

LIKHODI LEKUTIPHATSA KAHLE EKUVIKELENI NASEKUCEDZENI KUHLUKUMETWA EMSEBENTINI

“Cedza kuhlukumeta Emsebentini Nyalo!”





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employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



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Kungani leKhodi?

LeKhodi iholwa yi-ILO Convention 190 kanye neSincomo sayo macondzana nekucedvwa Ludlame neKuhlumeta Emhlabeni Wekusesebenta, 2019; i-Discrimination (Employment and Occupation) Convention 111 of 1958 (Convention 111); kanye ne-ILO Convention 151 lemayelana neTemphilo neKuphepha Emsebentini.

LeKhodi icitsa leKhodi yeKutiphatsa Lokuhle eKuphatfwa Kwemacala Ekuhlukumeta Ngekwemacasi Emsebentini leyakhishwa kuGazethi yaHulumende nombolo 27865 yangamhlaka 4 Ingci 2005.

Tinjongo teKhodi

LeKhodi yeKutiphatsa Lokuhle yentelwe kubukana nekuvimbela, kucedza, kanye nekuphatsa tonkhe tinhlobo tekuhlumeta letigcwele indzawo yekusebenta.

LeKhodi iniketa imihlahlandlela –

- kubacashi, kanye nakubasebenti nekuvimbela kanye nekucedza tonkhe tindlela tekuhlukumeta, njengendlela yekubandlulula lokungakafaneli, emsebentini; kanye
- nakutinchubomgomo temitfombolusito yeluntfu, kutinchubo nasekutiphatseni lokuhlobene nekuhlukumeta kanye nangetinchubo letifanele tekubukana nekuhlukumeta kanye nekuvimbela kuphindzeka kwakhona.

Ngubani lofakwa nguleKhodi?

Nanobe leKhodi isebenta kusimondzawo sasemsebentini njengemhlahlandlela kubacashi, kubasebenti nakulabo labafaka ticelo tekucashwa, benti bebusi nebahlukunyetwa bangafaka ekhatsi, kodvwa kungagcini lapho:

- baniyo;
- bacashi;
- baphatsi;
- emasuphavayiza;
- basebenti;
- labafuna umsebenti nalabafake ticelo temsebenti;
- emavolontiya;
- emaklayenti nemakhasimende;
- emasaplaya;
- bosonkontileka;
- labanye labasebentisana nebhizinisi; kanye
- nebantfu labaceceshwako kufaka ekhatsi ema-intern, labafundza umsebenti kanye nebantfu labakuma-learnership.

Ngabe leKhodi isebenta kutiphi timo?

Kuvikelwa kwebasebenti ekuhlukunyetweni kusebenta kunobe ngusiphi lekusebenta kuso sisebenti, nobe lesihlobene nemsebenti waso. Loku kufaka ekhatsi, kodvwa kungagcini:

- kundzawo yekusebenta lefaka ekhatsi tindzawo tesive netangasese lapho khona bantfu benta imisebenti yabo;
- kutindzawo lapho khona sisebenti sibhasalwa, sitsatsa likhefu lekuphumula nobe lekudla, sisebentisa tintfo tekuhlanteka, sigeza nobe sintjintja timphahla, simunyisa futsi sisebentisa tinsita tetekwelapha;
- kuluhambo loluhlobene nemsebenti, kuhamba, kucecesha, imicimbi nobe imisebenti yemphakatsi;
- kutekuchumana lokuhlobene nemsebenti, kufaka ekhatsi laba labasebenta ngemapulatifomu ethekhinoloji elwati newemningwane newe-inthanethi;
- kutindzawo tekuhlala letiniketwa ngumcashi, letifaka ekhatsi tindlu;¹
- nangabe kuyiwa futsi kubuywa emsebentini ngentilaspoti leniketwa nobe lelawulwa ngumcashi;
- esehlakalweni sebasebenti basemakhaya kanye nebasebenti bekunakekela ngetemphilo labacashwe endzaweni yekuhlala yebacashi babo, nobe endzaweni yekuhlala yemuntfu labanakekela yena, lendzawo yekuhlala yindzawo yekusebenta; futsi
- esehlakalweni sebasebenti labasentela emakhaya abo, nobe kunobe nguyiphi lenye indzawo ngaphandle kwetakihiwo temcashi, indzawo lapho basebenta khona leyenta indzawo yekusebenta.

¹ *Biggar v City of Johannesburg* (2011) 32 ILJ 1665 (LC).

Yini Kuhlukumeta?

Kuhlukumeta kuvisiswa jikelele kutsi:

- kutiphatsa lokungadzingeki, lokwehlisa sitfunti;
- lokudala simo sasemsebentini lesinebutsa noma lesisabisako kumsebenti loyedvwa nobe ngetulu nobe sibalwa, nobe sinemtselela, lobangela kutedzela ngemiphumela yangempela nobe lesongelwako lemibi; futsi
- ihlobene nasinye nobe tizatfu letinyenti lekuncatjelwe ngato kubandlulula ngekulandzela sigaba 6(1) se-EEA.

Tinhlobo tekulumeta

Kuhlukumeta kungaba ngumphumela wekulumeta ngekwemtimba, ngekwemlomo, nobe ngekwengcondvo.

- Kuhlukumeta ngekwemtimba kufaka ekhatsi kuhlasela ngekwemtimba, lodlame lolulinganiswa nobe lokwesabisa, nobe kusongela (njengekuphakamisa sibhakela kwangatsi ufuna kushaya umuntfu nobe kujikijela tintfo edvute nemuntfu).
- Kuchaphata ngemlomo kungafaka tinsongo, kuhlambalata, kudlalisa lokunelunya, kutfuka, kwahlulela lokungekule njalo, nekugceka, nobe lulwimi lolucwasa ngebuhlaka, bulili, nobe i-LGBTQIA+.
- Kuhlukumeta ngekwemcondvo emsebentini kungase kuhlotjaniswe nekuhlukumeta ngekwemoya futsi kufaka kutiphatsa lokunemiphumela lemibi kakhulu yengcondvo kum(kubamangali) njengobe kuvame kwenteka lapho kukhulunywa kabi, kuchashatwa kanye nekuhlukunyetwa.
- Kuchaphata – lapho khona kuhlukumeta kufaka kusetjentiswa kabi kwemandla kwemuntfu nobe kwelicembu lebantfu endzaweni yekusebenta. Kwesabisa – loku kutiphatsa ngemabomu lokungabangela kutsi umuntfu lanemcondvo lojwayelekile asabe kulimala nobe kulinyatwa. Kuchaphata emsebentini kungafaka kutiphatsa lokunelunya lapho khona lomunye umuntfu abangela ngalokuphindzaphindzeni kulimala nobe kuphatseka kwalomunye umuntfu.
- I-Mobbing yindlela yekuhlukumeta lokwentiwa licembu lebantfu lokucondziswe emuntfwini munye nobe labanyenti.
- Kuhlukumeta nge-inthanethi kuhlukumeta lokwentiwa, lokusitwa, nobe lokubangelwa ngencenye nobe ngalokugcwele, ngeusebentiswa kwethekhnoloji yemningwane neyetekuchumana njengema-mobile phone, ema-smart phone, i-inthanethi, tinkhundla tekuchumana nobe nge-imeyili. Kuchaphata nangabe kwentiwa nge-inthanethi kubitwa ngekutsi yi- cyber-bullying.

Tizatfu letincatjelwe

- Kuhlukunyetwa kwesisebenti kuncatjelwe ngekulandzela sigaba 6(1) se-EEA, nangabe kuhlukunyetwa kuhlobene nasinye nobe letinyenti taletizatfu letincatjelwe, kufaka buhlaka, bulili, kukhulelwa, simo semshado, sibopho semndeni, indzabuko, umbala, kutikhetsela temacasi, budzala, kukhubateka, inkholo, simo se-HIV, umcabango, inkholelo, umbono wetepoliti, lisiko, lulwimi nekutalwa nobe ngutiphi letinye tizatfu letincunyiwe.
- Kungenteka kwekutsi umuntfu lohlukenyeniwe ancume kutsi lokutiphatsa kubangelwe sizatfu lesincunyiwe, njengobe kuphawuliwe kusigaba 6(1) se-EEA.

Kuhlukunyetwa Ngekwemacasi

- Kuhlukunyetwa ngekwemacasi kwesisebenti yindlela yekubandlulula lokungakafaneli futsi lokuncatjelwe ngetizatfu temacasi, bulili, nobe kutikhetsela temacasi. Kuhlukunyetwa kwebulili lobufanako kungalingana nekubandlula ngesisekelo semacasi, bulili, kutikhetsela temacasi kanye nekuhlumeta lokusekelwe kubulili.

Kuhlukunyetwa ngeKwelibala, Kwebuve nobe Kwendzabuko

- Kuhlukunyetwa ngekwelibala yindlela yekubandlulula lokungakafaneli lokuncatjelwe sigaba 6(1) se-EEA lokuhlobene nebulunga bemuntfu nobe bulunga lobucatjangwako belicembu lobubonakala ngasinye nobe ngaletinyenti taletizatfu letincatjelwe letiphawuliwe nobe luphawu loluhlobene nalelicembu. Kutiphatsa lokubandlulula ngekwelicala, kufaka ekhatsi lulwimi loluhlambalatako, akuhambisani nemigomo leyesekele Umtsetfosisekelo, ikakhulukati emagugu ekungabandlululi ngekwelibala, esitfunti, kanye nekulingana.
- Kuhlukumeta ngekwelibala kutiphatsa lokungadzingeki lokungaphikelela nobe sehlakalo sinye lesilimatako, lesilulatako, lesihlambalatako nobe lesakha simo lesinebutsa nobe lesisabisako. Kutiphatsa lokubalwa njengalokubangela kutedzela ngenca yemiphumela mbamba nobe kwesatjiswa lokubi kwenta kuhlukunyetwa nanobe loku kungesiyo incenye lesemcoka yenchazelo yako.

Tindlela tekuhlukumeta ngekwelibala tingafaka:

- ✓ Lulwimi loluhlambalatako kanye nemahlaya labandlulula ngelibala, emakhathuni, nobe ema-meme, kufaka ekhatsi kuchumana lokulingana nenkhulumo yenzondvo;
- ✓ Tintfo letibhaliwe nobe letibonakalako leticansula ngekwelibala, kufaka ekhatsi kuhlukumeta nge-inthanethi;
- ✓ Kubitana ngemagama labandlulula ngekwelibala nobe tinkhulumo letingetinhle letinemtselela esitfuntini semuntfu;
- ✓ Kutiphatsa lokucasulako ngendlela yebutsa lobusobala kubantfu belibala lelitsite nobe licembu lebuve;
- ✓ Kukhishwa lokubhacile nobe lokusobala ekutsintsaneni kwasemsebentini nasemisebentini kanye naletinye tindlela tekubandlulula; kanye
- ✓ Kutiphatsa lokusongelako, lokwesabisa umuntfu nobe lokwakha simo sekusebenta lesinebutsa.

Imigomo Leholako Ekuvinjelweni, Ekucedvweni naseKuphatfweni Kwekuhlukunyetwa

- **Bonkhe bacashi bangaphasi kwesibopho ngekulandzela Sigaba 60 se-EEA sekutsatsa tinyatselo letisheshako naletilungisako tekuvimbela tonkhe tinhlobo tekuhlukumeta emsebentini. Loku kufaka ekhatsi kuhlolwa kwebungoti bekuhlunyetwa basebenti labahlangabetana ngalesikhatsi benta imisebenti yabo ngalokusemandleni abo.**
- Bacashi kumele babe nesimo sengcondvo sekungabeketeleli kuhlukumeta. Kumele bakhe futsi bagcine simo sekubenta lesihlonipha sitfunti sebasebenti. Kumele kuphindze kwakhiwe futsi kugcinwe iklayimethe yekutsi basebenti labaphakamisa tikhalo ngekuhlukunyetwa emsebentini ngayo tikhalo tekuhlukunyetwa angeke beve kwangatsi tikhalo tabo atinakwa nobe titsatfwa njengentfo lencane, nobe besabe kuphindzisela. Kusebentisa lemihlahlandlela lelandzelako kungasita kuphumelelisa letinhloso:
 - ✓ Bacashi netinyonyana tebasebenti/ basebenti banesibopho sekugwema kuhlukumeta.
 - ✓ Bonkhe bacashi kanye netinyonyana tebasebenti/ basebenti banendzima yekudlala ekufakeni ligalelo ngasekwakhiweni nasekugcineni simo sekusebenta lesingemukeli kuhlukumeta. Kumele bacinisekise kwekutsi emazinga abo ekutiphatsa akacasuli futsi kumele bangakhutsati kutiphatsa lokungakemukeleki kulabanye.
 - ✓ Bacashi kumele betame kucinisekisa kwekutsi bantfu labafana nemakhasimende, emasaplaya, bafaki beticelo kanye nalabanye labasebentisana nebhizinisi abahlukunyetwa basebenti babo nobe lomunye umunye umuntfu lomele umcashi.
 - ✓ Bacashi kumele bacinisekise kwekutsi basebenti labasebentela bona abahlukunyetwa ngemacembu esitsatfu njengemaklayenti, emakhasimende, emasaplaya kanye nalabanye labasebentisana nemcashi.
 - ✓ Tinchubomgomo netinchubo letitsetfwe ngumcashi kumele tinikete sitatimende lesisobala sesimo semcashi macondzana nekuvimbela, kucedza, kanye nekuphatsa tindlela letahlukene tekuhlukumeta emsebentini.
 - ✓ Bonkhe basebenti, lapho kukhonakala khona, nge kubambisana netinyonyana, kumele basebentise imiklamo yekucecesha kufundzisa basebenti kuto tonkhe tigaba ngekuhlukumeta kute bacinise futsi bagcine kutfobela ngetinhlelo tekwatisa letichubekako.

- ✓ Bacashi kumele batsatse sinyatselo lesifanele ngekulandzela leKhodi lapho tehlakalo tekukhukumeta tenteka khona esimeni sekusebenta.

Tinchubomgomo Tekukhukumeta

- Bacashi, ngekuya nganobe ngutiphi tivumelwano letikhona kanye nemibandzela yemtsetfo lekhona lephatselene nekukhukumeta, kumele basebentise tinchubomgomo yekukhukumeta, lekufanele kwekutsi inake futsi iholwe ngulemibandzela yaleKhodi.
- Lokucuketfwe tinchubomgomo tekukhukumeta kumele kwatiswe ngemphumelelo kubo bonkhe basebenti.
- Kwemukelwa kwenchubomgomo yekukhukumeta kanye nekuchumana ngalokucuketfwe ngulenchubomgomo kubasebenti, kumele, phakatsi kwaletinye tintfo, kubukisiswe ekuncumeni kutsi ngabe umcashi utentile tibopho takhe ngekulandzela imibandzela yesigaba 60(2) se-EEA.
- Tinchubomgomo tekukhukumeta kumele tihambisane kakhulu nemibandzela yaleKhodi.
- Tinchubo lekufanele tilandzelwe ngummangani ngekhukumunyetwa futsi nangumcashi nangabe kunetinsolo tekukhukumeta, kumele tichazwe kunchubomgomo.
- Kuba khona kwetinhlelo tekweluleka, tekunyanga, tekunakekela kanye netekwesekela tebasebenti kumele kuchazwe kunchubomgomo.

Kubika kuhlukumunyetwa

- Sigaba 60(1) se-EEA sivumela kwekutsi nobe ngutiphi tinsolo tekutiphatsa kwesisebenti lokungcubutana ne-EEA kumele tibikwe masinyane kumcashi.
- INkantolo Yekudluliswa Kwemacala Yetebasebenti incume kutsi ligama lelitsi “ngekushesha” kufanele lihunyushwe ngekwenhloso yalombandzela, lekukucinisekisa kwekutsi tehlakalo tekukhukumeta tiyaphenywa ngekw-EEA, hhayi ngebuchwepheshe. Tinsolo tekukhukumeta letentiwa ngesikhatsi lesifanele, ngaphasi kwetimo, kumele tiphenywe futsi kutsatfwe tinyatselo letifanele kuvimbela kwenteka kabusha. Loku kungase kufake phakatsi kutsatfwa kwesinyatselo sekucondziswa kwetigwegwe kubasolwa.²

Ngubani lekufanele atfutukise tinchubo tekubukana nekukhukumeta?

- Bacashi kufanele batfutukise tinchubo leticacile tekubukana nekukhukumeta ngekulandzela i-EEA. Letinchubo kufanele tivumele kucatululwa kwetinkinga ngendlela levela bulili, leyimfihlo, lenelikhono, nangendlela leyimphumelelo. Uma sisebenti sibike sigameko lekusolakala kutsi uhlukumetekile noma afake sikhalo, umcashi uphokelekile kutsi aphenye ngetinsolo tekukhukumeta letiletfwe etindlebeni takhe futsi eluleke ummangali ngemigudvu lengahleleki nalehlelekile lekhona yekubukana nalokukhukumunyetwa.

Ngabe bacashi kukhona sibopho labanaso nangabe tinsolo tekukhukumeta tiletfwa etindlebeni tabo?

- Yebo, umcashi kumele:
 - ✓ atsintsane nabo bonkhe labatsintsekako;
 - ✓ atsatse tinyatselo letidzingekele tekubukana nesikhalo ngalokuhambisana naleKhodi kanye nenchubomgomo yemcashi, lapho kufanele khona, sivumelwano sekucocisana ngekhulanganyela; futsi
 - ✓ atsatse tinyatselo letifanele tekucedza kuhlukumeta.

Kutsiwani nangabe umcashi ehluleka kutsatsa tinyatselo tekucedza kuhlukumeta?

- Kwehluleka kutsatsa tinyatselo letanele tekucedza kuhlukumeta nangabe tinsolo tekukhukumeta letentiwa sisebenti setifakiwe ngekhatshi kwesikhatsi lesifanele, kutawenta kwekutsi umcashi abukane nelicala lekutiphatsa

² Liberty Group Ltd v M (2017) 38 ILJ 1318 (LAC) at paras 48-54.

kwesisebenti ngekulandzela sigaba 60 se-EEA. Kutawuba njalo nanobe kuhlukumeta kunesigameko sinye kuphela.

Tijeziso tekucondziswa kwetigwegwe

- Inchubomgomo yemcashu kumele isho luhlu lwetijeziso tekucondziswa kwetigwegwe letingatfweswa umsolwa. Letijeziso kumele tilinganise nebhukulu balokuhlukunyetwa lokukhulunywa ngako, futsi kumele tisho kutsi:
 - ✓ tecwayiso tinganiketwa ngetigameko letincane tekohlukumeta. Secwayiso lesiniketwa umsolelwa kumele sichaze umnyombo wekungatiphatsi kahle lokubandlululako;³
 - ✓ kucoshwa kungase kulandzela ngetigameko letincane letichubekako tekohlukumeta ngemuva kwetecwayiso, nakutigameko letimatima tekohlukumeta;
 - ✓ kutehlakalo letifanele ngemuva kwekutfolakala nelicala lekuhlukumeta, umsolelwa angandluliselwa ngekhatsi kwenzawo yekusebenta nobe kulenye indzawo yekusebenta ngekhatsi kwenkapani; futsi
 - ✓ ummangali ngekuhlukumeta unelilungelo lekuvula licala lebugebengu nobe kusungula tinchubo tekumangalela lona losolelwako.

Ngubani lekumele acinisekise imfihlo?

- Bacashi kanye nebasebenti kumele bacinisekise kwekutsi tikhalo ngekuhlukunyetwa tiyaphenywa futsi tiphatfwa ngendlela lecinisekisa kwekutsi labantfu labatsintsekako bayimfihlo ngenhloso yekuvikela imfihlo yabo bonkhe labatsintsekako.
- Konkhe kuchumana kwangekhatsi nekwangephandle lokuhlobene nalesehlakalo sekuhlukumeta kumele kuphatfwe ngemfihlo.
- Kucabangela kugcina imfihlo akuvimbela umcashu kwekutsi atsatsa tinyatselo letifanele tekuvimbela kuphepha nobe sitfunti sebasebenti, kungaba ngesikhatsi sekuphepha nobe lesilandzelako.

Malanga langetiwe wokugula

- Lapho malanga ekugula labekakhona emcashu agunyatiwe asetjentiswe onkhe, umcashu kumele acabange kuniketa lamanye emalanga wokugula labhadalwako etehlakalweni tekohlukumeta lokumatima, lapho khona sisebenti singatfola kululekwa lokudzinga kwelashwa ngokwengcondvo.
- Nangabe kuhlukumeta kuholela kwekutsi sisebenti sigule ngetulu kwemaviki lamabili, sisebenti singaba neligunya lekufaka simangalo setinzuzo tekugula ngekulandzela sigaba 20 seMtsetfo Wemshwalensi Wekungasebenti, 2001.
- Etimeni letifanele, bacashi bangacabanga kusita ngetindleko tekwelulekwa ngetekwelashwa nangekwelulekwa ngekwengcondvo kanye nekunakekelwa, lapho khona emanani lanjalo akabhadalwa ngunobe ngusiphi sikimu setelusito lwetekwelapha lesikhona.

Ngubani lekumele anikete Umniningwane kanye neMfundvo Emsebentini?

- Bacashi, futsi lapho kukhonakala khona tinhlango tebacashi, kumele tifake indzaba yekohlukumeta ngekwemacasi kanye naletinye tinhlalo tekohlukumeta etinhlelweni tato tekungenisa basebenti, ekufundziseni nasekucekesheni ngendlela lefinyelelekako.
- Tinhlango tebacashi kumele tifake indzaba yekohlukumeta ngekwemacasi kanye naletinye tinhlalo tekohlukumeta etinhlelweni tato tekufundzisa nekucekesha lomele basebenti lokhetsiwe kanye nebasebenti ngendlela lefinyelelekako.

Ungawutfola njani umniningwane logcwele ngaleKhodi?

- Wutfole ngekuvakashela iwebhusayithi yeLitiko Letekucasha Neletetisebenti: www.labour.gov.za

³ Future of SA Workers Union on behalf of AB & others v Fedics (Pty) Ltd & another (2015) 36 ILJ 1078 (LC), at para 166.



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