

Plain English is essential in law

 By Anna Malczyk

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Earlier last year, the proposed labour law amendments drew ire from commentators - not for their content, but for the low quality of their drafting. Leon Grobler of Fedusa said, "There are some typing and stylistic errors, but of most concern is the ambiguity of some of the concepts and seemingly contradictory nature of some of the clauses." Others feared that these writing issues could cause hundreds of thousands of job losses.

The concerns that were raised highlighted some of the serious problems with bad, ambiguous, and obscure legal writing. Laws and legal documents are intended to serve the public; however, they are often completely illegible to lay people, and can often end up harming the public if they are unclear or confusing. Here are the four most common legal writing problems, and how to avoid them.

1. Filled with mistakes

The first error - spelling, grammar and logic mistakes - should be avoided in all writing, but especially in legal writing. Not only is this unprofessional, it can also cause some of the problems below, like ambiguity and confusion. To avoid these mistakes, take care to write clearly, read over your work and do a spelling and grammar check; you can also hire a specialist legal editor to help you.

2. Ambiguous

Ambiguity occurs when a phrase or passage can have two different, contradictory meanings and it is unclear which one was intended. Ambiguity generally happens in long, complex sentences or in writing where many different people or objects are being discussed at the same time. To avoid ambiguity, make sure that you keep your writing simple, keep ideas separate, and refer to people, concepts and things by their proper names. State your intended outcome as simply and clearly as possible upfront, so that any later confusion can be clarified.

3. Confusing

Legal texts sometimes get very confusing when the drafter tries to include every possible option or eventuality in each paragraph. Legal documents are often filled with long numbered lists, double negatives, references to other materials, abbreviations and so on. Avoid extra words, obscure references and confusing terms as much as possible; rather, write plainly and clearly, using words with common, clear meanings, and explain any references and acronyms fully.

4. Legalese

"Legalese" is the legal writing phenomenon where lawyers use complex words, jargon, long lists of synonyms and obscure phrasing - often in an effort to cover all bases or to remove any possible loopholes from a text. However, this results in language that no lay person can be expected to understand. When drafting a legal document, try to use the simplest plain English words and avoid lawyerly tropes.

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