

Short Notes on:

## **EVER WONDERED WHAT THE DIFFERENCE IS BETWEEN A RESIGNATION AND A TERMINATION?**

### *Introduction*

You cannot foresee yourself working for a company where the work environment becomes unendurable. Therefore, you have to make a conscious decision about whether you are going to resign or whether you are going to wait for the employer to dismiss you for whatever reason that is justifiable.

### *Grounds For Termination*

The Labour Relations Act<sup>1</sup> describes three (3) grounds where an employer may terminate an employee. The three reasons are an employee's conduct, the employee's capacity and the operational requirements of the employer's business.<sup>2</sup>

### *What is Resignation?*

Resignation, on the other hand, is when the employee terminates the working relationship between the employer and employee. The Basic Conditions of Employment Act<sup>3</sup> (BCEA) describes resignation whereby the employee may terminate the relationship by giving notice of such termination<sup>4</sup>. In other words, the employee voluntarily leaves the employment of the employer.

### *Resignation vs Termination*

The question remains: it is best to quit or be fired, and have you considered the consequences? The factors of being fired or resigning will depend on the unemployment benefits and the terms of termination. In certain instances, the employer may offer the employee options to quit rather than termination.

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<sup>1</sup> The Labour Relations Act 66 of 1995.

<sup>2</sup> The Labour Relations Act , Section: 2 (2).

<sup>3</sup> The Basic Conditions of Employment Act 75 of 1997.

<sup>4</sup> The Basic Condition of the Employment Act 75 of 1997, Section: 37.

When resigning you may be able to negotiate a severance package. This severance package would be helpful if you have no other form of employment secured. When negotiating the terms of your resignation, you may be entitled to other benefits. The benefit of resigning would be that you don't have to explain to your future employer why you were terminated. This allows you to structure your departure positively.

In Section 16 of the Unemployment Insurance Act<sup>5</sup>, you are only entitled to unemployment benefits when your services terminate. Therefore, you are only entitled to the benefits of the Unemployment Insurance Fund if you get fired and not when you resign.

### *Conclusion*

Therefore, it is crucial to know your options before deciding to resign or to be fired, as the outcome may not be the desired outcome with the benefits. In saying that however, not all employees may have the luxury of choosing resignation over being fired and in those instances the circumstances of the termination of employment needs to be properly considered in order to ensure that employer's actions were justified. It's always best to discuss this with an expert.

Contact an attorney at SchoemanLaw to help you better understand the difference between being fired or resigning as well as any other labour law needs.

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<sup>5</sup> Unemployment Insurance Act 63 of 2001