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# UNDERSTANDING INCITEMENT IN THE WORKPLACE

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## Definition of Incitement in Labour Law

The concept of incitement in the workplace, as it pertains to labour law, was clarified in the case of *Albion Services CC v CCMA (2013) ZALCD 12*. The court ruled that the key test for incitement is whether the employee had the intention to influence the minds of their colleagues. The specific methods used by the employee to incite others are of lesser importance.

## Awareness of Unlawfulness

A significant ruling in the case of *Economic Freedom Fighters v Minister of Justice and Constitutional Development (2019) ZAGPPHC 253* established that incitement does not necessitate the actual commission of the incited crime. The court emphasised that the critical question is whether the inciter believed the act to be unlawful, even if the incitee did not realise its unlawfulness. Therefore, there must be a clear and direct intention to influence another person's mind to commit an unlawful act.

## Freedom of Expression and Its Limits

The case of *Makhoba v CCMA (2021) ZALC 11*, addressed the issue of freedom of expression. The court upheld that while individuals have the constitutional right to freedom of expression, this right does not extend to the advocacy of hatred based on race, ethnicity, gender, or religion if it constitutes incitement to cause harm.

## Incitement through Social Media

A recent case in the CCMA involving the National Union of Mineworkers obo *Namathe/Imerys Refractory Minerals SA (Pty) Ltd (2024) 2 BALR 212 (CCMA)* demonstrated that incitement can occur via social media. An employee was dismissed for posting a message on WhatsApp, intending to mobilise the community to engage in a strike against the employer. The Commission found that the message aimed to persuade union members

to join an unprotected strike, attempting to disrupt the employer's operations without following the proper procedures required by the Labour Relations Act.

## Conclusion

From the above cases, it is evident that for an employer to justify the dismissal of an employee for incitement, it must be proven that the employee had a clear intention to influence their colleagues to commit an unlawful act.

The means by which this influence is exerted are secondary to the intent behind the actions.

By understanding these legal precedents, both, employers and employees can better navigate the complexities of incitement within the workplace, ensuring that actions and communications remain within the bounds of the law.



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