

Impact of Alcoholism in the Workplace and the Role of the Employers

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ABSTRACT Alcohol misuse and abuse negatively impact its consumers, their performance at the workplace and their behavior in society. Policies that regulate and guide the use of alcohol for employees should be put in place, side by side with statutory obligations by employers. The paper seeks to show that employers need to exercise caution when considering whether or not to dismiss an employee whose alcohol abuse affected his performance in the workplace. If an employee is an alcoholic, the principles have confirmed that this amounts to disease and as such the sick employee should not be dismissed but be treated in order to cure the disease and reintegrate him back into the workplace. It reveals that though there are consequences for alcohol abuse, employers should know what steps to take before exercising their power to dismiss in order not to be held liable for wrongful dismissal.

INTRODUCTION

Alcoholism and the abuse of alcohol have been in existence for a long time in South Africa (Schneider et al. 2007). Setlalentoa and Pisa (2010) indicate, *“use of alcohol in Africa, particularly in South Africa, has a long history and is a way of life for many people, regardless of their socioeconomic background. Alcohol abuse has many negative economic, social and health consequences. Research has shown that the socioeconomic effects associated with alcohol abuse include unemployment, violence, crime, sexual risk behavior and disruptions to family life and work performance.”*

Generally, if an employee is found guilty of misconduct in the workplace as a result of the use of alcohol (Sonnenstuhl et al. 1986), the company's policy and procedure that regulate such misconduct in the workplace might stipulate that the employee should be dismissed (Fogel and Kornblut 1988). Spencer (1978) writes thus *“it is a generally accepted notion that an individual who wishes to obtain or retain a job has certain responsibilities for example, he is responsible for performing his job satisfactorily, comply with reasonable work rules and showing up for work. If the individual will not live up to*

his responsibilities, the employer is under no obligation to him. He may refuse to hire him or, if already employed, he may fire him.” One of the exemptions to this notion, however, is the employee who is involuntarily dependent on alcohol in the workplace, and he cannot just be fired on the basis of abuse of alcohol (Browne 1986) because a dependent is considered under the principles guiding employment relationship as a disease and as such, the addicted employee needs assistance and rehabilitation, not punishment in any form (Van Wormer and Davis 2012).

Intoxication or alcohol abuse could be voluntary or involuntary (Cantor-Graae et al. 2001), hence, there is need to differentiate whether the use is voluntary or not before an employer could set in motion a disciplinary process against an intoxicated employee (Abrams and Nolan 1985). However, it has been observed that if an employee depends solely on alcohol without necessarily comprehending that he or she is abusing alcohol (Conway and Dierker 2012), and a disciplinary hearing process could be taken against an employee who is voluntarily abusing alcohol but if it is involuntary, it will amount to a disease, which is considered to incapacitate him to the extent of not being able to perform his job (Morrall 2005). Often, even courts find it difficult to differentiate between these two lines of dismissals during adjudications. The two are, however, not the same. While an abuse will amount to outright misconduct resulting in dismissal (Ede et al. 2002), dependent on alcohol will merely be considered as incapacity (Schuckit 2006). Hence, it requires incapacity proce-

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ture for purposes of assisting the employee (Godfrey et al. 1993). Because of the thin line that separates abuse from incapacity, employers need to exercise caution and thoroughly investigate the circumstances by ensuring that the right allegations and charges are preferred against the employee before putting the alcoholic employee through disciplinary proceedings (Rector 1986). Undoubtedly, if the alcohol usage is abused, it is misconduct and the employee can be dismissed based on this (Ames and Delaney 1992). However, if it amounts to dependent, there and then, the employee becomes incapable to perform his duty (Cross and Ashley 2004). At this point in time, the employee needs help and cannot be out rightly dismissed. This is because, according to Scanlon (1991), the employee has "loss of control." At this stage, the employee needs assistance in order to solve the problem of incapability caused by the use of alcohol (Gmel and Rehm 2003). The organization and those exercising supervisory and managerial roles over the employee must be sensitive in order to identify and solve performance problems that might prove to be indicative of a personal problem such as alcoholism (Newham 2000). South African courts have been very sensitive in this regard and have displayed this in some of their judgments. For example, in the case of Naik versus Telkom (2000) 21 ILJ 1266 (CCMA), the court held that an alcoholic employee was a sick person and deserved to go through a healing process. The court overturned the dismissal of the employee by the employer based on the grounds of alcoholism, and held that a sick person cannot be dismissed just because of being sick and displays symptoms of sickness but that he should be given an opportunity to undergo treatment and healing processes.

More importantly, in South Africa, the law in terms of Item 10(3) of code of Good Practice: Dismissal provides that "in the case of certain kinds of incapacity, for example alcoholism or drug abuse, counseling and rehabilitation may be appropriate steps for an employer to consider." This enjoins the employer to do everything reasonable within its capacity to help the employee during the period of his sickness. The employer is not expected to dismiss an employee who had been working for years in the organization and performing even when the organization knows he is sick. If he commits an of-

fense, which amounts to a misconduct as a result of the sickness and the employer dismisses him, it will amount to an unfair dismissal. The court will not hesitate to quash the dismissal and restore the employee back to his job depending on the circumstances.

Therefore, the employer is not expected to approbate and reprobate at the sametime regarding the issue of disciplining addicted employees in the workplace (Swanton 1985). To this end, if the employer has, however, on several occasions, overlooked the previous transgressions of the employee who abused alcohol in the workplace but seems to be performing very well at the same time (Denenberg and Denenberg 1991), the employer would have to tolerate or face the consequences of drunkenness in future should the employee misbehave and fail to perform to expectation.

An employee needs to be consistent in complying with the workplace's policy on alcoholism and substance abuse (Roman and Blum 2002). If the employer did not take any action on previous occasions against an alcoholic employee and was not subjected to any disciplinary hearing to deter the employee and others henceforth, the company will be precluded from doing so if the condition of the employee changes to being a dependent (Adams and Remmers 1986). A dependent employee needs help from the employer, not punishment (Robbins et al. 2013), hence the code in terms of Item 10(3) of code of Good Practice: Dismissal is applicable to the employee.

In order to determine whether an employee is alcoholic, the observation of the pattern of behavior of the employee in the workplace is very crucial, hence (Lee and Allen 2002), the employer should be very meticulous and should not jump the gun and conclude that the employee is misusing or abusing alcohol. The employer needs to exercise restraint and ensure that a correct procedure is followed in response to the problem otherwise, if an incorrect procedure is followed, it could invite a clear risk of a finding of unfair dismissal. Therefore, disciplinary procedure is not the first option in dealing with the problem as it may be quashed and considered invalid by a tribunal. Employers are therefore enjoined to seek legal opinion in order to know the steps to be taken in order to avoid litigation and potential damages.

RESEARCH METHODOLOGY

The paper examines the need for an employer to provide ample assistance to an employee with an alcohol drinking problem in the workplace, as this problem could eventually make him dependent and incapable of performing the responsibility required of him in the workplace (Eskelund 2014). The current paper utilized relevant existing literature and considered pertinent courts decisions and pieces of legislation on alcoholism and the misuse of alcohol in the workplace.

The Significance of the Research

Alcohol abuse and misuse impact society and business (Perkins 2002). It causes a lot of mishaps in the society and business (Levine 1984). In South Africa, a number of fatal accidents on the roads have been attributed to the use and abuse of alcohol by the drivers (Schneider 2007). Similarly, there have been a lot of shootings and killings by those entrusted with the responsibility to protect the society. For an example, policemen have been reported to shoot and kill innocent people due to use and abuse of alcohol (Gostomski 2012). The media regularly reports alcohol abuse incidents in the country (Bakke and Endal). Articles, newspapers and trade publications are constantly reporting on the impact of alcohol on the effectiveness of employees in the workplace (Martin et al. 1994). This issue has become a corporate and government concern (Martin et al. 1994). Employers often use the wrong procedure for disciplining an employee found to be under the influence of alcohol. This is often considered as unfair dismissal by the tribunal (Spencer 1978). This is the reason why employers should be well informed and aware that not all alcohol related misconducts should attract dismissals (Howard 199). If the employee is a dependent, this presupposes that he has a disease and needs help to cure the disease (Pescosolido et al. 2010).

Literature Review

Alcoholism, abuse of alcohol and chemical abuses by male and female employees (Ashley et al. 2003) are becoming increasingly problematic in the workplace. According to William et al. (1986), *“the workplace today is rapidly becoming a haven for illegal drug use, sale and pos-*

session (including alcohol-emphasis mine). Many employees are using and selling drugs on the job and are often using pilfered company property as the “currency” with which to buy drugs.” Williams et al. (1986) also point out that “alcohol abuse remains an important, unresolved problem that employers are confronted with in the workplace.”

Alcohol abuse and misuse in the workplace have serious impacts and consequences on workplace behavior (Gmel and Rehm 2003) such as sickness, absenteeism, violent behavior, and uncompromising attitudes (Scanlon 1991). All these characteristics have cost implications on the company. The company needs to adopt or put in place a workplace policy to curtail the use and misuse of alcohol in the workplace (Godfrey et al. 1993).

The study conducted by Greenberg and Grunberg (1995) showed that “work alienation, defined as a low job autonomy, low use of capacities, and lack of participation in decision-making in the workplace, is associated with heavy drinking and negative consequences of drinking.” Although it has been said that they used this as a means of coping, it is submitted that there are other people who experience the same situation and yet they never resort to heavy drinking at the workplace. Rather, they work very hard to improve their credentials in order to climb the ladder to the top and become successful. According to Gmel and Rehm (2003), *“alcohol misuse can harm people other than the drinker, and can have negative consequences for society as a whole. It is commonly believed to play a role in decreased worker productivity, increased unintentional injuries, aggression and violence against others, and child and spouse abuse.”*

According to Room (2005), *“processes of stigmatization include an intimate process of social control among family and friends, decisions by social and health agencies, and governmental policy decisions. What is negatively moralized commonly includes incurring health, casualty or social problems, derogated even by other heavy users, intoxication itself, addiction or dependence, and the loss of control such terms describe, and in some circumstances use per se.”*

According to Schneider et al. (2000), *“alcohol consumption has a long social history in South Africa. Indigenous people consumed fer-*

mented, intoxicating drinks as an important component of social and ritual gatherings. In colonial times alcohol was exchanged for labor and good."

Schneider et al.'s (2000) study revealed that alcoholism is causing a lot of calamities in the country in virtually all sectors. Alcohol abuse problems are posing serious health problems in South Africa, negatively affecting performances and profits in the workplaces. It is impacting various aspects of human endeavors and becoming a burden because it is expensive to cure.

Identifying the nature of the alcohol abuse problems provides some basis for developing solutions. Solutions to the problems start with individual responsibility and can be supported by collective community action in the form of education, enforcement and rehabilitation (Anderson et al. 2009).

ALCOHOL DEPENDENT EMPLOYEE AND RISKY JOBS: THE ROLE OF THE EMPLOYER

Consumption of alcohol is the prerogative of the person who has elected to drink it (Delaney and Ames 1993). Alcohol abuse is not only harmful to the person, but also to the society at large including the workplace (Roman and Blum 2002). Scanlon (1991) indicates, *"Loss of control is the characteristic that separates the alcoholic from non-alcoholic. While some alcoholics may argue that they do not get drunk every time they drink, their ability to consistently control their consumption is what makes them different from social drinkers. An alcoholic will have a good intention to leave a bar after a few drinks and go home and may, in fact, succeed on some occasions. But more often than not, this willpower will prove no match for the insidious onset of the disease."*

Although employers would not want to interfere with the private life or affairs of an employee (Beveridge 2014), when it comes to alcohol abuse, which will impact the performance of the employee in the workplace, the employer has a statutory duty to assist the employee (Sonnentstahl and Trice 1990). There are some jobs that require full mental alertness when performing them (Kruege 1989). Using alcohol during the course of performing these types of delicate jobs may impair the employee's reasoning and might cause harm to himself and other colleagues

(Vardi and Weitz 2003). These types of jobs require that employees be subjected to alcohol and substances testing. These tests are required according to the policy of the company. The purport of this is to provide and ensure a safe workplace environment for the employees who perform these types of sensitive and dangerous jobs.

PUNISHING ALCOHOLIC EMPLOYEES

Literature and case laws have confirmed that it is wrong to punish an alcoholic employee, rather the employer is under statutory obligation to help him recover from the sickness, which has caused the handicap (Fogel and Kornblut 1988). This is against the backdrop that alcohol addiction is considered a disease and as such, needs treatment, not punishment (Room 2005). It is therefore important to mention that all drug dependencies, including alcoholism are diseases (Young 1999).

Similarly, literature has shown that misuse of alcohol have different harmful consequences and impacts on health, safety, and work performance of the employee (Anderson et al. 2009). For example, alcohol related absenteeism can jeopardize productivity at the workplace (Tersine and Hazeldine 1982), deny businesses the leading edge and curtail competitiveness, reduce profit margin and might liquidate a business if appropriate intervention is not introduced. Against the backdrop of these overwhelming problems, companies need to have stringent and enforceable policies in place to prevent abuse of alcohol (Shahandeh 1985). The main aim of this policy intervention is therefore to ensure that on a regular basis, employers continuously raise awareness, providing guidance on the symptoms, effects of both drugs and alcohol on work and their health consequences (Shahandeh 1985). The employer should always consider alcohol abuse and problems as a disease (Vaillant and Vaillant 2009), which if subjected to treatment, is treatable. Ample support should therefore, be given to the employee by the employer (Palmer 1999). The benefit of this support is that if the disease is cured, the employee can be reintegrated back into work. One of the case laws that support rehabilitation and reintegration is the case of *Whitefield versus General Medical Council Whitefield versus General Medical Council* [2002] UKPC 62, where the appellant, a

medical doctor with alcohol misuse problem was convicted by the court and served his terms in prison and was released back to the society. The court allowed him to go back to his medical practice provided he fulfilled some conditions, which included abstaining from alcohol. He challenged this on the ground that it infringed on his privacy and human rights. The court disagreed with him and held that the imposition of a condition to abstain from alcohol consumption did not violate or infringe his right to respect for his private life because he could still go to socialize in the pub by drinking non-alcohol drinks. The court also held that "as a doctor his 'right' to an unrestricted social life was subject to the wider public interest of ensuring that he did not present a risk to his patients."

These days, all avenues are being explored to find solution to the problem of alcohol abuse and misuse as there is no one solution to the problem (Simpura et al. 1999). According to Denenberg and Denenberg (1991), "*arbitrators are often called upon to interpret labor management agreements that provide recovery opportunities for chemically dependent employees. The disputes require the neutral to determine when employees are entitled to be offered a course of treatment, how their progress toward rehabilitation is to be evaluated and the extent to which the normal disciplinary sanctions are to be held in abeyance. Arbitrators also must assess the enforceability of "last chance agreements" and the reasonableness of restrictions upon revolving door syndrome. From arbitrators' efforts to grapple with these issues and resolve conflicts between disciplinary and therapeutic precepts may emerge guidelines for dealing with substance abuse as a disability.*" Employers should be proactive and monitor the employees in order to identify any problem being faced before it escalates (Saeman 2007). This will minimize risks to the health and safety of the alcoholic employee and potentially safeguard the health and safety of fellow employees and others. By so doing, the employer will be fulfilling its legal duty towards the safety, health and welfare of the employees.

CONCLUSION

Misuse of substance and alcohol by an employee might be a result of sickness. The employer has a role to play because being alcohol-

ic is a disease and it needs to be treated and assistance must be provided to the alcoholic employee in this regard. In this instance, the act may not amount to misconduct. More importantly, the employee should be ready to receive help from the councilor or caregiver. If eventually the employee gets well and the alcohol intake is minimized or stopped, the employee can be reintegrated back into the workplace.

The analysis shows that alcoholism is a disease that needs to be cured. Consequently, an alcoholic employee is not supposed to be dismissed rather should be assisted by ensuring that the disease is cured. It shows that the adjudicating bodies, in most of the jurisdictions will quash any dismissal on the ground of alcoholism as substantially unfair and enjoined the employer to assist the employee in getting treatment, counseling and rehabilitation as part of healing and solving the problem.

RECOMMENDATIONS

It is important to have an alcohol policy, which is lawful, fair and attainable. There should be fair and lawful means of testing suspects at work to ascertain the level of alcohol in the blood, by qualified staff with approved and reliable testing equipment.

The employer must adopt measures to effectively implement policies at all times by guiding employees. Care must also be taken through monitoring, investigation and the assistance of qualified people to determine if an employee is abusing alcohol or has a disease. This will aid treatment, rehabilitation and reintegration in the workplace.

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