

## **SMOKING IN THE WORKPLACE**

The recent arbitration award in the matter of Naude and Stealth Marine spells out a warning to employers who do not adhere to the smoking rules stipulated in the Tobacco Products Control Act 83/99.

Ms Naude was employed as a receptionist. She suffered from respiratory problems and a previous serious health condition which included asthma attacks as a result of smoking. She had since developed an allergy to cigarette smoking.

There were no specific areas designated for smokers in the workplace and smoking was freely permitted. Staff smoked in the corridors, reception area and in their offices.

Within two weeks of commencing employment Ms Naude developed a reaction to the cigarette smoke and got ill. She had difficulty breathing, had developed nausea, a headache and light headedness. She warned the employer of her allergy and asked that other employees be stopped from smoking inside the building.

She complained repeatedly to the supervisor and her superior about the smoking in the building and the effect on her health.

Despite a warning from the manager to staff members, both the manager and the employees continued smoking inside the building. She lodged a formal complaint but to no avail. She left work early as she could no longer tolerate the smoke. When she returned to work the next day she found four people smoking inside the building. Ms Naude then resigned and claimed that she had been constructively dismissed.

Despite only being employed for six weeks, she was awarded four months' compensation.

The arbitrator had found that the employer had acted unlawfully by failing to implement the anti smoking legislation in the workplace. Smoking is not allowed in offices or in public areas in the workplace, except in designated areas.

Even though the employee had worked for a relatively short period, it was held that this was a long period to work under those conditions and endure the physical symptoms that she had developed. The situation did not improve in spite of her having followed all the internal procedures.

The arbitrator found that she had been (constructively) 'dismissed' and that the employer created an intolerable situation in the workplace that forced her to resign.

It is important to note that Ms Naude was not the average, healthy, non-smoking employee who was indignant at the fact that the employer had not complied with anti-smoking legislation. Ms Naude had been a heavy smoker who had developed serious respiratory problems.

Also, the employer had not attended the hearing, hence the matter was decided on Ms Naude's version only.

To prevent similar problems from arising in its workplace, an employer should implement a smoking policy that ensures that smoking in the workplace is limited to designated areas.