



NEWSLETTER



PART 6

DERIVATIVE VS TEAM MISCONDUCT

MISCONDUCT

Part 6: Derivative vs Team Misconduct

This is the last article in our series on Misconduct, covering 'Derivative vs Team Misconduct'.

[\(View Part 1, 2, 3, 4 & 5 on Misconduct in the Workplace here\)](#)

As derivative and team misconduct share similar aspects, differentiating between the two is often difficult:

Derivative misconduct is defined as "the situation where employees possess information that would enable the employer to identify wrongdoers, and that those employees who fail to come forward when asked to do so, violate the trust upon which the employment relationship is founded." - Chauke & Others v Lee Service Centre t/a Leeson Motors 1998 19 ILJ 1441 (LAC).

Simply put, derivative misconduct is when it becomes difficult to identify - and therefore discipline - specific culprits with regards to a specific type of misconduct (mostly stock losses or malicious damage to property). The parties involved usually conceal one another's identity either by way of intimidation, or for personal (financial) interest.

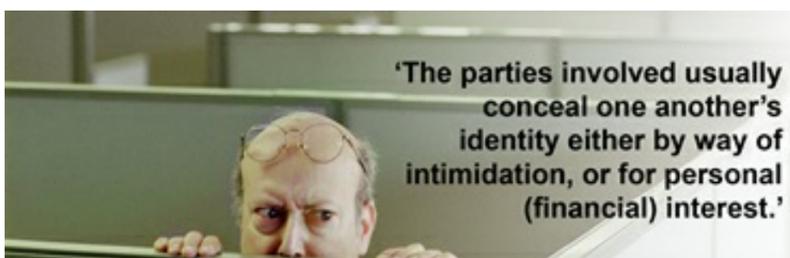
With **team misconduct**, the culprits are all more easily identified and are all suspected of the same misconduct, with no concealment of identity. The culprits will be charged collectively with any one of the types of misconduct described in previous articles, and will therefore be dealt with as prescribed.



"Perhaps you would like to rephrase your last answer."

Addressing issues of **derivative misconduct** is more difficult. When an employer faces an issue of misconduct without being able to pinpoint a specific culprit or culprits - but a staff member is suspect, or a number of staff members would reasonably be aware of the misconduct - then all staff members involved in concealing the misconduct and/or suspected of committing the misconduct must be informed that the repetition of the misconduct, or failure to come forward with precise information, would result in disciplinary action. The employer must be able to show that there was an attempt to identify the actual culprits, and therefore as a final resort had to issue ultimatums.

Should the employee or employees fail to come forward with specific information that would lead to the identity of the culprit or culprits, these employees would all face dismissal and in fact dismissal would be regarded as a warranted sanction. The employee concealing such information is not acting in the best interest of the employer and therefore cannot be trusted on the employer's premises any longer.



'The parties involved usually conceal one another's identity either by way of intimidation, or for personal (financial) interest.'

To determine whether an employee is to be charged with derivative misconduct, it must be determined whether the employee is connected to the misconduct in one of the following ways:

- If the employee is one of the persons in the group who actually committed the acts of misconduct;
- If the employee did not actually commit the misconduct, but associated himself with the acts of misconduct or associated himself with the common goal of the group concerned (common purpose); or
- The employee's guilt is based on the fact that the employee did not co-operate with the employer by failing to identify the employee/s guilty of the 'primary misconduct' in circumstances where he/she was able to do so.

We hope you have found the series on the various forms of Misconduct informative. However, we have given an overview only, and should you need further assistance please don't hesitate to contact us.

Daniel Berry | B.Com (Law) LLB
Senior Official
Guardian Employers Organisation

Contact us:

Email: geo@geo.org.za

Telephone: 0861 436

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For assistance with
POPI compliance,



please contact Andre
Rabe via email:
andrerr@geo.org.za

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Summary



Derivative misconduct is defined as "the situation where employees possess information that would enable the employer to identify wrongdoers, and that those employees who fail to come forward when asked to do so, violate the trust upon which the employment relationship is founded." - Chauke & Others v Lee Service Centre t/a Leeson Motors 1998 19 ILJ 1441 (LAC).



IN THE NEXT
ISSUE OF
THE GEO
NEWSLETTER:

There's an error made in the calculation of your employee's remuneration... are you entitled to deduct the amount overpaid without the written consent of the employee?

We'll debate this in November.