

# Can you still discipline an employee after they resign with immediate effect?

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Employees often resign with immediate effect when facing disciplinary action, leaving employers unsure of whether they can continue with an intended disciplinary action. Unfortunately, the Labour Courts' decisions on this issue have not always been clear or consistent. Having gone full circle on the issue, the latest decision of the Labour Court has held that employers lack jurisdiction to discipline employees once they have resigned with immediate effect.



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We set out below some background to the various Labour Court's decisions to date.

In 2017, in *Kalipi Mtati v KPMG Services (Pty) Ltd*, an employee facing disciplinary action resigned on notice. The employer informed the employee that the disciplinary action would continue notwithstanding her resignation. The employee, fearing dismissal, submitted a second resignation - this time with immediate effect. Despite the second resignation, the employer proceeded with disciplinary action and dismissed the employee. The employee approached the Labour Court for relief, claiming that the employer did not have jurisdiction to dismiss her as she had resigned with immediate effect. Although the Labour Court found that the employer did not have jurisdiction to dismiss her as she had resigned with immediate effect; it noted that the employer could have disciplined the employee if the employee had resigned on notice.

In 2018, the Labour Court ruled in *Coetzee v Zeitz MOCCA Foundation Trust and Others* held that an employee may still be disciplined even when they have resigned with immediate effect. Two key drivers for the decision were that the employment relationship only terminates once the notice period has been concluded and resignations with immediate effect are only permitted where the employer commits a material breach of the employment contract or the employer accepts the resignation with immediate effect.



**You can't fire me, I resign!**

Shan Radcliffe 19 Mar 2018



This issue was considered again most recently in *Tristyn Naidoo and Sedayshum Naidu v Standard Bank SA Ltd and SBG Securities (Pty)*. In this matter, two employees resigned with immediate effect pending disciplinary action - but the employer (following Coetzee) continued with the disciplinary hearing. The employer informed the employees that their resignations were rejected and that the disciplinary proceedings would proceed, effectively holding them to their notice periods. The employees approached the Labour Court for urgent relief. The Labour Court was called upon to determine whether:

- the employees' resignation with immediate effect had the effect of immediately terminating the employment relationship;
- the employer had the right to hold the employees to their notice periods; and
- the employer could proceed with disciplinary action against the employees, despite the employees' resignation with immediate effect.

The Labour Court held that:

- when an employee resigns with immediate effect, it means the employee will not serve the notice period, then the resignation will take effect immediately, terminating the employment relationship;
- if an employee resigns with immediate effect and the employer seeks to hold the employee to the notice period, the employer must first seek an order for specific performance in order to hold the employees to their notice periods; and
- on the facts, the employer was prohibited from pursuing disciplinary action against the employees as they had resigned with immediate effect.

In conclusion, there are conflicting Labour Court judgments which deal with the issue of whether employers may discipline an employee after a resignation with immediate effect. As matters currently stand, it appears that employers lack jurisdiction to discipline employees once they have resigned with immediate effect. The remedy available to employers is to seek an order of specific performance or to accept the repudiation and cancel the employment contract and claim for damages.

## ABOUT THE AUTHOR

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