

PROVOCATION AS A DEFENCE FOR ASSAULT

Assault in the workplace may range from an aggressive touch to an infliction of severe injuries, and includes the aggressor creating an impression that force will immediately be applied to the recipient. Assault constitutes a breach of a person's right to bodily integrity.

The *Code of Good Practice for Conduct and Capacity*, lists 'physical assault' in the workplace as a 'serious misconduct'. Whether it is directed at the employer, a fellow employee, a client or customer, the implication is that the wrongdoer may be dismissed.

However, if the offender was provoked, the defence of provocation may help the wrongdoer avoid dismissal. In *Metrorail v SATAWU* the arbitrator concluded that provocation rendered dismissal too harsh a penalty as the existence of provocation plays a role in the determination of the disciplinary sanction.

In terms of proof, an employee who has been provoked must prove:

- (a) that the provocation was wrongful; and
- (b) that such conduct would have induced a reasonable person to 'lose control'.

Thus, instead of dismissal, the employee may be issued with a final written warning.



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