

## RENT – A – CHAIR ISSUE:

The National Bargaining Council has witnessed a massive increase in the number of Rent-a-Chairs being registered with the Council. We thought it prudent to address the matter in a two-fold manner. The first part will deal with issues that employers/ landlords need to be cognisant of when entering into these arrangements.

The employer needs to understand the possible implications that Section 200A of the Labour Relations Act could have on them, should a rent-a-chair decide to refer a dismissal case even if the arrangement was that of renting a space only. The Act provides a clear test on who is presumed to be an employee. What is important to note is that the relationship only needs to comply with one of these tests to declare the person an employee.

There are two types of rent-a-chairs in the Industry being:

Type A: A person who rents a chair and has employees working for him/her.

Type B: A single person renting a chair who has no employees working for him/her.

This article deals primarily with the Type B rent – a- chair.

### Presumption of who is an employee:

*Until the contrary is proved, a person who works for, or renders services to, any other person is presumed regardless of the form of contract, to be an employee, if any one or more of the following factors apply:*

(This means that even if there is a lease agreement in place, the person renting a space could be regarded as an employee.)

- *The manner in which a person works is subject to the control or direction of another person.*
- (This means that any control by the owner over the manner the rent-a-chair operates, would qualify as them being an employee. Rent-a-Chairs should have free access to the business premises and have their own keys.)
- *The person's hours of work are subject to the control or direction of another person.*
- ( This means that if the rent-a-chair is directed in terms of starting and closing or any operation times, they could be construed to be an employee)
- *In the case of a person who works for an organization, the person forms part of that organisation.*
- (This means that where the rent-a-chair attends staff meetings, or staff functions or is generally part of the salon, they will be regarded as an employee)
- *The person has worked for that person for an average of at least 40 hours per month over the last three months*
- (This is clear)

- *The person is economically dependent on the other person for whom he or she works or renders services.*
- (This means when the rent – a-chair is receiving any form of remuneration or money from the owner)
- *The person is provided with tools of the trade or work equipment by the other person.*
- ( This means that where dryers, basins etc is made available for use, then in all likelihood the person will be regarded as an employee)
- *The person only works for, or renders services, to one person.*
- ( This means that when the rent-a-chair is only working in one establishment with one source of income , they could be an employee)

**Other elements the employer needs to be aware of:**

- Clients are the goodwill of each owner and are the property of the owner. What we see happening is that the owner is giving the clients that walk in, to rent-a-chairs to service. They need to be aware that when the rent-a-chair leaves, he/she can then take those clients with them.
- When you employ, the employee cannot take the clients with, when they leave.
- Owners should note that they are spending money in advertising and marketing of their businesses, yet the rent-a-chairs, in most cases, do not contribute to these expenses, and they benefit from new business.
- If the owner is not the legal owner of the property and has a Lease Agreement with a landlord, they need to obtain permission from their landlord to sub-lease to rent-a-chairs. Bargaining Council Agents will, in future, check whether such permission is in place.
- Any employee who works for the owner, and more specifically Operators, MAY NOT work for the Rent-a-Chairs. An owner may not include into the rental an amount that would include them brokering the services of their employees, to rent-a-chairs.
- It should be understood that a Rent-a-Chair is a totally separate business operating within the owner's premises. They need to have their own tills spate from the owner and credit cards facilities and all such matters..
- The owner could prejudice themselves when they order stock from the houses and then re-sell to another business. Selling of products should only be to clients.
- Rent-a-Chair is compelled by The Bargaining Council Agreement to register their businesses with the Bargaining Council.
- The Council's Agents will also request to see the lease agreement in place to determine the nature of the relationship.

In the next edition, the Council will provide more information from the rent-a-chair's perspective.

## **RENT - A – CHAIR ISSUE (CONTINUED)**

The National Bargaining Council hereby provides you with the second part of our article. The approach is primarily from the Rent –a-chair’s perspective and the issues pertaining to you.

Again, there are two types of rent-a-chairs namely:

**Type A: A person who rents a chair and has employees working for him/her.**

**Type B: A person who rents a chair and who has no employees king for him/her**

1. **Type A: A person who rents a chair and has employees working for him/her:**
  - This scenario is essentially that of an employer and employee relationship.
  - Such an employer needs to register the establishment and the employees with the Bargaining Council as per the stipulations.
  - Social benefits, as per the area, apply to these employees and employers. For example, the employer must deduct and contribute to the Pension Fund, Sick Pay and Sic Pay Benefit funds where applicable and UIF.
  - This is essentially a salon situation and all rules and regulations apply, as if the salon was operating at another premise.
  
2. **Type B: A person who rents a chair and has no employees working for him/her:**
  - Let’s deal with when an employee working for an employer, wants to convert to renting a chair first.
  - The status of the employee first needs to be terminated by either a resignation or a fair dismissal or a mutual agreement on separation.
  - Once you have become a rent-a-chair the following is important to know.
  - You are no longer an employee and should not comply with any of the stipulations, as per Section 200A of the labour relations Act.
  - You need to register the rent-a-chair with the bargaining Council and pay a monthly Bargaining Council levy.
  - You need to be a qualified Stylist, as defined in the Bargaining Council Agreement and need to provide proof there-of once an Agent of the Bargaining Council requests your qualification.
  - You will no longer have any paid leave. When you are not at work, it is unpaid and for your own account, as you are no longer an employee.
  - You need to have your own keys and have free access to the premises.

- You need to conduct your business separately from the salon for example. Have your own till, order your own stock from the respective Product House etc.
- You need to enter into a lease agreement with the owner of the premises indicating your lease arrangements.
- You are not allowed to make use of any staff of the owner, not even when you pay towards their salaries. The owner is not permitted to broker out their employee's services to a third party.
- You should not form part of the owner of the premises' business in any way what so-ever.
- When you terminate the lease agreement, the clients are your property and can be taken with you.
- Should the owner of the establishment terminate the lease agreement, it cannot be regarded that you were dismissed, as long as you do not qualify for any of stipulations of Section 200A of the Labour Relations Act.
- You will need to comply with tax laws as it pertains to you.
- Should you charge your clients VAT, you need to be registered for VAT.

We hope that the article is helpful in assisting employees, employers and rent-a-chairs to make informed decisions. Look out for our article on the National Industry Pension Fund in the next edition.

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