EMPLOYMENT

STRIKE GUIDELINE

CDH
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All employees (acting in concert with other employees) have the right to strike

STRIKE: FAQS

WHAT IS A STRIKE?

The Labour Relations Act, No 66 of 1995 (LRA) defines a strike as "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory"

A STRIKE CAN TAKE THE FORM OF

- A partial or complete refusal to work
- A 'go slow' where employees are working slowly to put pressure on an employer to comply with a demand
- A 'grasshopper' strike. This happens when the employees go on intermittent work stoppages about the same demand (ie strike, return to work, strike again)

but always in conjunction with the defined purpose of attempting to resolve a mutual interest issue existing between the parties. The disgruntled employees will normally express the purpose of a withholding of work in some form of a demand made to the employer.

DOES A WORK STOPPAGE CONSTITUTE A STRIKE?

A work stoppage is different to a strike.

The difference between a work stoppage and a strike is that there is no demand made by the participants in a work stoppage, the participants simply stop working.

NOTE: The distinction between a work stoppage and a strike is an important one as it has an impact on the types of remedies available to the employer when such conduct occurs.

WHO MAY GO ON STRIKE?

All employees (acting in concert with other employees) have the right to strike. An individual employee cannot strike on his or her own. The LRA, however, sets out certain limitations and requirements that must be complied with for a strike to be protected.

All employees of an employer may associate themselves with a protected strike, even if they are not members of the trade union initiating the dispute and declaring the strike.

NOTE: The employer must identify and record which employees are on strike as this information will become important if the employer approaches the Court to interdict an unprotected or violent strike.

WHAT IS A PROTECTED STRIKE?

A protected strike is a strike that complies with the requirements in the LRA, where the subject matter of the strike is legitimate and procedural requirements are complied with prior to the strike commencing.

If a strike is protected, no adverse consequences may result for employees who participate in protected strike action. Those employees are indemnified from claims for breach of contract or delict and for damages suffered by the employer pursuant to a protected strike. Importantly, employees are protected from dismissal for participating in a protected strike.

WHAT PROCEDURAL REQUIREMENTS MUST BE COMPLIED WITH FOR A STRIKE TO BE PROTECTED?

Referral

The issue in dispute must be referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) or Bargaining Council

30 Days/ Certificate

Before a strike notice is issued:

A. 30 days must lapse from when the dispute was received by the CCMA or Bargaining Council; or

B. A certificate must be issued stating that the dispute remains unresolved

(The first to occur of A or B)

Strike notice

A written notice stipulating the commencement of the strike must be issued to the employer at least 48 hours before the strike commences

WHY MUST THE ISSUE IN DISPUTE BE REFERRED TO CONCILIATION BEFORE THE STRIKE?

A code of good practice on collective bargaining, industrial action and picketing (the Code) was issued in December 2018. The Code is aimed at promoting orderly collective bargaining, effective and speedy resolution of disputes, peaceful strikes and lockouts and the prevention of prolonged violent industrial action.

The Code sets out two reasons why issues in dispute must be referred to conciliation. Firstly to try and have the dispute resolved without resorting to industrial action and secondly, to record the demands and agree on picketing rules, lines of communication and the need for minimum services.

WHAT HAPPENS IF A STRIKE DOES NOT COMMENCE ON THE DATE AND TIME STIPULATED IN THE WRITTEN NOTICE?

The trade union should issue another notice stating the date and time of the strike if it intends to strike. If no such notice is issued it may lead to the inference that the trade union has waived or abandoned its right to strike.

WHAT DISPUTES CAN EMPLOYEES STRIKE OVER?

Although the right to strike is a constitutional right, s65 of the LRA provides limitations on the right to strike. In terms of this section, employees are prohibited from striking if they are:

- "Bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute"
- "Bound by an agreement that requires the issue in dispute to be referred to arbitration"
- Engaged in an essential or maintenance service

In addition, s65 prohibits employees from striking over an issue in dispute that can be referred to arbitration or the Labour Court in terms of the LRA or other employment law. The LRA distinguishes between disputes that can be resolved by arbitration or adjudication (rights disputes) and disputes that can be resolved by the exercise of economic power (interest disputes). Employees may not strike over rights disputes.

NOTE: The limitations in s65 are equally applicable to lock-outs.

WHAT IS THE DIFFERENCE BETWEEN A RIGHTS DISPUTE AND INTEREST DISPUTES?

The Code identifies the differences and the importance of the differences between right disputes and interest disputes.

IN TERMS OF THE CODE:

A rights dispute is a dispute that relates to existing rights and that the LRA or other employment laws require be resolved by adjudication or arbitration. An example is a dispute relating to an unfair dismissal or where an employer pays an employee less than the amount set out in employment law or an employment contract.

An interest dispute is a dispute to create new rights and can form the subject of a protected strike or lockout. An example of such a dispute is a dispute about increase in wages or a change to working hours.

WHAT ARE EXAMPLES OF INTEREST DISPUTES?

The Code sets out the following examples of interest disputes:

- disputes about what the next years wages will be
- disputes about introducing new shift systems
- disputes about working hours or higher rates of overtime pay

CAN EMPLOYEES STRIKE OVER AN UNLAWFUL DEMAND?

No. An example of an unlawful demand is a demand that the employer dismiss a manager or that employees work more overtime than permitted in law.

CAN AN EMPLOYER DISMISS EMPLOYEES FOR PARTICIPATING IN A PROTECTED STRIKE?

No. A dismissal in such circumstances would constitute an automatically unfair dismissal. However, misconduct during a protected strike may be the subject of appropriate disciplinary action.

WHAT STEPS CAN AN EMPLOYER TAKE IF THE PROTECTED STRIKE ACTION BECOMES VIOLENT?

Amendments have been introduced to the LRA to deal with lengthy violent strike action. The amendments permit the director of the CCMA to establish an advisory arbitration panel. Employers can apply to the director to establish an advisory arbitration panel. Employers can also approach the Labour Court to interdict unlawful behaviour.

The employer may also institute disciplinary action against the employees who are acting unlawfully. In terms of the amendments to the LRA, the Labour Court may also order the director of the CCMA to establish an advisory arbitration panel.

WHAT ARE THE ESSENCE OF THE AMENDMENTS TO THE LRA RELATING TO THE ESTABLISHMENT OF AN ADVISORY ARBITRATION PANEL?

The amendments permit the director of the CCMA to establish an advisory arbitration panel. The circumstances of the strike or lockout will be considered by the panel and an advisory award will be established aimed at helping the parties resolve the dispute. The award will, among others, set out recommendations for the resolution of the dispute and the parties will have seven days to accept or reject the award. The award is binding on parties who accept it or persons to whom it has been extended to by the Minister.

WHEN WILL AN ADVISORY ARBITRATION PANEL BE ESTABLISHED?

The director must appoint an advisory arbitration panel if ordered to do so by the Labour Court or if the parties to the dispute agree to the panel being established.

The director may also appoint an advisory arbitration panel on his/her own accord or on application by a party to the dispute. If a party to the dispute applies for an advisory arbitration panel to be established or the Minister directs that a panel be established, before establishing the panel, the director must have grounds to believe one or more of the listed circumstances exist:

(i) "The strike or lockout is no longer functional to collective bargaining in that it has continued for a protracted period of time and no resolution of the dispute appears to be imminent;

(ii) there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the strike or lockout through the threat or use of violence or the threat of or damage to property; or

(iii) the strike or lockout causes or has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for the normal social and economic functioning of the community or society."

WHEN WILL THE LABOUR COURT ORDER THE DIRECTOR TO ESTABLISH AN ADVISORY ARBITRATION PANEL?

The Labour Court will order the director to establish a panel if there is an application to the Labour Court by a person or association materially affected by the circumstances in (ii) or (iii) above and the Labour Court considers that the circumstances in (ii) and (iii) exist.

WHO IS APPOINTED TO SIT ON THE ADVISORY ARBITRATION PANEL?

A senior commissioner will be appointed as the chairperson, and two assessors (one appointed by the employer and the other by the trade union).

WHAT HAPPENS IF THE EMPLOYER OR THE TRADE UNION DOES NOT APPOINT AN ASSESSOR?

The director must appoint an assessor from lists provided by NEDLAC.

WHAT IF THE EMPLOYER OR TRADE UNION REFUSES TO PARTICIPATE IN THE PROCEEDINGS OF THE PANEL?

The director is required to appoint a person with the requisite expertise to represent the interests of that party refusing or failing to participate in the proceedings.

DOES THE APPOINTMENT OF THE PANEL INTERRUPT OR SUSPEND THE RIGHT TO STRIKE OR LOCKOUT?

No.

WHAT WILL AN AWARD SET OUT?

A report on factual findings, recommendations to resolve the dispute, motivations as to why the recommendations should be accepted, the seven-day period within which the parties must either accept or reject the award.

CAN A PARTY REJECT THE AWARD?

Yes, but before doing so the trade union or employer's organisation must in accordance with its constitution, consult with its members. Any rejection is required to be motivated.

WHAT IF A PARTY DOES NOT ACCEPT OR REJECT THE AWARD WITHIN THE PRESCRIBED TIME PERIOD?

If a party fails to accept or reject the award within seven days, the party is deemed to have accepted the award.

IS THE AWARD BINDING AND WHO DOES IT BIND?

The award will be binding on the party and its members who accepted the award or who are deemed to have accepted the award. If the award is extended by the Minister in terms of s32 of the LRA it will be binding on persons who are not members of the parties to the council or on persons who have rejected the award.

QUESTIONS FOR CONSIDERATION:

CAN A PROTECTED STRIKE LOSE THAT STATUS WHERE THE VIOLENCE IS EXTREME AND UNCONTROLLABLE?

Despite attempts to interdict a protected strike on account of violence and declare the strike unprotected, the Labour Court is yet to make such a ruling. In previous judgements, the Labour Court has stated that it is possible to obtain this form of relief, but that the court should not easily adopt an approach which so severely limits the constitutional right to strike.

The test currently suggested by the Labour Court in order to succesfully declare a protected strike as unprotected, is that the nature and degree of the strike violence must be such that the strike is no longer functional to collective bargaining and that it no longer supports the legitimate purpose of collective bargaining.

While this relief has in theory been mentioned by the Labour Court as being possible, it is yet to grant such an order and/or set out guidelines as to what degree of violence it considers sufficient for such an order.

CAN AN EMPLOYER DISMISS EMPLOYEES AS A RESULT OF OPERATIONAL REQUIREMENTS FLOWING FROM A PROTECTED STRIKE?

Although employees are protected from dismissal for participating in protected strike action, the LRA does not preclude employers from dismissing employees based on operational requirements. However, in circumstances where the intention of a strike is to put financial pressure on an employer's business, an employer will have to prove that the main reason for the dismissal was the operational requirements of the employer and did not relate to employees' participation in the protected strike and that the reason for the dismissal and procedure followed was fair. The employer will also have to show that it considered alternatives to retrenchment and paid attention to letting the outcome of the strike be determined by the normal exercise of economic power.

WHAT REMEDIES ARE AVAILABLE TO AN EMPLOYER IF STRIKE ACTION IS UNPROTECTED?

TIPS ON EVIDENCE IN SUPPORT OF AN INTERDICT OR DISCIPLINARY ACTION RELATING TO VIOLENCE, INTIMIDATION OR DAMAGE TO PROPERTY:

- Keep a strike diary detailing all incidents relating to the strike including incidents of violence, intimidation and damage to property
- Obtain written and signed statements of witnesses detailing violence, intimidation and damage to property
- Obtain clear photographic and video evidence
- Keep evidence where the trade union was informed of the violence, intimidation and/or damage to property

Unprotected strike action may be interdicted by the Labour Court on application. The LRA provides for an expedited process in such an event. Employers may also take disciplinary action against employees for participating in unprotected strike action.

The Labour Court may also order the payment of compensation for loss arising from the unprotected strike after having regard to a number of factors, including the "financial position of the employer, trade union or employees".

IF A BALLOT IS NOT CONDUCTED WILL THE STRIKE BE UNPROTECTED?

Trade unions and employer organisations who apply for registration must have adopted a constitution meeting the requirements in LRA. One of the requirements is that the constitution must provide that before calling a strike or lock-out, the trade union or employer's organisation must conduct a ballot of members in respect of whom it intends to call the strike or lock-out. The LRA has been amended to clarify that a ballot means any system of voting by members that is recorded and secret. The LRA now also requires every registered trade union and employer's organisation to keep the ballot papers or any documentary or electronic record of the ballot for a period of three years from the date of every ballot.

In *Mahle BEHR SA (Pty) Ltd v NUMSA and Others*; *FOSKOR (Pty) Ltd v NUMSA and Others* (2019) 40 ILJ 1814 (LC), the Labour Court held that the language of the amendments to s95(5)(p) of the Labour Relations Act are peremptory and accordingly, trade unions and employer oraganisations must engage in a secret ballot prior to embarking on strike action or a lock-out.

Therefore trade unions and employer organisations must comply with the balloting provisions of their respective constitutions in order to engage in a protected strike.

Accordingly a strike or lock-out may be interdicted on the basis that a trade union or employer organisation has failed to conduct and record a secret ballot.

Section 19 of the Amendment Act that came into operation on 1 January 2019 provides that if there is non-compliance with the requirement to have a provision in its constitution to hold a ballot, it must nevertheless hold a secret ballot. In the absence of a secret ballot under those circumstances, the strike may be interdicted.

CAN AN EMPLOYER DISMISS AN EMPLOYEE FOR PARTICIPATING IN UNPROTECTED STRIKE ACTION?

Although participation in an unprotected strike constitutes misconduct, dismissal may not necessarily be the appropriate remedy. The Code of Good Practice: Dismissal sets out various considerations when determining the fairness of the dismissals. These considerations include whether "the strike was in response to unjustified conduct by the employer."

CAN EMPLOYERS REWARD NON-STRIKING EMPLOYEES FOR WORK DONE DURING A PROTECTED STRIKE?

No, the Labour Court has recently reaffirmed the position that the rewarding of non-striking employees for work done during a protected strike, such as additional payments, amounts to unfair discrimination against striking employees for lawfully electing to participate in protected strike action.

IS AN EMPLOYER REQUIRED TO PAY EMPLOYEES DURING A STRIKE?

No. The principle of "no work no pay" applies.

Should an employer provide accommodation or meals to employees in the ordinary course of employment, the employer is entitled to suspend such services at the commencement of the strike. However, if the employees or their trade union specifically request a continuation thereof, these services should be continued, with the proviso that the employer can make the appropriate deductions, if it has consent, once the strike is over, or it would have to sue for such amounts.

CAN EMPLOYEES BE HELD IN CONTEMPT OF COURT FOR DISOBEYING A LABOUR COURT INTERDICT ORDER?

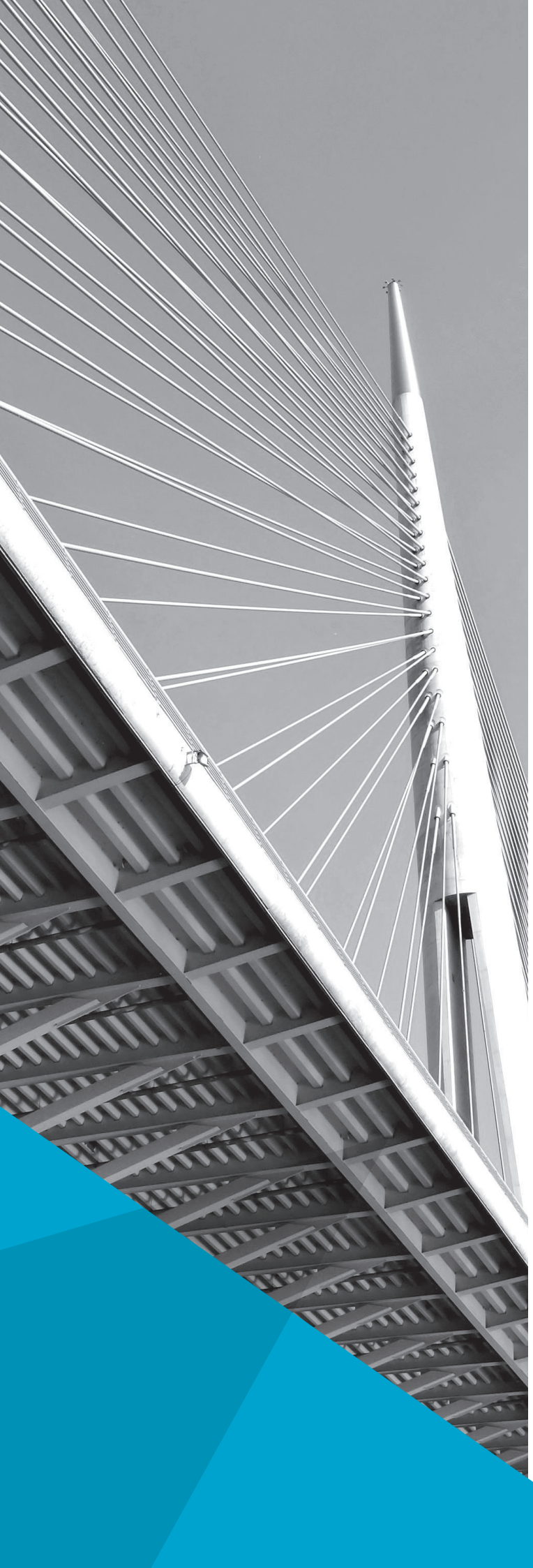
Yes. If the employer has approached the Labour Court to interdict an unprotected strike, or a protected strike which has turned violent, and the striking employees continue to disobey the interim court order after it has been granted, the employer may approach the Labour Court on application to hold the employees in contempt of court.

Contempt applications are generally done on an ex parte basis. Employers are required to approach the court without the union or its members being present, in order to convince the court that it has grounds for contempt. The court will then make an order calling on the relevant employees accused of acting in breach of the interim order to convince the court that they are not in contempt.

The requirements that must be satisfied by an employer in a contempt application are:

1. A court order must have been obtained
2. The order must be served on each employee subject to contempt proceedings (in some circumstances actual service is not necessary and notification of order may be sufficient)
3. Non-compliance with the order
4. Non-compliance must be perpetrated in a wilful and *mala fide* manner

A secondary strike is a strike held in support of a primary strike by other employees against their employer



It must be borne in mind that contempt applications require proof of beyond reasonable doubt and carries the onus required in criminal proceedings.

CAN TES EMPLOYEES STRIKE AT THE CLIENT'S PREMISES?

Yes, the CCMA may establish picketing rules that provide that temporary employment service (TES) employees can picket at the client's premises.

WHERE THERE IS NO BARGAINING COUNCIL AND THE PARTIES BARGAIN AT PLANT LEVEL, IF THE EMPLOYER AND MAJORITY TRADE UNION CONCLUDE A COLLECTIVE AGREEMENT, WILL THAT AGREEMENT BIND THE EMPLOYEES WHO ARE NOT MEMBERS OF THAT TRADE UNION?

Yes. In terms of the LRA a collective agreement will bind employees who are not members of a trade union, if those "employees are identified in the agreement; the agreement expressly binds the employees and the trade union has as its members the majority of employees employed by the employer in the workplace." It calls into debate what constitutes 'a workplace' for the purpose of such extension. Recently the Constitutional Court held that the term "workplace", for the purposes of the LRA, has a "special statutory meaning" that focuses on "workers as a collectivity rather than as isolated individuals" and where geographical location is de-emphasised. The Constitutional Court held that the determination is whether the employer conducts two or more operations "that are independent of one another by reason of their size, function or organisation."

NOTE: The LRA prohibits a person from striking if that person is bound by a collective agreement that prohibits a strike in respect of the issue in dispute.

WHAT IS A SECONDARY STRIKE?

A secondary strike is a strike held in support of a primary strike by other employees against their employer.

WHEN WILL A SECONDARY STRIKE BE PROTECTED?

A secondary strike cannot be protected unless it is in support of a protected primary strike. In addition, more notice (seven days) is required in respect of a secondary strike and the secondary strike must not have a disproportionate impact on the business of the secondary employer when having regard to the possible impact the secondary strike could have on the business of the primary employer.

LOCK-OUT FAQS

WHAT IS A LOCK-OUT?

A lock-out is a mechanism available to an employer to exclude employees from the workplace, in order to compel them to accept a demand of the employer relating to a matter of mutual interest.

WHAT IS THE DIFFERENCE BETWEEN A DEFENSIVE LOCK-OUT AND AN OFFENSIVE LOCK-OUT?

A defensive lock-out is where employers lockout the employees in response to a strike called by the employees and if it does so the employer may use replacement labour for the duration of the strike.

An offensive lock-out is initiated by an employer, without a strike first being called. The employer may not employ replacement labour for the duration of the lock-out.

NOTE: These terms are not used in the LRA but it has become common to distinguish a defensive lock-out from an offensive lock-out.

WHEN WILL A LOCK-OUT BE PROTECTED?

As with strikes, an employer's recourse to lock-out is subject to limitations and requirements.

A lock-out will be protected if:

- A demand has been made of employees who are to be excluded from the employer's workplace
- The dispute relates to a matter of mutual interest
- Employees are excluded from the employer's workplace
- The following procedural requirements are complied with:

Referral

The issue in dispute must be referred to CCMA or Bargaining Council

30 Days/ Certificate

Before a lock-out notice is issued:

A. 30 days must lapse from when the dispute was received by the CCMA or Bargaining Council; or

B. A certificate must be issued stating that the dispute remains unresolved

(The first to occur of A or B)

Lock-out notice

A written notice stipulating the commencement of the lock-out must be issued at least 48 hours before the lock-out commences

WHO CAN AN EMPLOYER LAWFULLY LOCK-OUT OF THE WORKPLACE?

An employer may only lock-out employees who are party to a dispute and with whom the employer has attempted to conciliate.

NOTE: The Constitutional Court confirmed that an employer cannot lock-out members of a trade union that were not a party to a bargaining council where the dispute arose and who were not part of the conciliation process.

WHEN CAN AN EMPLOYER USE REPLACEMENT LABOUR?

An employer may use replacement labour except in the following circumstances:

- Where there is "a protected strike and the whole or a part of the employer's service has been designated a maintenance service"
- To perform the work of an employee who is locked out of the employer's workplace due to an offensive lock-out

NOTE: Replacement labour is permissible when the lock-out is in response to a strike.

PICKETING FAQS

The Code issued by the Minister must be taken into account when interpreting or applying the LRA in respect of any picket. The Picketing Regulations, effective 1 January 2019 are also applicable.

WHAT IS THE PURPOSE OF A PICKET?

In terms of the Code, the purpose of a picket is *"to peacefully encourage non-striking employees and members of the public to oppose a lock-out or to support strikers involved in a protected strike...*

MAY A PICKET TAKE PLACE IF THERE ARE NO PICKETING RULES?

No. The trade union and employer or employer's organisation must conclude a collective agreement regulating picketing.

WHAT IF THE PARTIES HAVE NOT CONCLUDED A COLLECTIVE

NOTE: A picket will only be protected in terms of the LRA if it is in support of a protected strike or in opposition to a lock-out (unprotected or protected).

AGREEMENT REGULATING PICKETING?

No picket may take place. The parties must try to agree picketing rules before the protected strike or lockout.

WHAT IF THE PARTIES CANNOT AGREE PICKETING RULES?

The commissioner conciliating the dispute will try to get the parties to conclude a collective agreement regulating picketing before issuing a certificate of non-resolution. If no such agreement is reached the commissioner must determine the rules in accordance with published default rules at the same time as issuing the certificate of non-resolution.

WHAT WILL THE COMMISSIONER TAKE ACCOUNT OF WHEN DETERMINING PICKETING RULES?

The commissioner must take account of any relevant code of good practice, the particular circumstances of the workplace or premises where it is intended that the right to picket will be exercised and representations made by the parties at conciliation.

WHERE CAN A PICKET BE HELD?

Picketing may take place outside the employer's premises, unless the employer has agreed that it may take place inside the employer's premises (the employer may not unreasonably withhold permission to picket inside its premises).

The rules established by the commissioner may provide for picketing on the employer's premises if the commissioner is satisfied that employer's permission was unreasonably withheld.

The CCMA may establish picketing rules that provide for employees to picket in a place which "is owned or controlled by a person other than the employer" (ie shopping centre owner). However, that other person must have an opportunity to make representations to the CCMA before picketing rules were established.

HOW WILL A COMMISSIONER DETERMINE IF THE EMPLOYER'S PERMISSION WAS UNREASONABLY WITHHELD?

In terms of the Code, the factors that will be taken into account include:

- The nature of the workplace
- The situation of the workplace
- Number of employee partaking in the picket inside the employer's premises
- Potential for violence
- Areas designated for the picket
- Time and length of the picket
- Proposed movement of those participating in the picket
- The trade unions proposals to control the picket
- The picketers' conduct

HOW MUST PICKETING RULES BE DISSEMINATED?

Employers and trade unions must take measures to circulate the rules. Those measures may include placing the rules on notice boards and giving copies to employees.

Employers must give copies of the picketing rules to appointed representatives and managers on duty during the strike or lockout and to its private security company it contracted with.

Trade unions must give copies of the picketing rules to its covenors and marshalls and make sure that they understand the rules. The trade unions must also ensure the picketers understand the rules.

HOW IS A PICKETING AGREEMENT CONCLUDED?

Parties are encouraged to enter into a picketing agreement before a strike or picket commences. However, if no such agreement can be reached, the trade union or the employer can request that the CCMA assist in negotiating an agreement on the rules that should apply to the picket. If the parties still cannot reach agreement the CCMA must establish picketing rules.

MAY PICKETERS PREVENT CUSTOMERS FROM GAINING ACCESS TO THE EMPLOYER'S PREMISES?

No, picketers may also not commit unlawful acts during the picket.

Picketers may also not intimidate any person or threaten to cause damage to any property. Picketers may not incite violence, wear masks nor have in their possession any dangerous weapons.

WHAT IS THE ROLE OF POLICE DURING A PICKET?

The police have the power to take measures to ensure the picket remains peaceful, unarmed and orderly. However, the Code indicates that the police may only intervene with picketers in certain circumstances. Such circumstances include when the police believe a person is in possession of a firearm or dangerous weapon or where picketer/s prevent the employer from conducting its business or working. The police can also interfere where picketers threaten or commit assault or damage to property.

ARE POLICE RESPONSIBLE FOR ENFORCING PICKETING RULES?

No. Police are not responsible for enforcing a court order interdicting a strike or picket unless the court orders them to do so.

ESSENTIAL/MAINTENANCE SERVICES FAQS

WHAT ARE ESSENTIAL AND MAINTENANCE SERVICES?

An essential service is:

- A service the interruption of which endangers life, personal safety or health of the whole or any part of the population
- The Parliamentary service
- The South African Police Service

A maintenance service is one whose interruption results in material physical destruction to any working area, plant or machinery.

WHAT IS THE SIGNIFICANCE OF A SERVICE BEING DESIGNATED AN ESSENTIAL OR MAINTENANCE SERVICE?

Parties engaged in essential or maintenance services are precluded from participating in a strike or a lock-out.

WHAT IS A MINIMUM SERVICE AGREEMENT?

A minimum service agreement is an agreement relating to the minimum services that must be maintained in a strike or lock-out. The effect of the agreement is that employees who are employed outside of the agreed minimum services are permitted to strike, even though they are employed in a designated essential service and the employer may lock-out those employees.

A panel of the essential services committee may direct parties to negotiate such agreement. If parties do not conclude a minimum services agreement or the agreement is not ratified by the essential services committee, the minimum services required to be maintained may be determined by a panel appointed by the essential services committee.

The purpose of a picket is to peacefully encourage non-striking employees and members of the public to oppose a lock-out or to support strikers involved in a protected strike

MARKET RECOGNITION

Our Employment team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2014–2020 ranked our Employment practice in Band 2 for employment. *The Legal 500 EMEA 2020* recommended us in Tier 1 for employment and in Tier 2 from *2009–2019.*

The way we support and interact with our clients attracts significant external recognition.

Aadil Patel is the National Practice Head of the Employment team. *Chambers Global 2015–2020* ranked him in Band 2 for employment. *The Legal 500 EMEA 2012–2020* recommended him for employment. He was named as the exclusive South African winner of the *ILO Client Choice Awards 2014* in the employment & benefits category. *Who's Who Legal 2017–2018* identified Aadil as a leading labour & employment practitioner. He was identified in *The International Who's Who of Business Lawyers 2014*, and in *The International Who's Who of Management Labour and Employment 2011–2014*.

The Legal 500 EMEA 2020 recommended Jose Jorge for employment.

Chambers Global 2018–2020 ranked Fiona Leppan in Band 2 for employment. *Chambers Global 2016–2017* ranked her in Band 3 for employment. *The Legal 500 EMEA 2019–2020* recommended her as a leading individual for employment and recommended her from *2012–2018. IFLR1000 2012* recommended Fiona as a leading lawyer. *Who's Who Legal Thought Leaders Global Elite* identified her as a leading lawyer for *2018*. *Who's Who Legal 2017–2018* identified Fiona as a leading labour & employment practitioner. She was identified in *The International Who's Who of Business Lawyers 2014*, and in *The International Who's Who of Management Labour and Employment 2011–2017*.

Chambers Global 2020 ranked Gillian Lumb in Band 3 for employment. *Chambers Global 2017–2019* ranked Gillian in Band 4 for employment. *The Legal 500 EMEA 2012–2014* and *2017–2018, 2020* recommended her for employment.

Chambers Global 2014-2020 ranked Imraan Mahomed in Band 3 for employment. *The Legal 500 EMEA 2013-2020* recommended him for employment.

Chambers Global 2014–2020 ranked Hugo Pienaar in Band 2 for employment. *The Legal 500 EMEA 2014–2020* recommended him for employment. Hugo was named as the exclusive South African winner of the *ILO Client Choice Awards 2017, 2019* in the employment & benefits category.

Chambers Global 2020 ranked Michael Yeates as an up and coming employment lawyer. *The Legal 500 EMEA 2020* recommended him for employment. *ILO Client Choice Awards 2015-2016* named Michael the exclusive South African winner in the employment & benefits category. In *2018*, he was named the exclusive South African winner in the immigration category.

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BBBEE STATUS: LEVEL TWO CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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