

Caught looting? It could cost you your job...

 By Johan Botes

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Businesses in South Africa have been seeking advice on how to deal with the impact of recent riots, unrest and looting. Critical queries have included concerns regarding insurance cover, the ability to invoke force majeure clauses in commercial agreements, ensuring the health and safety of employees, assisting staff and their families who are stranded or unable to procure food or essential items, and even dealing with employees who have been identified as having partaken in the looting.



Demonstrators loot the Ayoba Cold Store as protests continue, following imprisonment of former South Africa President Jacob Zuma, in Chesterville, Durban, KwaZulu-Natal, South Africa 12 July 2021, in this still image obtained from social media video. Sphiwe Eneacous Moyo Snr/via Reuters

Businesses are liaising closely with their brokers and lawyers in dealing with insurance companies on payment of claims relating to damage caused to property. The destruction of infrastructure and risk to drivers have had a negative impact on companies that are dependent on the transport system. These and other companies wish to understand whether they could escape damages claims by their clients as a result of the unforeseen events outside their control.

Employers have sought guidance on legal steps required to ensure the workplace safety of employees required to perform critical functions. Some employers have even arranged air transport into affected areas to either collect stranded staff or have food, water and other essential items delivered to them and their families.



How to manage key employment issues during times of unrest and looting

Lizle Louw, Kate Collier, Dhevarsha Ramjettan, Shane Johnson and Mbali Nkosi 15 Jul 2021



Employers have also been keen to understand their right to take action against employees who have been identified as looters or vandals on social media. Footage has surfaced of drivers of luxury vehicles merrily taking part in the looting of retail stores. In a number of cases, the participants are identifiable through clear footage of their faces or vehicle registration numbers. Employers may well be entitled to terminate the employment of such employees where their after-hours conduct has a negative impact on the employment relationship.

Where a retailer is a client of a professional services firm, for example, and a person identified as an employee of the professional service firm was shown on social media to have been involved in the looting of the same retail chain, the professional services firm would have sound grounds to terminate the employment of the looting employee. No client would feel comfortable to have service providers whose staff participated in the wanton destruction and pillaging of its stores. The employer would be entitled to take disciplinary action against its employee for such non-work-related conduct, where it can prove the link between the misconduct and the ongoing employment relationship.

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