

Employer guidelines regarding false or fraudulent employee qualifications



When a company starts hiring personnel, the interviews form an important part of the process and the decision to appoint an applicant in most instances depends on the applicant's qualifications.

In this commentary we discuss a few important questions and highlight the latest case law on the matter of submission of false or fraudulent qualifications.

May an employer request proof of an applicant's qualifications?

Yes.

For some positions or professions, qualifications are a prerequisite. It is always advisable for an employer to verify any qualification of the applicant albeit not always pertaining to the relevant position.

What type of proof for qualification(s) will be deemed sufficient?

Most tertiary education institutions are equipped to provide the student with a Qualification Verification Letter / Letter of Good Standing in which the institution lists all the qualifications awarded to the student. The company or employer can, as an alternative or in addition to the above, also request copies of the qualification(s) certified by a Commissioner of Oaths.

- Given the technological and digital era in which we live, it is possible for qualifications to be forged. For this reason, *the employer or company may, as part of its interviewing process, obtain the applicant's consent, preferably in writing, to approach the institution which had awarded the qualification(s), and thereafter contact the institution in writing to confirm that the qualifications are true and verified.* Another option available to the employer or company is to use the services of a third party to verify the information and/or qualifications on their behalf.
- An important aspect for the employer and/or a third party conducting the verification of qualifications is to bear in mind that *the method of obtaining and storing the abovementioned information must comply with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (POPIA) and Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA).*

What can an employer or company do should it be discovered at a later stage that an employee had falsely claimed to have obtained a qualification(s)?

The employer or company is entitled to commence with disciplinary action against the errant employee regardless of his or her position and, with sufficient evidence, dismiss the employee for dishonest behaviour.

The case study below illustrates the position taken by an employer who, when the employee was no longer in its employ, sought a monetary refund of all salary payments made to the individual during his employment.

Take note that once the employment relationship has been terminated, any action taken by the former employer or employee against one another will be by means of civil action. The parties will need to approach an attorney to pursue such a matter in civil proceedings.

Why is it important for an employer to ensure that the qualifications presented by its employees are true and valid?

In order to work in a certain industry or to perform certain duties, an employee will be required to have obtained a specific qualification. The validity of qualifications is important from the perspective of a company's clients as the clients pay for certain services and are assured that their business interests are attended to by qualified persons, which also strengthens the trust between a company and its clients.

Furthermore, the *Umgeni* case (below) illustrates another important point, namely how an error in performing employment duties through a lack of knowledge can have serious consequences.

Caselaw: *Umgeni Water v Naidoo and Another* (11489/2017P) [2022] ZAKZPHC 80

In the case of *Umgeni Water v Naidoo and Another* (11489/2017P) [2022] ZAKZPHC 80 (15 December 2022), Mr Naidoo was employed based on a false claim that he had obtained an engineering degree from the University of KwaZulu-Natal for Umgeni Water's graduate programme in 2008. The employer (Umgeni Water) conceded that upon hiring Mr Naidoo, his credentials were not verified. However, eight (8) years later in 2016, Mr Naidoo applied for appointment as a process technician.

His employment commenced in 2008 and during the 2016 application process, the employer hired a private company to verify qualifications. It was at this point that a discrepancy in Mr Naidoo's qualification was uncovered. It was established that Mr Naidoo had fraudulently submitted a copy of a B.Sc. Chemical Engineering degree and accompanying academic records (results/marks) as his own.

Mr Naidoo was afforded multiple opportunities to substantiate his claim of obtaining the degree and academic results, but to no avail. Upon facing these discrepancies, Mr Naidoo tendered his resignation; however, his resignation was rejected as disciplinary proceedings had already been instituted against him. Mr Naidoo then submitted his second resignation indicating that he would resign with immediate effect based on a medical condition, which was accepted by the employer.

The employer instituted civil proceedings for monetary compensation against Mr Naidoo and approached the KwaZulu-Natal High Court.

- During the court proceedings, one of the company's witnesses testified as to the reasons for their requirement of hiring qualified personnel, namely that having an unqualified person working for the employer could potentially be extremely hazardous to the well-being of a large number of people who are dependent on water supplied to them by the employer. Any error in performing such calculations due to a lack of knowledge could potentially have incredibly serious consequences for the general population.
- The court held that Mr Naidoo presented these qualifications in order to secure the employment. His misrepresentations resulted in him being granted employment by the employer who would not have employed him had it received the true results.
- This conduct illustrated that Mr Naidoo had acted fraudulently. The court stated that Mr Naidoo "set out to deceive and wove his web accordingly. He achieved his goal".
- The court ordered Mr Naidoo to pay R2 203 565.04, which is "what he received from the [employer] arising out of the fraud that he perpetrated on it. Furthermore, the employer was entitled to execute this judgment against Mr Naidoo's provident fund administered by the Umgeni Water Provident Fund".

In conclusion

SERR Synergy has professional legal teams across South Africa specialising in Employment Law and Information Compliance (*POPI and PAIA*). Our legal teams can assist employers with disciplinary procedures when faced with the aforesaid scenarios regarding employees who had submitted false qualifications or listed false qualifications on their résumé or curriculum vitae.

About the author: Lané Boshoff is SERR Synergy's Corporate Legal Researcher. She obtained a BA Law degree and LLB from the University of Pretoria and is also an admitted Advocate of the High Court of Gauteng – Pretoria.

Sources acknowledged:

- Umgeni Water v Naidoo and Another* (11489/2017P) [2022] ZAKZPHC 80 (15 December 2022).
- Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).
- Labour Relations Act, 1995 (Act No. 66 of 1995).
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

Please note that some of the content above was also used and published in one of our previous Newsletters to existing clients.