

AARTO AND YOUR BUSINESS

I must say that when I first heard about AARTO I thought it was one of the several arts festivals taking place in South Africa. Well unfortunately AARTO is no festival as many motorists in Johannesburg and Pretoria will tell you. AARTO has been set to rollout nationally later this year after the successful completion of the test phases in Pretoria and Johannesburg.

AARTO is the abbreviation for Administrative Adjudication of Road Traffic Offences and is the new “administrator” of the National Road Traffic act. In layman's terms it means that AARTO is responsible for the administration and collection of fines related to road traffic offenses. You may at this stage ask what the big deal is since you will carry on ignoring the fines received by mail or simply storm into the office of the public prosecutor and frustrate the poor official with endless stories of incompetence, victimization or that your wife was in labour.

Unfortunately those days are over and traffic fines are now combined with a demerit point system. What this means is that for each traffic fine that you receive you will be allocated a minimum of one point on your driver’s license up to a maximum of 12 points. As soon as you exceed 12 points your driver’s license is suspended for a period of three months for each point above 12. So if you have 10 points on your driver’s license and you receive a fine coupled with five demerit points, your license to operate a vehicle will be suspended for a period of nine months. Should your license be suspended for a third time it will be canceled by the authorities and you may never drive a vehicle again. The good news is that the points you have incurred will be reduced by one for every three months that you did not incur any new points. It is also important to note that should your license be suspended you must hand it over to the relevant authorities and apply to have it returned to you as soon as you are eligible to drive again.

In order to understand the implications of AARTO on employers and employees we need to first look at the process involved.

1. **The first step is that you will receive an infringement notice (fine) from AARTO. Such a notice is considered to have been received 10 days after it was posted. Upon receiving this notice you have 32 days to either:**
 - Pay a discounted penalty. The value of fines for juristic persons and infringers that hold cross-border road transport permits, as contemplated in section 1 of the Crossborder Road Transport Act, 1998 (Act No. 4 of 1998) will be calculated on the basis of three times the value of the fines as contemplated in column 6 of Schedule 3 of the Act. No demerit points are applicable unless the employer nominates the relevant driver. Demerit points are applicable for all other drivers – even if you pay the fine.
 - Make a representation to the RTIA (Road Traffic Infringement Agency).
 - Arrange to pay in monthly instalments.
 - Nominate the driver of the vehicle.
 - Elect to be tried in court.

2. After 32 days you will receive a courtesy letter reminding you that you have an infringement notice outstanding. You will be charged for this courtesy letter and your options are now more limited:

- Pay the Penalty (no discount) as well as the fee for the courtesy letter
- Make a representation to the RTIA
- Arrange to pay in monthly instalments
- Elect to be tried in court

3. If you still have not exercised any of your rights as above, you will receive an enforcement order. You must now pay the fine as well as additional fees for the courtesy letter and the enforcement order. Your options are now extremely limited and you may no longer nominate the driver of the vehicle:

- Pay the Penalty (no discount) as well as the fees for the courtesy letter and enforcement order
- Apply for revocation of an enforcement order

4. The final step would be a warrant of execution giving the sheriff the power to:

- Seize and sell your movable property to defray the penalty, fees and cost applicable
- Seize and deface your driving licence and/or professional driving permit
- Remove and deface the licence disks of all your vehicles
- If applicable, seize and deface the operator cards of all the vehicles for which you are the registered operator
- Immobilise all your vehicles
- Blacklist the owner of the vehicle at credit bureaus

From the above it is abundantly clear that employers will have to be extremely cautious in dealing with traffic related offenses in future. Failure to deal with such offenses could lead to the immobilization of company vehicles or that company property is attached and sold to defray the penalty. The other dilemma that employers are facing is that employees can incur demerit points in their private capacity without the employer even knowing that the employee is no longer allowed to drive vehicles on our roads. This in return has severe implications in terms of insurance and public liability.

Employers are advised to implement and consistently apply strict policies and procedures in dealing with traffic related offenses and fines. Such policies and procedures will have to include:

- Measures to deal with the administrative process involved in fines received under AARTO.
- The payment of fines and the recovery thereof from the employee that drove the company vehicle or the nomination of that driver to the authorities within 32 days after receiving the infringement notice. It is important to consider the rights of the employee in terms of section 34 of the basic conditions of employment act.

- Disciplinary procedures for each traffic fine incurred.
- Incapacity procedures for employees whose licenses have been suspended or cancelled.
- Regular verification of drivers licenses in order to establish whether or not the employee incurred demerit points in his private capacity that could have an influence on the employment relationship.

AARTO is no walk in the park and employers are advised to in advance familiarize themselves with the act and to implement measures in dealing with the repercussions of this act.

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