

Zero-tolerance policies: not just an easy fix



A common perception in the workplace is that a zero-tolerance policy may be implemented for any form of transgression and that dismissal is imminent and automatic if said policy is ever breached.

It has become customary practice for employers to implement zero-tolerance policies in the hope of a quick fix for the specific transgressions that occur.

However, could it be that zero-tolerance policies are not an easy fix for disciplinary issues and will not always be considered justified or warranted, regardless of how an employer might feel?

In this article we aim to clarify a few elements about implementing a zero-tolerance policy in the workplace.

Caselaw: *Shoprite Checkers (Pty) Ltd v Tokiso Dispute Settlement and others (2015)*, 9 BLLR 887 (LAC)

In *Shoprite Checkers (Pty) Ltd v Tokiso Dispute Settlement and others (2015)*, 9 BLLR 887 (LAC), the Labour Appeal Court did away with the narrow approach to “Zero Tolerance”, ruling that the focus will not only be on whether a zero-tolerance policy was in place but also on whether said policy met the following requirements:

- The zero-tolerance policy must be justified and warranted.
- The zero-tolerance policy must be consistently applied as a rule in the workplace.
- The circumstances must require zero tolerance and a need for such a policy must materialise based on the company’s operational requirements.
- The zero-tolerance policy must be effectively communicated to all employees.
- An infringement in terms of the zero-tolerance policy must correlate with a dismissal in the employer’s disciplinary code.
- A zero-tolerance policy must still allow for mitigating circumstances to be considered.

Bearing in mind the above, a zero-tolerance approach cannot be adopted for all forms of transgressions. It must be justified and warranted; for example, if a zero-tolerance policy is implemented for arriving late for work, it would be considered unfair.

Such a transgression would normally constitute progressive discipline and would not correlate with the proposed disciplinary action contained in the employer’s disciplinary code because it is not a first-time dismissible offence, whereas a zero-tolerance policy for theft in the workplace would be deemed fair since theft is considered a first-time dismissible offence and the said policy would correlate with the proposed disciplinary action contained in the *employer’s disciplinary code*.

May an employer adopt a zero-tolerance approach in the workplace?

An employer may nevertheless adopt a zero-tolerance approach to the following serious transgressions:

- Dishonesty
- Sexual harassment
- Racist behaviour
- Reporting for duty while under the influence of alcohol and/or narcotics
- Assault
- Gross health and safety violations.

Furthermore, when it comes to zero-tolerance policies, commissioners and judges will look beyond claims of zero tolerance to ensure that dismissal was justified. As stated in section 3(4) of the Code of Good Practice, it is generally not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable.

Employers must therefore avoid implementing zero-tolerance policies out of frustration, but rather ensure that the relevant transgressions that occur are serious enough to warrant a zero-tolerance approach when implementing disciplinary action.

Guidelines when enforcing a zero-tolerance policy in the workplace

Employers can make use of the following guidelines when enforcing a zero-tolerance policy:

- Request legal assistance from our SERR Synergy labour team.
- Ensure that your policy is not vague and confusing. Clearly define “zero tolerance” so that your employees know what it means.
- Treat each incident as unique. When deciding whether disciplinary action is warranted, consider mitigating and aggravating circumstances internal and external to the workplace.
- *Ensure that the processes contained in your policy are procedurally fair.*
- Be mindful of your company culture when implementing or enforcing a zero-tolerance policy.

SERR Synergy guides and assists businesses in a practical and supportive way regarding the required processes and procedures to ensure labour legislation compliance and to minimise their risk exposure when employing staff.

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The following sources are acknowledged:

- *Shoprite Checkers (Pty) Ltd v Tokiso Dispute Settlement and others (2015) 9 BLLR 887 (LAC)*

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