

Banking on a resignation with immediate effect? Don't count on it!

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1. The Labour Appeal Court ("LAC") in the matter of Standard Bank of South Africa Ltd v Nombulelo Chiloane (case no. JA85/18) has clarified the issue of the effect of a resignation with immediate effect in the midst of a pending disciplinary hearing.
2. The Constitutional Court, in the matter of Steenkamp & Others v Edcon Ltd (National Union of Metalworkers of SA intervening) made the following statement obiter:
"Except where summary dismissal is warranted, the unilateral act of the employer in terminating the contract, whether by notice or other conduct, does not without more bring an end to the contract of employment. The same applies to an employee who gives short notice in violation of the contract: he or she may be obliged to serve out the notice period. In neither case does the unlawful repudiation of the contract have to be accepted by the other party".
3. The LAC relies on this obiter dictum and concludes that if the contract provides for a notice period, the party that seeks to withdraw from the contract must give or serve the requisite notice. The provisions of the Basic Conditions of Employment Act No. 75 of 1997 ("BCEA") will apply in circumstances where the contract of employment does not make provision for a notice period.
4. In light of the above, an employee will not be able to escape the disciplinary process by tendering a resignation with immediate effect. The essence of the judgement is that there exists no such thing as resigning with immediate effect in the employment context, unless the employer waives the notice period. Notice must be served or given either in terms of the contract of employment or in terms of section 37 of BCEA.