



INSIGHTS

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LRA 66 OF 1995 - CODE OF GOOD PRACTICE: DISMISSAL

Updated and Improved Code of Good Practice Comes into Force

A significant overhaul of South African labour law, a new Code of Good Practice: Dismissal has been officially enacted, as of 4 September 2025. Published under Notice 3470 in Government Gazette No. 53294. The code repeals and replaces the previous Schedule 8 code that has guided fair dismissal practices since 1996, and the Code of Good Practice based on Operational Requirements from 1999.





Key Objectives and Principles

Its purpose is to provide guidance on dismissals for misconduct, incapacity, and operational requirements (retrenchments), emphasising several key principles:

- **Flexibility and Fairness:** The code is intentionally general, acknowledging that each case is unique. It focuses on "employment justice, the efficient operation of an employer's business and the expeditious resolution of disputes."
- **Mutual Respect:** A cornerstone of the code is that employers and employees should treat one another with mutual respect.
- **Support for Small Businesses:** It explicitly states that small businesses are not expected to comply with obligations that are impractical for their size, recognising they may not have dedicated HR departments and must balance disciplinary processes with keeping the business operational.

A Summary of Key Provisions

The new code provides refreshed and detailed guidelines across all categories of dismissal.

1. Streamlined Approach to Misconduct

The code reinforces that the primary purpose of discipline is corrective action, outlining a progressive ladder approach. Formal procedures are not always necessary for minor violations, when informal advice and measures may be most effective.

Some Key factors for a fair misconduct dismissal:

- The rule must be valid and reasonable, and the employee must be aware of it.
- Dismissal is appropriate only if the employment relationship has become "intolerable."
- Consistency in applying sanctions is important, but inconsistency alone does not make a dismissal unfair if the misconduct itself is serious enough.

Dismissal for unprotected strikes (Industrial action is no longer automatic, the code has moved away from a zero-tolerance approach.



Key factors include:

- The Seriousness of the Contravention: Participating in an unprotected strike does not automatically justify dismissal. The employer must assess how serious the breach of the law was.

Some guidelines to assess "seriousness"

- ✓ The conduct of the parties - any violence, intimidation, or damage to property by strikers, including any bad faith by the employer.
 - ✓ The legitimacy of the strikers' demands - the underlying grievances are genuine.
 - ✓ The duration and timing of the strike - a short, disruptive strike, may be viewed differently from a prolonged strike that critically impairs the business.
 - ✓ The harm caused by the strike - the actual financial and operational impact on the employer and business.
- Attempts to Comply with the Act: The strikers attempt to follow the correct procedures (e.g. they gave notice but got the timing wrong) can be a mitigating factor.
 - Provocation by the Employer: The code explicitly states that fairness must consider "whether the strike was in response to unlawful, unfair or unreasonable conduct by the employer." If the employer provoked the strike, dismissal may be deemed unfair.

2. Clearer Guidelines on Probation

The code clarifies that the purpose of probation is to evaluate an employee's suitability for that role.

Key factors regarding probation:

- Probation cannot be used to deprive employees of a permanent status.
- A decision to dismiss at the end of probation must be made only after the employee has been given an opportunity to make representations.
- The standards for dismissing a probationary employee are ordinarily less stringent than for permanent staff.



3. Contemporary perspective on Incapacity

Beyond ill health and injury, the code recognises other forms of incapacity, including:

- Imprisonment, which may be a temporary or permanent barrier to performance.
- Incompatibility, defined as an inability to work in harmony with the company culture or other employees, this can constitute a fair reason for dismissal.

Incompatibility is a subjective reasoning and open to abuse, it requires a thorough, documented, and fair process. The employer bears a heavy burden of proving that the incompatibility was real, that it made the employment relationship intolerable, and that all reasonable alternatives to dismissal were explored.

4. Detailed Retrenchment Procedures (Operational Requirements)

The code incorporates and expands on retrenchment procedures, highlighting that dismissal must be a last resort.

A mandatory Annexure A serves as a template for the written notice employers must issue when contemplating retrenchments. This notice must detail:

- The number and categories of affected employees.
- The reasons for the proposed retrenchments.
- Alternatives considered and assistance proposed.
- The proposed selection criteria and severance pay.

Implications for Employers and Employees

For employers, this code is now the essential handbook for any dismissal process. Failure to follow its guidelines will significantly increase the risk of an unfair dismissal claim at the CCMA or Labour Court. The emphasis on a less rigid, more dialogue-based approach requires careful attention to procedure, even for small businesses. For employees, the code strengthens procedural rights, ensuring the opportunity to be heard and to understand the case against them. The clear condemnation of discriminatory selection criteria in retrenchments and the strengthened guidance on probationary dismissals offer employees better protection.



Conclusion

The introduction of the new Code of Good Practice: Dismissal marks a pivotal moment for South Africa's labour landscape. By consolidating nearly 30 years of legal evolution into a single, clear document, it aims to make dismissal processes fairer, more transparent, and more efficient for all parties involved. Both employers and employees must familiarise themselves with its provisions to navigate the future of workplace relations effectively.

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