

Beware of dismissing a disabled worker

If an employee is unable to work, is it possible for the employer to dismiss him or her? This is a question that sometimes arises in the workplace and Section Six of the Employment Equity Act specifically prohibits an employer from terminating employment on the grounds of a disability.



By Paddy Hartdegen 28 Oct 2011

An article written by Ivan Israelstam, chief executive of Labour Law Management Consulting and published by Polity points out that Section 187 (1) (f) of the Labour Relations Act prevents employers from terminating employment on the grounds of disability unless it is possible to prove that the employee is unable to work.

In a case heard by the Commission for Conciliation, Mediation and Arbitration (CCMA) (*Truter vs Mechem*) the employee was hired as a filing clerk but was promoted to logistics manager before a serious motor accident necessitated brain surgery and left her with a speech impediment.

The employer terminated her services while she was in hospital claiming that her contract had expired. However, the arbitrator believed the real reason for the dismissal was the accident that she had endured and awarded her eight months salary in compensation for unfair dismissal.

Israelstam points out that:

- Disabled employees are protected from unfair dismissal
- Employers are required to look after disabled employees as well as they can;
- Every option must first be tried before dismissing an employee who has been disabled.

ABOUT PADDY HARTDEGEN

Paddy Hartdegen has been working as a journalist and writer for the past 40 years since his first article was published in the *Sunday Tribune* when he was just 16-years-old. He has written 13 books, edited a plethora of business-to-business publications and written for most of the major newspapers in South Africa.
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