

IKHOWUDI YEKAMBISO EHLE NGOKUKHANDELWA NOKUQEDWA KOKUHLUKUMEZA EMSEBENZINI

“Qeda ukuhlukumeza emsebenzini njenganje!”





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Kubayini iKhowudi le?

IKhowudi le ihlahlwa yiNgqungquthela ye-ILO ye-190 kanye nesiPhakamiso sayo mayelana nokuqedwa kweNturhu kanye nokuHlukumeza ePhasini lomSebenzi, 2019; iNgqungquthela yeBandlululo (UkuQatjha kanye nomSebenzi) 111 ka-1958 (Ingqungquthela 111); kanye neNgqungquthela ye-ILO ephathelene nezamaPhilo nokuPhepha emSebenzini.

IKhowudi le isula iKhowudi yeKambiso eHle ngokuPhatha imiLandu yokuHlukumeza ngokomSeme emSebenzini enikelwe kuGazethi kaRhulumente yama-27865 yangomhlaka 4 kuRhoboyi 2005.

Iminqopho yeKhowudi

IKhowudi yeKambiso eHle le inqotjhiswe ukuqalana nokukhandela, ukuqeda kanye nokuphathwa kwayo yoke imihlobo yokuhlukumeza egcwele emsebenzini.

IKhowudi le inikela imihlahlandlela –

- kubaqatjhi kanye neensebenzi ngokukhandelwa kanye nokuqedwa kwayo yoke imihlobo yokuhlukumeza, njengendlela yokubandlulula ngokungakafaneli emsebenzini; kanye
- nangemigomo nekambiso yezabasebenzi ephathelene nokuhlukunyezwa nekambiso efaneleko yokuqalana nokuhlukunyezwa kanye nokukhandela ukwenzeka godu kwakho.

Ngubani ovikelwe yiKhowudi?

Nanyana iKhowudi le isebenza endaweni yomsebenzi njengomhlahlandlela kubaqatjhi, eensebenzini kanye nakubenziimbawo zomsebenzi, abenzi bobumbi kanye nabongazimbi bokuhlukunyezwa bangafaka hlangana kodwana bangacini:

- kubanikazi;
- abaqatjhi;
- abaphathi;
- abatlhogomeli;
- iinsebenzi;
- abafuna umsebenzi kanye nabenziimbawo zomsebenzi;
- abomazithandela;
- amatlayenti namakhastama;
- abaphakeli;
- abosokontra;
- abanye abasebenzisana nebhizinisi; kanye
- nabantu ababandulwako ukubandakanya ama-intheni, abasafundela umsebenzi kanye nabantu abakulenatjhipu.

IKhowudi isebenza kibuphi ubujamo?

Ukuvikelwa kweensebenzi ekuhlukunyezweni kusebenza kunanyana ngibuphi ubujamo isisebenzi esisebenza kibo, namkha obuphathelene nomsebenzaso. Lokhu kufaka hlangana kodwana akucini:

- emsebenzini okubandakanya iindawo zomphakathi nezangeqadi lapho abantu basebenza khona;
- iindawo lapho isisebenzi sibhadelwa khona, sithatha khona ikhefu yokuphumula namkha yokudla namkha sisebenzisa khona indlwana, sivasana namkha sitjhentjha, simunyisa kanye neendawo zokwelapha;
- amakhombo aphaathelene nomsebenzi, ukukhamba, ukubandula, iminyanya namkha imisebenzi yomphakathi;
- ukuthintana okuphathelene nomsebenzi, ukufaka hlangana lokho okukghonakaliswa ngetheknoloji yelwazi nokuthintana kanye neenkundla ezisekelwe ngethungelelanohlanganiso;
- indawo yokuhlala enikelwe mquatjhi, efaka hlangana izindlu;¹
- lokha nawuya namkha ubuya emsebenzini ngeenthuthi ezinikelwe namkha ezilawulwa mquatjhi;
- ebujameni beensebenzi zangendlini kanye neensebenzi zetjhejo lezamaphilo eziqatjhwe lapho ekuhlala abaqatjhi babo, namkha lapho ekuhlala umuntu abamtlhogomelako, indawo yokuhlala yindawo yokusebenzela; kanye

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

- nebuja meni beensebenzi ezisebenza ngethungelelwano emakhaya namkha kunanyana ngiyiphi indawo ngaphandle kweemakhiwo yomqatjhi, indawo ezisebenza kiyo iyindawo yokusebenza.

Khuyini ukuHlukumeza?

Ukuhlukumeza ngokujayelekileko kuzwisiswa njengokulandelako:-

- ukuziphatha okungafunekiko, okwehlisa isithunzi;
- sokuthama indawo yomsebenzi enobutha namkha esabisako esisebenzini sinye namkha ezinengi namkha kuhleliwe namkha kunomphumela obangela ukuzinikela ngemiphumela yeqiniso namkha emimbi yokuthuselwa; begodu
- kuphathelele nesizathu sinye namkha ezinengi lapho ukubandlulula kukhandelwa khona ngokwesigaba sesi-6(1) se-EEA.

Imihlobo yokuhlukumeza

Ukuhlukumeza kungaba miphumela wokuziphatha ngokomzimba, ngamezwi namkha ngokwengqondo.

- **Ukuhlukunyezwa ngokomzimba kubandakanya ukuhlaselwa ngokomzimba, inturhu elingiswako namkha lokusongela namkha iminyakazo (efana nokuphakamisa iguduva sengathi ubetha umuntu namkha ukuphosa izinto hlanu komuntu).**
- **Ukuthelisa ngomlomo kungabandakanya ukwesabisa, ukurhubutjha, ukurhuga, ukuthukana, ukwahlulela okungasikuhle kanye nokunyelisa namkha ilimi elibandlulula ngokobuhlanga, ngokobulili namkha i-LGBTQIA.**
- **Ukuhlukunyezwa ngokomkhumbulo emsebenzini kungaphathelana nokutlhoriswa ngokwemizwa begodu kubandakanya ukuziphatha okunemiphumela emimbi yomkhumbulo kumngqonghoyili njengombana kuvame ukwenzeka ekutlhorisweni ngamezwi, ukuthelisa nokutheliswa liwoma labantu.**
- **Ukuthelisa – lapho ukuhlukumeza kubandakanya ukusetjenziswa kumbi kwamandla wokukatelela umuntu namkha isiqhema sabantu emsebenzini. Ukuthusela – lo mumukghwa wangabomu ongabangela umuntu wemizwa ejayelekileko kobana esabe ukulimala. Ukuthelisa kwemsebenzini kungabandakanya ukuziphatha okunelunya lapho othileko alimaza namkha enza omunye umuntu angakhululeki ngokubuyabuyelela.**
- **Ukutheliswa liwoma labantu mhlobo wokuhlukunyezwa siqhema sabantu okunqotjhiswe emntwini munye namkha abanengi.**
- **Ukuhlukumeza ngethungelelwano kuhlukumeza okwenziwa, okusizwako namkha okwenziwe kwaba kumbi kancani namkha ngokupheleleko, ngokusetjenziswa kwethenoloji yelwazi nokuthintana njengabomaliledinini, ama-smart phones, iinkundla zokuthintana namkha i-imeyila. Ukuthelisa nakwenziwa kuthungelelwano kubizwa ngokuthelisa kwethungelelwano.**

Iinzathu ezalelwako

- Ukuhlukumeza isisebenzi kuyalelwa ngokwesigaba sesi-6(1) se-EEA, nangabe ukuhlukumeza kuhlobene nasinye isizathu namkha ezinengi ezalelweko, ukubandakanya ubuhlanga, ubulili, ukuzithwala, ubujamo bamathatho, isibopho somnden, ubutjhaba namkha umphakathi, umbala, ukukhetha ubulili, iminyaka yobudala, ukukhubazeka, ikolo, ubujamo be-HIV, unembeza, ikolelo, umbono ngezepolitiki, amasiko, ilimi, ukubelethwa namkha nanyana ngiziphi ezinye iinzathu.
- Kungahle kwenzeke bona umuntu ohlukunyezweko athole bona ukuziphatha lokho begade kumphumela wesizathu esithileko njengombana kutjhejwe esigabeni sesi-6(1) se-EEA.

Ukuhlukumeza ngokomseme

- Ukuhlukunyezwa ngokomseme kwesisebenzi kumhlobo wokubandlulula okungakafaneli begodu kuyalelwa ngeenzathu zomseme, ubulili namkha ukukhetha ubulili. Ukuhlukunyezwa kwabantu bobulili obufanako kungalingana nokubandlululwa ngokomseme, ubulili, ukukhetha ubulili kanye nokuhlukumeza ngokobulili.

Ukuhlukumeza ngokobuhlanga, ngokobuTjhaba namkha ngokweNdabuko yomPhakathi

- Ukuhlukumeza ngokobuhlanga mhlobo wokubandlulula okungakafaneli okwalelwa sigaba sesi-6(1) se-EEA okuhlobene nobulunga bomuntu namkha ubulunga obudlumbaniweko besiqhema esikhonjwe sizathu sinye namkha ezinengi ezirhenyisiweko ezalelweko namkha itshwayo eliphathelene nesiqhema lesa. Ukuziphatha okubandlulula ngokobuhlanga, ukubandakanya nelimi elinyelisako, kuphambene nomthethokambiso womThethosisekelo, khulu khulu umthethokambiso wokungabandlululi ngokobuhlanga, isithunzi kanye nokulingana.
- Ukubandlulula ngokobuhlanga kuziphatha okungafunekiko okuphikelelako namkha isehlakalo sinye esiyingozi, esehlisa isithunzi, esirhubutjhako namkha esithama ubujamo obunobutha namkha obusabisako. Indlela yokuziphatha ebalelwa bona ibasela ukuzinikela ngokomphumela wamambala namkha wokwesabisa okumbi ibandakanya ukuhlukumeza nanyana lokhu kungasiyo ingcinye eqakathekileko yehlathululo yakho.

Imihlobo yokuhlukumeza ngokobuhlanga kungabandakanya:

- ✓ Ilimi elinyefulako namahlaya abandlulula ngokobuhlanga, abopopayi namkha ama-meme, ukubandakanya nekulumo yezondo;
- ✓ Izinto ezitloliweko namkha ezibonakalako ezikhubekisako ngokobuhlanga ukubandakanya ukuhlukumeza kuthungelelwano.
- ✓ Ukubizwa ngamagama wokubandlulula ngokobuhlanga namkha ikulumo engasiyihle enomthelela esithunzini somuntu;
- ✓ Ukuziphatha okukhubekisako ngendlela yobutha obubhamba ebantwini bobuhlanga namkha bobutjhaba obuthileko;
- ✓ Ukukhutjhelwa ngaphandle ngokufihlakeleko namkha ngokusobala ekuthintaneni kwemsebenzini nemisebenzini kanye neminye imihlobo yokubandlululwa; kanye
- ✓ Ukuziphatha okwesabisako, okusabisa umuntu namkha okuthama ibhoduluko lomsebenzi elinobutha.

Imihlahlandlela yomthethokambiso wokuKhandelwa, ukuQedwa nokuLawulwa kokuhlukumeza

- **Abaqatjhi bangaphasi kwesibopho ngokwesiGaba sama-60 se-EEA sokuthatha amagadango wamsinya newokulungisa ukukhanela yoke imihlobo yokuhlukumeza emsebenzini. Lokhu kubandakanya ukuhlolwa kwengozi yokuhlukunyezwa iinsebenzi ezingakulemuka nazenza imisebenzi yazo ngendlela ekukhokeka ngayo.**
- Abaqatjhi kufanele babe nobujamo bengqondo yokungabekezeleli nakancani ukuhlukumeza. Kufanele batlhame bebalonde indawo yokusebenza lapho ekuhlontjhwana khona isithunzi seensebenzi. Kufanele kutlhanywe begodu kulondwe ubujamo bendawo yomsebenzi lapho iinsebenzi ezinghonghoyila mayelana nokuhlukunyezwa ngeze zizizwe kwangathi iinghonghoyilo zazo azitjhejwa namkha zithathwa njengento enganamsebenzi namkha zesabe nepindiselo. Ukusebenzisa imihlahlandlela le kungasiza ekuzalisekeni iminqopho le:
 - ✓ Abaqatjhi namayuniyoni/iinsebenzi banesibopho sokulisa ukuhlukumeza.
 - ✓ Boke abaqatjhi namayuniyoni/iinsebenzi banendima ekufanele bayidlale ekusizeni ukuthama nokulonda indawo yokusebenza lapho ukuhlukumeza kungamukelwa khona. Kufanele baqinisekise bona amazinga wabo wokuziphatha awabangeli ukusilingeka begodu kufanele ayikhuthazi ukuziphatha okungamukelekiko kwabanye.

- ✓ Abaqatjhi kufanele balinge ukuqinisekisa bona abantu abafana namakhastama, abaphakeli, abenziimbawo zomsebenzi kanye nabanye abasebenzisana nebhizinisi abahlukunyezwa ziinsebenzi zabo namkha nanyana ngubani ojamele umqatjhi.
- ✓ Abaqatjhi kufanele balinge ukuqinisekisa bona iinsebenzi eziqatjhiweko azihlukunyezwa ngabanye abantu abathintekako njengamatlayenti, amakhasatama, abaphakeli namkha abanye abasebenzisana nomqatjhi.
- ✓ Imigomo nekambiso eyamukelwa mqatjhi kufanele zinikele isitatimende esicacileko ngobujamo bomqatjhi mayelana nokukhandela, ukuqeda kanye nokuphathwa kwemihlobo ehlukahlukeneko yokuhlukumeza emsebenzini.
- ✓ Abaqatjhi lapho ekufuneka khona, ngokubambisana namayuniyoni kufanele basebenzise amahlelo wokubandula wokulemukisa kobana bafundise iinsebenzi kizo zoke iingaba mayelana nokuhlukunyezwa kobana kuqiniseke bekugcinwe ukulandelwa kwemithetho ngamahlelo aragela phambili wokulemukisa.
- ✓ Abaqatjhi kufanele bathathe amagadango afaneleko ngokukhambisana neKhowudi le lapho kuvela khona ubujamo bokuhlukunyezwa endaweni yomsebenzi.

ImiGomo yokuHlukumeza

- Abaqatjhi, ngokulawulwa nginanyana ngiziphi iimvumelwano ezikhona kanye neendinyana zomthetho ezisebenzako mayelana nokuhlukumeza, kufanele bamukele umgomo wokuhlukumeza, ekufanele utjheje begodu uhlahlwe ziindima zeKhowudi le.
- Okumumethwe migomo yokuhlukumeza kufanele kukhulunywe ngepumelelo kizo zoke iinsebenzi.
- Ukwamukelwa komgomo wokuhlukumeza kanye nokukhulunywa okumumethwe mgomo eensebenzini, kufanele, phakathi kwezinye izinto, kutjhejwe ekuthathweni kwesiqu nto sokobana ingabe umqatjhi uzizalisekile iimbopho zakhe ngokukhambisana neendinyana zesigaba sama-60(2) se-EEA.
- Imigomo yokuhlukumeza kufanele ikhambisane khulu neendinyana zeKhowudi le.
- Ikambiso ekufanele ilandelwe ngumngxongxoyili mayelana nokuhlukunyezwa kanye nomqatjhi lokha nakusolwa ukuhlukunyezwa, kufanele zihlathululwe kumgomo.
- Ukuba khona kwamahlelo wokwelulekwa, ukwelatjiswa, ukuthogonyelwa nokusekelwa kweensebenzi kufanele kuhlathululwe kumgomo.

Ukubika ukuhlukunyezwa

- IsiGaba sama-60(1) se-EEA sinikela bona nanyana ngiliphi ihlebezana lokuziphatha kwesisebenzi okwephula i- EEA kufanele lilethwe msinyana emqatjhini.
- IKhotho yeemBilayezo zezabaSebenzi iqunte bona igama elithi “msinyana” kufanele lirhumutjhe ngokukhambisana nomngqopho wendinyana, okukuqinisekisa bona ubujamo bokuhlukumeza buphenywa ngokwe-EEA, begodu ingasi ngokobuqhewephetjhe. Amahlebezi wokuhlukunyezwa enziwa ngesikhathi esifaneleko, ngaphasi kobujamo, kufanele aphenywe begodu kufanele kuthathwe amagadango afaneleko wokukhandela ukwenzeka godu. Lokhu kungabandakanya nesikhongo sokunqotjhiswa kwabasolwa.²

Ngubani ekufanele enze ikambiso yokuqalana nokuhlukunyezwa?

- Abaqatjhi kufanele benze ikambiso ecacileko yokuqalana nokuhlukunyezwa ngokwe-EEA. Ikambiso le kufanele ivumele ukusonjululwa kwemiraro ngendlela ezwela ubulili, eyifihlo, esebenzako nangendlela ephumelelako. Lokha isisebenzi nasibike ihlebezi lesehlakalo sokuhlukunyezwa namkha sifake isingxongxoyilo, umqatjhi ukatelelekele ukuphenya ihlebezi lokuhlukunyezwa elilethwe kutjhejo lakhe bese weluleka umngxongxoyili ngekambiso engakahleleki namkha ehlelekileko ekhona yokuqalana nokuhlukunyezwa.

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

Ingabe abaqatjhi banesibopho lokha ihlebezi lokuhlukunyezwa nalilethwe kibo?

- Iye, umqatjhi kufanele:
 - ✓ athintane nabo boke abathintekako;
 - ✓ athathe amagadango afaneleko wokuqalana nesinghonyoyilo ngokukhambisana neKhowudi le kanye nomgomo womqatjhi, lapho ekufaneleko, isivumelwano sokucocisana; begodu
 - ✓ athathe amagadango afaneleko wokuqeda ukuhlukumeza.

Kuthiwani nangabe umqatjhi ubhalelwa kuthatha amagadango wokuqeda ukuhlukumeza?

- Ukubhalelwa kuthatha amagadango aneleko wokuqeda ukuhlukumeza nasele isisebenzi sethule ngesikhathi esifaneleko ihlebezana lokuhlukunyezwa, kuyokwenza umqatjhi aqalane nomlandu wokuziphatha kwesisebenzi ngokwesigaba sama-60 se-EEA. Lokhu kunjalo nanyana ukuhlukumeza kubandakanya isehlakalo sinye.

Linjeziso zokunqotjhiswa

- Umgomo wokuhlukumeza kamqatjhi kufanele ucacise irherho leenjeziso zokunqotjhiswa ezingahle zithweswe umenzi wobumbi. Linjeziso kufanele zilingane nobumbi bokuhlukumeza okukhulunyiswako, begodu kufanele zinikele bona:
 - ✓ kungahle kunikelwe iyeleliso ebujameni obuncani bokuhlukumeza. Isiyeleliso esinikelwe umenzi wobumbi kufanele sihlathulule ummango wokuziphatha okubandlululako;³
 - ✓ ukuqothwa kungahle kulandele izehlakalo ezincani eziragela phambili ngemva kokukhalinywa, kanye nobujamo obumbi bokuhlukumeza;
 - ✓ ebujameni obufaneleko lapho sitholwa sinomlandu wokuhlukumeza, umenzi wobumbi angahle adluliselwe emsebenzini namkha komunye umsebenzi ngaphakathi kwekhamphani; begodu
 - ✓ ummangali mayelana nokuhlukunyezwa unelungelo lokuvula umlandu wobulelesi namkha lokuvulela umenzi wobumbi.

Ngubani ekufanele aqinisekise ukugcinwa kwefihlo?

- Abaqatjhi kanye neensebenzi kufanele baqinisekise bona iinlilo ezimayelana nokuhlukunyezwa ziyaphenywa begodu ziphathwa ngendlela eqinisekisa bona imininingwana yabantu abathintekako igcinwa iyifihlo ngomnqopho wokuvikela ukugcinwa kuyifihlo kwabo boke ababandakanyekako.

Koke ukuthintana kwangaphakathi nangaphandle okuphathelene nesehlakalo sokuhlukumeza kufanele kuthathwe njengokuyifihlo.

- Ukucatjangelwa kokugcinwa kwefihlo akuvimbeli umqatjhi bona athathe amagadango afaneleko wokuvikela ukuphepha namkha isithunzi seensebenzi, kungaba phakathi nephenyo namkha ngemva kwalo.

Ilifu yokugula engezelelweko

- Lapho ilungelo lelifu yokugula yesisebenzi sele iphelile, umqatjhi kufanele aqalelele ukunikelwa kwelifu engezelelweko ebhadelwako ebujameni obumbi bokuhlukunyezwa, lapho isisebenzi, ngokweseluleko sezokwelatjhwa, athlola ukwelulekwa ngokwengqondo.
- Nangabe ukuhlukunyezwa kubangela bona isisebenzi sigule isikhathi esingaphezu kweemveke ezimbili, isisebenzi singahle sibe nelungelo lokutleyima imihlomulo yokugula ngokwesigaba sama-20 somThetho weTjhorensi yokungaqatjiswa, 2001.
- Ebujameni obufaneleko abaqatjhi bangahle baqalele ngokusiza ngeendleko zeseluleko sezokwelatjhwa kanye nokwelulekwa ngokwengqondo kanye nokutjhejwa, lapha iimali lezo zingabhadeliswa nanyana ngisiphi isikimu esisebenzako sesizo lezokwelatjhwa.

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

Ngubani ekufanele anikele iLwazi neFundo emSebenzini?

- Abaqatjhi, begodu lapho ekufanele khona iinhlangano zeensebenzi, kufanele bafake indaba yokuhlukumeza ngokomseme kanye neminye imihlobo yokuhlukumeza emahlelweni wabo wokujayeza, ifundo kanye nokubandula ngendlela efikeleleka lula.
- Amayuniyoni kufanele afake indaba yokuhlukumeza ngokomseme kanye neminye imihlobo yokuhlukumeza emahlelweni wabo wefundo kanye nokubandula wabajameli kanye neensebenzi ngendlela efikeleleka lula.

Ungalifikelela njani ilwazi elizeleko lomGomo?

- Ukufikelela ngokuvakatjhela iwebhusayidi yomNyango wezokuQatjha nezabaSebenzi: www.labour.gov.za



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