



Schreuder
Attorneys

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news

Newsletter, Articles and Matters of Interest

1 SOBER DRIVING

The festive season, also known as the silly season is upon us. Many people will be spending the holidays catching up with friends and family. Word of caution though, should you decide to consume alcoholic beverages, avoid driving a motor vehicle. Drinking and driving is a criminal offence, should you get caught.

Section 65(1) of the National Road Traffic Act 93 of 1996 states that no person shall on a public road drive a vehicle; or occupy the driver's seat of a motor vehicle the engine of which is running, while

under the influence of intoxicating liquor or a drug having a narcotic effect;

In addition, Section 65(2) states that, no person shall on a public road – drive a vehicle; or occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of blood taken from any part of his or her body is not less than 0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millimetres. This means that if you have 350 ml beer or a single tot of brandy, you may already be over the limit.

While section 65(3) states that if in any prosecution for an alleged contravention of subsection(2) it is proved that the concentration of alcohol in any specimen of blood taken from any part of the body of the person concerned was not less than 0,05 millilitres at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,05 gram per 100 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres at the time of the alleged contravention.

Where evidence of drunken driving is procured in terms of section 65(4), where in any prosecution in terms of this Act proof is tendered of the analysis of a specimen of the blood of any person, it shall be presumed, in the absence of evidence to the contrary, that any syringe used for obtaining such specimen and the receptacle in which such specimen was placed for dispatch to an analyst, were free from any substance or contamination which could have affected the result of such analysis.

Sections 65(2) to (4) pertain to blood samples that may be procured from a person suspected of driving under the influence of alcohol. One should also bear in mind section 65(9) states that no person shall refuse that a specimen of blood, or a specimen of breath, be taken of him or her.

The following sections pertain to samples obtained from using a breathalyzer, section 65(5) says no person shall on a public road; drive a vehicle; or occupy the driver's seat of a motor vehicle the engine of which is running, while the concentration of alcohol in any specimen of breath exhaled by such person is not less than 0,024 milligrams per 1000 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres.

Section 65(6) states that if any prosecution for a contravention of a provision of subsection (5), it is

proved that the concentration of alcohol in any specimen of breath of the person concerned was not less than 0,24 milligrams per 1000 millilitres of breath taken at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,24 milligrams per 1000 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,10 milligrams per 1000 millilitres at the time of the alleged contravention.

The equipment to be used in measuring blood alcohol levels is in terms of section 65(7), which states that for the purposes of subsection (5) the concentration of alcohol in any breath specimen shall be ascertained by using the prescribed equipment

Section (8) any person detained for an alleged contravention of any provision of this section shall not; during his or her detention consume any substance that contains alcohol of any nature, except on the instruction of or when administered by a medical practitioner; during his or her detention smoke until the specimen referred to in subsection (3) or (6) has been taken, as the case

may be;

During this season, police are more vigilant and have set up road blocks on many public roads. It is perhaps prudent during these times to be more aware of your state of sobriety, after all the penalties that could be imposed if one is convicted of drunken driving include suspension of the drivers licence, a jail term or payment of a fine, not forgetting a criminal record.

By V Miya



2. BONUS PAYMENTS

There is no statutory requirement for employers to pay employees bonuses, any bonus payments that are made are at the employer's discretion and not regulated by labour legislation.

Bonus payments are depended either on the terms and conditions of the contract of employment, Company Policy, Custom and practice, certain targets being reached in terms of production or sales, Company performance in terms of gross profits or any other criteria stipulated by the employer.

Instances where a bonus is a contractual condition embodied in the employee's contract of

employment, or a contractual condition embodied in a Company Policy, then the bonus must be paid.

Failure to pay the bonus may amount to a unilateral change to terms and conditions of employment, and be seen as breach of contract

The three most popular types of bonuses that some companies offer are Christmas Bonus or 13th cheque, the Performance Bonus and the Production Bonus.

The Christmas bonus is paid to thank the employer for a job well done. This bonus is paid at the sole discretion of the employer.

The Performance bonus is paid to employees for above-average and consistent performance in a department.

A Production Bonus is paid based on meeting targets and quality of production. Company specified targets must be met for the company to pay the bonus.

It is crucial that in an employment contract, the terms and conditions applicable to the payment of bonuses are specifically and clearly stated. Bonus payments are at the employer's discretion unless agreed upon in the contract of employment.

By R Mphela

HAPPY HOLIDAYS

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