



Steps to Take When an Employee Commits a Criminal Offence

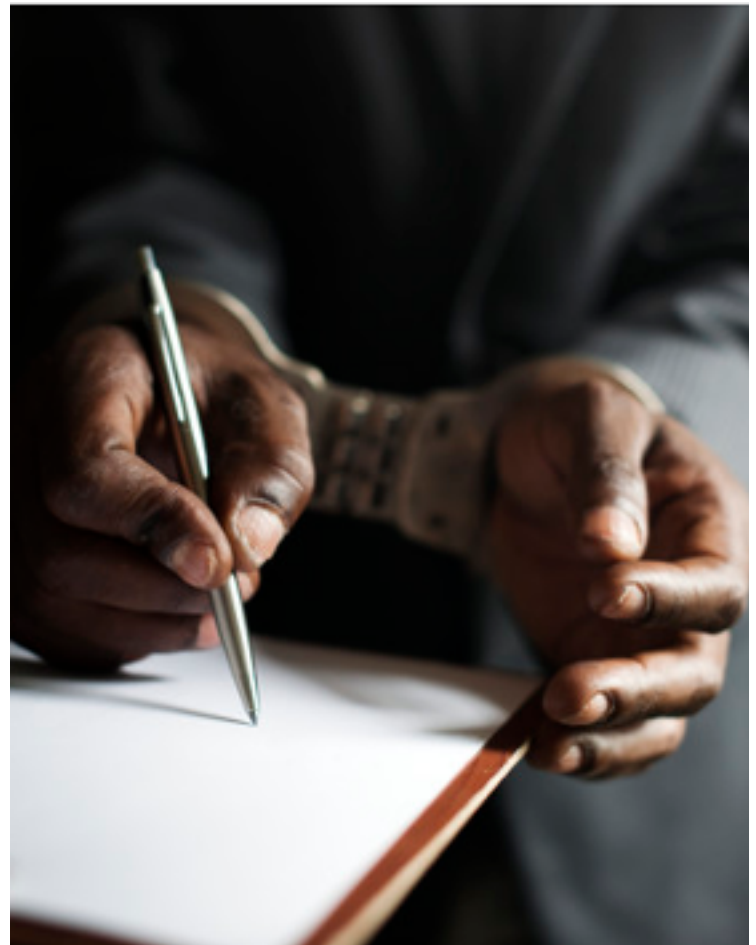
By Geoffrey E. Odongo

The Employment Act allows an employer to summarily dismiss an employee if the employee is arrested for a cognizable offence punishable by imprisonment and is not released within 14 days. An employer may also dismiss an employee summarily if the employee commits, or on reasonable and sufficient grounds is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his employer's property. Where the offence is against the employer, the employer should take the following steps.

1 Review any relevant evidence including emails, letters, finance records, CCTV footage, computer history, telephone logs and so on. This not only helps an internal investigation but could also provide relevant information to provide to the investigating officers. Additionally, where the offence also includes a cause of action under civil law, this will enable the employer gather evidence for a claim in a civil court against the employee.

2 Consider an internal investigation, particularly interviewing the employee involved and any relevant co-workers. The employee must still follow lawful and reasonable directions of their employer and so must attend the disciplinary hearing if so required. The criminal investigation and the internal company investigation need to be treated entirely separately. During the disciplinary hearing, an employer should ensure that all the requirements of a fair hearing are adhered to, to avoid future litigation.

3 If during the internal investigations the employee is found to have committed misconduct, consider what disciplinary action to take against the employee within the internal disciplinary procedure. An employer may choose to suspend the employee or summarily dismiss him depending on the severity of the allegations.



4 Pay any terminal dues that the employee has earned or is entitled to. In the event that after the disciplinary hearing the employer finds it prudent to dismiss the employee, it is prudent to confirm whether the employer owes any terminal dues to the employee as well as whether the employee owes the employer.

5 Report the offence to police to enable them handle the matter through the criminal justice system. Once reported, the employer should keep in contact with the investigating officer to find out as much information as possible, relating to the offence and whether the investigating officer needs the employer to assist with investigations.