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MANDELA DAY CONTAINER LIBRARY
Dear Member,

LegalWise is committed to ensuring that as a Member you will always receive the highest quality Legal Services from all our Branches, throughout the country. And we strive to deliver this in the most affordable way.

To keep up with the increasing costs of providing legal expenses insurance, our cover limits and premiums will increase, effective 1 July 2013. We have been mindful of the increasing cost of living in increasing our premiums and as such increases have been kept to minimum.

In this issue of the WiseUp we provide you with guidance and what to look for in the content of an employment agreement and your rights and duties as an employee.

Two years ago, LegalWise responded to the Mandela Day call to “take action and inspire change”. LegalWise recently funded the 24th Mandela Day container library, which was launched at the Montshiwa Primary School in Galeshewe, Kimberley on 22 February 2013. Read more about the launch on page 8.

Enjoy this issue of the WiseUp.

Jan Luwes
UP!

W SEI

GET-A-FRIEND

YOUR GET-A-FRIEND REWARDS

REMEMBER! NOW YOU CAN GET-A-FRIEND WITH AN SMS!
IT’S THE QUICK & EASY WAY. JUST SMS FRIEND TO 43145 AND WE WILL CALL YOU BACK. ALL THE DETAILS ARE IN THE GET-A-FRIEND LEAFLET.

EVERY TIME YOU INTRODUCE A NEW MEMBER TO LEGALWISE
YOU WILL GET ONE OF THESE WISESTYLE REWARDS. SEE THE ENCLOSED GET-A-FRIEND LEAFLET FOR ALL THE DETAILS.

A BURIAL PLAN BENEFIT EXCLUSIVE TO LEGALWISE MEMBERS.

TRIPLE THE COVER PAYOUT FOR ACCIDENTAL DEATH

If you are a LegalWise Member, LifeWise will pay out 3 times the cover in the case of an accidental death of either you or your spouse/partner. For example, if you have our R20 000 cover option we will pay the R20 000 plus another R40 000. That’s a total of R60 000!

No waiting period and no extra charge. This triple payout to LegalWise Members starts immediately and lasts as long as the life of your policy and as long as you are a paid up LifeWise and LegalWise Member at the time of the accident.

Contact us for a quote on our Family Burial Plan options and see how affordable they are.
SMS LIFE to 39644 and we will call you back or call 011 472 2020 or contact your nearest LegalWise Branch. You can also download an application form at www.legalwise.co.za

Authorised Financial Services Provider. Terms & conditions apply. SMS charged at standard rates.

Binder Disclosure: This policy is underwritten by The Hollard Assurance Company Limited. (Your Insurer) The binder holder, LifeWise has entered into a specific agreement with the insurer authorising LifeWise to perform certain binder functions. These binder functions include entering into, varying or renewing an insurance policy and settling off claims. In performing these binder functions, the binder holder acts solely on behalf of the insurer. The binder holder is paid a fee of 20% of gross written premium for performing the above mentioned functions.

Approved by LegalWise.
The definition of an employment agreement

- There are 2 parties called the employer and the employee.
- The parties must:
  - voluntarily enter into the employment agreement without force;
  - have an offer and an acceptance of the offer;
  - have a serious intention to enter into an employment agreement;
  - have a lawful employment agreement; and
  - perform the work described in the employment agreement.
The employee must work for the employer in return for remuneration (such as a salary).

An employment agreement includes rights and duties of the parties determined by the labour law or a collective agreement.

A collective agreement is a written agreement of employment

Labour law includes the general provisions plus the sectoral determination (specific rules for a specific industry).

A collective agreement is a written agreement of employment or matter of mutual interest concluded by one or more registered trade unions and one or more employers.

The rights and duties may be changed by the parties as long as:
- they remain within the boundaries of what the law and the collective agreements say.

What the law says about the content of an employment agreement

- An employment agreement must have:
  - parties full names and residential addresses;
  - a brief description of the work of the employee;
  - place of employment;
  - date the employment begins;
  - how the employment terminates;
  - hours and days of work;
  - the amount of remuneration to be paid, when it will be paid, and how it is calculated;
  - rate/s of overtime;
  - benefits the employee is entitled to such as maternity leave, relocation costs, and payment from the unemployment insurance fund;
  - leave allocated;
  - a description of the relevant collective agreement or sectoral determination;
  - other conditions such as producing an identity document to the employer;
  - a list of documents that should form part of the agreement; and
  - other rights (for example an employee's right to join a trade union), duties (for example an employee's duty to act honestly), and legal consequences (for example to go to arbitration if a party breaches the agreement).

If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.

When an agreement is changed

Once the parties have agreed to the details of the agreement, it may be changed if the agreement provides for a change.

Changes may be brought about by agreement between the parties at any stage, or by a collective agreement.

Non-negotiated changes are an unfair labour practice.

A change to the employment agreement must be reduced to writing.

The written particulars must be revised to reflect the change, and the employee must be supplied with a copy of the document reflecting the change.

How can LegalWise assist you?

We can assist with:
- interpreting your employment agreement if you do not understand it; and
- providing you with guidance on the content of an employment agreement.

Subject to our terms and conditions, labour disputes are covered by your policy.
MINISTER OF DEFENCE IS SUED FOR ACTIONS OF EMPLOYEE


1. The meaning of vicarious liability
   - An employer can be held liable to a third party for damages caused by an unlawful act performed by the employee.
   - The requirements for vicarious liability are:
     1. there must be an employment agreement between the employer and the employee at the time of the act;
     2. the act must be unlawful (such as acting negligently); and
     3. the employee must act in the course and scope of his/her employment.
   - The court case of Minister of Defence v Von Benecke 2012 is an example of vicarious liability. Other examples include the liability of employers of truck
drivers and construction workers who cause damages due to their negligence.

2. The facts of the case
   ▶ The Minister of Defence was the employer of Mr Motaung.
   ▶ Mr Motaung was responsible for the safekeeping and storage of dangerous weapons in the defence force including R4 rifle parts, ammunition and magazines. He stole them and supplied them to Mr Mahlangu for a profit. Mr Mahlangu used the R4 rifle parts, ammunition and magazines to shoot Mr Von Benecke several times with an R4 assault rifle.
   ▶ On 15 November 2012 the Supreme Court of Appeal (the second highest court in South Africa) ordered the Minister (the Defendant) to pay damages to Mr Von Benecke (the Plaintiff) resulting from the armed robbery.
   ▶ Mr Von Benecke claimed these damages based on vicarious liability.

- The Court said:
  - The facts of the case
  - it needed to develop and extend the third requirement of vicarious liability due to the public interest, the Constitution, and the legislation, by ensuring there was a link between the damages caused to Mr Von Benecke and the theft of the equipment by Mr Motaung;
  - the Constitution (which is the highest law in South Africa) dictated that the State needed to establish a credible and efficient police service that the public could rely on for protection from crime; and that South Africans must be able to live in peace and harmony and free from fear;
  - the law of the defence force demands that its armed weapons must be secured, preserved and controlled or else there could be enormous potential for public harm; and
  - the defence force needs to maintain a relationship with its employees and the public as it is a special employer that differs from the ordinary employment relationship.

4. The Court’s conclusion
   ▶ The Minister should not be able to avoid liability for wrongful acts of his employees that he appointed to carry out the duty to preserve and control its arms.
   ▶ There was a direct connection between the damage to Mr Von Benecke and Mr Motaung’s employment: Mr Motaung had a duty to preserve and care for the items sold, and the opportunity to sell them was provided by the scope of his employment and without his employment he would not have had access to them.

How can LegalWise assist you?
We can, subject to our terms and conditions:
▶ explain the requirements of vicarious liability to you; and
▶ defend or institute a claim of vicarious liability.
PREMIUMS & COVER 2013

To keep up with the increasing costs of providing legal expenses insurance, our cover limits and premiums will increase, effective 1 July 2013. We have been mindful of the increasing cost of living in increasing our premiums and as such increases have been kept to minimum.

NEW COVER AND PREMIUMS FROM 1 JULY 2013 PLUS THE BENEFIT LIST FOR YOUR MEMBERSHIP.

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- GOLDPLUS: R10 000
- PLATINUM: R16 000
- EXTENDA: R7 000
- PENSIONER: R7 000

*Terms & conditions apply.

ASSISTANCE IN-HOUSE PLUS COVER PER MATTER IF REFERRED TO AN ATTORNEY & GOES TO COURT

- Labour matters: ✔ ✔ ✔ ✔
- Civil matters: ✔ ✔ ✔ ✔
- Criminal matters: ✔ ✔ ✔ ✔
- No limit to annual claims: ✔ ✔ ✔ ✔
- Option to use own lawyer: ✔ ✔ ✔ ✔

ASSISTANCE IN-HOUSE BY OUR LEGAL COUNSELLORS

- 24 hour help line: ✔ ✔ ✔ ✔
- Extended benefits: ✔ ✔ ✔ ✔
- Basic wills: ✔ ✔ ✔ ✔
- Debt Counselling: ✔ ✔ ✔ ✔
- Maintenance: ✔ ✔ ✔ ✔
- Accidental death cash pay-out: ✔ ✔ ✔ ✔
- 6 months premiums if retrenched: ✔ ✔ ✔ ✔
- Pensioner rate R35 per month: ✔ ✔ ✔ ✔
- Legal emergency fast track: ✔ ✔ ✔ ✔
- Antenuptial contracts: ✔ ✔ ✔ ✔
- Uncontested divorce: ✔ ✔ ✔ ✔
- 60% discount on property transfer fees: ✔ ✔ ✔ ✔
- Property valuation/rates matters: ✔ ✔ ✔ ✔

NOTICE FOR MEMBERS WHO PAY THEIR PREMIUMS AT THE POST OFFICE AND EASYPAY OUTLETS.

If you pay your premiums through retailers such as EasyPay (Pick n Pay, Shoprite) and the Post Office, please take note of the following increase in fees levied by these retailers. These amounts include vat:

- EasyPay R5.91 effective from 1 April 2013.
- Post Office R10.91 effective from 1 February 2013.

It is important that you add this fee to your LegalWise monthly premium when making payment at these retailers. This will ensure that your full premium is received by LegalWise to ensure your continued legal protection.
Two years ago, LegalWise responded to the Mandela Day call to “take action and inspire change.” In partnership with the Nelson Mandela Centre of Memory, Breadline Africa and Soul City’s Soul Buddyz clubs, 24 container libraries have been placed at underprivileged primary schools throughout South Africa. Mandela Day on 18 July is celebrated both nationally and internationally as the catalyst for social change and engagement by individuals, organisations and governments. Learners at about 20 000 schools across South Africa do not have access to a functioning library, contributing to the low rates of literacy and numeracy experienced in our schools.

In early 2011, the Nelson Mandela Centre of Memory launched the Mandela Day Container Library Project, to contribute towards promoting literacy and encouraging reading in disadvantaged schools in South Africa. LegalWise is a strategic partner in the on-going planning and implementation of the container library project. In addition to the libraries, educators are offered librarian training to ensure that they are able to fully realise the potential of each library and assist learners with their development. LegalWise recently funded the 24th Mandela Day container library, which was launched at the Montshiwa Primary School in Galeshewe, Kimberley on 22nd February 2013. The event was attended by a number of dignitaries, including representatives from the Department of Education’s Provincial and Information Services, the School Governing Body, LegalWise, Soul Buddyz, the Nelson Mandela Centre of Memory and Breadline Africa: all of whom expressed the importance of reading as the gateway to knowledge.

The children however, stole the show. Despite the sweltering heat, the whole school turned out for the ceremony and expressed their gratitude through song and dance. The school’s field band entertained with music whilst the dance troupe went through their routine. The container library had been beautifully painted by parents of the learners in the colours of the South African flag and sported the logos of all the key role players. In the words of Mr Mpuang from the Department of Education: “we hope that the right book reaches the right child at the right time. In doing this we build the confidence of the learners and with confidence a child will not falter in life”.

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Every day is full of success stories from our LegalWise Legal Counsellors.
Here are 5 examples from satisfied LegalWise Members. If you would like to share how LegalWise assisted you, please do so on www.facebook.com/legalwise, www.hellopeter.com or email customercare@legalwise.co.za

The Manager,
I want to thank you for your assistance. I was frustrated and my health was negatively affected, but you rescued me.

My money was withdrawn from my account without my knowledge. LegalWise fought for me and my money was deposited back into my account.

I am running short of words to express my happiness. Mr Tefo, you helped me a lot.

Thank you.

Yours,
Mawelewele S.F.

S.F. Mawelewele was assisted by our Polokwane Branch.

Dear Manager,
I would like to congratulate, Mme Tshidi Senyarelo. She is a wonderful Legal Counsellor who cares and shows love to every client. She treats each and every client equally and takes in each one like her family.

She welcomes you with a smile and helps with a smile. I feel free when I am around her. I am not scared to ask any question as she answers honestly and is a great person.

She takes her job to her heart, she is passionate, honest and a hard worker. Her communication skills are of a high quality. She shows respect and I therefore respect her. She is focused and was made for this.

I love Tshidi Senyarelo. Mme Tshidi, forward with your honesty, forward. "God Bless You."

Thank you for everything and keep it up everyday.

Rebecca Dhlabu.

Mrs. R. Dhlabu was assisted by our Bloemfontein Branch.
The landlord locked my kids out of our home while I was at work. I was furious and immediately contacted LegalWise. Within one hour they had him unlock the door.

Without LegalWise we would have had a big problem.

“Mrs. F. Mojapelo was assisted by our Johannesburg Branch.

Ndiyabulela ngohoyo endilifumene apha kwa LegalWise.
Ndiphume ndixolile noba bendingakwazi ukubona umMeli wam namhlanje.
Ngaske bonke abantu bafane nomntu obendenzela iAppointment, unohoyo kakhulu uyayazi iClient xa isengxakini.
Enkosi, nontombi ungabisadinwa kukuhoya abantu.
S.N. Mditsane

S.N. Mditsane was assisted by our Mthatha Branch.

Mr. A. Martin was assisted by our Bellville Branch.

Geagte Mnr/Mev

AANDAG: ANDISWA MAGADI

Hiermee wil ek graag my innige dankbaarheid teenoor u uitspreek vir u volgehewe ondersteuning en bystand tydens hierdie saak wat nog steeds aan die gang is vir die afgelope tien jaar plus. Dankie dat ek steeds op u volgehewe ondersteuning kan staan maak in die toekoms.

Ek vertrou dat LegalWise vir 2013 sal uitstyg teenoor die ander legal groepe. Daarom wens ek vir u en die Groep 'n Gesênde en Voorspoedige nuwe jaar toe. Ek wil ook vir u dankie sê vir die prokureur wat u aangestel het om my saak te hanteer. Sy het 'n passie vir haar werk en ek vertrou haar volkome in dit wat sy doen.

Nogmaals baie dankie. Vir Mev Fiona Bester.

Die Uwe,
Mnr. A. Martin.

Mr. A. Martin was assisted by our Bellville Branch.
Who is an employee?

- A person who:
  - is under the supervision and control of an employer,
  - forms part of the employer’s organisation, or has carried on work for the employer for at least 40 hours per month for the last 3 months;
  - receives a salary from the employer; and
  - provides skill and labour to perform the work of the employer.
- An agent acting on behalf of his/her principal is not an employee.

- An employment agreement specifies the details of an employee’s rights and duties as determined by the law. These rights and duties may be changed by the parties as long as they remain within the boundaries of what the law says, and the conditions must be more favourable to the employee.

What the law says about an employee’s rights

To:
- work a maximum of 45 hours a week or 9 hours a day (8 hours a day if the employee works 6 or 7 days a week);
- work overtime in terms of an employment agreement or no more than 10 hours a week (not more than 12 hours
of work a day), and an employee who works overtime must receive one and a half times the daily wage (and a person who ordinarily works on a Sunday) and double the daily wage for working on a Sunday;

- take a 60 minute break after 5 hours of work - if an employee works less than 6 hours a day he/she may forfeit the lunch break;

- receive:
  - annual leave of 1 day for every 17 days worked;
  - sick leave of 6 weeks over a 36 month period;
  - family responsibility leave of 3 days over a year for when an employee's child is born or is sick; the employee legally adopts a child; or for the death of the employee’s spouse, life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild, or sibling); and

What the law says about an employee's duties

To:

- co-operate with the employer and obey lawful instructions, rules and procedures;
- be respectful, honest and obedient;
- act in good faith to the employer such as not divulging confidential information;
- refrain from misconduct or face possible dismissal.

Examples of misconduct include:

- dishonesty;
- drunkenness or hangovers;
- gross negligence;
- revealing of trade secrets;
- persistent idleness; and
- damage to the employer’s property;
- enter into and perform services;
- guarantee that he/she is capable of performing the tasks agreed to and to carry them out with efficiency and without negligence;
- further the employer’s business interests by not allowing personal interests to conflict with the employer’s interests, such as being employed with a competing business;
- not tamper or remove safety objects at the employer’s premises;
- report unhealthy or unsafe conditions; and
- provide notice of termination of the employment agreement:
  - one week's notice if the employee is employed for 6 months or less;
  - two weeks' notice if the employee is employed between 6 months to 12 months; and
  - four weeks' notice if the employee is employed for 12 months or more.

How can LegalWise assist you?

We can:

- advise you on whether you are an employee, an independent contractor, or an agent; and what the differences are;
- interpret your employment agreement if you do not understand it; and
- explain your rights and duties as an employee both generally and in accordance with a sectoral determination.

Subject to our terms and conditions, labour disputes are covered by your policy.
The LegalWise Randburg Branch recently relocated to a more central location, giving our Members even better access to our Legal Counsellors and face-to-face service.

The Branch services amongst other areas, the business hubs in Randburg, Sandton and Midrand.

Our competent staff comprises three Legal Counsellors and two support staff who work as one unit to get the job done.

The company’s values are entrenched within the Branch. Keeping it focused on our plan and never losing sight of our purpose. We are dedicated and strive to achieve complete customer satisfaction and the professional delivery of our services. We are well aware of the complete faith and trust that our Members place in our hands.

It is for this reason that our service is often remembered long after the battle is won.

The Randburg Branch telephone is 011 787 5059 and fax 011 781 1331. For the contact details of all the LegalWise Branches visit www.legalwise.co.za or call 011 470 4000.

Important Notice for LegalWise Platinum Members.

Please make use of the following contact details to access legal advice & assistance.

Telephone (24 hours) 011 670 3300 / 0861 3777 66, fax 011 670 3319.
In this very technologically advanced era, thieves and scam artists are on the rise and find ways to entice and trick you. Here are a few scams and key measures you can take today to protect yourself:

**Scam utilising the LegalWise brand.**

Please be aware of a scam currently doing the rounds. Members of the public are fraudulently offered loans by scamster’s pretending to be from certain microloan companies. The person is advised that upon approval of the loan they will be required to deposit an initiation fee into an attorney’s bank account called LegalWise. When the person pays the initiation fee they never hear from the microloan company again and worse still, they never receive the loan.

LegalWise is in no way or form acting on behalf of any microloan company and we do not hold ourselves out as attorneys. The use of the LegalWise name and brand in this manner is unauthorised, false and fraudulent.

How to avoid falling victim to this scam:

- Pay attention to the interest rate. Avoid any loans offered where the interest rate offered is lower than the current prime rate of 8.5%.
- Avoid any loans where an initiation fee is required to be paid. This does not include bank loans for vehicles or homes where a deposit may be required.
- Where possible visit the offices of the applicable company to apply for the loan. This will give you a chance to determine if this is indeed a legitimate company.

If you have been a victim or suspect that you are being scammed by someone using the LegalWise name, please call our Compliance Manager on 011 670 4535.

**Buying and selling of vehicles**

Sometimes potential buyers inspect vehicles with the papers and get into the vehicle to do a test drive, never to return, with all the necessary paperwork.

What to do so you don’t become a victim:

1. Always have someone else with you as a witness to any transaction.
2. Sign a purchase agreement.
3. Never let your car be test driven without you being present during the test drive.
4. Always meet the potential buyer in a public place.
5. Do not invite the person to your home or provide the person with your personal details.

**General everyday buying, selling and advance payments**

A seller may come across as so decent and trustworthy that you may be tempted to pay for a product or service before receiving it. You run the risk of paying for something that turns out not to be in the expected condition or worse, a fraudster disappearing with your money.

Alarm bells should ring if someone you do not know asks for payment in advance.

**Overpayment**

The fraudster will deposit money into your account and then call you and claim that the funds were mistakenly deposited into your account or the incorrect amount was paid into your account or you have been overpaid.

The caller will ask you to refund the amount and will fax a proof of payment to you that he deposited the money by mistake. The ‘proof’ is either a copy of a deposit slip or an altered Internet banking payment confirmation.

Your bank statement will show the transaction as a “cheque deposit” and not an “internet Banking Payment”.

After you have refunded the money electronically, you will never see it again following the reversal of the fraudulent deposit by the bank.

What to do so you don’t become a victim:

1. Always have someone else with you as a witness to any transaction.
2. Request a special clearance on cheque deposits.
3. Never let your car be test driven without you being present during the test drive.
4. Always meet the potential buyer in a public place.
5. Do not invite the person to your home or provide the person with your personal details.
6. Do not refund any monies until the cheque is fully paid/cleared.
7. Check that the proof of payment and your statement details add up and reflect the same reference details.
8. Never accept a notification of this nature as proof of deposit, rather obtain written verification from your bank before taking any action.

**Remember, protect yourself and prevent criminals from stealing your personal information.**

Source: [http://www.securitycentre.standardbank.co.za/pcworld](http://www.securitycentre.standardbank.co.za/pcworld)
What is a dismissal?

- A dismissal differs to a resignation.
- A dismissal is the termination of an employment agreement at the option of the employer who communicates this to the employee.
- With regards to a resignation, a notice period is given by the employee to his/her employer.

Every employee has the right not to be unfairly dismissed.

An unfair dismissal means:
- the employer fails to prove that the dismissal was procedurally and substantially (relating to the reason for the dismissal) fair; and
- the employee must be re-employed unless he/she...
prefers compensation of no more than 12 months' remuneration.

Examples of an unfair dismissal include a dismissal where an employee exercises his/her freedom of association to belong to a trade union, based on discrimination, or for whistleblowing.

Types of fair dismissals

- There are 3 grounds of dismissal in South Africa.

1. Misconduct

- Examples of misconduct include:
  - a conflict of interest (to engage with a business that conflicts with the employer's business);
  - gross dishonesty such as theft, fraud, or lying;
  - damage to the employer's property;
  - endangering the safety of other employees;
  - the use of drugs or alcohol on duty;
  - refusing to obey the employer's lawful instructions;
  - sexual-harassment;
  - racist language; and
  - participating in an unprotected strike.

Misconduct, such as theft, justifies the dismissal of an employee

- The fair reason for the dismissal: there was a lawful rule that existed at work relating to the employee's conduct, it was consistently applied by the employer, the employee was aware of the rule, and it was contravened by the employee.
- The fair procedure includes: the employer did an investigation into the misconduct, the employee was informed of the misconduct in a language he/she understood, the employee responded with assistance and sufficient time to prepare and defend the allegation, and on dismissal he/she was given reasons for the dismissal and was reminded of his/her rights in a dispute resolution procedure.

2. Incapacity (where an employee cannot do the work for which he/she was employed)

a. Poor Work Performance

- The fair reason for the dismissal: the employee was aware of performance standards, and failed to achieve these standards.
- The fair procedure includes: that the employee was given an opportunity to improve on his/her poor work performance.
- There can be no dismissal if the employee was transferred to a less physically, intellectually or emotionally demanding position.

b. Ill-health or Injury

- The fair reason for the dismissal: the employee was unable to perform the work due to ill-health or injury and the absence from work was unreasonably long.
- The fair procedure includes: that the employer investigated the disability, the employee's work circumstances could not be adapted to accommodate the disability, there was no other suitable work available, and a pre-termination hearing was given to the employee to defend his/her case.

3. Operational Requirements (retrenchment)

- The fair reason for the dismissal: will depend on the facts of each case. For example: due to a drop in demand for the company's services or products, the introduction of new technology, or reorganisation of the employer.
- The fair procedure includes: a written notice inviting employees to a consultation with a facilitator such as a representative from a trade union, negotiation on measures to avoid retrenchment, a written disclosure of all relevant information, allowing employees an opportunity to make a representation, a selection criteria to decide who gets dismissed, and severance pay.

How can LegalWise assist you?

We can, subject to our terms and conditions:

- refer dismissals for misconduct and incapacity to a Bargaining Council or the CCMA; or
- refer dismissals for operational requirements to an attorney for representation in the Labour Court.
LegalWise gives you all the right answers

LEGALWISE WILL ADVISE AND ASSIST YOU ON ALL OF THESE SITUATIONS AND MORE

What is an unfair labour practice?
An unfair labour practice is an act by an employer which is unfair towards an employee and includes:

- the unfair conduct by the employer relating to his/her training, promotion, demotion, probation, or provision of benefits of an employee;
- the unfair suspension (or other unfair disciplinary action) of an employee; and
- a failure or refusal by an employer to reinstate or re-employ an employee in terms of an agreement.

Disputes concerning unfair labour practice must be referred to a bargaining council, failing this, the CCMA (unfair conduct relating to discrimination may be referred directly to the Labour Court).

What is a sectoral determination and what is collective bargaining?
A sectoral determination controls the terms and conditions of employment for employees in a particular sector (such as the domestic worker industry). It sets minimum rules for the industry such as minimum wages, the payment of pension and medical aid, or minimum standards for employees who live on the employer’s premises.

Collective bargaining (negotiation to reach agreement on issues of mutual concern of the employee) takes place between one or more employers and one or more trade unions. A collective agreement binds the trade unions, members (employees) and employers.

What is summary dismissal?
It is when the employment agreement between an employer and employee is terminated immediately after a disciplinary inquiry without notice, or payment instead of notice. Summary dismissal is only allowed in exceptional circumstances of misconduct i.e. if there is a material (serious) breach of the employment agreement. Examples of summary dismissal include an assault of a fellow employee and theft. The dismissal should be justified and carried out only after an investigation or hearing has taken place.

What is constructive dismissal?
It occurs when an employer makes the working environment impossible for the employee to work, forcing the employee to resign. An employee must show that:

- the work environment was too unbearable that continuance of employment was impossible;
- the situation was caused by the employer’s conduct;
- the employee had no choice but to resign;
- there was no reasonable alternative but for the employee to resign; and
- the employer was in control of the bad working conditions.

For further information and clarification contact your nearest LegalWise Branch or call 011 670 4500.
The LegalWise Teacher Legal Plan is unique. Designed exclusively to protect, guide and support teachers in their profession. Add it to an existing LegalWise Membership for just R15 per month and be prepared with benefits like these:

- **Debt Counselling.** By qualified in-house Debt Counsellors, at reduced rates.
- **Retrenchment benefit.** Six month’s premium will be paid by LegalWise if you are retrenched.

**Teaching is one of the most difficult yet rewarding professions in the world. Now LegalWise will help teachers deal with the risks and headaches that come with it.**

SMS TEACH to 44351 or call 08 600 35 000 or visit www.legalwise.co.za. Add it to Your Membership.

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*Pricing effective 1 July 2013. See page 7 for details.

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- **Face-to-face consultations.** At over 80 Branches countrywide. You will get assistance and legal advice from our Legal Counsellors including:
  - The drawing up of legal contracts and vetting of your employment contract.
  - Representation in legal matters and disciplinary hearings where required.

- **Trauma counselling.** Counselling services include telephonic, face-to-face, couple and group therapy conducted by skilled professionals.

- **Free antiretroviral treatment.** In the case of accidental exposure to HIV.

- **Up to R55 000 extra cover per matter.** For any legal problem related to the teaching profession.

- **24/7 access to our HelpLine.** 24/7 access to a dedicated HelpLine manned by professionals with the ability to communicate verbally in the most commonly spoken official languages - English, Afrikaans, Zulu, Xhosa, Tswana, Pedi and Sotho. Get advice on health, wellness and teaching specific matters.

- **Defamation.** We will protect a teacher’s professional reputation even if it requires going to court.

- **Debt Counselling.** By qualified in-house Debt Counsellors, at reduced rates.
- **Retrenchment benefit.** Six month’s premium will be paid by LegalWise if you are retrenched.

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10 LEGALWISE BACK PACKS TO BE WON!

TO THE FIRST 10 CORRECT ENTRIES DRAWN

There are 5 differences in the pictures.
Just find them and mark them clearly with an X...then get your entry to us!

Congratulations to the 10 winners of the February 2013 ‘SPOT THE DIFFERENCE COMPETITION’ who each won a Back Pack. They are Najbulo Nyathi of PMB, Karabelo Mosia of Sasolburg, Reagan Davids of Ceres, Elias Lethata of Dikgale, Shewata Mahabeer of PMB, Amanda Base of Richmond, Chriswill Constance of Kuilsrivier, Siyaphila Langa of Ixopo, Amahle Vilakazi of Newcastle and Eric van der Vent of Kuilsrivier.

Please note that only the children of LegalWise Members who are under the age of 18 are eligible to enter this competition. Post in the prepaid envelope or in a plain envelope to LegalWise, PO Box 1524, Florida 1710.

Closing date 30 June 2013