



## LABOUR LAW UPDATE

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### CASE 1

#### CASE SYNOPSIS:

##### The reasonable expectation test – how long until this ends?

Under the current legislative environment, an Employee needs to prove a reasonable expectation in order to prove dismissal. Going forward, post the legislative amendments, the onus will be on the Employer to prove why a fixed term contract is being used, to justify employment post 3 months and to justify the termination thereof.

The case of *Independent Municipal and Allied Trade Union and others v City of Johannesburg Metropolitan Municipality and others* - [\(2014\) 23 LAC 8.34.1](#) may well be one of the last to be heard under the reasonable expectation test.

While the applicant employee was employed on a fixed-term contract, he was granted permission to enroll for a two year diploma on condition that he would not leave the respondent municipality's employ for two years. A short while later, the employee was informed that the municipality had erroneously extended his contract by a year, and that his post would be advertised.

Jurisdictional issues were also raised and dealt with by the Court herein.

Turning to the merits, the Court noted that it was for the employee to prove that he had a reasonable expectation that his contract would be renewed. The employee's claim that the letter informing him that there had been a mistake in recording the date of termination of his contract gave him an expectation of renewal was far-fetched. The contract itself clearly indicated that it was for only five years. The subsidised education agreement had also neither amended the contract, as the appellants claimed, nor given rise to an expectation of renewal. In any event, that agreement had nothing to do with a renewal off the main contract on the same or similar terms. The employee's attempt to make out a dismissal in terms of section 186(1) (b) failed.

Source: *IRNetwork*

#### LESSONS LEARNT

A substantial amount of pressure will be placed on employers post-amendments to justify the use and termination of fixed term contracts. You would need to ensure that your contracts and rationale are aligned in terms of the new amended Labour Relations Act.





## CASE 2

### CASE SYNOPSIS:

#### The Usual Suspects – Subcontractor or not?

The matter of *Lujik / International SOS* - [\(2014\) 23 CCMA 4.3.1](#) raised this ever-perplexing question of whether an employment relationship exists or not.

The applicant, a qualified nurse, had been hired for a part-time post as flight nurse in terms of which a contract was provided to her clearly indicating that she was an independent contractor.

The applicant rendered service to the respondent on a roster system for about two years before her services were terminated due to an alleged breach of the respondent's confidentiality policy, which she claimed constituted an unfair dismissal. The respondent maintained that the applicant was an independent contractor, not an employee, and that the CCMA lacked jurisdiction to entertain the dispute.

To decide upon the arguments raised, the Commissioner delved past the contractual term "Independent Contractor" and analysed the substance of the relationship.

The Commissioner noted that despite:

1. the code only applying to employees,
2. the employee being provided a pay slip
3. she was not an employee.

The reasons educating the Commissioner's decision that she was an independent contractor were, amongst others:

1. She had performed remunerated work for other employers;
2. She also operated a successful guest house;
3. The manner in which she treated patients was not supervised;
4. She did not become part of the organisation when she performed her duties as a professional nurse;

The Commission found that it lacked jurisdiction and as such dismissed the employee's claim of unfair dismissal.

### LESSON LEARNT

One needs to scrutinise the true nature of a relationship to fully establish whether there is an employment relationship. These will be scrutinised even further under the new legislative environment.

