

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, 2000¹¹

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 dismissals 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