Basic Guide to Unfair Dismissal and Unfair Labour Practices

Every worker is entitled to fair labour practices. There are several types of unfair dismissal and unfair labour practices. Workers may consent to pre-dismissal arbitration.

Application

The Labour Relations Act applies to all employers, workers, trade unions and employers organisations, but does not apply to-

- members of the:
  - National Defence Force;
  - National Intelligence Agency; or

See

- Labour Relations Act

Applies to all workers and employers and aims to advance economic development, social justice, labour peace and the democracy of the workplace.

Dismissal

Every worker has the right not to be unfairly dismissed.

Definition

Dismissal means that

- an employer has ended a job contract with or without notice;
- an employer did not renew a job contract as agreed, or offered to renew it on less favourable terms;
- an employer does not allow a worker to return to work after
  - has taken legal maternity leave;
  - has been absent up to 4 weeks before and up to 8 weeks after the birth;
- an employer, who has dismissed several workers for the same reason, re-employs only some of them;
- a worker ended a job contract with or without notice, because
  - the employer made working circumstances unbearable; or
  - a new employer made working conditions less favourable than the old employer.

Fair Dismissal

Dismissal is fair if-

- the specific needs of a job are not being met;
- a worker has reached retirement age.

Unfair dismissal

Dismissal is unfair if

- a worker intended to or did take part in or supported a strike or protest; or
- a worker refused to do the work of a striking or locked out co-worker, unless his refusal will endanger life or health; or
- a worker is forced to accept a demand; or
- a worker intended to or did take action against an employer by
  - exercising a right; or
  - taking part in proceedings; or
- a worker is pregnant or intends to be pregnant; or
- an employer discriminated against a worker because of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility; or
- an employer cannot prove-
  - a workers misconduct or inability; or
  - that the employers operational needs are valid; or
  - that the dismissal procedure was fair.

Pre-Dismissal Arbitration

With a workers consent, an employer may ask a council, agency or the Commission for Conciliation, Mediation and Arbitration (CCMA) to arbitrate on a worker’s conduct or ability.

An arbitrator may be appointed only after the employer has paid the prescribed fee and the worker has given his written consent.

A worker may represent himself, or be represented by:

- a co-worker;
- a director or worker (if a juristic person);
- any member of the workers registered trade union; or
- a lawyer as agreed to by the parties.

Unfair Labour Practice
Unfair labour practice means any failure to act or unfair act of an employer towards a worker concerning:
- promotion, demotion, trial periods, training or benefits;
- suspending a worker or disciplinary action;
- refusing to re-employ a worker, as agreed; and
- an employer makes circumstances difficult for a worker who was forced to make a protected disclosure.

**Disputes**

**Procedure**

Unfairly dismissed or treated workers may refer disputes for conciliation in writing to:
- a statutory or bargaining council; or
- the CCMA.

Referrals must be made within:
- 30 days of a dismissal date or an employers decision to dismiss;
- 90 days of the date of an unfair labour act; or
- 90 days of the date when a worker became aware of an unfair act.

A dispute may be referred after the above periods if a worker can show good cause.

The employer must receive a copy of the referral.

**Unresolved Disputes**

If a dispute remains unresolved:
- a council or the CCMA must arbitrate it, if a worker requests it, if
  - a worker alleges that the dispute is about his conduct or capacity;
  - a worker alleges that his employer made working conditions intolerable or less favourable after a transfer;
  - a worker does not know why he was dismissed;
  - the dispute is about an unfair labour practice;
- a worker may refer a dispute to the Labour Court, if he says the reason is
  - automatically unfair;
  - based on operational needs;
  - the worker refused to join a trade union;
  - the worker was refused trade union membership;
  - the worker was expelled from a trade union.

A council or the CCMA must arbitrate immediately if:
- the dismissal is linked to a workers probation; or
- any other dispute where no-one objects to it being settled in terms of this subsection.

**Related Links**

- Basic Guide to Bargaining Councils
  Under the Labour Relations Act, bargaining councils conclude agreements, resolve labour disputes, make proposals on labour policies, etc.
- Basic Guide to Statutory Councils
  Statutory councils may be formed by registered trade unions and employers' organizations to manage labour disputes.
- The Commission for Conciliation, Mediation and Arbitration (CCMA)
  Visit the website of the Commission for Conciliation, Mediation and Arbitration (CCMA)