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LABOUR NEWS

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Moonlighting in 2025: Moonlightings, Gigs, and the Employer’s Rights

SOUND ADVICE & FAIR LABOUR PRACTICE

072 349 9596 (T)

admin@contactlabour.co.za

www.contactlabour.co.za

🚀 Welcome to the Age of the Moonlighting

Once upon a time, employees went home after work, kicked off their shoes, and relaxed. Fast forward to 2025: many head straight into shift two—delivering food, freelancing online, selling products, or running a TikTok side gig.

It's the era of the always-on hustle economy. For some, it's passion. For others, survival. And for employers? It's both an opportunity and a brand-new workplace headache.

🌙 Why Employers Can't Ignore Moonlighting

Work outside your 9-5 might sound harmless, but left unmanaged, they can cost your business:

✨ Split Loyalties – Employees who stay up late for side gigs may arrive tired, distracted, or absent. Even small productivity dips add up to big costs.

✨ Conflict of Interest – A staff member running a moonlighting in the same industry could leak strategies, clients, or pricing info—knowingly or not.

✨ The "Free Wi-Fi" Problem – Using company laptops, data, or working hours to run a side business drains resources you're paying for.

✨ Reputation Risks – A badly managed moonlighting (e.g., an online store with poor service or an influencer posting offensive content) can drag your company's name into controversy by association.

Examples to consider:

- **Productivity costs:** An exhausted delivery driver who moonlights as a rideshare driver after work may be unsafe behind the wheel the next morning.
- **IT risks:** An employee who downloads client data onto their personal laptop to support their side gig may trigger a POPIA violation.

⚖️ What Does the Law Say?

Here's the twist: South African labour law doesn't outright ban moonlighting.

- ✓ The Labour Relations Act requires "fair reason" for dismissal — moonlighting alone is not fair reason.
- ✓ The Basic Conditions of Employment Act protects employees from excessive hours (55 hours max per week, including overtime).
- ✓ The Code of Good Practice on Dismissal emphasises that employers must prove the misconduct had an impact on performance, trust, or the business.

Instead, it gives employers the right to:

- ✓ Protect their business interests – stop secondary work that competes directly with you.
- ✓ Expect performance – an employee's hustle can't interfere with duties during paid hours.
- ✓ Enforce contracts and policies – provided they're clearly written and fairly applied.

👉 **The golden rule: You cannot discipline or dismiss someone *just for having a moonlighting*. You need to prove actual risk: poor performance, breach of trust, or conflict of interest**

Case Example (CCMA):

In a 2024 dispute, a retail employee was dismissed for running an online clothing store. The CCMA overturned the dismissal, finding no evidence that performance had dropped or that the store competed directly. The employer lost—not because moonlighting was fine, but because there was no proof of harm.

💡 How to Manage Moonlighting Without Losing Sleep

1. **Review Contracts and Policies**
   If your contracts don’t mention secondary employment, update them. Include clear language about disclosure, conflicts of interest, and performance expectations.
2. **Make Disclosure Mandatory**
   Ask employees to declare any secondary work. This encourages transparency and helps you assess risk fairly.
3. **Focus on Performance, Not Policing**
   If the employee is still delivering results, there’s no problem. Address issues when performance or attendance dips—not before.
4. **Educate Managers**
   Line managers are your first line of defence. Train them to spot red flags: sudden fatigue, missed deadlines, or unusual use of resources.
5. **Have Open Conversations**
   An honest chat often solves the issue before it becomes a case file. Employees are less likely to hide hustles if they trust you won’t overreact.

❌ What Not to Do

- **The Blanket Ban Trap** – Banning all moonlightings is unrealistic and unenforceable. Employees will simply hide them.
- **Selective Policing** – If you only act against some employees, you risk claims of unfair treatment.
- **The Wait-and-See Mistake** – Don’t ignore clear signs of a moonlighting causing harm. Deal with it early, document everything, and follow procedure.
- **Assuming all hustles are bad** - This can damage trust and morale.
- **Ignoring digital hustles** - Social media side gigs may not seem harmful, but they can drain focus and risk reputational harm.
- **Not documenting** - Without written warnings and evidence, dismissals won’t hold at the CCMA.

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Side Hustles That Are A Good Idea ✅

- **Totally Unrelated to Core Business:** A side hustle that has nothing to do with your company's industry or client base.
- **Time-Bound:** One that happens entirely outside of work hours, like a weekend dog-walking service or a late-night online art store.
- **No Use of Company Assets:** An activity that does not use company laptops, internet, supplies, or intellectual property.
- **Does not Interfere with Work Performance or Output:** An activity that is managed in a way that doesn't cause the employee to be tired, distracted, or less productive during their contracted work hours.
- **No Conflict of Interest:** A hustle that does not compete with your company or create a conflict of interest.

Side Hustles That Are a Bad Idea ❌

- **Direct Competition:** A hustle that is in the same industry and directly competes with your company's services or products.
- **Interferes with Work Performance or Output:** An activity that causes an employee to be tired, distracted, or less productive during their contracted work hours.
- **Use of Company Resources:** An activity that uses company assets like Wi-Fi, laptops, software, or data for personal gain.
- **Reputation Risk:** A side hustle that could damage the company's reputation, for example, by selling products that are of low quality or engaging in risky behavior.
- **Time Conflict:** A hustle that requires the employee to be "on call" or working on tasks during their contracted work hours.

🧩 Scenarios from the Workplace

Scenario A: No Harm, No Foul

Thabo works as a cashier during the day. In the evenings, he bakes muffins at home and sells them at weekend markets.
He never uses company resources, his timekeeping is reliable, and his performance is solid.
➡️ *Outcome:* No conflict of interest, no impact on the employer. Thabo's moonlighting could be allowed.

Scenario B: The Risky Hustle

Sarah is a sales consultant at a car dealership. On weekends, she runs her own online car-broking business, advertising cheaper deals to the same customers her employer is targeting.
➡️ *Outcome:* Direct conflict of interest. Sarah's moonlighting damages her employer's bottom line.
Action must be taken—clear policy, warning, or dismissal (if trust is broken).

📌 Fiduciary Duty & Employer Action

Employees on permanent contracts have a fiduciary duty to devote their time and attention primarily to the interests of the company. Should this duty be divided or interfered with in any way, employers are entitled to act accordingly.

To manage this effectively, employers should:

- Implement clear policies on secondary employment, disclosure, and conflicts of interest.
- Communicate expectations upfront in contracts and handbooks.
- Monitor performance and conduct to ensure outside work does not compromise productivity or loyalty.

🚨 Consequences When Negatives Arise

Employers must take decisive action if secondary work leads to:

- Interference with work performance.
- A conflict of interest – considered a serious breach of trust.
- Wasting company time or resources.
- Failing to disclose outside work when a written undertaking to disclose is required.

By addressing these risks proactively, employers can protect their business interests while ensuring fairness and compliance with labour law.

Did you know?

A 2025 workplace study found that nearly 4 in 10 South African employees now have a moonlighting. That means in a company of 50 people, at least 20 are juggling "Shift two."

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Closing Thoughts: Balance, Not Battle

Moonlighting may be common, but employers should approach it with caution. The primary obligation of any employee on a permanent contract is towards the company, and this duty cannot be compromised.

The key is not to normalise or promote moonlighting, but to **control its risks**. Employers should ensure:

- Policies are unambiguous about disclosure, conflicts of interest, and the use of company resources.
- Any breach that undermines trust, performance, or loyalty is dealt with promptly and consistently.
- Managers are equipped to identify early warning signs and address them before harm occurs.

Handled correctly, this gives employers the assurance that while outside work may exist, **the company's interests remain fully protected**.

Think of it this way:

- A moonlighting that fuels creativity and keeps staff motivated can boost your workforce.
- A moonlighting that drains energy, divides loyalty, or competes with your business can undermine trust and performance.

The employer's job is to
tell the difference—and act fairly when the line is crossed

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FUN FACT:

Some industries (like finance and security) enforce **absolute bans** on outside work due to the high risk of conflict, and these policies are generally upheld.

L Soyizwapi

Sincerely yours!
Luzanne Soyizwapi

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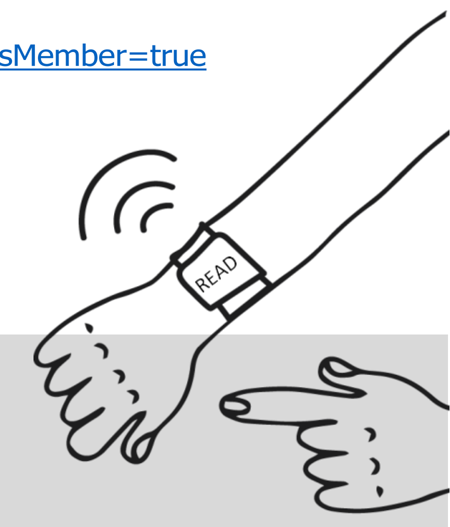

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