KNOW YOUR LRA

A guide to the Labour Relations Act, 1995
(as amended)

Second Edition

PUBLISHED BY THE DEPARTMENT OF LABOUR

Please note:

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Know your LRA

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2nd Edition

Editorship:	This publication fell under the general editorship of Mr Thembinkosi Mkalipi at the Department of Labour
Publication co-ordinator:	Dawn Norton
Editors:	Paul Benjamin and Mandy Taylor
Writers:	Lucelle Buchler, Michelle Moonsammy, Dawn Norton and Mandy Taylor
Proof reader:	Marisa van der Haar
Design and layout:	ContentAfrica and M & M Studios
Illustrations:	Mzwakhe Nhlabatsi and Drew Lindsay
Cover:	Drew Lindsay
Distribution:	Directorate of Communications, Department of Labour
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KNOW YOUR LRA

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Introduction

The Labour Relations Act (LRA), Act 66 of 1995 aims to promote economic development, social justice, labour peace and democracy in the workplace.

It sets out to achieve this by providing a framework for regulating the relationship between employees and their unions on the one hand, and employers and their organizations on the other hand. At the same time, it also encourages employers and employees to regulate relations between themselves.

The Act promotes the right to fair labour practices, to form and join trade unions and employers' organizations, to organize and bargain collectively, and to strike and lock-out. In doing so it reflects the vision of employees' and employers' rights contained in the Constitution.

The LRA 1995 with the subsequent amendments sets out the rights of employers and employees and their organisations more clearly than before. This should provide the parties with more certainty with regard to the exercise of these rights.

The Act also favours conciliation and negotiation as a way of settling labour disputes. It expects parties to make a genuine attempt to settle disputes through conciliation before going on to the next step, which could be arbitration, adjudication or industrial action. By providing for a more simplified dispute resolution process, the Act aims to achieve a quick, effective and inexpensive resolution of disputes. It thereby aims to reduce the level of industrial unrest, and to minimize the need for costly legal advice. The Commission for Conciliation, Mediation and Arbitration (CCMA) plays a critical role in actively conciliating and arbitrating disputes, and also provides advice on a range of issues to the parties concerned.

This second edition of the booklet incorporates the 2002 amendments, which provides for the following:

- the right to strike on retrenchments and facilitation of disputes around retrenchments;
- increased powers to bargaining councils and its officials;
- obliging bargaining councils to report to the Registrar on the activities of small business;

- better protection of vulnerable workers;
- increased powers of the Registrar in respect of bargaining councils and trade unions and employers' organisations;
- one stop conciliation and arbitration processes; and
- one stop final and binding disciplinary enquiries (called pre-dismissal arbitration).

Content

The Act guides employees and employers on:

- the purpose, application and interpretation of the Act (LRA Chapter 1)
- joining organisations (LRA Chapter 2)
- organising and collective bargaining (LRA Chapter 3)
- strikes and lock-outs (LRA Chapter 4)
- participating in workplace decision-making (LRA Chapter 5)
- registering and managing organisations (LRA Chapter 6)
- settling disputes (LRA Chapter 7)
- discipline and dismissals (LRA Chapter 8)
- general provisions (LRA Chapter 9)
- the establishment of institutions, transitional arrangements, and Codes of Good Practice (LRA Schedule 1-8)

The Department of Labour and the role of other labour laws

Over the last few years, the Department of Labour has made great strides developing other employment legislation following the same tripartite process (ie involving negotiations between labour, business and the government). Acts passed include:

- an employment standards law, the Basic Conditions of Employment Act, 1997;
- an employment equity law, to prohibit discrimination and to promote affirmative action, the Employment Equity Act, 1998;
- a skills development law and financing mechanism law to incentivise the growth of skills among workers, the Skills Development Act, 1998 and the Skills Development Levies Act, 1999; and
- a revised social security law to assist employees who become unemployed, the Unemployment Insurance Act, 63 of 2001.

These laws together with the LRA set the parameters for labour relations in South Africa.

How to use this guide

This guide is a summary of key aspects of the LRA. At the end of each chapter you will find reference to the Act which you can consult for further information. Talk to a union organiser, personnel manager, Department of Labour official or a staff member at the CCMA if you have difficulty in understanding the Act.

KNOW YOUR LRA

Chapter 1

Who is covered by the Act?

Almost all employers and employees are covered. So too are jobseekers and former employees.

Who does the Act cover?

Employees and employers

Almost every employee and employer is covered by the Act.

People who are considered to be genuine "independent contractors"[1] are not employees and they are thus not protected by this Act (or by other labour legislation).

Some unscrupulous employers have, in the past, simply informed their employees that they have become "independent contractors" even if the employment relationship has not changed or have persuaded their employees to sign contracts which state that they are no longer "employees" but "independent contractors" . Those same employers often do not contribute to the unemployment insurance fund (UIF) or are covered by the compensation fund or meet basic obligations in terms of occupational health and safety legislation.

In a number of judgements the Labour Court has shown that it will not accept an independent contractor contract at face value but will consider a range of factors to determine whether the person is in fact an independent contractor or an employee.[2]

The 2002 amendments to the LRA have clarified the issue further by providing that where a particular factor is present in the relationship between a worker and the person for whom he or she works, the worker is presumed to be an employee, unless the employer proves the opposite.

These factors are whether or not a person:

- falls under the control or direction of the employer;
- works hours which are subject to the control of another person;
- forms part of an organisation;

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1 An independent contractor is a person who sells his or her services to the public and who does not fall under the control of an employer. For example a plumber or electrician.

2 See for example, *Building Bargaining Council (Southern and Eastern Cape) v Melmons Cabinets CC and Another* (2001) 22 ILJ 20 (LC) and *Motor Industry Bargaining Council v Mac-Rites Panel Beaters and Spray Painters (Pty) Ltd* (2001) 22 ILJ 1077(N)

- has worked for another person for an average of at least 40 hours per month over the last 3 months;
- is economically dependant on the employer;
- is provided with tools of trade or equipment; or
- only works for one employer.

The presumption (as to who is an employee) does not apply to a person who earns in excess of an amount stipulated by the Minister in terms of the Basic Conditions of Employment Act, 1997.[3]

If an employer is of the view that despite the presence of one of these factors there is no employment relationship, the employer must prove this.

Applicants for jobs

The Act protects people who are applying for a job from being discriminated against. The Act also provides that no person may require a person seeking employment not to be a member of a trade union or workplace forum or to give up membership of the trade union or workplace forum.

Former employees

The Act covers former employees who are disputing an employer's failure to re-employ them when the employer has re-employed other former employees dismissed for a similar reason. Likewise, if an employer fails to re-employ former employees in terms of an agreement to do so, this may be challenged.

[3] Presently that amount is R89 455.

Who does the Act not cover?

The Act does not apply to members of the National Defence Force, the National Intelligence Agency and the South African Secret Service. This is in line with international standards. Military and secret service personnel are supposed to have a special duty towards the state and, therefore, do not have the same employment rights as other public servants. However, these personnel have the right to protection against unfair labour practices in terms of the Constitution. The Constitutional Court has held that this includes the right of Defence Force members to join trade unions.[4]

Do all employees covered by the Act enjoy identical rights?

Domestic workers, members of the police, and essential service and maintenance service workers are restricted in certain respects. These restrictions relate mainly to organisational rights (the rights of trade unions) and the right to strike and will be dealt with in chapters 3 and 7.

Further information

Relevant sections of the Act are:

Section 2:	Exclusion from application of this Act
Section 5:	Protection for employees and persons seeking employment
Section 186:	Meaning of dismissal
Section 200A:	Presumption as to who is an employee

Forms to fill in

No forms.

[4] *South African National Defence Union v Minister of Defence and others* 1999 (6) BCLR 615 (CC)

Chapter 2

Organisations of employers and employees

Strong organisations are essential for effective collective bargaining. The Act supports and protects trade unions and employers' organisations.

Strong trade unions and employers' organisations are necessary for effective collective bargaining. Collective bargaining is an important way of regulating industrial relations and of determining employees' wages and benefits.

In the past trade unions have struggled to secure organisational rights (such as permission to enter a workplace or conduct union meetings there). These rights are essential for building the capacity of trade unions to enable them to bargain more effectively. (See chapter 3 in this guide for further details on organisational rights.)

The LRA attempts to strengthen trade union organisation in two ways:

- by supporting freedom of association rights which enable employees and jobseekers to participate freely in union activities; and
- by supporting organisational rights which make it easier for unions to organise employees.

The LRA also supports the right of employers to join together to form employers' organisations.

Promoting and protecting employees' and employers' rights

Protecting employees and jobseekers

The Act prohibits employers from victimising employees or jobseekers for their trade union activities both at their workplace and in their previous jobs. It also prohibits employers from offering some advantage to an employee or jobseeker to prevent that employee or jobseeker from joining a union. So, for example, an employer may not offer to pay non-union employees more than union members. Employers may also not prevent employees or jobseekers from exercising any right under the Act.

Protecting employers

Employers cannot be placed under pressure not to join a particular employers' organisation or not to exercise any right conferred by the Act.

Registration of employers' organisations and unions

Employers' organisations and unions do not have to register with the Department of Labour, but they are advised to do so. If they do not register, there is no guarantee for members that there will be a proper constitution or control over finances. Registration provides some check on abuse, corruption and unconstitutional practices, such as racism. Registration also affects the rights of unions - see below.

Requirements for registration: ballots, non-discrimination and independence

If unions or employers' organisations wish to be registered, their constitutions have to meet certain requirements. Two important requirements are as follows:

- there must be provision in the constitution for a ballot of members before a strike or lock-out is called; and
- there must not be any provision in the constitution that discriminates on the grounds of race or sex.

A trade union wishing to register must also be independent, that is, it must be free from the influence or control of an employer or employers' organisation. The Labour Court may decide whether or not a union is independent.

In the past, some businesses or consultancies have formed bogus trade unions or employers' organisations. Now the registrar of labour relations has the power not to register (or to withdraw the registration of) a trade union or an employers' organisation if the registrar is satisfied that the applicant it is not a genuine trade union or a genuine employers' organisation.

The Minister, in consultation with the National Economic Development and Labour Council (NEDLAC), may publish guidelines to be applied by the registrar to determine whether an applicant is a genuine trade union or a genuine employers' organisation.

Rights of registered unions

Registered unions have more rights than unregistered ones under the LRA. Some of the important rights of registered unions are:

- organisational rights awarded by the Commission for Conciliation, Mediation and Arbitration (CCMA);
- a right to be a member of a bargaining or statutory council, subject to the admission requirements of the council;
- a right to enter into agency and closed shop agreements;
- a right to establish workplace forums; and
- a right to conclude collective agreements as defined under the Act.

Winding-up and cancellation of registration

If a trade union or employers' organisation is unable to continue functioning, it may be wound up by the Labour Court on the application of the registrar of labour relations or any member of the trade union or employers' organisation. A trade union or employers' organisation may also resolve to wind up its affairs, and it may apply to the Labour Court to give effect to that resolution.

The Labour Court may appoint a suitable person as liquidator to assist with the winding up process.

Any registered trade union may apply to the Labour Court for an order declaring that another trade union is no longer independent.

The registration of any trade union or employers' organisation that has been wound up by the Labour Court, or has been declared to be not independent by the Labour Court, must be cancelled by the registrar of labour relations.

When an organisation's registration is cancelled all the rights it enjoyed as a result of being registered come to an end.

Further information

Relevant sections in the Act

Sections 4 - 10:	Freedom of association and general protections
Section 95 - 106:	Registration and regulation of trade unions and employers' organisations

Forms to fill in

LRA Form 6.1	Registration of a trade union
LRA Form 6.2	Registration of an employers' organisation
LRA Form 6.3	Certificate of registration of a trade union
LRA Form 6.4	Certificate of registration of an employer's organisation
LRA Form 6.5	List of members to be kept by a trade union
LRA Form 6.6	List of members to be kept by an employers' organisation
LRA Form 6.7	Number of trade union members
LRA Form 6.8	Number of employers' organisation members
LRA Form 6.9	Application by amalgamating trade union for registration
LRA Form 6.10	Application by amalgamating employers' organisation for registration

Notes

Chapter 3

Organisational rights

Organisational rights assist a union to recruit and service members, and to operate democratically.

Organisational rights provided by the Act

The Act provides for the following organisational rights:

- Trade union access to a workplace. This includes the right of unions to:
  - enter an employer's premises to recruit or meet members;
  - hold meetings with employees outside their working hours at the employer's premises; and
  - conduct elections or ballots among its members on union matters.
- Deductions from employees' wages of trade union subscriptions by the employer for the trade union (stop-order facilities).
- Election of trade union representatives at a workplace. The more members the trade union has, the more representatives it can elect. The trade union representative can:
  - assist and represent employees in grievance and disciplinary proceedings;
  - monitor the employer's compliance with labour laws, for example, sectoral determinations and health and safety regulations or any collective agreement, and report any contravention to the employer, union or any responsible authority; and
  - perform any other function agreed to between the union and the employer.
- Leave for trade union activities during working hours. Union representatives are entitled to reasonable time off with pay during working hours to:
  - perform their functions as union representatives; and
  - receive training in the functions of union representatives.

  Union office bearers who are employees may take off reasonable time to perform their union duties. The amount of time to be taken, as well as the number of days' paid leave, is a matter for negotiation between the union and the employer.

How does a trade union acquire organisational rights ?

The LRA sets out procedures to be followed by a union wishing to gain organisational rights in a workplace.

Step one

A registered union can write to an employer requesting some or all of the organisational rights listed in the Act. The notice to the employer must specify:

- the workplace for which the rights are requested;
- the extent to which the union is representative of employees in that workplace; and
- the evidence relied on to demonstrate that support.

The union must attach a certified copy of its registration certificate with the request.

Within 30 days of receiving the request, the employer must meet the union and attempt to conclude an agreement on how the union will exercise the rights it has requested. If an agreement is concluded the process stops here.

Step two

If no agreement is reached, the union or employer may refer the matter to the CCMA in writing and send a copy to the other party. A CCMA commissioner then attempts to resolve the dispute through conciliation.

Step three

If conciliation is unsuccessful, either party can ask for the dispute to be settled by arbitration. Often the dispute concerning organisational rights is about how much support the union has among employees at the workplace. To resolve this dispute, the arbitrator may conduct a ballot or make other investigations.

If the commissioner is satisfied that the union is sufficiently representative to enjoy certain organisational rights, he or she can make an award requiring the employer to grant the union those rights and specify how those rights are to be exercised.

Industrial action as an alternative to arbitration

A union can choose to strike rather than to follow the route of arbitration, except for disclosure of information disputes. If the union embarks on strike action, it has to wait one year before it can turn to the CCMA to obtain organisational rights. In other words, the union has a choice of using the CCMA procedure or the route of industrial action (after following the correct procedures for protected strike action). However, it must live with the consequences of its choice for at least a year if it chooses strike action. See chapter 7 in this Guide for further details on strike procedure.

Organisational rights and union membership

Majority membership

If the applying union, or unions acting jointly, have majority membership in the workplace, they must be granted all the organisational rights provided for by the Act.

No majority membership

If the registered union is not a majority union but it is at least 'sufficiently representative' it can apply for the following rights:

- access to the workplace for union organisers;
- deductions from employees' wages of trade union subscriptions by the employer for the trade union (stop-order facilities); and
- time off for trade-union activities for union office bearers who are employees.

The Act does not specify a fixed percentage of membership which will count as 'sufficiently representative'. Rather, this can vary according to the circumstances of a particular workplace.

In deciding if a union is sufficiently representative, a commissioner must take into account:

- the type of workplace;
- the sector in which the workplace falls;
- the organisational history of that workplace or other workplaces of that employer; and
- the type of rights the union wants to exercise.

Examples:

In *SACTWU v WN Eachus & Co (Pty) Ltd* [5] it was held that 15.6% was not sufficiently representative despite SACTWU being a major player in the industry and representing 83% of employees at sectoral level. However, the arbitrator said that in some situations 15.6% might be sufficiently representative.

In *UPUSA v Komming Knitting*[6] the Commissioner found that the union was sufficiently representative with 22.5% because the union had demonstrated that it was capable of recruiting a majority but had lost a number of members as the business had a very high turn over.

One of the key issues an arbitrator must decide in determining whether a union is "sufficiently representative" is whether different branches or outlets of a company should be regarded as a "workplace" or whether representivity should be assessed across the company as a whole.

Example:

In *OCGAWU v Woolworths*[7], OCGAWU enjoyed 22% support in Woolworths' branches in the Western Cape, with over 50% support in some branches, but almost no support elsewhere in the country. This meant that its national support was only about 6%. The arbitrator held that the individual branches of Woolworths could not be regarded as "workplaces" and that the 6% OCGAWU enjoyed nationally could not make it sufficiently representative to be given organisational rights.

[5] (1997) 1 CCMA 4.7.14 (on the IRNetwork)
[6] [1997] 4 BLLR 508 CCMA
[7] [1997] 7 BLLR 813 CCMA

The threshold of representativeness may also be set by agreement between a majority union and an employer. This agreement must then be applied equally to all registered trade unions.

Example:

In *OCGAWU v Volkswagen SA*, OCGAWU[8] applied to the CCMA for certain organisational rights. Before the matter went to arbitration, however, NUMSA, which was the majority union at VW, and VW, entered into an agreement setting the threshold for representation at 40%. The arbitrator upheld the validity of this agreement which had the effect that OCGAWU was not granted organisational rights as it did not have 40% support.

Members of bargaining or statutory councils

Unions that are members of a bargaining or statutory council automatically enjoy access, meeting and stop-order rights.

Disclosure of information

A union has a right to disclosure of information by an employer on a range of workplace issues. Only a registered majority union (or group of unions acting jointly which form a majority) in the workplace is entitled to this organisational right.

Employers can be asked to disclose to a trade union representative information which is relevant:

- for grievance and disciplinary proceedings;
- for monitoring of workplace-related provisions of the Act;
- for monitoring any law concerning working conditions;
- for monitoring any collective agreement;
- for reporting alleged contraventions of collective agreements and labour laws;

[8] (1999) 8 CCMA 4.7.4 (on the IRNetwork)

- for performing any other function the employer agreed that employees' representatives could do, eg helping an injured employee to claim compensation;

and to a representative trade union information which is relevant:

- for collective bargaining, eg wage negotiations; and
- for consultations, eg before retrenchments.

When may an employer refuse to give information?

An employer may only refuse to give information for one of the following reasons:

- the information is legally privileged;
- the information is such that a law or order of court bans disclosure;
- the information is confidential and would cause substantial harm to an employee or employer if disclosed;
- the information is private and personal and the employee concerned does not agree to it being disclosed; and
- the information concerns the employer of a domestic worker.

Can an employer be required to disclose information?

If there is a dispute about the disclosure of information, the employer or the trade union or trade union representative concerned may write to ask the CCMA to conciliate, and if the dispute is not settled, to arbitrate. Only the CCMA can deal with this type of dispute.

Further information

Relevant sections in the Act

Sections 11 - 22: Organisational rights

Schedule 7 Part C

Forms to fill in

No forms

Chapter 4

Union security arrangements

The LRA assists unions to become strong and stable by providing for agency shop and closed shop agreements.

Agency shop agreements

An agency shop is a system that requires non-union employees to pay an amount into a special fund kept by the union. The amount may not be more than a union member's subscription. This money may only be used to advance and protect the socio-economic interests of employees.

The aim of an agency shop is to ensure that non-union employees, who nevertheless benefit from the union's bargaining efforts, make a contribution towards those efforts**.**

Establishing an agency shop

Only a majority union (or unions which jointly have a majority of employees as members) in a workplace or a sector can establish an agency shop by reaching an agency shop agreement with an employer or employers' organisation.

Controls on the agency shop

The employer must pay the employees' agency fee into a separate account administered by the union. This account must be audited once a year and the auditor's report must be available for inspection at the office of the registrar of labour relations.

Agency fees from a conscientious objector (an employee who refuses to belong to a union on the grounds of conscience) must be paid to a fund administered by the Department of Labour if the employee requests this.

Agency shop fees cannot be used to make contributions to political parties or political candidates or used to pay affiliation fees to political parties. However, the fees can be used to advance or protect the socio-economic interests of employees. For example, a campaign against a VAT increase would probably be considered to be a campaign in the socio-economic interests of employees.

Closed shop agreements

Closed shop agreements have a similar aim to agency shop agreements, but provide a union with a more powerful way of strengthening its bargaining position with employers. Under a closed shop agreement, non-union employees must join the union or face dismissal. If a union expels a member or refuses to allow a new employee to become a union member and if this expulsion or refusal is in accordance with the union's constitution or is for a fair reason, then the employer will have to dismiss the employee.

Establishing a closed shop

There are two requirements for the establishment of a closed shop:

- an agreement must be reached between the relevant employer and a majority union (or unions acting jointly which constitute a majority) in a workplace or sector; and
- a ballot must be held among the employees at the workplace where the closed shop will apply and two thirds (66%) of the employees at the workplace who vote must support the establishment of a closed shop.

Controls on the closed shop

Apart from the voting requirements to implement new closed shop agreements, other democratic controls and protections for individuals are provided by the LRA, namely:

- if one third of the employees covered by the agreement sign a petition calling for the ending of the agreement and if three years have passed since the inception of the agreement or the last ballot was held, the union must hold a ballot to decide whether a closed shop agreement should end;
- the money deducted in terms of a closed shop agreement may only be used to advance or protect the socio-economic interests of employees and may not be used to make contributions to political parties or political candidates, or to pay affiliation fees to political parties;

- a union which represents a significant grouping of employees covered by the closed shop can apply to join the closed shop agreement. If the existing parties to the agreement refuse to admit the new union, the union can apply to the CCMA to resolve the dispute. If conciliation fails, any party to the dispute may refer the dispute to the Labour Court; and

- an employee who is unfairly expelled from a union (for example, the employee is a conscientious objector who may validly refuse to join the union) and is subsequently dismissed, can challenge the dismissal in the Labour Court if conciliation has failed. If the court finds that the union's action was unfair, it must order the union, and not the employer, to compensate the employee.

It is not unfair in law to expel an employee or refuse an employee admission to a union if that employee undermines the union's collective exercise of its rights.

Further information

Relevant sections in the Act

Section 25:	Agency shop agreements
Section 26:	Closed shop agreements

Forms to fill in

LRA Form 3.1	Conscientious objector requests agency fee to be paid to Department
LRA Form 3.2	List of deductions from conscientious objector's wages

Chapter 5

Centralised collective bargaining

The Act promotes centralised collective bargaining by providing for bargaining councils and statutory councils

Centralised collective bargaining occurs when employers in a sector get together and bargain with one or more unions representing the employees of those employers. Centralised collective bargaining can also occur at the level of a group of companies or at the national or regional level of a company.

How does the Act promote centralised collective bargaining?

The Act provides for three options:

Collective agreements

Employers and a trade union (or trade unions acting jointly) can negotiate a collective agreement, providing for joint negotiations. An example is the agreement between the Chamber of Mines and the National Union of Mineworkers. The terms and conditions of the collective agreement will apply only to the parties to the agreement and their members.

Bargaining councils

Bargaining Councils may negotiate agreements on a range of issues, including wages and conditions of work, benefits, training schemes, and disciplinary and grievance procedures.

Bargaining Council agreements may be extended to all employers and employees in the council's registered scope of representivity, as long as certain requirements are met. However, the minister may extend agreements even if these requirements are not met, if the minister believes that collective bargaining will be undermined if the agreement is not extended.

Unions which are party to a bargaining council have organisational rights in all workplaces in that sector.

Establishment of a bargaining council

To establish a bargaining council for a sector and an area, both the unions and the employers' organisations must be sufficiently representative of the sector and area. 'Sufficiently representative' is not defined in the Act. It could be determined by factors such as:

- the degree of union and employer organisation in the sector and area of the proposed council;
- the nature of the sector;
- the number of employees employed by members of the employers' organisation; and
- the ability of the unions and employers' organisations to represent the different interests of employers and employees to be covered by the proposed council.

If the employers employ the majority of a sector's workforce and the union, or unions, have organised a majority of the workforce, they should be considered sufficiently representative to establish a bargaining council. The sector must be acceptable to NEDLAC.

Enforcement of collective agreements by bargaining councils

Designated agents of bargaining councils can monitor and enforce compliance with any collective agreement concluded in the bargaining council by -

- issuing compliance orders;
- publishing the contents of collective agreements; and
- following up complaints and conducting investigations.

If a dispute about compliance remains unresolved, a council may refer the dispute to final and binding arbitration. An arbitrator may order the person to pay the amount owing; impose a fine; or confirm, vary, or set aside the compliance order.

The minister has published a notice that sets out the maximum fines that may be imposed by an arbitrator for a breach of a collective agreement.

Statutory councils

A statutory council is a weaker version of a bargaining council.

While the parties to a statutory council can draw up agreements on wages and working conditions, these agreements cannot be extended to employers and employees outside the council. However, agreements on training schemes, provident or pension funds, medical schemes and similar benefit schemes can be extended by the minister to cover all employers and employees in that sector.

Unions that are members of a statutory council will enjoy the advantage of acquiring organisational rights of access, meetings, ballots and stop-order facilities for all workplaces in that sector. The rights will apply even in a workplace in that sector where the union has no members.

Establishment of a statutory council

In order to apply to the minister of labour for a statutory council, a registered union or unions must have organised at least 30% of the employees in the sector or area, or members of a registered employers' organisation or organisations must employ at least 30% of the employees in that sector or area. The sector must be acceptable to NEDLAC.

If the union or employers' organisation meets the above requirement, the minister will set in motion a process to establish a council even if some parties are not co-operative. The CCMA will be used to facilitate this process.

Bargaining Councils in the public service

The Public Service Co-ordinating Bargaining Council (PSCBC) negotiates issues that are common to all public service employees.

The PSCBC may also set up bargaining councils for particular sectors in the public service. These sector specific bargaining councils have exclusive jurisdiction over all matters that are specific to their sector.

Demarcation disputes between bargaining councils in the public sector may be referred to the CCMA which will first conciliate the disputes, failing which the disputes may be referred to arbitration.

Further information

Relevant sections in the Act

Sections 27 - 48:	Collective Bargaining
Schedule 7:	Parts C and D

Forms to fill in

LRA Form 3.3	Application for registration of a bargaining council
LRA Form 3.4	Certificate of registration of a bargaining council
LRA Form 3.5	Bargaining council requests extension of collective agreement to non-parties
LRA Form 3.8	Council requests appointment of designated agent
LRA Form 3.10	Subpoena by designated Agent
LRA Form 3.11	Amalgamating bargaining council applies for registration
LRA Form 3.12	Referring public service jurisdictional disputes for conciliation
LRA Form 3.13	Referring public service jurisdictional disputes for arbitration
LRA Form 3.14	Trade union applies for establishment of statutory council
LRA Form 3.15	Employers' organisations applies for establishment of statutory council
LRA Form 3.16	Certificate of registration of statutory council
LRA Form 3.19	Statutory council applies to register as a bargaining council

Notes

Chapter 6

Workplace forums

Workplace forums encourage employee participation in the workplace with the goal of promoting the interests of employees and the efficiency of businesses.

Provision for workplace forums is a major innovation in the Act. These forums are committees of employees elected by employees in a workplace. They meet employers on a regular basis for consultation on workplace issues.

The forums do not replace collective bargaining, but deal with matters which are better suited to resolution through consultation rather than through collective bargaining. These include non-wage issues, such as the restructuring of production and the introduction of new technologies.

Functions of a workplace forum

The general functions of workplace forums are:

- to promote the interests of all employees in the workplace -not only of trade union members;
- to enhance efficiency in the workplace;
- to be consulted by the employer on certain matters; and
- to participate in joint decision-making on other matters.

Matters for consultation

Unless the matters for consultation are regulated by a collective agreement with a representative trade union, a workplace forum is entitled to be consulted by the employer on the following:

- restructuring the workplace;
- changes in the organisation of work;
- partial or total plant closures;
- mergers and transfers of ownership;
- dismissal of employees for operational reasons;
- exemptions from any collective agreement or law;
- job grading;

- criteria for merit increases and bonuses;
- education and training;
- product development plans; and
- export promotion.

The forum may present alternative proposals which the employer must consider. If the employer rejects these proposals, the employer must give reasons for the rejection. The employer can then proceed and implement the changes which he or she proposes. While the employer and workplace forum must try to reach consensus on the above matters, the consultation process is not a negotiation process, and the employer may unilaterally make decisions after genuine consultation with the forum. However, if employees are unhappy with the changes, they may strike after following the procedures for a protected strike.

The consultation discussed above differs from joint decision-making in three ways: the issues, the degree of consensus required for the implementation of decisions, and strike action.

Matters for joint decision-making

In joint decision-making the employer must consult and reach consensus with the workplace forum before implementing changes. The following are joint decision-making issues:

- disciplinary codes and procedures;
- workplace rules not relating to employees' conduct;
- affirmative action measures; and
- rules regulating social benefit schemes (such as provident funds or housing) where these are controlled by the employer:

An employer can refer a dispute over joint decision-making to the CCMA for conciliation. If it remains unresolved the employer may request that the dispute be resolved through arbitration. Employees cannot strike over a matter which is regulated by joint decision-making.

Workplace forums and their relationship with collective bargaining

Although the Act allocates certain matters for consultation and joint decision-making between employers and workplace forums, this does not mean that there is a rigid demarcation between this process and collective bargaining. The Act makes provision for an interaction between workplace forums and collective bargaining.

It does this in two main ways:

- firstly, a bargaining council may decide that certain matters are best referred to workplace forums to deal with rather than left to collective bargaining and may refer these issues to such forums; and
- secondly, the Act makes provision for a representative trade union and an employer to conclude a collective agreement giving the forum the right to be consulted or to participate in joint decision-making on other matters. The agreement can also remove any issue from the joint-decision-making list in the Act.

Establishing a workplace forum

- A forum may be established in any workplace where there are more than 100 employees.
- Only a representative trade union may initiate a workplace forum by applying to the CCMA. A representative union means a registered trade union or unions acting jointly which have as members the majority of employees in the workplace.
- The CCMA will appoint a commissioner to assist the parties to reach agreement on establishing the forum.
- If the parties cannot reach agreement on setting up a forum, then the CCMA must itself establish the forum following the Act's provisions. The Act sets out certain requirements that the constitution of a workplace forum must meet. Most of these relate to the manner in which a forum should be elected.
- The commissioner must then facilitate the holding of the first election of members to the forum.

Establishing a trade union based workplace forum

If a representative trade union is recognised by an employer in a collective agreement as the bargaining agent for all employees, that trade union may apply to the CCMA for the establishment of a trade union-based workplace forum. This allows the union simply to appoint the members of the forum without holding an election.

Electing a workplace forum

Who can stand for election?

All employees can stand for election except senior managerial employees who have the authority to:

- represent the employer in dealings with the forum; or
- determine policy and take decisions on behalf of the employer which may conflict with the role of workplace forum representatives.

Who can nominate candidates for election as workplace forum representatives?

- Any registered trade union in the workplace.
- Employees by a petition, if the petition is signed by at least 20% of employees in a workplace or 100 employees, whichever is the smaller.

How are elections conducted?

- Voting takes place during working hours at the employers' premises by secret ballot. All employees who may stand for election may vote.
- Every employee has the same number of votes as there are members of the forum, and can cast these votes in favour of any candidate.

How do workplace forums operate?

Forums operate by holding three kinds of meetings:

- Firstly, the forum must hold regular meetings of its representatives.
- Secondly, the forum must meet regularly with the employer. At these meetings the employer must:
  - present a report on the company's performance and its financial situation; and
  - consult the forum on matters arising from the report.
- Thirdly, the forum must also meet other employees in the workplace to report on its activities and on the consultation and joint decision-making between it and the employer. These meetings must take place during working hours without any loss of pay for the employees. Once a year at one of these meetings the employer must report on the company's financial and employment situation and future plans and prospects.

Rights of workplace forums and their members

The Act specifies certain rights for workplace forums that the constitutions of forums must contain.

- The employer must allow each member of a forum reasonable time off with pay during working hours:
  - to perform the functions of a forum; and
  - to receive training regarding the performance of such functions.
- The employer must also provide facilities so that the forum can perform its functions.
- Workplace forums may invite experts to attend their meetings, and the expert is entitled to any information to which the forum is entitled.

- Office bearers and officials of the representative trade union may attend workplace forum meetings.

Can workplace forums be dissolved?

An employer may not dissolve a workplace forum unless the parties have a private agreement allowing for this. If there is no private agreement, a forum can be dissolved only if a representative trade union requests a ballot to dissolve a forum and the majority of those who vote, vote in favour of doing so.

A trade union-based workplace forum may be dissolved by collective agreement or if the trade union is no longer representative of a majority of employees.

Workplace forums and other laws

Any other law can specify issues for consultation and joint decision-making by a workplace forum.

Further information

Relevant sections in the Act

Sections 78 - 94:	Workplace forums
Schedule 2:	Guidelines for constitution of workplace forum

Forms to fill in

LRA Form 5.1	Application for establishment of a workplace forum
LRA Form 5.2	Application for establishment of a trade union-based workplace forum

Notes

Chapter 7

Industrial action

The Act regulates strikes, lock-outs and picketing and it provides certain protections for employers and employees who embark on a lawful strike or lock-out.

Strikes and lockouts

The Act gives effect to employees' constitutional right to strike. It also grants employers recourse to lock out employees.

Issues over which employees can strike and employers can lock out

Strikes and lock-outs may be held over disputes which relate to a matter of mutual interest between employees and their employer. However a strike or lock-out may not be held if the Act provides that the dispute may be resolved by way of arbitration or adjudication. Some of the issues over which a strike or lock-out may be held are:

- wage increases;
- a demand to establish or join a bargaining council;
- a demand to recognise a union as a collective bargaining agent;
- a demand for organisational rights;
- a demand to suspend or negotiate unilateral changes to working conditions; and
- an unprotected lock-out or unprotected strike by the other party.

Changes introduced by the 2002 Amendment Act permit workers to stage protected strikes over retrenchments in certain circumstances. These are discussed in chapter 9 of this Guide.

Strikes

The following elements constitute a strike.

Who can strike?

A strike must involve two or more employees. (Thus a single domestic worker in a household cannot strike.) Striking employees may work for the same or different employers.

What type of action can the employees take?

Employees must act with a common work-related purpose. For example, industrial action over the removal of a provincial premier is not a strike.

The action can be a partial or complete refusal to work or the retardation or obstruction of work, for example: go-slows, work-to-rule, intermittent strikes (where employees stop and start the same strike over a period of time) and overtime bans. An overtime ban initiated by employees concerning voluntary or compulsory overtime constitutes a strike.

What must the reason for the action be?

The reason must be to solve a grievance or dispute about a matter of mutual interest that concerns employees and employers. (A dispute between two unions does not constitute a strike nor does a non-work-related grievance.)

Protected strikes

Strike action can be protected or unprotected. Employees involved in protected strikes enjoy certain benefits which are denied employees who engage in unprotected strikes.

What are the effects of a protected strike?

- Employees may not be dismissed for going on strike. Employees may, however, be dismissed for misconduct during a strike, such as intimidation or violence.

Employees may also be dismissed for operational reasons, although the retrenchment procedures will first have to be followed. (See chapter 9 on dismissals.)

- Employers may not get a court interdict to stop the strike. However, the employer can apply for a court interdict to prevent unlawful action, such as damage to machinery.
- Employees do not commit a breach of contract or a delict by going on strike.
- Employers may not institute civil legal proceedings against employees on strike. For example, the employer may not claim damages for lost production during the strike.
- An employer does not have to pay an employee participating in a protected strike. If the employer provides food or housing as part of the employees' wages, then the employees can ask the employer to continue to provide these during the strike. The employer may not refuse this request. However, the employer may reclaim the money for this food and housing from the employees after the strike has ended, by going to the Labour Court.

Procedures for a protected strike

The Act sets out certain procedures that must be followed for a strike to be protected:

- the issue in dispute must be referred in writing to the CCMA or to a bargaining or statutory council;
- the CCMA or council must try to settle the dispute by conciliation within 30 days;
- if this fails, the CCMA or council must issue a certificate saying that the dispute has not been resolved; and
- at least 48 hours notice in writing of the proposed strike must be given to the employer, or seven days if the state is the employer.

The employees may then strike.

It is not necessary to hold a ballot to make the strike protected, but union members may force a registered union to hold a ballot.

Situations when procedures in the LRA for a protected strike do not have to be followed

A strike will still be protected even if the procedures in the LRA have not been followed, if:

- the parties to the dispute are members of a council and the dispute has been dealt with by that council in accordance with its constitution;
- the strike conforms with the procedures in a collective agreement;
- the strike is in response to an unprocedural lock-out; or
- the employer intends unilaterally to change the employees' employment conditions, or has changed them, and refuses to change them back again within 48 hours of a written request to do so.

The Labour Appeal Court has held that if there is a collective agreement containing a dispute resolution procedure, compliance with either the procedure in the agreement or the procedures set out in the Act will render the strike a protected strike.[9] (The same principle would apply where there is a dispute resolution procedure in a council constitution and it would apply in a lock-out situation.) It is important to note, however, that if employees choose to follow the procedures in the Act rather than the procedures in a collective agreement, they may be in breach of that agreement which may enable the employer to cancel the agreement or even claim damages from the employees or their union, depending on the wording of the agreement.

Special procedure concerning a refusal to bargain

The Act sets out a special procedure to be followed where the dispute concerns a refusal to bargain. An advisory award must be obtained before a strike can take place over such a dispute. This award cannot force a party to bargain.

[9] *County Fair Foods (Pty) Ltd v Food and Allied Workers Union & Others* (2001) 22 ILJ 1103(LAC)

Limitations on strikes

A strike will not be protected if:

- a collective agreement prohibits a strike in respect of the issue in dispute;
- an agreement requires that the issue in dispute be referred to arbitration;
- the issue in dispute is one that the Act says may be referred to arbitration or to the Labour Court;
- the parties are bound by an arbitration award or collective agreement that regulates the issue in dispute;
- the parties are bound by a sectoral determination that regulates the issue in dispute and the determination is less than one year old;
- the parties are engaged in an essential service (see below); or
- the parties are engaged in a maintenance service (see below).

Lock-outs

The following elements constitute a lock-out.

Who can lock out?

Employers can lock out employees.

What kind of action must employers take?

The employer must physically exclude employees from the workplace.

What must the reason for the action be?

The action must be to force employees to accept a demand of the employer about a matter that concerns the employer and the employees.

Protected lock-outs

What are the effects of a protected lock-out?

- Employees cannot apply to court to interdict the action.
- An employer does not commit a delict or breach of contract.
- Employees may not bring civil legal proceedings against an employer, for example, for loss of wages.
- An employer may not dismiss employees who have been locked out.
- The employer may use replacement labour only if the lock-out is in response to a strike. But the employer may only do so until the lock-out ends; striking employees must then get their old jobs back.
- An employer does not have to pay wages to an employee participating in a protected lock-out. The same provisions apply with regard to food and housing as in the case of strikes (see above).

Procedures for a protected lock-out

The Act sets out certain procedures that must be followed for a lock-out to be protected. These procedures are the same procedures that must be followed for a strike to be protected. They are as follows:

- the issue in dispute must be referred in writing to the CCMA or to a bargaining or statutory council;
- the CCMA or council has up to 30 days to try to settle the dispute through conciliation;
- if this fails, the CCMA or council must issue a certificate saying that the dispute has not been resolved; and
- the employer must then give at least 48 hours notice in writing of the proposed lock-out to the trade union, or employees if there is no union, or seven days notice, where the state is the employer.

The employer may then lock out the employees.

Situations when procedures in the LRA for a protected lock-out do not have to be followed

A lock-out will still be protected even if the procedures in the LRA are not followed by the employer, if:

- the parties to the dispute are members of a council and the dispute has been dealt with by that council in accordance with its constitution;
- the lock-out conforms with the procedures in a collective agreement; or
- the lock-out is in response to an unprocedural strike.

Limitations on lock-outs

The same limitations apply to lock-outs as to strikes (see above).

Compensation for loss attributable to a strike or lock-out

An employer or employees can claim compensation from the Labour Court if they suffer any loss as a result of an unprotected strike or lock-out or as a result of any conduct connected to the strike or lock-out that does not comply with the Act. The Labour Court will consider:

- what attempts were made by the parties to comply with the provisions of the LRA;
- whether the strike or lock-out was premeditated;
- whether the strike or lock-out was in response to unjustified conduct by another party to the dispute;
- the duration of the strike or lock-out; and
- the financial position of the employer, trade union or employees.

The Labour Court has held that an employer suing for damages must satisfy three requirements:[10]

- it must prove that the strike was unprocedural;
- it must prove that it sustained loss as a consequence of the strike; and
- it must prove that the party or parties from which it seeks compensation participated in the strike or committed acts in contemplation or furtherance of the strike.

If a union wants to avoid being sued when its members engage in unprocedural strike action ie. wild cat strikes, the union must inform the employer at the earliest possible opportunity that it disapproves of the strike and must take steps to try and persuade its members to return to work.

Essential services

Employees in essential services may not strike and employers may not lock-out such employees. This is in line with generally accepted international principles.

Definition

The Act defines an essential service as:

- a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
- the parliamentary service; and
- the South African Police Service.

Essential services are determined by the essential services committee. The essential services committee is a body consisting of equal representatives of employers, trade unions and government set up in terms of the Act. Its function is to declare services as essential and to hear disputes over whether or not a service is essential.

[10] *Rustenburg Platinum Mines Limited vs The Mouthpiece Workers Union* [2002] 1BLLR 84 (LC)

If there is a collective agreement in an essential service that provides for a minimum service in that service, then employees engaged in the minimum service may not strike but the rest of the employees may.

How are disputes in essential services settled?

Disputes in essential services go to arbitration if conciliation has failed.

Maintenance services

Employees in maintenance services may not strike. The Act defines a maintenance service as one where the interruption of that service will lead to the material physical destruction of the working area, plant or machinery. Parties can agree in a collective agreement that a service is a maintenance service. Alternatively, an employer may apply to the essential services committee for a determination that all or part of the service is a maintenance service.

Where a service has been declared a maintenance service, employers may not employ replacement labour if non-maintenance service employees go on strike. In other words, the employer gives up his or her right to employ replacement labour in exchange for having a maintenance service in which employees may not strike.

Other forms of industrial action

Picketing

The Act recognises the right to picket.

- Only a registered trade union may authorise a picket.
- A picket may be held at any place to which the public has access outside the premises of an employer. Unions need the employer's permission to picket inside the workplace. If an employer refuses permission for a picket to take place inside the premises, the CCMA may overrule the employer if the refusal to grant permission is unreasonable taking into account the conduct of the picketers, the duration of the picket, the number of employees taking part, etc.

- The picket must be peaceful.
- The parties must take account of any picketing rules to which they have agreed and must take into account the code of good practice on picketing issued by NEDLAC (see below).

Code of Good Practice on Picketing

The code of good practice on picketing provides practical guidance on picketing in support of a protected strike or in opposition to a lock-out. It is a guide to those who take part in the picket and for employers, other employees or members of the public who may be affected by the picket.

The code does not impose any legal obligations and a failure to observe it does not in itself render anyone liable.

The code only applies to pickets that are authorised by a registered trade union and where only members and supporters of the trade union may participate.

A registered trade union must authorise the picket. This means that there must be either a resolution authorising the picket or a resolution permitting a trade union official to authorise the picket.

The authorisation must be in writing and must be served on the employer before the commencement of the picket.

The union and employer should attempt to agree on picketing rules. This would include an agreement on the number of picketers, the duration of the picket, the location of the picket, communication between marshals and employers, and access to the employer's premises for purposes other than picketing eg. access to toilets or telephones.

A registered trade union must appoint a convenor to oversee the picket who must be a member or an official of the trade union. That person should at all times have:

- a copy of section 69 of the Act which deals with pickets;
- a copy of the code of good practice on picketing;

- any collective agreement or rules regulating pickets; and
- a copy of the resolution from the trade union.

The picketers must conduct themselves in a peaceful, unarmed and lawful manner and may carry placards, chant slogans and sing and dance. They may not physically prevent members of the public from gaining access to or leaving the employer's premises and they may not commit any action which may be unlawful or which may be perceived to be violent.

The police may not take a view on the merits of the dispute that gave rise to the strike or lock-out. However, they have a general duty to uphold the law and may take reasonable measures to keep the peace. An employer cannot require the police to help identify picketers. The police have a responsibility to enforce the criminal law. They may arrest picketers for participation in violent conduct or attending a picket armed with dangerous weapons.

Secondary action

The Act makes specific provision for secondary action. Secondary action happens when employees strike in support of a strike by other employees. It does not include a strike over a demand which has been referred to a council if the strikers are employed within the registered scope of the council, and they have a material interest in the demand of the main strikers.

When will secondary action be protected?

Secondary action will be protected if:

- the main strike is a protected strike;
- the secondary strikers give seven days notice to their employer or the relevant employers' organisation; and
- the nature and extent of the secondary strike is reasonable in relation to the possible direct or indirect effect it may have on the business of the primary employer. In other words, if dockworkers strike in support of striking mineworkers, their strike is unlikely to have any effect on the business of the mine owner who is the primary employer. If it has no effect, it will not be reasonable, and the dockworkers will be prohibited from holding their secondary strike.

If the secondary employer believes the secondary strike does not meet the Act's requirements, that employer may apply to the Labour Court for an interdict to prohibit the strike. The court can ask the CCMA to investigate and report to it whether there is a reasonable connection between the strike and its possible effect on the primary employer. The court must take account of the CCMA's report before it makes an order.

Protest action to defend the socio-economic interests of employees

The Act also makes provision for protected stayaways in support of socio-economic issues. The issue must be raised at NEDLAC or a similar forum and the action must be authorised by a registered union or federation. Even if these requirements are met, the Labour Court can remove protection against dismissal if participants do not comply with any order it issues to regulate the stayaway.

Further information

Relevant sections in the Act

Sections 64 - 77:	Strikes and lockouts
Section 213:	Definition of strikes and lockouts

Code of Good Practice on Picketing

Forms to fill in

LRA Form 4.1	Request to assist parties reach agreement on picketing rules
LRA Form 4.2	Referral of dispute for essential services determination
LRA Form 4.3	Employer applies for maintenance service determination
LRA Form 4.4	Notice to NEDLAC about possible protest action
LRA Form 4.5	Notice to NEDLAC of intention to proceed with protest action

Notes

Chapter 8

Unfair treatment in the workplace

Unfair treatment will not be tolerated at workplaces.

Types of unfair labour practices

The Act lists the following kinds of treatment as unfair labour practices.

Unfair conduct of an employer relating to the promotion, demotion, probation or training of an employee or the provision of benefits

Example:

If all employees pass a test and all except one are promoted, the employer might be guilty of unfair conduct against that employee.

Unfair suspension of an employee or any other disciplinary action short of dismissal

Example:

If an employee and her supervisor have an argument and the employer suspends only the employee, even though it is unclear who was to blame for the argument, this could be an unfair suspension (this category excludes dismissal, because dismissals are dealt with in Chapter 8 of the Act.)

Failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement

Example:

If an employee was retrenched but it was agreed with the employer that the employee would be re-employed if a suitable job became vacant, and the employer disregards the agreement by employing another person when a suitable job does become vacant, the employer will be guilty of an unfair labour practice.

Occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000[11]

This Act protects employees who "blow the whistle" by disclosing wrongdoing or unlawful conduct taking place in the workplace. Employees who "blow the whistle" may not be dismissed and may not be subjected to disciplinary action, suspended, demoted, harassed, intimidated, or be refused a transfer or promotion.

Example:

If an employee informs the Department of Labour that an employer has been deducting UIF amounts from all the employees' wages in the factory but not making payment to the fund and the employer then discovers the employee's disclosure the employer may not subject the employee to disciplinary action or in any other way prejudice the employee because of the disclosure.

Disputes about unfair labour practices

If there is a dispute about an unfair labour practice the aggrieved employee may refer the dispute to a council or to the CCMA. The referral must be made within 90 days of the alleged unfair labour practice.

The council or CCMA must attempt to resolve the dispute through conciliation. If the unfair labour practice concerns probation, the CCMA or council must deal with the dispute by 'con-arb'. This means that if conciliation is unsuccessful, the arbitration must start immediately. If the dispute does not concern probation then the employee must refer the dispute for arbitration within 30 days of the council or CCMA issuing a certificate that the dispute remains unresolved. The council or CCMA must then arbitrate the dispute.

The employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court for adjudication if the employee has alleged that he or she has been prejudiced by his or her employer in contravention of the Protected Disclosures Act, 2000.

[11] This Act provides that an employee may not be dismissed or prejudiced in any way on the basis of disclosing wrongdoing or other unlawful conduct taking place in his or her employment environment.

Remedies

The remedies that an arbitrator may order include reinstatement, re-employment or compensation. Compensation must be just and equitable, and limited to a maximum of 12 months remuneration.

Further information

Relevant sections in the Act

Section 186: Meaning of dismissal and unfair labour practice

Section 191: Disputes about dismisals and unfair labour practices

Section 193: Remedies for unfair dismissals and unfair labour practices

The Protected Disclosures Act, 26 of 2000

Forms to fill in

LRA Form 7.11 Referring a dispute to the CCMA for conciliation

LRA Form 7.13 Request for arbitration

Chapter 9

Dismissals

An employer can dismiss employees for reasons of misconduct or incapacity. An employer can also dismiss employees for business-related reasons. A fair procedure must always be followed even in circumstances where there is a good reason for the dismissal.

What is a dismissal?

Under the Act an employee is regarded as dismissed when:

- an employer ends a contract of employment with or without notice to the employee;
- an employee has a reasonable expectation that the employer will renew a fixed-term contract on the same or similar terms but the employer offers to renew it on less favourable terms, or does not renew it;
- an employer refuses to allow an employee to return to work after maternity leave;
- an employer selectively re-employs some employees after dismissal for the same or similar reasons but fails to re-employ others;
- an employer makes the working environment impossible for the employee to tolerate, which forces the employee to leave (this is known as a constructive dismissal); or
- there is a transfer of a business as a going concern (see chapter 10) and the new employer provides the employee with substantially less favourable terms and conditions of employment than the old employer, and as a result the employee resigns.

A dismissal may be unfair or fair depending on the circumstances.

Some types of dismissals can never be legally justified

The Act states that certain reasons for dismissal will always be unfair. Dismissal for one of the following reasons will be regarded as 'automatically unfair':

- an employee takes part in the activities of a union or workplace forum;
- an employee takes part in a protected strike or protest action;

- employees refuse to accept an employer's offer on a matter of mutual interest between the employer and employees, such as a wage increase;
- an employee refuses to do the work of someone who is on a protected strike or a lock-out, unless the work is necessary to prevent danger to life, personal safety and health;
- an employee's pregnancy or any reason related to her pregnancy;
- the employee takes (or intends to take) action against an employer by exercising any right or by participating in any proceedings contained in the Act;
- an employer dismisses an employee for a reason related to a transfer of the employer's business;
- an employee makes a disclosure in terms of the Protected Disclosures Act 2000; or
- the employee is dismissed on arbitrary grounds, such as the employee's race, age, religion, sex, sexual orientation or family responsibilities.

However, there are two exceptions to this last class of automatically unfair dismissal:

- an employer may retire someone who has reached the normal or agreed retirement age; and
- an employer may fairly dismiss someone if the reason for the dismissal is based on an inherent requirement of the job. For example, a teacher in a religious college who changes his or her faith could be justifiably dismissed.

When is an employer legally permitted to dismiss an employee?

An employer can dismiss an employee for a fair reason (this means the dismissal is 'substantively' fair) and only if the employer has followed a fair procedure (this means the dismissal is 'procedurally' fair).

There are three kinds of fair reason for dismissal. These are:

- for **misconduct** (if an employee intentionally or carelessly breaks a rule at the workplace, for example, steals company goods);
- for **incapacity** (if an employee cannot perform duties properly owing to illness, ill health or inability); and
- for **operational** reasons (if a company has to dismiss employees for reasons which are related to purely business needs and not because of some failing on the part of the employee).

A code of good practice (Schedule 8 in the Act) sets out the principles of substantive and procedural fairness to be followed in the case of dismissal for misconduct or incapacity. The principles of a fair dismissal for operational reasons are contained in the Act itself and in a code of good practice on dismissals based on operational requirements, issued by NEDLAC. If there is a collective agreement on disciplinary procedures, the employer must comply with the procedures in the agreement.

Dismissal for misconduct

Dismissal for misconduct is the last resort of an employer, when other measures to correct misconduct have failed or are pointless. Principles of a proper disciplinary procedure are summarised below.

Substantive fairness

The code of good practice on dismissals says that any person who has to decide on the fairness of a dismissal should consider whether or not:

- the employee broke a rule of conduct in the workplace;
- the rule was valid or reasonable;
- the employee knew of the rule or should have known of the rule;
- the employer applied the rule consistently; and
- dismissal is the appropriate step to take against the employee for breaking the rule instead of less serious action like a final written warning or a suspension.

Repeated offences could justify the final step of dismissal.

Dismissal for a first offence may be appropriate if the misconduct is very serious and makes the continued employment of that person intolerable.

Examples of serious misconduct are:

- gross dishonesty (for example, theft);
- deliberate damage to the property of the employer;
- deliberate endangering of the safety of others;
- physical assault of the employer, a fellow employee, client or customer; and
- gross insubordination (for example, swearing at a supervisor in front of other employees).

Each case should be judged on its merits and the employer should also take into account other factors such as:

- the employee's circumstances (for example, length of service, previous disciplinary record and personal circumstances);
- the nature of the job; and
- the circumstances of the infringement itself (for example, if an employee was justifiably provoked to assault a colleague).

Procedural fairness

Even if there are very good substantive reasons for a dismissal, an employer must follow a fair procedure before dismissing an employee. This requires the employer to conduct an investigation into the alleged misconduct. This need not be a formal enquiry, but these requirements should be met:

- the employer must inform the employee of the allegations in a manner the employee can understand;
- the union should be consulted before commencing an enquiry into the conduct of an employee who is a shop steward or union office-bearer;
- the employee should be allowed reasonable time to prepare a response to the allegations;
- the employee must be given an opportunity to state his or her case; and
- the employee has the right to be assisted by a shop steward or other employee.

After the enquiry, the employer should inform the employee of the decision, preferably in writing. If the employer dismisses the employee, the employer must give reasons and inform the employee of his or her right to refer the dispute for resolution to a council or the CCMA.

If the employee wishes to challenge the fairness of the dismissal by using a council or the CCMA the matter must be referred to the correct body within 30 days of the dismissal.

Employers should keep records of disciplinary action for each employee, stating the nature of the misconduct, the disciplinary action, and the reasons for the action.

Minimum requirements for fair disciplinary rules

Employers should adopt disciplinary rules that set out how employees must behave at work. The rules must be clear. All employees should be informed of them, unless they are so well known that everyone can be expected to know them.

The Act promotes the principle of progressive discipline. This means efforts should be made to correct employees' behaviour by means of graded disciplinary action. The most effective way for an employer to deal with minor problems is by informal advice and correction. Repeated misconduct will justify repeated and more severe warnings until a final warning is issued.

Dismissals during unprotected strikes

Although employees may not be dismissed for participating in a procedural strike, they can be dismissed if they participate in an unprocedural strike. Such action is regarded as misconduct. However, it will not always justify dismissal. Employers need to consider whether a dismissal would be substantively fair. Factors to be taken into account include:

- how serious the breach of the Act was;
- whether attempts were made to comply with the Act; and
- whether or not the strike was in response to unjustified conduct by the employer.

Before dismissing striking employees, an employer should:

- contact the union to discuss the employer's intention to dismiss strikers;
- give the striking employees a clear ultimatum which should state what is required of the employees and what will happen if they do not comply with the ultimatum;
- give employees enough time to consider the ultimatum; and
- allow the employees an opportunity to make representations which the employer must consider.

The employer can ignore these steps if it is not reasonable to follow them. For example, if an unprocedural strike is accompanied by extreme violence, the employer might be forced in the interests of safety and security to dispense with these steps.

Dismissal for incapacity

The code of good practice on dismissals sets out guidelines on what is necessary for a dismissal for incapacity to be substantively and procedurally fair.

Substantive fairness

Poor work performance

Before an employer can dismiss an employee for poor work performance the employer must first give the employee appropriate evaluation, training or guidance and a reasonable time for improvement. The employer must hold an investigation into reasons for the poor performance. Only if the employee still continues to perform poorly thereafter and the problem cannot reasonably be solved without dismissing the employee, will dismissal be fair.

Bad health or injury

If temporary incapacity will cause an employee to be away from work for an unreasonably long time, it will be unfair to dismiss the employee unless the employer first investigates all possible ways of avoiding this step. If the incapacity is permanent, the employer should try to find alternative work for the employee, or adapt the work so that the employee is able to do it. The employer must make a greater effort to accommodate the employee if the employee was injured while at work.

Procedural fairness

In investigations relating to poor work performance and incapacity, the employee should be given an opportunity to state his or her case and to be assisted by a shop steward or co-worker. This applies to employees on probation too.

Pre-dismissal arbitration

Instead of holding an internal hearing prior to dismissing an employee for misconduct or incapacity, the employer and employee can agree to hold a pre-dismissal arbitration paid for by the employer. This arbitration is conducted by a council, the CCMA or an accredited agency and is final and binding and subject only to review by the Labour Court.

Employees may agree to a pre-dismissal arbitration after receiving the charges brought against them. Higher-paid employees may agree to pre-dismissal arbitration in their contracts of employment.

The possibility of pre-dismissal arbitration was introduced by the 2002 amendments to the Act. Its purpose is to avoid the duplication that often occurs when you have an internal hearing conducted at the workplace prior to dismissal, followed by an arbitration conducted by the CCMA or a council after the dismissal has taken place.

Dismissal for operational reasons (retrenchment)

An employer may dismiss employees for operational reasons, but only if the employer has first attempted to avoid such an event by reaching an agreement with recognised representatives of employees.

In terms of the 2002 amendments to the Act, a distinction is made between retrenchments of individuals, retrenchments at small scale businesses, and retrenchments at large scale businesses. The main changes introduced by the amendments are that:

- individuals who are retrenched may refer a dispute either to arbitration by the CCMA or a council or to the Labour Court for adjudication;
- the consultation process in large scale retrenchments may be facilitated by a person appointed by the CCMA;
- employees involved in a large scale retrenchment may either strike or may refer a dispute over the substantive fairness of the retrenchments to the Labour Court.

The Process in respect of small-scale and large-scale retrenchments

The consultation hierarchy

If an employer is considering dismissing employees for operational reasons, the employer must consult (in this order of preference) one of the following:

- any person whom the employer is required to consult in terms of a collective agreement;
- a workplace forum and a registered trade union whose members are likely to be affected by the proposed dismissals;
- any registered trade union whose members are likely to be affected by the proposed dismissals; or
- the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.

The joint consensus-seeking process

The employer and consulting parties must engage in a joint consensus-seeking process and attempt to reach consensus on:

- appropriate measures to avoid or minimise or change the timing of the dismissals;
- means to mitigate the adverse effects of the dismissals;
- the method for selecting employees; and
- the severance pay for dismissed employees.

The written notice

When an employer contemplates a dismissal for operational reasons, the employer must issue a written notice inviting the other consulting parties to consult with it and must disclose all relevant information including –

- the reasons for the dismissals;
- the alternatives considered;
- the number of employees likely to be affected;
- the proposed method for selecting which employees to dismiss;
- when the dismissals are likely to take effect;
- the severance pay proposed;
- any assistance that the employer proposes to offer to the employees likely to be dismissed;
- the possibility of future re-employment;
- the number of employees employed by the employer; and
- the number of employees that the employer has dismissed for reasons based on its operational requirements in the last 12 months.

The employer must allow the other consulting parties to make representations about these matters and any other matters. The employer must consider and respond to any representations that are made. If they were made in writing, the employer must respond in writing.

The process for large-scale retrenchments

The 2002 amendments to the Act introduced a new section to improve the effectiveness of consultations in large-scale retrenchments. This new section (s189A) applies to work places where an employer employs more than 50 employees and where the number of retrenchments contemplated meet a certain minimum threshold. This threshold is reached if the employer contemplates the retrenchment of more than the specified minimum, or if the number of retrenchments that have taken place in the preceding 12 months plus the number contemplated exceed the specified minimum.

For example, if an employer employs 240 employees but only contemplates dismissing 16 then s189A is not applicable. However, if the same employer is contemplating 25 dismissals, s189A would be applicable. Table one summarizes these provisions.

TABLE ONE

No. of employees employed by the employer	Min no of. dismissals contemplated for s189A to be applicable
50-200	10 or more
201-300	20 or more
301-400	30 or more
401-500	40 or more
500 or more	50 or more

The appointment of a facilitator

The employer or the consulting parties may request the appointment of a facilitator from the CCMA to assist the parties during the consultation process. If the employer makes the request, the request must accompany the notice calling on the other parties to consult (s189(3)). If the other consulting parties make the request, the request must be within 15 days of the employer issuing the notice to consult.

The minister has made regulations dealing with the facilitation process. The facilitator may chair the meetings of the parties or direct them to meet on their own. The facilitator must assist the parties to resolve disputes over the disclosure of information and can arbitrate unresolved issues on this matter. The facilitator may meet up to four times with the parties. The Director of the CCMA may extend the number of facilitation meetings.

When a facilitator is appointed, the employer may not issue notices of termination for 60 days after giving the notice to consult. If 60 days have passed from the date on which notice to consult was given, the employer may give notice terminating the contracts of employment and the registered trade union or the employees concerned may either give notice of a strike or may refer a dispute to the Labour Court concerning whether there is fair reason for the dismissal.

If there is no facilitator

If neither party requests the CCMA to appoint a facilitator, a party may not refer the dispute to a council or the CCMA for 30 days from the date of the notice to consult. Once the period for conciliation is finished (30 days or a when a certificate is issued), the employer can give notice of termination and the union or employees can give notice of a strike.

The election to strike or to refer a dispute to the Labour Court

In large-scale retrenchments, employees may elect to strike over their dismissals or to have the Labour Court adjudicate the substantive fairness of the dismissals. Employees may not do both – ie refer a dispute to the Labour Court and strike.

The test for substantive fairness

If a consulting party chooses to challenge the substantive fairness of the dismissals in the Labour Court then the test for substantive fairness is limited to whether-

- the dismissal was to give effect to an operational requirement;
- the dismissal was justifiable on rational grounds;
- there was a proper consideration of alternatives; and
- the selection criteria were fair and objective.

Disputes over procedural fairness

In a large-scale retrenchment, disputes over the procedural unfairness of a dismissal are dealt with separately from disputes over the substantive fairness of a dismissal. Whether employees choose to strike or to refer a dispute on the substantive fairness of a dismissal, does not effect their right to approach the Labour Court if an employer does not comply with a fair procedure. The Labour Court can compel an employer to comply with fair procedures and can grant an interdict preventing an employer from dismissing until it has complied with a fair procedure. A challenge to the employer's procedure must be brought on application (affidavit) no later than 30 days after the employer gave notice of termination.

The referral of a dispute by employees at a small-scale operation

Employees may refer a dispute over the substantive and/or procedural fairness of retrenchments to the Labour Court, if section 189A, which deals with large-scale retrenchments, is not applicable. This is the case if the employer has less than 50 employees or if the number of dismissals contemplated is less than the threshold figure set out above.

The referral of a dispute by a single employee

A single employee who has been retrenched may choose to refer a dispute either to arbitration or to the Labour Court. This was introduced by the 2002 amendments to the Act and is likely to significantly reduce the case load of the Labour Court. Prior to the amendment, about 50% of cases that went to trial dealt with individual retrenchments.

Selection criteria

If one or more employees are selected for dismissal from a number of employees, the criteria for selection must be either agreed between the consulting parties or, if no criteria have been agreed, be fair and objective. Criteria that infringe a fundamental right protected by the LRA would be unfair – for example criteria based on union membership or pregnancy. Selection criteria that are generally considered to be fair include - length of service, skills and qualifications. With regard to length of service, generally the last-in-first-out principle is regarded as fair but in some circumstances, this principle may undermine affirmative action programmes.

Severance pay

Employees who are retrenched must receive at least one week's remuneration for every year of completed service from the employer. The consulting party may reach agreement on a higher amount.

An employee who unreasonably refuses to accept an employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay.[12]

[12] Refer to section 41 of the Basic Conditions of Employment Act, 1997 for further details. An important innovation is that the workers of employers that go insolvent (bankrupt) are now entitled to severance benefits.

Disputes over dismissals

An employee may refer a dispute about a dismissal to the CCMA or a council for conciliation. If a dispute remains unresolved, the employee may refer the dispute to arbitration by the CCMA or a council or to adjudication by the Labour Court. The following dismissal disputes may be referred to arbitration:

- dismissals for misconduct or incapacity; or
- constructive dismissals[13] or where an employee resigns after being given less favourable terms and conditions of employment following a transfer of a business as a going concern or the transfer of an insolvent business.

An individual employee who has been dismissed for operational reasons may refer a dispute either to the CCMA (or council) for arbitration, or to the Labour Court for adjudication.

Automatically unfair dismissals, dismissals for participating in an unprotected strike, and operational requirement dismissals (other than those that only involve one employee) may be referred to the Labour Court for adjudication.

Remedies for unfair dismissals

Reinstatement is the first choice of remedy for an unfair dismissal, unless special circumstances exist.

These circumstances exist if:

- the dismissed employee does not wish to return to work;
- the dismissal was only procedurally unfair;
- the working relationship between the parties has become intolerable; or
- it is not practical to do so. For example, it may be excessively costly for an employer to adapt the workplace to the needs of an employee who was unfairly dismissed for incapacity.

[13] An employee resigns because the employer has made continued employment intolerable

An employee who is not reinstated is usually given compensation. Compensation must be just and equitable and not more than the equivalent of 12 months remuneration. If the dismissal is automatically unfair, the maximum compensation that may be awarded is the equivalent of 24 months remuneration. Evidence will need to be led on, for example, an employee's loss of earnings, to enable the court or arbitrator to decide what will be just and equitable compensation.

The compensation award is additional to monies owing for other reasons, such as outstanding holiday pay or bonuses.

In cases of automatically unfair dismissal or dismissal based on operational requirements the Labour Court can make additional orders apart from reinstatement or compensation.

Further information

Relevant sections in the Act

Section 185:	Right not to be unfairly dismissed
Section 186:	Meaning of dismissal
Section 187:	Automatically unfair dismissals
Section 188:	Other unfair dismissals
Section 188:	A Pre-dismissal arbitration
Section 189 and 189A:	Dismissals based on operational requirements
Section 190:	Date of dismissal
Section 191:	Disputes about unfair dismissals
Section 192:	Onus in dismissal disputes
Section 193:	Remedies for unfair dismissal
Section 194 – 195:	Compensation
Schedule 8:	Code of good practice on dismissals

Code of good practice on dismissals based on operational requirements

Forms to fill in

Form 7.11	Referring a dispute to the CCMA for conciliation
Form 7.13	Request for arbitration
Form 7.19	Request for pre-dismissal arbitration
Form 7.20	Request for facilitation

Chapter 10

The transfer of a business

Employees' contracts of employment transfer automatically when a business is transferred as a going concern or where a business is transferred in a situation of insolvency.

In situations when a business is sold or transferred either as a going concern or because of insolvency, the Act seeks to:

- prevent job losses;
- ensure that employees' terms and conditions of employment remain the same.

The transfer of a business as a going concern

Automatic transfer of employment contracts

When a business is transferred as a going concern, the new employer takes over the employees' contracts of employment from the old employer. This happens automatically on transfer of the business unless there is an agreement to the contrary between the employers and the appropriate employee representatives.

An employee's continuity of employment is not interrupted by the transfer of the business. The new employer must employ the employees on terms and conditions which are on the whole not less favourable than those which employees enjoyed with the old employer. However, if the terms and conditions of employment of the transferred employees are determined by collective agreement, the collective agreement continues to apply. The purpose of this provision (with respect to employees who are not covered by a collective agreement) is to allow for flexibility in the total package provided by the new employer. For example a white collar employee may have received a cell allowance and a car allowance from the old employer, but with the new employer does not enjoy those allowances, but benefits from a housing subsidy instead. (This is a term of employment with the new employer which is on the whole "not less favourable".)

Employees who do not wish to transfer to the new employer may resign. They will not, however, be entitled to severance pay. If their new service conditions are substantially less favourable than their previous service conditions, they may resign and bring a claim for constructive dismissal.

Agreements between the parties

The old employer must reach agreement with the new employer as to a valuation on the date of transfer of the transferring employees' -

- accrued leave pay;
- severance pay, had the employees been entitled to severance pay; and
- any other accrued entitlements (eg bonuses).

The agreement must also specify which employer is liable for paying these amounts and what provision has been made for the payment of those amounts.

For a period of 12 months after the date of transfer both the old employer and the new employer are liable to any employee who becomes entitled to a payment as a result of being dismissed for operational requirements or as a result of the employer's liquidation or sequestration.

Obligations of the new employer

The old employer's obligations in respect of trade union organisational rights or recognition agreements are transferred to the new employer. This facilitates the continuity of collective bargaining.

Unless the parties agree otherwise the new employer is bound by any existing arbitration award or collective agreement.

The new employer becomes liable for any unfair dismissal, unfair labour practice or act of discrimination committed prior to the transfer by the old employer. These provisions place a burden on the new employer and the new employer should factor into the purchase price the potential financial costs of transferring employees on.

Dismissals and transfers of businesses

An employee cannot be dismissed merely because a transfer takes place but an employee can be dismissed if the transfer creates operational requirements that justify dismissal.

A dismissal due to a transfer that cannot be justified in terms of operational requirements, is regarded as automatically unfair.

If an employee resigns because the new employer fails to provide employment conditions that are substantially as favourable as those provided by the old employer, then the employee may have a claim for a constructive dismissal.

The transfer of contracts of employment in circumstances of insolvency

Prior to the amendments of this Act, employees' contracts of employment would automatically terminate when a business became insolvent. Employees often lost severance pay and did not have a right to be reinstated if the business revived. The Act deals with this problem by providing that when a business becomes insolvent and a scheme of arrangement is entered into to avoid the winding-up or sequestration of the business, employees' contracts of employment transfer from the old employer to the new.

The new employer is automatically substituted in the place of the old employer but all the rights and obligations between the old employer and its employee at the time of transfer remain with the old employer. This is in contrast to when a business that is not insolvent is transferred.

When an employer is facing financial problems that may result in the business becoming wound up or sequestrated, the employer must advise the employee representatives of that fact. An employer who applies to be wound up or sequestrated must provide the employee representatives with a copy of the application.

Further information

Relevant sections in the Act

Section 185	Right not to be unfairly dismissed or subjected to unfair labour practice
Section 186	Meaning of dismissal and unfair labour practice
Section 187	Automatically unfair dismissals
Section 189	Dismissals based on operational requirements
Section 191	Disputes about unfair dismissals and unfair labour practices
Section 197 and 197A	Transfer of contract of employment
Section 197B	Disclosure of information concerning insolvency

Forms to fill in

Form 7.11	Referring a dispute to the CCMA for conciliation
Form 7.13	Request for arbitration

Chapter 11

Resolution of disputes

Disputes should be resolved as quickly as possible. The Act encourages the negotiation of private procedures for the resolution of disputes. It also established the CCMA, the Labour Court and the Labour Appeal Court for resolving disputes.

The Act established the following dispute resolution institutions:

- the Commission for Conciliation, Mediation and Arbitration (CCMA), an independent body that seeks to resolve disputes through conciliation and arbitration; and
- the Labour Court and the Labour Appeal Court, which are the only courts which can hear and decide most labour disputes.

The Act also promotes private procedures negotiated between parties for the resolution of disputes.

Dispute resolution institutions

Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA:

- is an independent body even though it is mainly state funded;
- is controlled by a governing body on which government, business and labour have three representatives each. The governing body has an independent chairperson. The CCMA's director is a member of the governing body;
- has an office in each province and a national office in Johannesburg (see Appendix for phone and fax numbers); and
- has both part-time and fuIl-time commissioners who perform conciliation and arbitration functions.

The main functions of the CCMA are as follows:

- **Resolving disputes**

  The CCMA must attempt to resolve, through conciliation, workplace disputes referred to it. If conciliation fails, the CCMA must settle the dispute by arbitration if the Act says that the next step is arbitration and if any party to the dispute refers the dispute to arbitration.

- **Assisting with the establishment of workplace forums**

  Read more about workplace forums in chapter 6 of this Guide.

- **Giving advice, assistance and training**

  The CCMA can assist parties on a range of issues, including advice on dispute resolution design and collective bargaining structures.

- **Accrediting councils and private agencies**

  The CCMA can accredit councils or private agencies to conciliate and arbitrate on certain disputes.

The Labour Court

The Labour Court has the same status as the High Court. The Labour Court has exclusive jurisdiction over most labour matters. The Labour Court has concurrent jurisdiction with the High Court in constitutional matters that arise in an employment context and in cases concerning contracts of employment. The Labour Court may make any appropriate order including granting urgent interim relief, an interdict, an order for specific performance, a declaratory order and an award of compensation or damages.

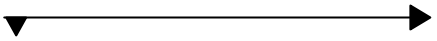
Any person appointed as a judge of the Labour Court must have knowledge, experience and expertise in labour law and must meet the requirements for appointment as a judge of the High Court. Labour Court judges are paid on the same scale as High Court judges.

The Labour Appeal Court

Parties may apply to the Labour Court for leave to appeal to the Labour Appeal Court (LAC) against any final order or judgement of the Labour Court.

The LAC is the final court of appeal against decisions of the Labour Court. The persons who hold the positions of judge president and deputy judge president in the Labour Court also hold the same positions in the LAC.

DISPUTE RESOLUTION

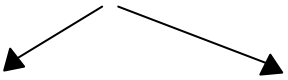


Resolution of disputes in terms of the Act

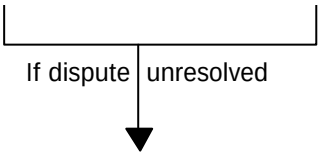
Private agreement
Parties can make provision for their own procedures for the settlement of disputes. Then they need not follow the procedures in the Act.

Stage One

Conciliation



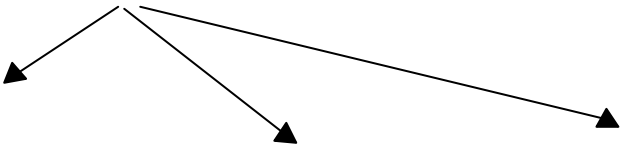
CCMA (if no council) Council



If dispute unresolved

Stage two

The Act set out which route a particular Dispute must go at stage two. Parties may only depart from these routes by agreement



Arbitration **or** Adjudication **or** Strike or Lock out

(Labour Court or Labour Appeal Court)

Basic procedures for the resolution of disputes

The Act tries to ensure that disputes are resolved as quickly as possible. It provides for a basic two-step procedure which will apply whenever the parties in dispute have not agreed to a private dispute procedure in a collective agreement which covers the issue in dispute.

Step one is conciliation. **Step two** is one of the following: arbitration or adjudication or industrial action depending on the type of dispute. The second step is taken only if the first step fails. An important innovation in the 2002 amendments to the Act is that the CCMA may now resolve disputes by 'con-arb'. In 'con-arb' the arbitration starts immediately after the end of the conciliation if the dispute is not settled. 'Cob-arb' must be used in –

- disputes about probation; and
- dismissals for misconduct or incapacity, unless a party objects.

Step one: Conciliation

Firstly, an attempt must be made to conciliate the dispute. A genuine attempt should be made to arrive at a resolution at this stage.

What is conciliation?

Conciliation occurs when the parties in dispute get together with a third, neutral party, a conciliator. The conciliator does not decide who is right or wrong, but attempts merely to assist the parties to reach agreement. The Act states that conciliation can include mediation, fact-finding or the making of a recommendation to the parties. It is up to the conciliator to decide on which is the most appropriate process.

Who can conciliate?

Disputes may be conciliated either by:

- a commissioner of the CCMA;
- a council (statutory council or bargaining council); or
- a private agency.

The general rule is that if a council has been established for a sector, then the council must conciliate the dispute and not the CCMA. To perform this role a council must either become accredited itself or use the services of an accredited agency.

The CCMA will normally only conciliate a dispute if there is no council covering the parties in dispute.

However, certain disputes may be conciliated only by the CCMA, even if there is a council covering the parties in dispute, for example, disputes over picketing rights.

The Table in the Appendix tells you which kinds of disputes are conciliated by which body.

Are there time limits for the conciliation process?

Where disputes relate to unfair dismissals, these must be referred for conciliation within 30 days of the dismissal or, if it is a later date, the employer's final decision to dismiss (eg when the employer rejects the employee's appeal).

Where disputes relate to unfair labour practices, these must be referred for conciliation within 90 days of the alleged unfair labour practice occurring or within 90 days of the employee becoming aware of the unfair labour practice.

Once a dispute has been referred to conciliation, the commissioner must attempt to resolve the dispute within 30 days, although the parties may agree to extend this period.

Step two: Arbitration or adjudication by the Labour Court or industrial action

If conciliation fails, parties can proceed to Step two. At this second stage there are three alternate routes for dispute resolution:

- arbitration;
- adjudication by the courts; or
- industrial action.

The Act determines which process a particular type of dispute must follow. Parties must comply with the Act, unless they have agreed to follow their own private dispute resolution process.

Arbitration

What is arbitration?

In arbitration the dispute is referred to a neutral third party, called an arbitrator, who hears both sides of the dispute, and then makes a decision about who is right. The arbitrator will issue an arbitration award which is binding on the parties. There is no appeal against a decision of an arbitrator, but a review might be possible.

Who can arbitrate?

The Act specifies that certain disputes may be arbitrated by-

- a commissioner of the CCMA;
- a council; or
- a private agency.

The body which conciliated the dispute should also arbitrate. If there is a council for the sector, the council will conciliate and then arbitrate if the dispute remains unresolved. If there is no council, then the CCMA will arbitrate the dispute after conciliation. Councils and private agencies must be accredited.

Are there time limits for arbitration?

Disputes must be referred for arbitration within 90 days of the CCMA or council issuing a certificate that the dispute remains unresolved.

Arbitrators must issue an arbitration award giving brief reasons for their decision within 14 days of the conclusion of the arbitration proceedings.

Adjudication (Labour Court disputes)

Some disputes go to the Labour Court for a decision instead of to arbitration. These disputes must be referred to the Labour Court within 90 days of the CCMA or council certifying that the dispute remains unresolved.

It is also possible for parties to a dispute to agree that instead of referring the matter for adjudication by the Labour Court, it will be referred to arbitration conducted by the CCMA.

A party can appeal against a decision of the Labour Court to the LAC, if leave to appeal is granted.

Enforcing awards and orders

Often an arbitrator or Labour Court will award an award in favour of an employee and the employer will not comply with this award. Previously the employee then had to apply to the Labour Court to enforce the award. The 2002 amendments to the Act simplify this. A party may apply to the Director of the CCMA to have an arbitration award certified. A certified award may be enforced in the same fashion as a Labour Court order. If the award is for money, the party may request the Sheriff of the Court to seize the other parties' goods and sell them to raise the money. This usually leads to the party paying the money owing. Other awards, such as reinstatement orders, must be enforced through contempt proceedings in the Labour Court.

Industrial action

Parties can embark on industrial action - strikes or lock-outs - only if:

- the Act does not provide that the dispute may be referred for arbitration or adjudication; and
- specific restrictions in Chapter 4 of the Act do not apply. See chapter 7 on Industrial Action for more details.

Private dispute resolution procedures

The Act recognises private dispute resolution procedures. In other words, the parties themselves may reach agreement on procedures for the resolution of disputes. If they do this, they need not follow the procedures set out in the Act, provided the dispute is finalised.

Further information

Relevant sections in the Act

Sections 112 – 126:	Commission for Conciliation, Mediation and Arbitration
Sections 133 – 150:	Resolution of disputes under auspices of Commission
Sections 151 – 166:	Labour Court
Sections 167 – 183:	Labour Appeal Court
Section 191:	Disputes about unfair dismissals
Schedule 4:	Dispute resolution flow diagrams

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Forms to fill in

LRA Form 7.1	Council applies for accreditation
LRA Form 7.2	Private agency applies for accreditation
LRA Form 7.3	Certificate of accreditation of council
LRA Form 7.4	Certificate of accreditation of a private agency
LRA Form 7.8	Council applies for subsidy
LRA Form 7.9	Private agency applies for subsidy
LRA Form 7.11	Referring a dispute to the CCMA for conciliation
LRA Form 7.12	Certificate of outcome of dispute referred for conciliation
LRA Form 7.13	Request for arbitration
LRA Form 7.16	Supoena by commissioner
LRA Form 7.18	Application to certify CCMA award and writ of execution
LRA Form 7.18A	Application to certify council award and writ of execution

Chapter 12

Impact of the act on particular employees

The Act aims to treat all employees the same. There are, however, some differences in the way the law might apply in certain sectors.

Small businesses

With fewer than 100 employees

The Act requires a workplace to have at least 100 employees before a workplace forum can be established. Workplaces with fewer employees than this cannot have workplace forums. However, nothing prevents a registered union from reaching a collective agreement with the employer to establish a body like a workplace forum.

With fewer than 10 employees

In such workplaces there is no automatic right of a majority union to trade union representatives (shop stewards). This can only be achieved by negotiation with the employer. However, employees in such a workplace still have the right to join unions. Unions may apply for access and meeting rights.

Also, even if an employer refuses to recognise a shop steward, the employees may still rely on that shop steward to represent them in the capacity of a co-worker.

Small businesses under councils

Councils are compelled to make provision in their constitutions for the representation of small and medium businesses.

The Act also requires councils to establish independent exemption committees to ensure that small businesses get a fair hearing in exemption applications from council agreements.

Each year councils must provide the registrar of labour relations with a report on small enterprises falling within their scope.

Retrenchments

Section 189A of the Act, dealing with large-scale retrenchments, does not apply to employers employing less than 50 employees. This means that workers in these businesses may not strike about impending retrenchments and do not have the right to request assistance from the CCMA to facilitate the retrenchment process. Refer to chapter 9 for more details.

Domestic workers

Domestic workers now have almost all of the same rights as other employees under the Act. The following exceptions are important to note:

No trade union access

Unless an employer of a domestic worker agrees, no trade union official or office-bearer can demand the right of access to the home of such an employer.

No right to disclosure of information

Unions of domestic workers have no right to disclosure of information from the employer (such as an employer's payslips), unlike in other workplaces where a union has majority membership. Of course, this does not prevent an employer of domestic workers from agreeing to disclose relevant information to the union.

Workers employed by temporary employment services

A business may not employ people to perform its work directly but may instead pay a temporary employment firm to provide it with people to do its work. These people are not employees of the business, but of the temporary employment firm. To ensure employees in this situation are not exploited by either the business or the employment agency, the Act makes both responsible for complying with an employer's duties to the employee. So employees of temporary employment services can make a claim either against the service itself or against the business where they perform their work.

Example:

Mrs Bruinders is employed as a typist by Top Temps CC. Top Temps sends Mrs Bruinders to perform typing work at a bank. Mrs Bruinders has a claim against Top Temps or the bank if Top Temps does not pay her salary.

Probationary employees

New employees may be employed on probation to enable the employer to assess their performance. The period of probation must be reasonable. During the period of probation employees must be given feedback and guidance arising out of the employer's assessment of their performance.

If an employee on probation is not meeting the required standard, the employer must give the employee an opportunity to make representations and may then extend the probationary period or dismiss the employee. A dispute concerning the extension of a probationary period or the dismissal of an employee on probation may be referred to the CCMA or a council for conciliation and thereafter arbitration. In deciding whether the dismissal of an employee on probation for poor performance is fair, the arbitrator may accept less compelling reasons for the dismissal than would be required if the person had not been on probation.

Chapter 13

Codes of good practice

There are codes of good practice dealing with picketing, sexual harassment, dismissals for operational requirements, and HIV/aids.

Previously a code of good practice issued under the LRA could only be taken into account when interpreting or applying that Act. Now codes of good practice may be taken into account in interpreting or applying any employment law including:

- the Occupational Health and Safety Act, 1993;
- the Compensation for Occupational Injuries and Diseases Act, 1993;
- the Labour Relations Act, 1995;
- the Basic Conditions of Employment Act, 1997;
- the Employment Equity Act, 1998;
- the Skills Development Act, 1998;
- the Unemployment Insurance Act, 2001.

NEDLAC has published four codes of good practice. These are on:

- picketing;
- the handling of sexual harassment cases;
- dismissals based on operational requirements; and
- key aspects of HIV/aids and employment.

Code of Good Practice on Picketing

The Code of Good Practice on picketing provides practical guidance on picketing in support of a protected strike or in opposition to a lock-out. (See chapter 7 for more detail on the code.)

Code of Good Practice on the handling of sexual harassment cases

Sexual harassment is unwelcome conduct of a sexual nature and may include:

- physical conduct;
- unwelcome innuendoes;
- sexual advances;
- unwelcome gestures and indecent exposures; and
- *quid pro quo* treatment (where an employer or supervisor attempts to influence the process of employment or promotion or training or discipline etc in exchange for sexual favours).

The Code encourages the development and implementation of policies and procedures that will lead to workplaces that are free of sexual harassment, and where employers and employees respect one another's integrity, dignity and privacy.

The application of the code goes beyond employers and their employees and may include clients and suppliers and other persons who have dealings with the business.

Employers should issue a policy statement stipulating that:

- employees have the right to be treated with dignity;
- sexual harassment in the workplace will not be permitted or condoned;
- persons who are subjected to sexual harassment have the right to lodge a grievance about it; and
- appropriate action will be taken by the employer which includes disciplinary action.

The code sets out procedures for dealing with sexual harassment. These procedures include

- providing advice and assistance;
- dealing with the problem informally but seriously;
- evoking a formal grievance procedure;
- a process of investigation and disciplinary action; and
- the possibility of criminal and civil charges being laid.

Code of Good Practice on dismissals based on operational requirements

The LRA defines a dismissal based on operational requirements as one based on the economic, technological, structural or similar needs of the employer. A dismissal based on operation requirements is regarded as a "no-fault" dismissal. In other words it is not the employee who is responsible for the termination of the employment.

Because retrenchment leads to job losses the LRA places particular obligations on an employer most of which are directed to ensure that all possible alternatives to dismissal are explored and that the employees who are to be dismissed are treated fairly. The consultation process envisaged in the LRA between the employer and employee representatives is thus particularly important.

The Act provides for the disclosure of information by the employer on matters relevant to the consultation. The employer must disclose for example:

- the reasons for the proposed retrenchments;
- the alternatives considered;
- the number of employees likely to be affected;
- the method for selecting which employees to dismiss;
- the timing of the dismissal; and
- the possibility of future employment.

If one or more employees are selected for dismissal from a number of employees the criteria for selection must be either agreed upon with the consulting parties or if no criteria has been agreed upon the criteria must be fair and objective. Criteria that infringes any fundamental right protected by the LRA would be regarded as unfair - for example criteria based on union membership or pregnancy.

The selection criteria that is generally considered to be fair includes length of service, skills and qualifications. Generally the last in and first out (LIFO) criteria is regarded as fair but may undermine affirmative action programs.

Retrenched employees are entitled to one week's severance pay for every year of completed service. The consulting party may reach agreement on a higher amount. If any employee accepts or unreasonably refuses to accept an offer of alternative employment then the employee's rights to severance is forfeited.

Dismissed employees should be given preference when it comes to new appointments if they have expressed within a reasonable time a desire to be rehired.

Code of Good Practice on key aspects of HIV/aids and employment

The HIV/aids epidemic is having a severe effect on the workplace and is impacting on issues of productivity, employee benefits, occupational health and safety, production costs and workplace morale.

The code's primary objective is to set out guidelines for employers and trade unions to ensure that employees infected with HIV are not unfairly discriminated against in the workplace.

The code must be taken into account when developing and implementing workplace policies or programmes in terms of employment related legislation.

The code makes the following points with respect to employees with HIV /aids in the workplace:

- There is no general legal duty on an employee to disclose his or her HIV status to his or her employer or to other employees.

- No employer may require an employee or an applicant for employment to undertake a HIV test in order to ascertain that employee's or applicant's HIV status. Employers may however approach the Labour Court to obtain authorisation for HIV testing.

- The risk of HIV transmission in the workplace is minimal. However, occupational accidents involving bodily fluids may occur, for example, in the health care profession. Where this happens, an employee may be compensated in terms of the Compensation for Occupational Injuries and Diseases Act, 1993.

- Employees with HIV or aids may not be unfairly discriminated against in the allocation of employee benefits. Employees who become ill with aids should be treated like any other employee with a comparable life threatening illness with regard to employee benefits.

- Employees with HIV or aids may not be dismissed solely on the basis of their HIV status but when they become too ill to perform their work, an employer will be obliged to follow the guidelines regarding dismissal for incapacity (Schedule 8 in the LRA) before terminating an employee's services.

Appendices

An outline of statutory dispute procedures for different kinds of disputes

The table below lists the main forms of dispute that can arise in the order in which they appear in the Act.
The ticks in the appropriate boxes indicate which institution may perform which function of the statutory dispute resolution process. Obviously the parties to the dispute might agree to a private dispute resolution mechanism for some of these disputes instead of using the statutory process.

DISPUTE	Conciliation by Council or CCMA	Conciliation by CCMA only	Arbitration by Council or CCMA	Arbitration by CCMA only	Adjudication by Labour Court	Adjudication by another body
Exercise of freedom of association rights	✓				✓	
Collective Bargaining (organisational rights, collective agreements, closed and agency shops, councils						
Rights of access, meetings, stop-orders, trade union representatives, leave for office bearers		✓		✓		
Disclosure of information to representatives and for collective bargaining and consultation purposes		✓		✓		
Interpretation and application of collective agreements where the CA arbitration procedure is non-existent or not functioning		✓		✓		
Interpretation of closed shop and agency shop agreements		✓		✓		
Appeals against CCMA arbitration on utilisation of agency and closed shop funds					✓	
Interpretation and application of the part (Chapter III part A) on organisational rights		✓		✓		
Admission of a union to a closed shop agreement		✓			✓	
Jurisdictional dispute between the Public Service Co-ordinating Bargaining Council and any other public sector bargaining council						[redacted]
Interpretation or application of a statutory council determination		✓		✓		
Refusal to admit a registered union or employers' organisation to a council					✓	

DISPUTE	Conciliation by Council or CCMA	Conciliation by CCMA only	Arbitration by Council or CCMA	Arbitration by CCMA only	Adjudication by Labour Court	Adjudication by another body
Demarcation of sectors and areas outside the public sector				✓		
Other disputes about the interpretation and application of Chapter III (collective bargaining) not dealt with above		✓			✓	
CHAPTER IV – INUSTRIAL ACTION						
Matters that may give rise to a strike or lock-out	✓					
Refusal to bargain (advisory arbitration)	✓					
Strike, lock-out, secondary action and protest action interdicts					✓	
Determination of picketing rules if requested		✓		✓		
Exercise of picketing rights		✓			✓	
Determination of what is an essential service						
Determination of disputes in essential service	✓		✓			
Determination of what is a maintenance service						
CHAPTER V – WORKPLACE FORUMS						
If no agreement is achieved on the workplace forum constitution		✓		✓		
If no agree arbitration procedure exists for joint decision-making disputes		✓		✓		
Breach of fiduciary duty arising from change in rules of social benefit schemes					✓	
Disclosure of information to workplace forum		✓		✓		
Interpretation and application of Chapter not dealt with elsewhere		✓		✓		

DISPUTE	Conciliation by Council or CCMA	Conciliation by CCMA only	Arbitration by Council or CCMA	Arbitration by CCMA only	Adjudication by Labour Court	Adjudication by another body
CHAPTER VI – REGISTRATION OF UNIONS AND EMPLOYER ORGANISATIONS						
Appeals against decision of registrar					✓	
CHAPTER VII – DISPUTE RESOLUTION						
Review of arbitration awards of commission					✓	
Failure to comply with a provision of the Act					✓	
Dispute between a member and registered union or employers' organisation over compliance with its constitution					✓	
CHAPTER VIII – UNFAIR DISMISSAL						
Automatically unfair dismissals	✓				✓	
Dismissals for misconduct, incapacity, constructive dismissal or dismissal for unknown reasons	✓		✓			
Dismissal for strikes or operational reasons	✓				✓	
Entitlement to statutory severance pay	✓		✓			

Essential Services

Under section 71(8) of the Labour Relations Act, 1995 (Act No. 66 of 1995), the essential services committee hereby gives notice that –

1. It has designated the following services as essential services:
   - municipal traffic services and policing;
   - municipal health;
   - municipal security;
   - the supply and distribution of water;
   - the security services of the Department of Water Affairs and Forestry;
   - the generation, transmission and distribution of power;
   - fire fighting;
   - the payment of social pensions one month after they fall due;
   - the services required for the functioning of courts;
   - correctional services; and
   - blood transfusion services provided by the South African Blood Transfusion Services.

2. It has designated the following parts of sanitation services as essential services:
   - the maintenance and operation of water-borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system;
   - the maintenance and operation of sewage purification works;
   - the collection of infectious refuse from medical and veterinary hospitals or practices;
   - the collection and disposal of refuse at a disposal site; and
   - the collection of refuse left uncollected for 14 (fourteen) days or longer, including domestic refuse and refuse on public roads and open spaces.

3. It has designated as essential services the following services provided by the private sector which are funded by the public sector:

   - Emergency health services and the provision of emergency health facilities to the community or part thereof;
   - nursing; and
   - medical and paramedical services.

4. It has designated as essential services the following services in support of the services referred to in paragraph 3:

   - Boiler; and
   - water purification.

5. It has designated as essential services the following services provided by nursing homes which are registered as welfare organisations in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), to patients in need of moderate (level 2) and maximum (level 3) care:

   - Emergency health services and the provision of emergency health facilities;
   - nursing; and
   - medical and paramedical services.

6. It has designated as essential services the following services in support of the services referred to in paragraph 5:

   - Physiotherapy;
   - dispensary;
   - catering;
   - laundry;
   - boiler;
   - transport; and
   - security.

7. It has designated as essential services the following services provided by the following civilian personnel in the Department of Defence to support the South African National Defence Force:

- The Secretariat for Defence;
- the Intelligence Division;
- the Finance Division;
- the parachute seamstresses of the South African Army;
- the parachute packing operators of the South African Army;
- the military intelligence functionaries of the South African Army;
- the storemen in the South African Navy;
- the provisioning officers and clerks in the South African Navy;
- the technical personnel in the South African Navy;
- the tugboat personnel in the South African Navy;
- the surveyors in the South African Navy;
- the South African Medical Service;
- those serving in military posts in the South African National Defence Force;
- the cryptographers in the South African National Defence Force; and
- the maintenance services in the South African National Defence Force.

8. The following computer services provided or supported by the Central Computer Service of the Department of State Expenditure are designated as essential services:

- the Persal system;
- the social pension system;
- the hospital systems; and
- the flood control system.

9. The following services in the public sector have been designated as essential services:

- emergency health services and the provision of emergency health facilities to the community or part thereof;
- nursing; and
- medical and paramedical services.

10. The following services which support the services referred to in paragraph 9 have been designated as essential services:

- catering;
- medical records;
- security;
- porter and reception;
- pharmaceutical and dispensary;
- medicine quality control laboratory;
- forensics;
- laundry work;
- clinical engineering;
- hospital engineering;
- waster removal;
- mortuary services; and
- pest control.

11. The following blood transfusion services have been designated as essential services:

- Eastern Province Blood Transfusion Service;
- Western Province Blood Transfusion Service;
- Natal Blood Transfusion Service;
- Northern Blood Transfusion Service; and
- Border Blood Transfusion Service.

Contact Numbers

	TELEPHONE	TELEFAX
Department of Labour (Head Office) Laboria House 215 Schoeman Street Pretoria	(012) 309-4000	(012) 320-2059
Provincial Offices		
Eastern Cape Private Bag X9005, East London, 5200 Laboria Building, 3 Hill Street, East London	(043) 701-3000	(043) 743-9719
Free State P O Box 522, Bloemfontein, 9300 43 National House, Maitland, Bloemfontein	(051) 505-6200	(051) 447-9353
Gauteng North Magisterial Districts of Benoni, Bronkhorstspruit, Cullinan, Krugersdorp, Nigel, Pretoria, Randfontein, Soshanguve 1 and 2, Springs and Wonderboom P O Box 393, Pretoria, 0001 239 Skinner Street, Concillium Building, Pretoria	(012) 309-5000	(012) 309-5061
Gauteng South Magisterial Districts of Alberton, Boksburg, Brakpan, Germiston, Heidelberg, Johannesburg, Kempton Park, Oberholzer, Randburg, Roodepoort, Vanderbijlpark, Vereeniging and Westonaria P O Box 4560, Johannesburg, 2000 18 Rissik Street, Annuity House, Johannesburg	(011) 497-3000	(011) 834-1081
KwaZulu-Natal P O Box 940, Durban 4000 Masonic Grove, Government Building, Durban	(031) 336-1500	(031) 307-6882
Mpumalanga Private Bag X7263, Witbank 1035 Cnr. Hofmeyer and Beatty Avenue, Witbank	(013) 655-8700	(013) 690-2622
Limpopo Private Bag X9368, Polokwane, 0700 42A Schoeman Street, Old Boland Bank, Polokwane	(015) 290-1744	(015) 290-1670
Northern Cape Private Bag X5012, Kimberley, 8300 No. 13 Cnr. Pniel/Compound Streets, Laboria House	(053) 838-1500	(053) 832-4798

	TELEPHONE	TELEFAX
North West Private Bag X2040, Mmabatho Second Floor SEBO Building, Provident House, University Drive, Mmabatho	(018) 387-8100	(018) 384-2745
Western Cape P O Box 872 Cape Town 8000 22 Parade Street, Thomas Boydell Building, Cape Town	(021) 460-5911	(021) 465-7318
Commission for Conciliation, Mediation and Arbitration (CCMA)		
Head Office The National Registrar CCMA House, 20 Anderson Street, Johannesburg Private Bag X94 Marshalltown 2107	(011) 377-6650	(011) 834-7351
Eastern Cape The Registrar 102 Govan Mbeki Avenue, Port Elizabeth 6001 Private Bag X22500 Port Elizabeth 6000	(041) 586-4466	(041) 586-4585
Free State The Registrar CCMA House Cnr. Elizabeth & West Kruger Streets Bloemfontein 9301 Private Bag X20705 Bloemfontein 9300	(051) 505-4400	(051) 448-4468
Gauteng The Registrar CCMA House, 20 Anderson Street, Johannesburg 2001 Private Bag X96 Marshalltown 2107	(011) 377-6600	(011) 377-6658 (011) 377-6804
KwaZulu-Natal The Registrar Garlicks Chambers, 61 Field Street, Durban 4001 Private Bag X54363 Durban 4000	(031) 306-5454	(031) 306-5401
Mpumalanga The Registrar Foschini Centre, Eddie Street, Witbank 1035 Private Bag X7290 Witbank 1035	(013) 656-2800	(013) 656-2885

	TELEPHONE	TELEFAX
North West The Registrar 47-51 Siddle Street, Klerksdorp 2570 Private Bag X5004 Klerksdorp 2571	(018) 464-0700	(018) 462-4126
Northern Cape The Registrar 1A Bean Street, Kimberley 8301 Private Bag X6100 Kimberley 8300	(053) 831-6780	(053) 831-5948
Limpopo The Registrar CCMA House104 Hans van Rensburg Street Polokwane 0700	(015) 297-5010	(015) 297-1649
Western Cape The Registrar 78 Darling Street, Cape Town 8001 Private Bag X9167 Cape Town 8000	(021) 469-0111	(021) 465-7193
NEDLAC	(011) 328-4200	(011) 447-6053
Federations of Employers' Organisations Business South Africa (BSA)	(011) 784-8000	(011) 784-8004
Federation of Unions of South Africa (FEDUSA)	(011) 476-5188	(011) 476-5131
National African Federated Chamber of Commerce and Industry of South Africa (NAFCOC)	(011) 336-0321	(011) 336-0420
South African Chamber of Business (SACOB)	(011) 446-3800	(011) 358-9774
Trade Union Federations Congress of South African Trade Unions (COSATU)	(011) 339-4911	(011) 339-6940
National Council of Trade Unions (NACTU)	(011) 833-1040	(011) 833-1032
Federation of Unions of South Africa (FEDUSA)	(011) 476-5188	(011) 476-5131

Notes