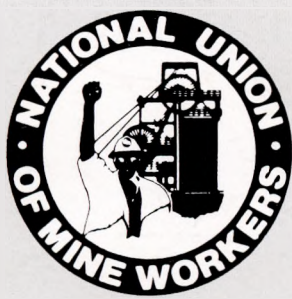


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**NUM GUIDE  
TO THE  
LABOUR RELATIONS  
ACT OF 1995**

This booklet should:

1. Provide a framework and guide to the L.R.A.
2. Create a better understanding of the L.R.A.
3. Encourage worker participation in workplace activities.



Abbreviations used:

C.C.M.A. – Commission for Conciliation, Mediation and Arbitration

I.L.O. – International Labour Organisation

NEDLAC – National Economic Development and Labour Council

# INDEX

## CHAPTER ONE

Purpose, application and interpretation.....3

## CHAPTER TWO

Freedom of association and general protections .....3

## CHAPTER THREE

Collective bargaining .....4-8

## CHAPTER FOUR

Strikes and lock-outs.....8-13

## CHAPTER FIVE

Workplace forums (WPF).....13-16

## CHAPTER SIX

Trade unions and employers' organisations.....17

## CHAPTER SEVEN

Dispute resolution.....18-19

## CHAPTER EIGHT

Unfair dismissals.....20-23

## CHAPTER NINE

General provisions .....23-24

# CHAPTER ONE

## PURPOSE, APPLICATION AND INTERPRETATION

### *WHAT IS THE PURPOSE OF THIS ACT?*

- The advancement and development of the economy
- The promotion of justice in the workplace
- The promotion of industrial peace

### *TO WHOM DOES IT APPLY?*

- To everybody except : National Intelligence  
Defence Force  
Secret Service

# CHAPTER TWO

## FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS

Every employer and employee have the right to:

- form and join unions or employers' organisations
- and participate in their activities
- and stand for elections within that organisation

### *HOW DOES THE ACT PROTECT THAT RIGHT?*

The LRS protects against any form of discrimination or victimisation of the employer or employee for joining or choosing not to join a union or organisation.

# CHAPTER THREE

## COLLECTIVE BARGAINING

### *ORGANISATIONAL RIGHTS*

#### *WHAT RIGHTS DO TRADE UNIONS HAVE?*

- to be represented within the workplace
- to have access to the workplace
- to have stop orders administered by the company
- to hold meetings and elections in the workplace during agreed upon hours

#### *But note:*

- These only apply to the majority trade union.
- They can be regulated by a collective agreement.
- They minimise the formation of new trade unions.

#### *HOW CAN THESE RIGHTS BE EXERCISED?*

Any registered trade union must notify an employer that it wishes to exercise any of the above rights, and it must show that it represents the majority.

The employer and registered trade union have the right to agree to the threshold of representativeness.

#### *SUBSCRIPTION DEDUCTIONS*

An employee belonging to a trade union may authorise his/her employer to deduct a subscription fee from his/her wages.

To stop the authorisation of this deduction requires one month's written notice to both the union and the employer.

The employer must give the trade union all the names, amounts and dates of the people whose wages are being deducted from every month.

### ***WHAT RIGHTS DOES A SHAFT STEWARD OR A UNION REPRESENTATIVE HAVE?***

- to represent and assist an employee in disputes at the request of the employee
- to monitor employers compliance with the LRA and any other law regulating the workplace
- to report any contraventions to the LRA by the employer
- to perform any other functions agreed upon by the union and employer
- to have reasonable leave during working hours for union duties but union and employer must agree on:
  - the number of days of leave
  - the number of days of paid leave
  - conditions of leave

### ***WHAT RIGHTS DO WE HAVE TO THE DISCLOSURE OF INFORMATION?***

The trade union representative (shaft stewards) has the right of access to all the information that is relevant to the performance of his/her duties.

Some confidential information may be withheld.

Disputes arising about disclosures to be referred to the CCMA.

## **COLLECTIVE AGREEMENTS**

### **WHAT IS A COLLECTIVE AGREEMENT?**

- It is an agreement, which binds all parties to the agreement including trade unions and employer's organisations.
- It can also bind non-members of the union if they are identified in the agreement and the agreement expressly binds them.
- If disputes about the collective agreement arise they should be referred to the CCMA.
- A collective agreement may contain provisions for agency shop or closed shop. The difference between the two is outlined below.

<b>Agency Shop Agreement</b>	<b>Closed Shop Agreement</b>
<ul style="list-style-type: none"><li>■ Non union members pay a union bargaining fee.</li><li>■ New law legalises agency shop, if majority union agrees.</li><li>■ Aim to prevent non union members who don't pay subs from benefiting from union negotiations.</li></ul>	<ul style="list-style-type: none"><li>■ All workers must be members of a trade union of their choice.</li><li>■ New law allows closed shop.</li><li>■ Aim to allow closed shop, but democratise it.</li></ul>

## **BARGAINING COUNCILS**

### ***WHAT IS A BARGAINING COUNCIL?***

A bargaining council is a body that engages in bargaining for the industry. It is a type of centralised bargaining structure.

A bargaining council may be established by unions and employers' organisations.

It must have a constitution and be registered.

The constitution must:

- provide for rules of representation
- cater for representation of small and medium enterprises
- provide rules for meetings and decision making, including rules governing committees and committee work
- provide a method for dispute resolution
- stipulate purposes and procedures for the use of their funds

### ***WHAT DOES A BARGAINING COUNCIL DO?***

- It concludes collective agreements and enforces them
- It prevents and resolves labour disputes
- It promotes education and training
- It runs various benefit funds
- It develops proposals on industry for NEDLAC
- It determines what must be bargained at industry level and what at workplace level.



### ***WHAT IS A STATUTORY COUNCIL?***

A statutory council is a bargaining structure for industrial sectors.

A registered trade union or an employers' organisation with 30% employees in a sector or area may apply for the establishment of this body.

### ***WHAT DOES A STATUTORY COUNCIL DO?***

- Promote and establish training and education
- promote and establish pension and other benefit schemes
- can perform dispute resolution functions
- can expand its functions
- can resolve to become a bargaining council
- a statutory council cannot bargain on wages and working conditions.

## **CHAPTER FOUR**

### **STRIKES AND LOCK-OUTS**

#### ***WHAT IS A STRIKE?***

A strike is the partial or complete refusal to work by people who are or have been employed by the same employer or different employers for the purpose of resolving a dispute in respect of any matter that involves the employee and the employer. The definition of a strike includes: go slows, sit-ins, work to rule, overtime ban and the refusal to do Sunday and holiday work.

## ***WHAT IS A LOCK-OUT?***

A lock-out is the exclusion by an employer of employees from the employer's workplace, for the purpose of pushing the employees to accept a demand in respect of any matter that involves the employee and the employer.

## ***WHAT DOES THE ACT SAY ABOUT THE RIGHT TO STRIKE OR LOCK-OUT?***

Every employer has the right to the recourse of a lock-out and that every employee has the right to strike if:

- the dispute has already been referred to the CCMA and the dispute is still unresolved or 30 days have passed since being referred to the CCMA, and following that,
- 48 hours written notice has been given to the party against whom the action is to be taken.
- 7 days' notice has been given to the employer if the State is the employer.

- No person may take part in a strike or a lock-out if:-
- (a) a collective agreement has been signed not to strike or lock-out about the issue in dispute
  - (b) an agreement requires the dispute to be sent to arbitration.
  - (c) The dispute involves essential services or maintenance services
  - (d) there is a determination made in terms of the Wage Act or an arbitration award or a collective agreement regulating the dispute.

Procedural strikers cannot be dismissed, replaced or sued for damages. An employer is not required to compensate strikers for the period of the protected strike but the employer cannot stop food rations or accommodation if requested by the union.

Procedural strikers can be dismissed for any unlawful conduct during a protected strike.

If economic problems arise during or as a result of the strike, retrenchments can occur. Please refer to rules on dismissal due to operational requirements.

## **SYMPATHY STRIKES (SECONDARY STRIKES)**

### ***WHAT IS A SECONDARY STRIKE?***

■ A secondary strike is an action taken in support of a strike by other employees against their own employer.

No person may take part in a secondary strike unless:-

(a) the primary strike is a protected strike

(b) a notice of seven days has been given to the secondary employer.

(c) there is a relationship between the first and second employer.

■ A secondary employer may apply to the Labour Court for an interdict to stop or limit the strike.

## **PROTEST ACTION**

### ***WHAT IS A PROTEST ACTION?***

A protest action is the partial or complete refusal to work for the purpose of promoting or defending the socio-economic interests of workers. These actions are also known as sympathy strikes and stay-aways.

- Every employee not in essential or maintenance services has the right to take part in protest action if:-
  - (a) the protest action has been called by a registered trade union or federation of trade unions
  - (b) the trade union has notified NEDLAC stating:
    - (1) their reasons and duration for the protest action;
    - (2) the nature of the protest action 14 days before the commencement of the protest action.
- The Labour Court can grant an order restraining participation in protest action where procedure was not followed.

***WHAT IS AN UNPROCEDURAL STRIKE OR LOCK-OUT?***

An unprocedural strike is an action that is not in compliance with the LRA, and is thereby deemed unlawful.

In the case of an unlawful strike or lock-out the Labour Court can:-

- grant an interdict or a restraining order forbidding participation in the strike or the lock-out
- order the payment of compensation for any loss suffered during or as a result of the strike or lock-out, after considering the following:-
  - attempts to comply with procedures
  - whether the strike or lock-out was premeditated
  - whether the strike or lock-out was a result of unjustified conduct by the other party
  - whether there was a court order
  - interests of collective bargaining

- duration of the strike or lock-out
  - financial position of the trade union or the employers' organisation that had the strike or lock-out.
- Participation in an illegal strike can lead to dismissal. To determine whether or not the dismissal is fair, reference must be made to the Code of Good Practice, Schedule 8.

### ***PICKETING***

- Peaceful picketing is allowed in support of any strike or opposition to any lock-out in any public place outside company premises, or inside company premises with company permission.
- All parties involved must agree on the rules for the picket. If there is no agreement then the CCMA must set the rules.
- The rules set by the CCMA may allow for picketing by employees on their employer's premises if the CCMA believes that the permission of the employer was unreasonably withheld.

### **ESSENTIAL SERVICES AND MAINTENANCE SERVICES**

- An Essential Services Committee must be appointed by NEDLAC and a Minister to investigate whether or not a service is an essential service or a maintenance service.
- Anyone working in Essential Services or Maintenance Services may not take part in a strike or protest.
- Disputes in Essential and Maintenance Services are resolved by arbitration.

### ***WHAT IS AN ESSENTIAL SERVICE?***

An essential service is a service, the interruption of which endangers the life, personal safety or health of the whole or any part of the population.

### ***WHAT IS A MAINTENANCE SERVICE?***

A maintenance service is a service, the interruption of which has the effect of material destruction to any working area, plant or machinery. Maintenance services can become essential over time in some situations.

### ***SCAB LABOUR***

An employer can hire scab (replacement) labour during a legal strike but only for the duration of the strike.

An employer cannot hire scab labour in a maintenance service to continue or maintain production during a protected strike.

## **CHAPTER FIVE**

### **WORKPLACE FORUMS (WPF)**

#### ***WHAT IS A WORKPLACE FORUM?***

It is a meeting consisting of the employer(s) and employees at the workplace.

#### ***WHO CAN ESTABLISH A WORKPLACE FORUM?***

- Must be triggered by a majority union.
- Can only be established where an employer employs more than 100 employees at workplace.

- A representative trade union must initiate the process of establishing a workplace forum by reaching collective agreement with the employer by applying to the CCMA for permission to establish a workplace forum.
- The activities of a workplace forum are regulated by a constitution which is also formed by agreement.
- A workplace forum must promote:-
  - (a) the interests of all the employees, both union and non-union, excluding senior management
  - (b) greater worker participation in joint decision-making.

It is the employers obligation to

- meet the workplace forum regularly
- provide financial and employment information
- consult on any issues affecting employees

<b>Bargaining</b>	<b>Co-determination</b>
<ul style="list-style-type: none"> <li>■ Happens between union representatives and company</li> <li>■ Can lead to conflict and result in industrial action</li> <li>■ Focus on distribution i.e. increase of distribution</li> </ul>	<ul style="list-style-type: none"> <li>■ Happens between workplace forum and employer</li> <li>■ Aims to be co-operative and reduce need for industrial action</li> <li>■ Focus on improving output i.e. increase productivity</li> </ul>

## ***HOW DOES A WPF FUNCTION***

They encourage worker participation on 3 levels

### ***(1) INFORMATION***

The workplace forum has a right to the disclosures of all relevant information to enable the forum to do its job.

### ***(2) CONSULTATION***

■ The Act requires the deliberation of options discussion before the implementation of certain policies. Unless there is a collective agreement on these issues the following are items for consultation:

- workplace restructuring; new technology
- work organisation
- job grading
- plant closures, both partial and total
- retrenchments
- impact of mergers or sale of company
- exemptions from laws
- new productions and export promotion
- education and training
- bonuses and merit increases

### ***(3) JOINT DECISION-MAKING***

■ Joint decision-making is to be regulated by a collective agreement.

■ The items that are subject to joint decision making include:

- disciplinary codes and procedures
- matters relating to conduct of an employee which is not related to the work performance of that employee

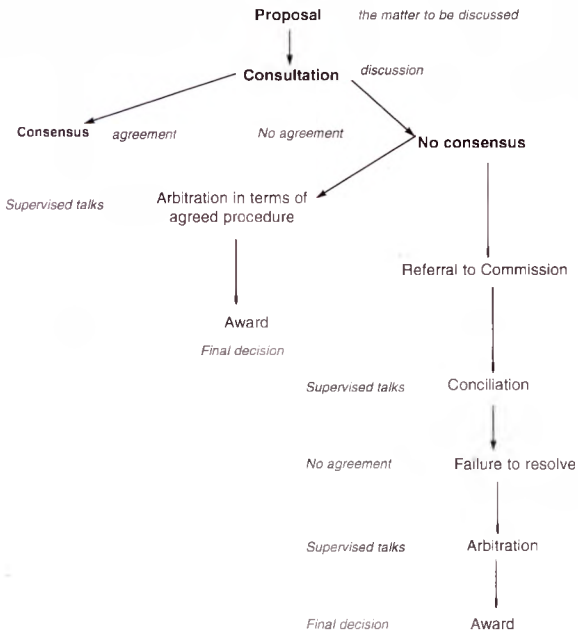


- affirmative action
- changes to rules of provident fund and similar funds

## DISPUTES THAT ARISE FROM WORKPLACE FORUMS

Any disputes must be referred to a council or the CCMA.

### Flow diagram for workplace



Ways through which a work place forum could work or function.

# CHAPTER SIX

## TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

### *REGISTRATION AND REGULATION OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS*

- Any trade union or employers' organisation may apply for registration
- Registrar must approve the union's constitution
- Union must be independent
- The registered trade union or employers' organisation must keep accounting and auditing books and make them available to members for inspection.
- The registered trade union or employers' organisation has a duty to keep records of members, minutes and ballot papers.

### *REGULATION OF FEDERATIONS OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS*

- Any federation of trade unions or employers' organisations must provide proper documentation to the Registrar on time.
- Any federation of trade unions or employers' organisations wishing to cancel their registration must notify the Registrar.

# CHAPTER SEVEN

## DISPUTE RESOLUTION

### *THE ESTABLISHMENT, STRUCTURE AND FUNCTION OF THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION*

The CCMA is established as an independent body. It has jurisdiction in all provinces of the Republic of South Africa.

#### Functions of the CCMA

- to resolve any disputes by conciliation and if they are not resolved by arbitration
- assist in the formation of workplace forums.
- organise, oversee, check any election or ballot of a registered trade union or employers' organisation if asked to do so.
- draft codes of good conduct.

#### *ACCREDITING AND SUBSIDISING COUNCILS*

- Any council may apply to the CCMA for accreditation to conciliate or arbitrate.
- The council or agency may apply for subsidy to the Commission for assisting or performing in any function which it has been accredited for.

#### *DISPUTE RESOLUTION UNDER THE COMMISSION*

- A dispute must be resolved through conciliation with the help of a Commissioner.

- If the dispute is still not resolved, the Commissioner may then use arbitration.
- For Essential and Maintenance Services, arbitration is the only dispute resolution mechanism available.
- For dismissal the CCMA has 30 days to conciliate or mediate, and 14 days to arbitrate.
- Arbitration awards issued by the Commissioner are final and binding to the parties involved unless it is an advisory arbitration award.

### ***LABOUR COURT***

The Labour Court is a court of law with supreme court jurisdiction.

Judges are appointed by the State President, headed by a Judge President, Deputy Judge President, and will have several judges.

The Labour Court has jurisdiction in all the provinces of the Republic of South Africa.

All proceedings in the Labour Court are to be carried out in open court, where the public is allowed to attend.

### ***LABOUR APPEAL COURT***

The Labour Appeal Court is the court of final appeal. It is comprised of 3 Supreme Labour court judges.

It has jurisdiction in all the provinces of the Republic of South Africa. All its proceedings are to be carried out in open court. The judgements made in the Labour Appeal Court are binding on the Labour Court.

# CHAPTER EIGHT

## *UNFAIR DISMISSALS*

Every employee has the right not to be unfairly dismissed.

### *WHAT IS DISMISSAL?*

Dismissal is the termination of employment, failure to recommence or renew the employment relationship or constructive termination.

### *WHAT IS UNFAIR DISMISSAL?*

Unfair dismissal is dismissal without a good reason or a fair procedure which the employer must prove.

### *WHAT IS AN AUTOMATICALLY UNFAIR DISMISSAL?*

A dismissal is automatically unfair if the reason for the dismissal is

- for participating in a protected strike or protest action
- for refusing to do the job of a legally striking or locked-out worker
- to compel employees to accept a demand related to contested terrain between management and workers
- dismissal on a discriminatory basis, e.g. race, colour, age, pregnancy etc. (But note that discrimination is okay if it is an inherent requirement of the job, or in line with normal or agreed retirement age).

## *RETRENCHMENTS*

Dismissals based on operational requirements are allowed for economic, technological, structural or similar needs. However, the employer must consult one or all of the following:-

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

In the consultation, an agreement must be reached on appropriate measures to avoid, minimise, change the time or mitigate the adverse effects of the dismissal.

They must also consult on the method for selecting employees to be affected and the severance pay for dismissed employees.

### ***DISCLOSURE OR INFORMATION REGARDING RETRENCHMENTS***

The employer must disclose the following information to the consulting parties (in accordance with LRA Section 16.):-

- reasons for the proposed dismissals
- alternatives considered by the employee before proposing dismissals and the reasons for rejecting those alternatives, if they are rejected
- the number of employees likely to be affected and their job categories
- the proposed method for selecting which employees to dismiss
- time frame for dismissals
- the proposed severance pay
- the proposed assistance to the employees to be dismissed
- the possibility of future re-employment.

## ***DISPUTES***

If there are any disputes about the fairness of a dismissal they must be referred to a council, or the CCMA.

## ***REMEDIES FOR UNFAIR DISMISSAL***

The following remedies can be sought

### **(i) REINSTATEMENT OR RE-EMPLOYMENT**

This must be granted unless the employee does not wish to be reinstated or re-employed, or the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable, or it is not reasonably practicable for the employer to reinstate or re-employ the employee.

### **(ii) COMPENSATION**

- The compensation awarded to an employee must be just and equitable in all the circumstances but not more than the equivalent money calculated at the employee's rate of payment on the date of dismissal.
- Compensation is awarded in addition to any other amount of money that the employee is entitled to.
- Compensation will not be awarded for unreasonable delays caused by the employee.

### **(iii) SEVERANCE PAY**

An employer must pay severance pay to the employee who is dismissed for reasons based on the employer's operational requirements. Severance pay must be equal to at least one week's payment for each completed year of continuous service with that

employer, unless the employer has been exempted from this requirement.

- An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer will forfeit severance pay.
- An employee may not be transferred from one employer to another without the employee's consent unless the whole or any part of the business is transferred.

### ***SCHEDULE 8: CODE OF GOOD PRACTICE***

The Code of Good Practice (Schedule 8) regulates unfair dismissals for misconduct, incapacity, including poor work performance and poor health. It also identifies fair procedure.

The Code of Good Practice provides guidelines, but the emphasis remains with the authority of collective agreements, while imposing the duty of employer and employee to treat each other fairly.

## **CHAPTER NINE**

### **GENERAL PROVISIONS**

- A temporarily employed person may not contravene any collective agreements concluded in a bargaining council or any binding arbitration award.
- Contracts of employment may not disregard or ignore collective agreements or arbitration awards.



- All records concerning the company and the employees must be kept by the employer.
- In any conflicts between the Act and any laws, save for the Constitution of the State, this Act will prevail.

### ***SELECTIVE DEFINITIONS FROM SECTION 213***

**“employee”** means:-

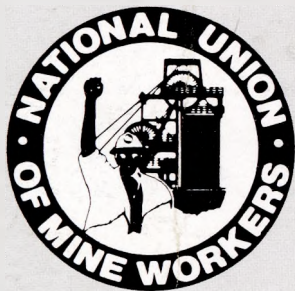
- (a) any person, excluding an independent contractor, who works for another person or the State and who receives or is entitled to receive any money; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have relating meanings to that of “employee”.

**“issue in dispute”**, in relation to a strike or a lock-out, means the demand, the grievance or the dispute that forms the subject matter of the strike or lock-out.

**“operational requirements”** means requirements based on the economic, technological, structural or similar needs of an employee.

**“working hours”** means those hours during which an employee is obliged to work.

**“work place”** in all other instances means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reasons of their size, function or organisation, the place or places where employees work in connection with each independent operation, constitutes the workplace for that operation.



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