

# UNDERSTANDING AND APPLYING THE PARITY PRINCIPLE IN THE WORKPLACE.

- ✓ Application of the parity principle in the workplace.
- ✓ Exceptions to the application of the parity principle
- ✓ Conclusion

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Published: 29<sup>th</sup> Jan 2024

The parity principle is one of the basic tenets of employment law. The principle denotes that like cases should be treated alike. Otherwise, it amounts to unfair discrimination if equally circumstanced employees are not treated equally. This article seeks to discuss the application of this principle in the workplace as well as instances where its application is unsustainable.

### Application of the parity principle in the workplace.

The parity principle has on countless occasions been applied in cases of unfair dismissals. When speaking of misconduct in the workplace the parity principle requires that if two employees are caught committing the same wrong, one should not be disciplined if the other goes free nor should one be more severely punished than the other. Employers should, at all reasonable times when preferring disciplinary action, make sure that they are doing so in the spirit of fairness and equality.

If an employee is dismissed and it is established that the parity principle was breached (where similarly circumstanced employees were treated differently), such employee can challenge the fairness of the dismissal either procedurally or substantively.

However, this principle should not be abused especially where circumstances are distinguishable. It is important to note that for the principle to be applied there must be evidence showing that there was differential treatment. See **OABILE v LEWIS (PTY) LTD 2020 ALL BOTS**.

The application of this principle is not confined to misconduct, but to a wide range of issues in the workplace such as policies and procedures put in place. It also applies in the public service. A practical example would be the case of **ATTORNEY GENERAL v SEFORE 2021 ALL BOTS 102 (CA)** wherein the court held as follows:

*“In my view, it would bring chaos in the public service if government directives are applied selectively by each ministry or department when such directives are intended to apply to a certain defined category of employees. In my view, the principle of parity was applicable and should be applied”*

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It can safely be concluded, that where directives have been issued by the Government affecting certain individuals within the public service, such directives should not be selectively applied.

## **Exceptions to the application of the parity principle**

In as much as our employment law recognizes the parity principle, there are instances where its application cannot succeed. Our Courts have been very reluctant to extend the application of the parity principle to administrative decisions.

In the case of **PERRMANENT SECRETARY, MINISTRY OF HEALTH v PHILLIP 2014 ALL BOTS 444 (CA)** wherein the Respondents sought to invoke the parity principle in their application for paid leave. It was held that:

*“This is a sensible rule in its correct context, but no authority has been cited for us extending its operation to the wide range of administrative decisions which must be made on an almost daily basis in the public service- to training, promotions, transfers and the like. In all these, there will be a host of individual circumstances which fall to be considered before decisions are made in the interest of the service.”*

## **Conclusion**

In conclusion, the relevance and or application of the parity principle is circumstance-based where each case is considered on its own perculiar merits.

If you have interest in an in-depth discussion on this subject matter or any employment and labour issues, feel free to contact us at

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