people are resistant to change. Yet, many organizations have been facing continuous changes in the past few years. In order to ensure business continuity, companies need to be agile. They need to adopt best change management practices and adjust to the ever-changing business environments.

All these changes, digital transformation being a common one, require employees to adjust and embed new behaviors. If these changes are not managed properly, they can be a major source of stress.

8. Poor leadership and management

Good leadership is crucial for managing stress in a workplace. Leaders are the ones who can inspire people and encourage them to work together towards achieving a common goal.

Managers are the ones who are responsible for building good relationships with and among their team members and motivating them to do great work.

Therefore, when management and leadership are poor, the chances for higher stress at work are much bigger.

9. Inappropriate/insufficient workplace technology

Today's workplaces are highly digital and we depend on technology to do our jobs successfully. In the last few years, many organizations have been adding numerous workplace tools hoping to enable their people to be more productive.

Adding too many different solutions can, however, be contra-effective. In the sea of software for employee communication, video calling, employee engagement, project management, learning and development, document sharing, and others, employees tend to get lost and frustrated.

So workplace tech, especially when not integrated properly, can be a big source of stress at work.

Top 5 Consequences of High Stress In the Workplace

Earlier, we talked about how workplace stress management is a big priority for many employers. Why? Well because the consequences of work-related stress are numerous and serious. In fact, all the factors that impact employee experience in the workplace can also cause stress. When employee experience is poor, people will probably feel some kind of stress.

So let's take a look at some of the most concerning ones.

1. Poor employee health and wellbeing

Even though the consequences of high stress levels at work can be numerous, employees' health is the most concerning one. Unfortunately, all the research done in this area is more than worrisome.

Stress Management Society reported that workplace stress is linked to 70% of visits to the doctor and 85% of serious illnesses.

Poor mental and physical health caused by workplace stress negatively impacts people's personal lives – many employees pick up unhealthy habits such as alcohol, prescription pain medication, and other substances.

2. Low employee engagement and productivity

According to the American Institute of Stress, more than 50% of workers are not engaged at work as a result of stress. In another research, 41% of workers said stress made them less productive, 33% said it made them less engaged.

Managing such stress is of utmost importance to employers as it directly impacts employees' work quality. According to Deloitte, 91% of employees said that feeling overwhelmingly stressed negatively affects the quality of their work

3. High employee turnover

When stress leads to a loss in engagement and productivity it naturally impacts turnover rates in an organization. These leaves can be either voluntary or involuntary.

In a previously mentioned research, 15% of employees admitted they were looking for a new job because of the stress they experience at work. This percentage is extremely big, and workplace stress can be considered as one of the main causes of employee turnover and low retention.

In the past few years, we have been living in the era of great resignation, which proves that the pandemic and the current world situation have been leading to higher levels of stress at work.

4. Increased employee absenteeism

Previously mentioned research by the American Institute of Stress showed that about one million Americans miss working each day because of stress. And depression-induced absenteeism costs US businesses \$51 billion a year, as well as an additional \$26 billion in treatment costs.

5. Poor employer brand

Same as customers, unhappy employees tend to be much louder than happy ones. When dealing with work-related stress, employees share their feelings and thoughts with family and friends via online and offline channels.

This can seriously impact the organization's reputation as an employer, weaken its employer brand, and make it harder to attract and hire new talent.

Workplace Stress Management Best Practices

In a recent article, SHRM reported that only 35% of employees say that they receive sufficient resources to cope with and manage stress at work. Given that work is becoming more and more stressful for people, this percentage is concerningly low.

So what can employers do to improve workplace stress management in their organizations? Let's take a look!

1. Find the biggest sources of stress

In order to improve workplace stress management, the first step is to understand the main and biggest sources of stress among employees.

The best way to do so is by asking employees directly. This is the best way to find stress sources and also to encourage employees to share their voice, and raise their fears, concerns, and opinions.

Short and regular employee surveys are the best way to collect such information in the workplace. Make sure that the surveys are intuitive and available to every employee on any device.

2. Reassess your company culture and provide more flexibility

Have you reconsidered your company's culture, core values, and value proposition in the past 3 years? If not, you should probably do so. Times have changed, and employees' expectations have changed as well.

If, for example, job flexibility in terms of working hours and locations hasn't been addressed yet, you should consider it. Today, employees expect more flexibility at work and lack of flexibility can be one of the big sources of stress.

3. Raise internal awareness

This step is crucial!

Educating employees and managers about how to cope with stress is very important for mastering workplace stress management.

Clear, consistent, and frequent organizational communication is a must as this is the only way to inform and encourage employees to take stress seriously and to help them identify their own stress triggers at work.

Consider implementing an employee wellbeing program where you can provide useful information about stress management or offer therapies designed to help people deal with stress at work.

You can also create designated channels and communities where people can connect and share their own experiences and best practices about stress management.

4. Stay competitive!

Earlier, we mentioned that low compensation and poor benefits can cause stress at work. Hence, make sure that you analyze the market frequently and stay competitive.

Learn about the benefits your employees care the most about and make sure that you offer attractive compensation packages.

5. Provide the right workplace technology

Make sure that your employees and managers have all the necessary tools to be the best versions of themselves at work. Ensure that these technologies are well integrated and intuitive for your multigenerational workforce.

Today, workers spend less time interacting with other workers throughout the day. In reality, there is significantly less human interaction on all levels. Emails, voice mails, text messaging and video conferencing make many workers feel stressed, alone and isolated.

So enable your employees to communicate and collaborate properly, have access to important information and documents at all times, share their voices and concerns, and stay aligned with your company culture, strategy, and goals.

Written By
John Mitchell III



“While some prefer remote work, many have been struggling to cope with social isolation. While younger generations may prefer asynchronous communication, older generations are finding it hard to adjust to all the new technologies implemented in their organizations. ”

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VISION

To become a vibrant Organisation enhancing Employment Relations through debate and dialogue.

MISSION

- To facilitate an ongoing forum for constructive relationship building
- To deal with themes of relevance to the South African Employment Relations community
- To enhance the understanding, knowledge and practices of Employment Relations at National, Regional and branch levels in South Africa

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