

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.

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- 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.


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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.

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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						
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 – INDUSTRIAL 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, Bronkhorstspuit, 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

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	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 House 104 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
