

## **What conduct is expected from an employer and employee in terms of the contract of employment?**

The legal principles applicable to the employment relationship in South Africa come from a variety of sources. These include labour legislation and the common law. The Common Law is a body of law, a set of principles, that has been developed by South African Courts over decades, initially drawing on Roman-Dutch and English law. Although the primary source of labour law is legislation or statutes, the common law remains an important and a binding source of law. For example, most of the South African law of contract is to be found in the common law. In terms of common law, the employment relationship is a contract between the employer and the employee.

See Information Sheet (other): Law governing the employment relationship

See Information Sheet (other): Labour legislation that governs the employment relationship

In the employment context, the common law expects certain conduct from both the employer and the employee and implies certain terms and expectations from the employment relationship even though the parties have not inserted them into the employment contract or applied their minds to them. For example, employees are under a common law duty to act in good faith in the context of their employer's business, they must work with proper care and diligence and refrain from misconduct. Employers are obliged to remunerate employees for the work that they do and provide safe working conditions.

## **What are the obligations of an employer and the duties of an employee in terms of the contract of employment?**

A contract of employment can be defined as an agreement between an employee and an employer where the employee works for the employer and assists in carrying on or conducting the business of the employer. The employee is entitled to receive remuneration for this.

An employment relationship is established between the employer and the employee, whether there is a written contract or not.

In terms of the contract of employment the employer and the employee have certain obligations and duties. These are set out below:

### **Obligations of an employer**

- To receive the employee into service;
- To remunerate the employee;
- To ensure safe working conditions;
- To treat the employee fairly, and with respect;
- To comply with general contractual obligations;
- To apply statutory obligations.

## **Duties of an employee**

- To enter and remain in service;
- To maintain reasonable efficiency;
- To further the employer's business interests;
- To obey lawful and reasonable instructions;
- To refrain from misconduct generally;
- To act in good faith, and to be loyal to the employer.