

Fired for coming to work with Covid - dismissal deemed fair by court

By [Johan Botes](#)

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Is it fair to dismiss an employee who came to work, knowing that he was exposed to Covid-19? Absolutely, said the Labour Court in a recent judgment (*Eskort Limited v Stuurman Mogotsi and others*). The court was not only critical of employees who act with scant regard for the health and safety of their colleagues and customers, but also cautioned employers to act more decisively in ensuring the health and safety of their staff.



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The employer dismissed Mbgotsi for (i) failing to notify it that he suffered from Covid symptoms, and (ii) neglecting to take appropriate steps after receiving his test results, including declining to self-isolate, continuing to attend work, and not practicing social distancing at work. The employer's disenchantment with Mbgotsi was compounded by the fact that he was part of the employer's Coronavirus Site Committee and was responsible for putting up the posters to create awareness of do's and don'ts in respect of exposure. Mbgotsi claimed that he had informed the employer of his contact with his ill colleague but was not given clear direction as to the steps he ought to have taken.

At the employment tribunal, the presiding commissioner found that Mbgotsi's conduct was "extremely irresponsible" and that he was "grossly negligent". To the amazement of the employer (and the court subsequently), the commissioner awarded the employee reinstatement after finding that dismissal was not the appropriate remedy. The court (on review) was critical of the commissioner's handling of the matter, especially his reasoning in holding the employer to suggested sanctions in its own disciplinary code, rather than considering the merits and determining the appropriate sanction on the facts. The court was clear that the employee's conduct negatively impacted on a sustainable employment relationship, and thus dismissal was to be the appropriate sanction.



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The employer did not escape the court's chagrin either. The judge chastised employers for not taking decisive action in ensuring the health and safety of staff, stating, "It is one thing to have all the health and safety policies in place and on paper. These are however meaningless if no one, including employers, takes them seriously." The court upheld the review application and held that Mbgotsi's dismissal was indeed fair.

Employers may take a cue from this judgment to be more robust in managing employee conduct in the workplace where it impacts the health and safety of employees and customers. Employees who fail to adhere to Covid protocols should expect little sympathy from employers, the employment tribunal or the court. Employers need not pussyfoot around employees who act callously or harbour conspiracy-theory or unorthodox views about the impact of the virus where this impacts on their workplace conduct. Failing to believe in the impact of the virus is not likely to be a valid defence against dismissal for refusing to adhere to workplace protocols.

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