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FALSIFYING UNIVERSITY QUALIFICATIONS AND INFORMATION ON A CURRICULUM VITA LINKEDIN & OTHER SOCIAL MEDIA PLATFORMS

The escalating unemployment crisis in South Africa is a well-known issue, with the country reaching unprecedented levels in 2024, marking the highest unemployment rate in Africa, hovering around 30%.

In this competitive job market, employers are increasingly seeking highly qualified and skilled individuals. As the applicant pool widens, candidates must distinguish themselves from their counterparts vying for the same positions. However, succumbing to the temptation of embellishing qualifications or experiences, even if seemingly harmless, is essentially a form of deception and a crime.

In recent years we have witnessed several high-profile individuals in South Africa facing scrutiny and legal consequences for misrepresenting their credentials and affiliations. While some may view these misrepresentations as mere embellishments to bolster their resumes, the ramifications extend beyond surface impressions

1. What Constitutes Misrepresentation on a Curriculum Vitae?

- CV fraud is a misrepresentation of the truth with the objective of improving one's circumstances.
- The damage or negative impact of the fraud only needs to be a cause of potential damage.
- According to the amendment law, misrepresentation extends beyond falsifying information on a CV to also encompass misrepresenting qualifications on various social media platforms such as LinkedIn, Facebook, Twitter / X, and Instagram.

2. National Qualifications Framework Amendment Act 2019

- The Act aims to:
 - a) Dissuade individuals from falsifying information on their CV's
 - b) Impose penalties, such as fines and/or imprisonment for up to five years, on those found guilty of fabricating details in their CV's.
 - c) Explicitly state that misrepresentation extends beyond CV's to encompass profiles on professional networking platforms like LinkedIn, as well as personal social media accounts such as Facebook and others.
- 32B. (1) A person is guilty of an offence if the person—
 - (a) makes or causes to be made a false entry in the national learners' records database or the misrepresented or fraudulent register;
 - (b) is a party to the falsification and dissemination or publication of a qualification or part-qualification of any person or the records of the national learners' records database or the misrepresented or fraudulent register; or
 - (c) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person.
- Furthermore -
- (6) Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of sections 32B(1), 32B(2), 32B(3) or 32B(4) to a fine or to imprisonment for a period not exceeding five years, or to both a fine and imprisonment.

3. Grounds to Terminate Employment and Case Law

- Upon discovering that an employee has falsified or misrepresented their qualifications on their CV, the employer has the authority to summon the employee to a disciplinary hearing. If found guilty, the employee may face summary dismissal.
- Case law emphasises that the crux of the matter lies in the employee's deception, wherein the employer's decision to hire them hinges solely on this misrepresentation. It is immaterial whether the employee can fulfil the job duties as stipulated in their employment contract.
- Therefore, as elucidated by the Labour Court in the case of *LTE Consulting (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (JR1289/14) [2017] ZALCJHB 291 (8 August 2017), an employee's dismissal is grounded in their dishonest conduct rather than their competence to perform the job. The misrepresentation revolves around falsely claiming a specific title or qualification, irrespective of the employee's ability to carry out the work.

4. Preventative Measures and POPI Act

- Employers can proactively safeguard against the risk of hiring deceitful individuals who misrepresent themselves and their qualifications.
- Employers have the option to enlist the services of companies specialising in background checks. These checks encompass verifying the authenticity of

qualifications, affiliations with various organizations, as well as conducting reference and criminal record checks.

- It is advisable for companies to incorporate psychometric testing into their interview process for prospective employees.
- However, it's crucial for employers to obtain prior written consent before investigating any information not publicly available. Compliance with the regulations outlined in the Protection of Personal Information (POPI) Act is essential for lawful processing of personal information belonging to employees, also ensuring that the information obtained serves a specific purpose.
- Adhering to the age-old adage, "prevention is better than cure," underscores the importance of investing upfront in verifying the credentials and capabilities of potential hires. This approach mitigates the risk of later discovering inadequacies in job performance, which could lead to time-consuming incapacity procedures or disciplinary actions for serious misconduct.
- Additionally, an "offenders register" exists for employers to record instances where employees have misrepresented or submitted fraudulent qualifications. This serves as a deterrent against dishonest behaviour in the workplace.

5. Can you claim back the money from the Employee?

- In essence, the answer is affirmative concerning a civil claim of "unjust enrichment." The employer must establish that the employee gained unjustified benefits directly due to the misrepresentation and therefore should not be entitled to the perks of the job, including salary and associated benefits.
- It is incumbent upon the employer to demonstrate that the misrepresentation was significant and that the decision to hire the employee was directly influenced by this misrepresentation.
- Should the employee be found guilty of unjust enrichment, they may be liable to forfeit their salary, contributions to pension/provident funds, and be responsible for reimbursing any damages incurred as a result.

We eagerly anticipate the opportunity to support you with any of your labour law requirements and / or training. Please feel free to reach out to us if you need any assistance.

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