Summary of the Labour Relations Act, (Act No. 66 of 1995)

This poster contains a summary of the Labour Relations Act (Act No. 66 of 1995). The full act, schedules, notices as well as the regulations can be found at www.labour.gov.za

Introduction

To change the law governing labour relations and, for that purpose—

to give effect to section 23 of the Constitution;

to regulate the organisational rights of trade unions;

to promote and facilitate collective bargaining at the workplace and at sectoral level;

to regulate the right to strike and the recourse to lock-out in conformity with the Constitution;

to promote employee participation in decision-making through the establishment of workplace forums;

to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;

to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;

to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;

to give effect to the public international law obligations of the Republic relating to labour relations;

to amend and repeal certain laws relating to labour relations; and

to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

Chapter I: Purpose, Application and Interpretation

1. Purpose of this Act

(1) The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are—
(a) to give effect to and regulate the fundamental rights conferred by section 23 of the Constitution of the Republic of South Africa, 1996;
(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
(c) to provide a framework within which employees and their trade unions, employers and employers' organisations can—
(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and
(ii) formulate industrial policy; and
(d) to promote—
(i) orderly collective bargaining;
(ii) collective bargaining at sectoral level;
(iii) employee participation in decision-making in the workplace; and
(iv) the effective resolution of labour disputes.

2. Exclusion from application of this Act

This Act does not apply to members of—
(a) the National Defence Force;
(b) the State Security Agency;

3. Interpretation of this Act

Any person applying this Act must interpret its provisions—
(a) to give effect to its primary objects;
(b) in compliance with the Constitution; and
(c) in compliance with the public international law obligations of the Republic.

Chapter II: Freedom of Association and General Protections

4. Employees' right to freedom of association

(1) Every employee has the right—
(a) to participate in forming a trade union or federation of trade unions; and
(b) to join a trade union, subject to its constitution.
(2) Every member of a trade union has the right, subject to the constitution of that trade union—
(a) to participate in its lawful activities;
(b) to participate in the election of any of its office-bearers, officials or trade union representatives;
(c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; and
(d) to stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of this Act or any collective agreement.
(3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation—
(a) to participate in its lawful activities;
(b) to participate in the election of any of its office-bearers or officials; and
(c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office.

5. Protection of employees and persons seeking employment

(1) No person may discriminate against an employee for exercising any right conferred by this Act.
(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following—
(a) require an employee or a person seeking employment—
(i) not to be a member of a trade union or workplace forum;
(ii) not to become a member of a trade union or workplace forum; or
(iii) to give up membership of a trade union or workplace forum;
(b) prevent an employee or a person seeking employment from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
(c) prejudice an employee or a person seeking employment because of past, present or anticipated—
(i) membership of a trade union or workplace forum;
(ii) participation in forming a trade union or federation of trade unions or establishing a workplace forum;
(iii) participation in the lawful activities of a trade union, federation of trade unions or workplace forum;
(iv) failure or refusal to do something that an employer may not lawfully permit or require an employee to do;
(v) disclosure of information that the employee is lawfully entitled or required to give to another person;
(vi) exercise of any right conferred by this Act; or
(vii) participation in any proceedings in terms of this Act.
(3) No person may advantage, or promise to advantage, an employee or a person seeking employment in exchange for that person not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle that dispute.
(4) A provision in any contract, whether entered into before or after the commencement of this Act, that directly or indirectly contradicts or limits any provision of section 4, or this section, is invalid, unless the contractual provision is permitted by this Act.

6. Employers' right to freedom of association

(1) Every employer has the right—
(a) to participate in forming an employers' organisation or a federation of employers' organisations; and
(b) to join an employers' organisation, subject to its constitution.
(2) Every member of an employers' organisation has the right, subject to the constitution of that employers' organisation—
(a) to participate in its lawful activities;
(b) to participate in the election of any of its office-bearers or officials; and
(c) if—
(i) a natural person, to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; or
(ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an office-bearer or official and, if elected or appointed, to hold office.
(3) Every member of an employers' organisation that is a member of a federation of employers' organisations has the right, subject to the constitution of that federation—
(a) to participate in its lawful activities;
(b) to participate in the election of any of its office-bearers or officials; and
(c) if—
(i) a natural person, to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; or
(ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an office -bearer or official and, if elected or appointed, to hold office.

7. Protection of employers' rights

(1) No person may discriminate against an employer for exercising any right conferred by this Act.
(2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following—
(a) require an employer—
(i) not to be a member of an employers' organisation;
(ii) not to become a member of an employers' organisation; or
(iii) to give up membership of an employers' organisation;
(b) prevent an employer from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
(c) prejudice an employer because of past, present or anticipated—
(i) membership of an employers' organisation;
(ii) participation in forming an employers' organisation or a federation of employers' organisations;
(iii) participation in the lawful activities of an employers' organisation or a federation of employers' organisations;
(iv) disclosure of information that the employer is lawfully entitled or required to give to another person;
(v) exercise of any right conferred by this Act; or
(vi) participation in any proceedings in terms of this Act.
(3) No person may advantage, or promise to advantage, an employer in exchange for that employer not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle that dispute.
(4) A provision in any contract, whether entered into before or after the commencement of this Act, that directly or indirectly contradicts or limits any provision of section 6, or this section, is invalid, unless the contractual provision is permitted by this Act.

8. Rights of trade unions and employers' organisations

Every trade union and every employers' organisation has the right—
(a) subject to the provisions of Chapter VI—
(i) to determine its own constitution and rules; and
(ii) to hold elections for its office-bearers, officials and representatives;
(b) to plan and organise its administration and lawful activities;
(c) to participate in forming a federation of trade unions or a federation of employers' organisations;
(d) to join a federation of trade unions or a federation of employers' organisations, subject to its constitution, and to participate in its lawful activities; and
(e) to affiliate with, and participate in the affairs of, any international workers' organisation or international employers' organisation or the International Labour Organisation, and contribute to, or receive financial assistance from, those organisations.

9. Procedure for disputes

(1) If there is a dispute about the interpretation or application of any provision of this Chapter, any party to the dispute may refer the dispute in writing to—
(a) a council, if the parties to the dispute fall within the registered scope of that council; or
(b) the Commission, if no council has jurisdiction.
(2) The party who refers the dispute must satisfy the council or the Commission that a copy of the referral has been served on all the other parties to the dispute.
(3) The council or the Commission must attempt to resolve the dispute through conciliation.
(4) If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.

10. Burden of proof

In any proceedings—
(a) a party who alleges that a right or protection conferred by this Chapter has been infringed must prove the facts of the conduct; and
(b) the party who engaged in that conduct must then prove that the conduct did not infringe any provision of this Chapter.

Chapter V: Workplace Forums

78. Definitions in this Chapter

In this Chapter—
(a) **"employee"** means any person who is employed in a workplace, except a senior managerial employee whose contract of employment or status confers the authority to do any of the following in the workplace—
(i) *[deleted by Labour Relations Amendment Act, 1996]*
(ii) represent the employer in dealings with the workplace forum; or
(iii) determine policy and take decisions on behalf of the employer that may be in conflict with the representation of employees in the workplace; and
(b) **"representative trade union"** means a registered trade union, or two or more registered trade unions acting jointly, that have as members the majority of the employees employed by an employer in a workplace.

79. General functions of workplace forum

A workplace forum established in terms of this Chapter—
(a) must seek to promote the interests of all employees in the workplace, whether or not they are trade union members;
(b) must seek to enhance efficiency in the workplace;
(c) is entitled to be consulted by the employer, with a view to reaching consensus, about the matters referred to in section 84; and
(d) is entitled to participate in joint decision-making about the matters referred to in section 86.

80. Establishment of workplace forum

(1) A workplace forum may be established in any workplace in which an employer employs more than 100 employees.
(2) Any representative trade union may apply to the Commission in the prescribed form for the establishment of a workplace forum.
(3) The applicant must satisfy the Commission that a copy of the application has been served on the employer.
(4) The Commission may require further information in support of the application.
(5) The Commission must—
(a) consider the application and any further information provided by the applicant; and
(b) consider whether, in the workplace in respect of which the application has been made—
(i) the employer employs 100 or more employees;
(ii) the applicant is a representative trade union; and
(iii) there is no functioning workplace forum established in terms of this Chapter.
(6) If satisfied that the requirements of subsection (5) are met, the Commission must appoint a commissioner to assist the parties to establish a workplace forum by collective agreement or, failing that, to establish a workplace forum in terms of this Chapter.
(7) The commissioner must convene a meeting with the applicant, the employer and any registered trade union that has members employed in the workplace, in order to facilitate the conclusion of a collective agreement between those parties, or at least between the applicant and the employer.
(8) If a collective agreement is concluded, the provisions of this Chapter do not apply.
(9) If a collective agreement is not concluded, the commissioner must meet the parties referred to in subsection (7) in order to facilitate agreement between them, or at least between the applicant and the employer, on the provisions of a constitution for a workplace forum in accordance with this Chapter, taking into account the guidelines in Schedule 2.
(10) If no agreement is reached on any of the provisions of a constitution, the commissioner must establish a workplace forum and determine the provisions of the constitution in accordance with this Chapter, taking into account the guidelines in Schedule 2.
(11) After the workplace forum has been established, the commissioner must set a date for the election of the first members of the workplace forum and appoint an election officer to conduct the election.
(12) The provisions of this section do not apply to the public service. The establishment of workplace forums in the public service will be regulated in a Schedule promulgated by the Minister for the Public Service and Administration in terms of section 207(4).

81. Trade union based workplace forum

(1) If a representative trade union is recognised in terms of a collective agreement by an employer for the purposes of collective bargaining in respect of all employees in a workplace, that trade union may apply to the Commission in the prescribed form for the establishment of a workplace forum.
(2) The applicant may choose the members of the workplace forum from among its elected representatives in the workplace.
(3) If the applicant makes this choice, the provisions of this Chapter apply, except for section 80(11) and section 82(1)(b) to (m).
(4) The constitution of the applicant governs the nomination, election and removal from office of elected representatives of the applicant in the workplace.
(5) A workplace forum constituted in terms of this section will be dissolved if—
(a) the collective agreement referred to in subsection (1) is terminated;
(b) the applicant is no longer a representative trade union.
(6) The provisions of this section do not apply to the public service.

82. Requirements for constitution of workplace forum

(1) The constitution of every workplace forum must—
(a) establish a formula for determining the number of seats in the workplace forum;
(b) establish a formula for the distribution of seats in the workplace forum so as to reflect the occupational structure of the workplace;
(c) provide for the direct election of members of the workplace forum by the employees in the workplace;
(d) provide for the appointment of an employee as an election officer to conduct elections and define that officer's functions and powers;
(e) provide that an election of members of the workplace forum must be held not later than 24 months after each preceding election;
(f) provide that if another registered trade union becomes representative, it may demand a new election at any time within 21 months after each preceding election;
(g) provide for the procedure and manner in which elections and ballots must be conducted;
(h) provide that any employee, including any former or current member of the workplace forum, may be nominated as a candidate for election as a member of the workplace forum by—
(i) any registered trade union with members employed in the work-place; or
(ii) a petition signed by not less than 20 per cent of the employees in the workplace or 100 employees, whichever number of employees is the smaller;
(i) provide that in any ballot every employee is entitled—
(i) to vote by secret ballot; and
(ii) to vote during working hours at the employer's premises;
(j) provide that in an election for members of the workplace forum every employee is entitled, unless the constitution provides otherwise—
(i) to cast a number of votes equal to the number of members to be elected; and
(ii) to cast one or more of those votes in favour of any candidate;
(k) establish the terms of office of members of the workplace forum and the circumstances in which a member must vacate that office;
(l) establish the circumstances and manner in which members of the workplace forum may be removed from office, including the right of any representative trade union that nominated a member for election to remove that member at any time;
(m) establish the manner in which vacancies in the workplace forum may be filled, including the rules for holding by-elections;
(n) establish the circumstances and manner in which the meetings referred to in section 83 must be held;
(o) provide that the employer must allow the election officer reasonable time off with pay during working hours to prepare for and conduct elections;
(p) provide that the employer must allow each member of the workplace forum reasonable time off with pay during working hours to perform the functions of a member of the workplace forum and to receive training relevant to the performance of those functions;
(q) require the employer to take any steps that are reasonably necessary to assist the election officer to conduct elections;
(r) require the employer to provide facilities to enable the workplace forum to perform its functions;
(s) provide for the designation of full-time members of the workplace forum if there are more than 1000 employees in a workplace;
(t) provide that the workplace forum may invite any expert to attend its meetings, including meetings with the employer or the employees, and that an expert is entitled to any information to which the workplace forum is entitled and to inspect and copy any document that members of the workplace forum are entitled to inspect and copy;
(u) provide that office-bearers or officials of the representative trade union may attend meetings of the workplace forum including meetings with the employer or the employees;
(v) provide that the representative trade union and the employer, by agreement, may change the constitution of the workplace forum; and
(w) establish the manner in which decisions are to be made.
(2) The constitution of a workplace forum may—
(a) establish a procedure that provides for the conciliation and arbitration of proposals in respect of which the employer and the workplace forum do not reach consensus;
(b) establish a co-ordinating workplace forum to perform any of the general functions of a workplace forum and one or more subsidiary workplace forums to perform any of the specific functions of a workplace forum; and
(c) include provisions that depart from sections 83 to 92.
(3) The constitution of a workplace forum binds the employer.
(4) The Minister for the Public Service and Administration may amend the requirements for a constitution in terms of this section for workplace forums in the public service by a schedule promulgated in terms of section 207(4).

83. Meetings of workplace forum

(1) There must be regular meetings of the workplace forum.
(2) There must be regular meetings between the workplace forum and the employer, at which the employer must—
(a) present a report on its financial and employment situation, its performance since the last report and its anticipated performance in the short term and in the long term; and
(b) consult the workplace forum on any matter arising from the report that may affect employees in the workplace.
(3) (a) There must be meetings between members of the workplace forum and the employees employed in the workplace at regular and appropriate intervals. At the meetings with employees, the workplace forum must report on—
(i) its activities generally;
(ii) matters in respect of which it has been consulted by the employer; and
(iii) matters in respect of which it has participated in joint decision-making with the employer.
(b) Each calendar year, at one of the meetings with the employees, the employer must present an annual report of its financial and employment situation, its performance generally and its future prospects and plans.
(c) meetings of employees must be held during working hours at a time and place agreed upon by the workplace forum and the employer without loss of pay on the part of the employees.

84. Specific matters for consultation

(1) Unless the matters for consultation are regulated by a collective agreement with the representative trade union, a workplace forum is entitled to be consulted by the employer about proposals relating to any of the following matters—
(a) restructuring the workplace, including the introduction of new technology and new work methods;
(b) changes in the organisation of work;
(c) partial or total plant closures;
(d) mergers and transfers of ownership in so far as they have an impact on the employees;
(e) the dismissal of employees for reasons based on operational requirements;
(f) exemptions from any collective agreement or any law;
(g) job grading;
(h) criteria for merit increases or the payment of discretionary bonuses;
(i) education and training;
(j) product development plans; and
(k) export promotion.
(2) A bargaining council may confer on a workplace forum the right to be consulted about additional matters in workplaces that fall within the registered scope of the bargaining council.
(3) A representative trade union and an employer may conclude a collective agreement conferring on the workplace forum the right to be consulted about any additional matters in that workplace.
(4) Any other law may confer on a workplace forum the right to be consulted about additional matters.
(5) Subject to any applicable occupational health and safety legislation, a representative trade union and an employer may agree—
(a) that the employer must consult with the workplace forum with a view to initiating, developing, promoting, monitoring and reviewing measures to ensure health and safety at work;
(b) that a meeting between the workplace forum and the employer constitutes a meeting of a health and safety committee required to be established in the workplace by that legislation; and
(c) that one or more members of the workplace forum are health and safety representatives for the purposes of that legislation.
(6) For the purposes of workplace forums in the public service—
(a) the collective agreement referred to in subsection(1) is a collective agreement concluded in a bargaining council;
(b) a bargaining council may remove any matter from the list of matters referred to in subsection (1) in respect of workplaces that fall within its registered scope; and
(c) subsection (3) does not apply.

85. Consultation

(1) Before an employer may implement a proposal in relation to any matter referred to in section 84 (1), the employer must consult the workplace forum and attempt to reach consensus with it.
(2) The employer must allow the workplace forum an opportunity during the consultation to make representations and to advance alternative proposals.
(3) The employer must consider and respond to the representations or alternative proposals made by the workplace forum and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
(4) If the employer and the workplace forum do not reach consensus, the employer must invoke any agreed procedure to resolve any differences before implementing the employer's proposal.

86. Joint decision-making

(1) Unless the matters for joint decision-making are regulated by a collective agreement with the representative trade union, an employer must consult and reach consensus with a workplace forum before implementing any proposal concerning—
(a) disciplinary codes and procedures;
(b) rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;
(c) measures designed to protect and advance persons disadvantaged by unfair discrimination; and
(d) changes by the employer or by employer-appointed representatives on trusts or boards of employer-controlled schemes, to the rules regulating social benefit schemes.
(2) A representative trade union and an employer may conclude a collective agreement:
(a) conferring on the workplace forum the right to joint decision-making in respect of additional matters in that workplace;
(b) removing any matter referred to in subsection (1)(a) to (d) from the list of matters requiring joint decision-making.
(3) Any other law may confer on a workplace forum the right to participate in joint decision-making about additional matters.
(4) If the employer does not reach consensus with the workplace forum, the employer may—
(a) refer the dispute to arbitration in terms of any agreed procedure; or
(b) if there is no agreed procedure, refer the dispute to the Commission.
(5) The employer must satisfy the Commission that a copy of the referral has been served on the chairperson of the workplace forum.
(6) The Commission must attempt to resolve the dispute through conciliation.
(7) If the dispute remains unresolved, the employer may request that the dispute be resolved through arbitration.
(8) (a) An arbitration award is about a proposal referred to in subsection (1)(d) takes effect 30 days after the date of the award.
(b) Any representative on the trust or board may apply to the Labour Court for an order declaring that the implementation of the award constitutes a breach of a fiduciary duty on the part of that representative.
(c) Despite paragraph(a), the award will not take effect pending the determination by the Labour Court of an application made in terms of paragraph (b).
(9) For the purposes of workplace forums in the public service, a collective agreement referred to in subsections (1) and (2) is a collective agreement concluded in a bargaining council.

87. Review at request of newly established workplace forum

(1) After the establishment of a workplace forum, the workplace forum may request a meeting with the employer to review—
(a) criteria for merit increases or the payment of discretionary bonuses;
(b) disciplinary codes and procedures; and
(c) rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to work performance of employees in the workplace.
(2) The employer must submit its criteria, disciplinary codes and procedures, and rules, referred to in subsection (1), if any, in writing to the workplace forum for its consideration.
(3) A review of the criteria must be conducted in accordance with the provisions of Section 85.
(4) A review of the disciplinary codes and procedures, and rules, must be conducted in accordance with the provisions of section 86(2) to (7), except that, in applying section 86(4), either the employer or the workplace forum may refer a dispute between them to arbitration or to the Commission.

88. Matters affecting more than one workplace forum in an employer's operation

(1) If the employer operates more than one workplace and separate workplace forums have been established in two or more of those workplaces, and if a matter has been referred to arbitration in terms of section 86(4)(a) or (b), or by a workplace forum in terms of section 87(4), the employer may give notice in writing to the chairpersons of all the workplace forums that no other workplace forum may refer a matter that is substantially the same as the matter referred to arbitration.
(2) If the employer gives notice in terms of subsection (1)—
(a) each workplace forum is entitled to make representations and participate in the arbitration proceedings; and
(b) the arbitration award is binding on the employer and the employees in each workplace.

89. Disclosure of information

(1) An employer must disclose to the workplace forum all relevant information that will allow the workplace forum to engage effectively in consultation and joint decision-making.
(2) An employer is not required to disclose information—
(a) that is legally privileged;
(b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
(c) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
(d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
(2A) The employer must notify the workplace forum in writing if of the view that any information disclosed in terms of subsection (1) is confidential.
(3) If there is a dispute about the disclosure of information, any party to the dispute may refer the dispute in writing to the Commission.
(4) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
(5) The Commission must attempt to resolve the dispute through conciliation.
(6) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
(7) In any dispute about the disclosure of information contemplated in subsection (3), the commissioner must first decide whether or not the information is relevant.
(8) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (2)(c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an employee or employer against the harm that the failure to disclose the information is likely to cause to the ability of the workplace forum to engage effectively in consultation and joint decision-making .
(9) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee or employer.
(10) When making an order in terms of subsection (9), the commissioner must take into account any breach of confidentiality in respect of information disclosed in terms of this section at that workplace and may refuse to order the disclosure of the information or any other confidential information, that might otherwise be disclosed, for a period specified in the arbitration award.

90. Inspection and copies of documents

(1) Any documented information that is required to be disclosed by the employer in terms of section 89 must be made available on request to the members of the workplace forum for inspection.
(2) The employer must provide copies of the documentation on request to the members of the workplace forum.

91. Breach of confidentiality

In any dispute about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in that workplace be withdrawn for a period specified in the arbitration award.

92. Full-time members of workplace forum

(1) In a workplace in which 1000 or more employees are employed, the members of the workplace forum may designate from their number one full-time member.
(2) (a)The employer must pay a full-time member of the workplace forum the same remuneration that the member would have earned in the position the member held immediately before being designated as a full-time member.
(b) When a person ceases to be a full-time member of a workplace forum the employer must reinstate that person to the position that person held immediately before election or appoint that person to any higher position to which, but for the election, that person would have advanced.

93. Dissolution of workplace forum

(1) A representative trade union in a workplace may request a ballot to dissolve a Workplace forum.
(2) If a ballot to dissolve a workplace forum has been requested, an election officer must be appointed in terms of the constitution of the workplace forum.
(3) Within 30 days of the request for a ballot to dissolve the workplace forum, the election officer must prepare and conduct the ballot.
(4) If more than 50 per cent of the employees who have voted in the ballot support the dissolution of the workplace forum the workplace forum must be dissolved.

94. Disputes about workplace forums

(1) Unless a collective agreement or this Chapter provides otherwise, any party to a dispute about the interpretation or application of this Chapter may refer that dispute to the Commission in writing, if that party is—
(a) one or more employees employed in the workplace;
(aA) a workplace forum;
(b) a registered trade union with members employed in the workplace;
(c) the representative trade union; or
(d) the employer.
(2) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
(3) The Commission must attempt to resolve the dispute through conciliation.
(4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.

Chapter VIII: Unfair Dismissal and Unfair Labour Practice

185. Right not to be unfairly dismissed or subjected to unfair labour practice

Every employee has the right not to be—
(a) unfairly dismissed; and
(b) subjected to unfair labour practice.

186. Meaning of dismissal and unfair labour practice

(1) **"Dismissal"** means that—
(a) an employer has terminated employment with or without notice;
(b) an employee employed in terms of a fixed term contract of employment reasonably expected the employer—
(i) to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or
(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee;
(c) an employer refused to allow an employee to resume work after she—
(i) took maternity leave in terms of any law, collective agreement or her contract of employment; or
(ii) was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child;
(d) an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another; or
(e) an employee terminated employment with or without notice because the employer made continued employment intolerable for the employee; or
(f) an employee terminated employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer.
(2) **"Unfair labour practice"** means any unfair act or omission that arises between an employer and an employee involving—
(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;
(b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
(c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
(d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.

187. Automatically unfair dismissals

(1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for the dismissal is—
(a) that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Chapter IV;
(b) that the employee refused, or indicated an intention to refuse, to do any work normally done by an employee who at the time was taking part in a strike that complies with the provisions of Chapter IV or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health;
(c) a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer;
(d) that the employee took action, or indicated an intention to take action against the employer by—
(i) exercising any right conferred by this Act; or
(ii) participating in any proceedings in terms of this Act;
(e) the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy;
(f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.
(g) a transfer, or a reason related to a transfer, contemplated in section 197 or 197A; or
(h) a contravention of the Protected Disclosures Act, 2000, by the employer, on account of an employee having made a protected disclosure defined in that Act.
(2) Despite subsection (1)(f)—
(a) a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job;
(b) a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for persons employed in that capacity.

188. Other unfair dismissals

(1) A dismissal that is not automatically unfair, is unfair if the employer fails to prove—
(a) that the reason for dismissal is a fair reason—
(i) related to the employee's conduct or capacity; or
(ii) based on the employer's operational requirements; and
(b) that the dismissal was effected in accordance with a fair procedure.
(2) Any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act .

188A. Inquiry by arbitrator

(1) An employer may, with the consent of the employee or in accordance with a collective agreement, request a council, an accredited agency or the Commission to appoint an arbitrator to conduct an inquiry into allegations about the conduct or capacity of that employee.
(2) The request must be in the prescribed form.
(3) The council, accredited agency or the Commission must appoint an arbitrator on receipt of—
(a) payment by the employer of the prescribed fee; and
(b) the employee's written consent to the inquiry.
(4) (a) An employee may only consent to an inquiry in terms of this section after the employee has been advised of the allegation referred to in subsection (1).
(b) Despite any other provision in this Act, an employee earning more than the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act at the time, may agree in a contract of employment to the holding of an inquiry in terms of this section.
(5) In any inquiry in terms of this section a party to the dispute may appear in person or be represented only by—
(a) a co-employee;
(b) a director or employee, if the party is a juristic person;
(c) an office bearer or official of that party's registered trade union or registered employers' organisation; or
(d) a legal practitioner, on agreement between the parties or if permitted by the arbitrator in accordance with the rules regulating representation at an arbitration before the Commission.
(6) Section 138, read with the changes required by the context, applies to any inquiry in terms of this section.
(7) An arbitrator appointed in terms of this section has all the powers conferred on a commissioner by section 142(1)(a) to (e), (2) and (7) to (9), read with the changes required by the context, and any reference in that section to the director for the purpose of this section, must be read as a reference to—
(a) the secretary of the council, if the inquiry is held under the auspices of the council;
(b) the director of the accredited agency, if the inquiry is held under the auspices of an accredited agency.
(8) The ruling of the arbitrator in an inquiry has the same status as an arbitration award, and the provisions of sections 143 to 146 apply with the changes required by the context to any such ruling.
(9) An arbitrator conducting an inquiry in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, rule as to what action, if any, may be taken against the employee.
(10) (a)A private agency may only appoint an arbitrator to conduct an inquiry in terms of this section if it is accredited for arbitration by the Commission.
(b) A council may only appoint an arbitrator to conduct an inquiry in terms of this section in respect of which the employer or the employee is not a party to the council, if the council has been accredited for arbitration by the Commission.
(11) Despite subsection (1), if an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act No. 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.
(12) The holding of an inquiry by a arbitrator in terms of this section and the suspension of an employee on full pay pending the outcome of such an inquiry do not constitute an occupational detriment as contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

189. Dismissals based on operational requirements

(1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult—
(a) any person whom the employer is required to consult in terms of a collective agreement;
(b) if there is no collective agreement that requires consultation—
(i) a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum and;
(ii) any registered trade union whose members are likely to be affected by the proposed dismissals;
(c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or
(d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.
(2) The employer and the other consulting parties must in the consultation envisaged by subsections (1) and (3) engage in a meaningful joint consensus-seeking process and attempt to reach consensus on—
(a) appropriate measures—
(i) to avoid the dismissals;
(ii) to minimise the number of dismissals;
(iii) to change the timing of the dismissals; and
(iv) to mitigate the adverse effects of the dismissals;
(b) the method for selecting the employees to be dismissed; and
(c) the severance pay for dismissed employees.
(3) The employer must disclose in writing to issue a written notice inviting the other consulting party to consult with and disclose in writing all relevant information, including, but not limited to—
(a) the reasons for the proposed dismissals;
(b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
(c) the number of employees likely to be affected and the job categories in which they are employed;
(d) the proposed method for selecting which employees to dismiss;
(e) the time when, or the period during which, the dismissals are likely to take effect;
(f) the severance pay proposed;
(g) any assistance that the employer proposes to offer to the employees likely to be dismissed;
(h) the possibility of the future re-employment of the employees who are dismissed.
(i) the number of employees employed by the employer; and
(j) the number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months.
(4) (a) The provisions of section 16 apply, read with the changes required by the context, to the disclosure of information in terms of subsection (3).
(b) In any dispute in which an arbitrator or the Labour Court is required to decide whether or not any information is relevant, the onus is on the employer to prove that any information that it has refused to disclose is not relevant for the purposes for which it is sought.
(5) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter dealt with in subsections (2), (3) and (4) as well as any other matter relating to the proposed dismissals.
(6) (a) The employer must consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
(b) If any representation is made in writing the employer must respond in writing.
(7) The employer must select the employees to be dismissed according to selection criteria—
(a) that have been agreed to by the consulting parties; or
(b) if no criteria have been agreed, criteria that are fair and objective.

189A. Dismissals based on operational requirements by employers with more than 50 employees

(1) This section applies to employers employing more than 50 employees if—
(a) the employer contemplates dismissing by reason of the employer's operational requirements, at least—
(i) 10 employees, if the employer employs up to 200 employees;
(ii) 20 employees, if the employer employs more than 200, but not more than 300, employees;
(iii) 30 employees, if the employer employs more than 300, but not more than 400, employees;
(iv) 40 employees, if the employer employs more than 400, but not more than 500, employees; or
(v) 50 employees, if the employer employs more than 500 employees; or
(b) the number of employees that the employer contemplates dismissing together with the number of employees that have been dismissed by reason of the employer's operational requirements in the 12 months prior to the employer issuing a notice in terms of section 189(3), is equal to or exceeds the relevant number specified in paragraph (a).
(2) In respect of any dismissal covered by this section—
(a) an employer must give notice of termination of employment in accordance with the provisions of this section;
(b) despite section 65(1)(c), an employee may participate in a strike and an employer may lock out in accordance with the provisions of this section;
(c) the consulting parties may agree to vary the time periods for facilitation or consultation;
(d) a consulting party may not unreasonably refuse to extend the period for consultation if such an extension is required to ensure meaningful consultation.
(3) The Commission must appoint a facilitator in terms of any regulations made under subsection (6) to assist the parties engaged in consultations if—
(a) the employer has in its notice in terms of section 189(3) requested facilitation; or
(b) consulting parties representing the majority of employees whom the employer contemplates dismissing have requested facilitation and have notified the Commission within 15 days of the notice.
(4) This section does not prevent an agreement to appoint a facilitator in circumstances not contemplated in subsection (3).
(5) If a facilitator is appointed in terms of subsection (3) or (4) the facilitation must be conducted in terms of any regulations made by the Minister under subsection (6) for the conduct of such facilitations.
(6) The Minister, after consulting NEDLAC and the Commission, may make regulations relating to—
(a) the time period, and the variation of time periods, for facilitation;
(b) the powers and duties of facilitators;
(c) the circumstances in which the Commission may charge a fee for appointing a facilitator and the amount of the fee; and
(d) any other matter necessary for the conduct of facilitations.
(7) If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of section 189(3)—
(a) the employer may give notice to terminate the contracts of employment in accordance with section 37(1) of the Basic Conditions of Employment Act; and
(b) a registered trade union or the employees who have received notice of termination may either—
(i) give notice of a strike in terms of section 64(1)(b) or (d); or
(ii) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191(11).
(8) If a facilitator is not appointed—
(a) a party may not refer a dispute to a council or the Commission unless a period of 30 days has lapsed from the date on which notice was given in terms of section 189(3); and
(b) once the periods mentioned in section 64(1)(a) have elapsed—
(i) the employer may give notice to terminate the contracts of employment in accordance with section 37(1) of the Basic Conditions of Employment Act; and
(ii) a registered trade union or the employees who have received notice of termination may—
(aa) give notice of a strike in terms of section 64(1)(b) or (d); or
(bb) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191(11).
(9) Notice of the commencement of a strike may be given if the employer dismisses or gives notice of dismissal before the expiry of the periods referred to in subsections (7)(a) or (8)(b)(i).
(a) A consulting party may not—
(i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning whether there is a fair reason for that dismissal to the Labour Court;
(ii) refer a dispute about whether there is a fair reason for a dismissal to the Labour Court, if it has given notice of a strike in terms of this section in respect of that dismissal.
(b) If a trade union gives notice of a strike in terms of this section—
(i) no member of that trade union, and no employee to whom a collective agreement concluded by that trade union dealing with consultation or facilitation in respect of dismissals by reason of the employers operational requirements has been extended in terms of section 23(1)(d), may refer a dispute concerning whether there is a fair reason for dismissal to the Labour Court;
(ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.
(10) The following provisions of Chapter IV apply to any strike or lock-out in terms of this section:
(a) Section 64(1) and (3)(a) to (d), except that—
(b) section 64(1)(a) does not apply if a facilitator is appointed in terms of this section;
(c) an employer may only lock out in respect of a dispute in which a strike notice has been issued;
(d) subsection (2)(a), section 65(1) and (3);
(e) 66 except that written notice of any proposed secondary strike must be given at least 14 days prior to the commencement of the strike;
(f) sections 67, 68, 69 and 76.
(11) During the 14-day period referred to in subsection (11)(c), the director must, if requested by an employer who has received notice of any intended secondary strike, appoint a commissioner to attempt to resolve any dispute, between the employer and the party who gave the notice, through conciliation.
(12) A request to appoint a commissioner or the appointment of a commissioner in terms of paragraph (a) does not affect the right of employees to strike on the expiry of the 14-day period.
(13) If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an application for an order—
(a) compelling the employer to comply with a fair procedure;
(b) interdicting or restraining the employer from dismissing an employee prior to complying with a fair procedure;
(c) directing the employer to reinstate an employee until it has complied with a fair procedure;
(d) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.
(14) Subject to this section, the Labour Court may make any appropriate order referred to in section 158(1)(a).
(15) An award of compensation made to an employee in terms of subsection (14) must comply with section 194.
(16) The Labour Court may not make an order in respect of any matter concerning the disclosure of information in terms of section 189(4) that has been the subject of an arbitration award in terms of section 16.
(17) An application in terms of subsection (13) must be brought not later than 30 days after the employer has given notice to terminate the employee's services or, if notice is not given, the date on which the employees are dismissed.
(18) The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph (a).
(19) *[deleted by section 33(b) of Act No. 6 of 2014]*
(20) In any dispute referred to the Labour Court in terms of section 191(5)(b)(ii) that concerns the dismissal of the number of employees specified in subsection (1), the Labour Court must find that the employee was dismissed for a fair reason if—
(a) the dismissal was to give effect to a requirement based on the employer's economic, technological, structural or similar needs;
(b) the dismissal was operationally justifiable on rational grounds;
(c) there was a proper consideration of alternatives; and
(d) selection criteria were fair and objective.
(21) For the purposes of this section, an 'employer' in the public service is the executing authority of a national department, provincial administration, provincial department or organisational component contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994).

Summary of the Labour Relations Act, (Act No. 66 of 1995)

190. Date of dismissal

(1) The date of dismissal is the earlier of—
(a) the date on which the contract of employment terminated; or
(b) the date on which the employee left the service of the employer.
(2) Despite subsection (1)—
(a) if an employer has offered to renew on less favourable terms, or has failed to renew, a fixed-term contract of employment, the date of dismissal is the date on which the employer offered the less favourable terms or the date the employer notified the employee of the intention not to renew the contract;
(b) if the employer refused to allow an employee to resume work, the date of dismissal is the date on which the employer first refused to allow the employee to resume work;
(c) if an employer refused to reinstate or re-employ the employee, the date of dismissal is the date on which the employer first refused to reinstate or re-employ that employee;
(d) if an employer terminates an employee's employment on notice, the date of dismissal is the date on which the notice expires or, if it is an earlier date, the date on which the employee is paid all outstanding salary.

191. Disputes about unfair dismissals and unfair labour practices

(1) (a) If there is a dispute about the fairness of a dismissal, the dismissed employee may refer the dispute in writing within 30 days of the date of dismissal to—
(i) a council, if the parties to the dispute fall within the registered scope of that council; or
(ii) the Commission, if no council has jurisdiction.
(b) A referral in terms of paragraph (a) must be made within—
(i) 30 days of the date of a dismissal or, if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal;
(ii) 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence.
(2) If the employee shows good cause at any time, the council or the Commission may permit the employee to refer the dispute after the relevant time limit in subsection (1) has expired.
(2A) Subject to subsections (1) and (2), an employee whose contract of employment is terminated by notice, may refer the dispute to the council or the Commission once the employee has received that notice.
(3) The employee must satisfy the council or the Commission that a copy of the referral has been served on the employer.
(4) The council or the Commission must attempt to resolve the dispute through conciliation.
(5) If a council or a commissioner has certified that the dispute remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the council or the Commission received the referral and the dispute remains unresolved—
(a) the council or the Commission must arbitrate the dispute at the request of the employee if—
(i) the employee has alleged that the reason for dismissal is related to the employee's conduct or capacity, unless paragraph (b)(iii) applies;
(ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable or the employer provided the employee with substantially less favourable conditions or circumstances at work after a transfer in terms of section 197 or 197A, unless the employee alleges that the contract of employment was terminated for a reason contemplated in section 187; or
(iii) the employee does not know the reason for dismissal; or
(iv) the dispute concerns an unfair labour practice.
(b) the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is—
(i) automatically unfair;
(ii) based on the employer's operational requirements;
(iii) the employee 's participation in a strike that does not comply with the provisions of Chapter IV; or
(iv) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.
(5A) Despite any other provision in the Act, the council or Commission must commence the arbitration immediately after certifying that the dispute remains unresolved if the dispute concerns—
(a) the dismissal of an employee for any reason relating to probation;
(b) any unfair labour practice relating to probation;
(c) any other dispute contemplated in subsection (5)(a) in respect of which no party has objected to the matter being dealt with in terms of this subsection.
(6) Despite subsection (5)(a) or (5A), the director must refer the dispute to the Labour Court, if the director decides, on application by any party to the dispute, that to be appropriate after considering—
(a) the reason for dismissal;
(b) whether there are questions of law raised by the dispute;
(c) the complexity of the dispute;
(d) whether there are conflicting arbitration awards that need to be resolved;
(e) the public interest.
(7) When considering whether the dispute should be referred to the Labour Court, the director must give the parties to the dispute and the commissioner who attempted to conciliate the dispute, an opportunity to make representations.
(8) The director must notify the parties of the decision and refer the dispute—
(a) to the Commission for arbitration; or
(b) to the Labour Court for adjudication.
(9) The director's decision is final and binding.
(10) No person may apply to any court of law to review the director's decision until the dispute has been arbitrated or adjudicated, as the case may be.
(11) (a) The referral, in terms of subsection (5)(b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.
(b) However, the Labour Court may condone non-observance of that timeframe on a good cause shown.
(12) An employee who is dismissed by reason of the employer's operational requirements may elect to refer the dispute either to arbitration or to the Labour Court if—
(a) the employer followed a consultation procedure that applied to that employee only, irrespective of whether that procedure complied with section 189;
(b) the employer's operational requirements lead to the dismissal of that employee only; or
(c) the employer employs less than ten employees, irrespective of the number of employees who are dismissed.
(13) (a) An employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court for adjudication if the employee has alleged that the employee has been subjected to an occupational detriment by the employer in contravention of section 3 of the Protected Disclosures Act, 2000, for having made a protected disclosure defined in that Act.
(b) A referral in terms of paragraph (a) is deemed to be made in terms of subsection (5)(b).

192. Onus in dismissal disputes

(1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal.
(2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.

193. Remedies for unfair dismissal and unfair labour practice

(1) If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may—
(a) order the employer to reinstate the employee from any date not earlier than the date of dismissal;
(b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
(c) order the employer to pay compensation to the employee.
(2) The Labour Court or the arbitrator must require the employer to reinstate or re-employ the employee unless—
(a) the employee does not wish to be reinstated or re-employed;
(b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
(c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or
(d) the dismissal is unfair only because the employer did not follow a fair procedure.
(3) If a dismissal is automatically unfair or, if a dismissal based on the employer's operational requirements is found to be unfair, the Labour Court in addition may make any other order that it considers appropriate in the circumstances.
(4) An arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation

194. Limits on compensation

(1) The compensation awarded to an employee whose dismissal is found to be unfair either because the employer did not prove that the reason for dismissal was a fair reason relating to the employee's conduct or capacity or the employer's operational requirements or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.
(2) *[deleted by the Labour Relations Amendment Act, 2002]*
(3) The compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of 24 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.
(4) The compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months remuneration.

195. Compensation is in addition to any other amount

An order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment.

196. Severance pay

(1) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, unless the employer has been exempted from the provisions of this subsection.
(2) The Minister, after consulting NEDLAC and the Public Service Co-ordinating Bargaining Council, may vary the amount of severance pay in terms of subsection (1) by notice in the Government Gazette.
(3) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer is not entitled to severance pay in terms of subsection (1).
(4) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.
(5) An employer or a category of employers may apply to the Minister for exemption from the provisions of subsection (1) as if the application is one in terms of the Basic Conditions of Employment Act and the Minister may grant an exemption as if it were an exemption granted in terms of that Act.
(6) If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to—
(a) a council, if the parties to the dispute fall within the registered scope of that council; or
(b) the Commission, if no council has jurisdiction.
(7) The employee who refers the dispute to the council or the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
(8) The council or the Commission must attempt to resolve the dispute through conciliation.
(9) If the dispute remains unresolved, the employee may refer it to arbitration.
(10) If the Labour Court is adjudicating a dispute about a dismissal based on the employer's operational requirements, the Court may inquire into and determine the amount of any severance pay to which the dismissed employee may be entitled and the Court may make an order directing the employer to pay that amount.

197. Transfer of contract of employment

(1) In this section and in section 197A—
(a) 'business' includes the whole or a part of any business, trade, undertaking or service; and
(b) 'transfer' means the transfer of a business by one employer ('the old employer') to another employer ('the new employer') as a going concern.
(2) If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6)—
(a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;
(b) all the rights and obligations between the old employer and an employee at the time of the transfer continue in force as if they had been rights and obligations between the new employer and the employee;
(c) anything done before the transfer by or in relation to the old employer, including the dismissal of an employee or the commission of an unfair labour practice or act of unfair discrimination, is considered to have been done by or in relation to the new employer; and
(d) the transfer does not interrupt an employee's continuity of employment, and an employee's contract of employment continues with the new employer as if with the old employer.
(3) (a) The new employer complies with subsection (2) if that employer employs transferred employees on terms and conditions that are on the whole not less favourable to the employees than those on which they were employed by the old employer.
(b) Paragraph (a) does not apply to employees if any of their conditions of employment are determined by a collective agreement.
(4) Subsection (2) does not prevent an employee from being transferred to a pension, provident, retirement or similar fund other than the fund to which the employee belonged prior to the transfer, if the criteria in section 14(1)(c) of the Pension Funds Act, 1956 (Act No. 24 of 1956), are satisfied.
(5) (a) For the purposes of this subsection, the collective agreements and arbitration awards referred to in paragraph (b) are agreements and awards that bound the old employer in respect of the employees to be transferred, immediately before the date of transfer.
(b) Unless otherwise agreed in terms of subsection (6), the new employer is bound by—
(i) any arbitration award made in terms of this Act, the common law or any other law;
(ii) any collective agreement binding in terms of section 23; and
(iii) any collective agreement binding in terms of section 32 unless a commissioner acting in terms of section 62 decides otherwise.
(6) (a) An agreement contemplated in subsection (2) must be in writing and concluded between—
(i) either the old employer, the new employer, or the old and new employers acting jointly, on the one hand; and
(ii) the appropriate person or body referred to in section 189(1), on the other.
(b) In any negotiations to conclude an agreement contemplated by paragraph (a), the employer or employers contemplated in subparagraph (i), must disclose to the person or body contemplated in subparagraph (ii), all relevant information that will allow it to engage effectively in the negotiations.
(c) Section 16(4) to (14) applies, read with the changes required by the context, to the disclosure of information in terms of paragraph (b).
(7) The old employer must—
(a) agree with the new employer to a valuation as at the date of transfer of—
(i) the leave pay accrued to the transferred employees of the old employer;
(ii) the severance pay that would have been payable to the transferred employees of the old employer in the event of a dismissal by reason of the employer's operational requirements; and
(iii) any other payments that have accrued to the transferred employees but have not been paid to employees of the old employer;
(b) conclude a written agreement that specifies—
(i) which employer is liable for paying any amount referred to in paragraph (a), and in the case of the apportionment of liability between them, the terms of that apportionment; and
(ii) what provision has been made for any payment contemplated in paragraph (a) if any employee becomes entitled to receive a payment;
(c) disclose the terms of the agreement contemplated in paragraph (b) to each employee who after the transfer becomes employed by the new employer; and
(d) take any other measure that may be reasonable in the circumstances to ensure that adequate provision is made for any obligation on the new employer that may arise in terms of paragraph (a).
(8) For a period of 12 months after the date of the transfer, the old employer is jointly and severally liable with the new employer to any employee who becomes entitled to receive a payment contemplated in subsection (7)(a) as a result of the employee's dismissal for a reason relating to the employer's operational requirements or the employer's liquidation or sequestration, unless the old employer is able to show that it has complied with the provisions of this section.
(9) The old and new employer are jointly and severally liable in respect of any claim concerning any term or condition of employment that arose prior to the transfer.
(10) This section does not affect the liability of any person to be prosecuted for, convicted of, and sentenced for, any offence.

197A. Transfer of contract of employment in circumstances of insolvency

(1) This section applies to a transfer of a business—
(a) if the old employer is insolvent; or
(b) if a scheme of arrangement or compromise is being entered into to avoid winding-up or sequestration for reasons of insolvency.
(2) Despite the Insolvency Act, 1936 (Act No. 24 of 1936), if a transfer of a business takes place in the circumstances contemplated in subsection (1), unless otherwise agreed in terms of section 197(6)—
(a) the new employer is automatically substituted in the place of the old employer in all contracts of employment in existence immediately before the old employer's provisional winding-up or sequestration;
(b) all the rights and obligations between the old employer and each employee at the time of the transfer remain rights and obligations between the old employer and each employee;
(c) anything done before the transfer by the old employer in respect of each employee is considered to have been done by the old employer;
(d) the transfer does not interrupt the employee's continuity of employment and the employee's contract of employment continues with the new employer as if with the old employer.
(3) Section 197(3), (4), (5) and (10) applies to a transfer in terms of this section and any reference to an agreement in that section must be read as a reference to an agreement contemplated in section 197(6).
(4) Section 197(5) applies to a collective agreement or arbitration binding on the employer immediately before the employer's provisional winding-up or sequestration.
(5) Section 197(7), (8) and (9) does not apply to a transfer in accordance with this section.

197B. Disclosure of information concerning insolvency

(1) An employer that is facing financial difficulties that may reasonably result in the winding-up or sequestration of the employer, must advise a consulting party contemplated in section 189(1).
(2) (a) An employer that applies to be wound up or sequestrated, whether in terms of the Insolvency Act, 1936, or any other law, must at the time of making application, provide a consulting party contemplated in section 189(1) with a copy of the application.
(b) An employer that receives an application for its winding-up or sequestration must supply a copy of the application to any consulting party contemplated in section 189(1), within two days of receipt, or if the proceedings are urgent, within 12 hours.

Chapter IX:
Regulation of Non-Standard Employment and General Provisions

198. Temporary Employment Services

(1) In this section, "temporary employment service" means any person who, for reward, procures for or provides to a client other persons—
(a) who perform work for the client; and
(b) who are remunerated by the temporary employment service.
(2) For the purposes of this Act, a person whose services have been procured for or provided to a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
(3) Despite subsections (1) and (2), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
(4) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any of its employees, contravenes—
(a) a collective agreement concluded in a bargaining council that regulates terms and conditions of employment;
(b) a binding arbitration award that regulates terms and conditions of employment;
(c) the Basic Conditions of Employment Act; or
(d) a sectoral determination made in terms of the Basic Conditions of Employment Act.
(4A) If the client of a temporary employment service is jointly and severally liable in terms of section 198(4) or is deemed to be the employer of an employee in terms of section 198A(3)(b)—
(a) the employee may institute proceedings against either the temporary employment service or the client or both the temporary employment service and the client;
(b) a labour inspector acting in terms of the Basic Conditions of Employment Act may secure and enforce compliance against the temporary employment service or the client as if it were the employer, or both; and
(c) any order or award made against a temporary employment service or client in terms of this subsection may be enforced against either.
(4B) (a) A temporary employment service must provide an employee whose service is procured for or provided to a client with written particulars of employment that comply with section 29 of the Basic Conditions of Employment Act, when the employee commences employment.
(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to a person whose services were procured for or provided to a client by a temporary employment service in terms of subsection 198(1) prior to the commencement of the Labour Relations Act, 2014.
(4C) An employee may not be employed by a temporary employment service on terms and conditions of employment which are not permitted by this Act, any employment law, sectoral determination or collective agreement concluded in a bargaining council applicable to a client to whom the employee renders services.
(4D) The issue of whether an employee of a temporary employment service is covered by a bargaining council agreement or sectoral determination, must be determined by reference to the sector and area in which the client is engaged.
(4E) In any proceedings brought by an employee, the Labour Court or an arbitrator may—
(a) determine whether a provision in an employment contract or a contract between a temporary employment service and a client complies with subsection (4C); and
(b) make an appropriate order or award.
(4F) No person must perform the functions of a temporary employment service unless it is registered in terms of any applicable legislation, and the fact that a temporary employment service is not registered will not constitute a defence to any claim instituted in terms of this section or 198A.
(5) Two or more bargaining councils may agree to bind the following persons, if they fall within the combined registered scope of those bargaining councils, to a collective agreement concluded in any one of them—
(a) temporary employment service;
(b) a person employed by a temporary employment service; and
(c) a temporary employment service client.
(6) An agreement concluded in terms of subsection (5) is binding only if the collective agreement has been extended to non-parties within the registered scope of the bargaining council.
(7) Two or more bargaining councils —
(a) temporary employment service;
(b) a person employed by a temporary employment service; and
(c) a temporary employment service's client.
(8) An agreement concluded in terms of subsection (7) is binding only if—
(a) each of the contracting bargaining councils has requested the Minister to extend the agreement to non-parties falling within its registered scope;
(b) the Minister is satisfied that the terms of the agreement are not substantially more onerous than those prevailing in the corresponding collective agreements concluded in the bargaining councils; and
(c) the Minister, by notice in the Government Gazette, has extended the agreement as requested by all the bargaining councils that are parties to the agreement.

198A. Application of section 198 to employees earning below earnings threshold

(1) In this section, a 'temporary service' means work for a client by an employee—
(a) for a period not exceeding three months;
(b) as a substitute for an employee of the client who is temporarily absent; or
(c) in a category of work and for any period of time which is determined to be a temporary service by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8).
(2) This section does not apply to employees earning in excess of the threshold prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.
(3) For the purposes of this Act, an employee—
(a) performing a temporary service as contemplated in subsection (1) for the client is the employee of the temporary employment services in terms of section 198(2); or
(b) not performing such temporary service for the client is—
(i) deemed to be the employee of that client and the client is deemed to be the employer; and
(ii) subject to the provisions of section 198B, employed on an indefinite basis by the client.
(4) The termination by the temporary employment services of an employee's service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of subsection (3)(b) or because the employee exercised a right in terms of this Act, is a dismissal.
(5) An employee deemed to be an employee of the client in terms of subsection (3)(b) must be treated on the whole not less favourably than an employee of the client performing the same or similar work, unless there is a justifiable reason for different treatment.
(6) The Minister must by notice in the Government Gazette invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the Minister in terms of subsection (1)(c).
(7) The Minister must consult with NEDLAC before publishing a notice or a provision in a sectoral determination contemplated in subsection (1)(c).
(8) If there is conflict between a collective agreement concluded in a bargaining council, a sectoral determination or a notice by the Minister contemplated in subsection (1)(c)—
(a) the collective agreement takes precedence over a sectoral determination or notice; and
(b) the notice takes precedence over the sectoral determination.
(9) Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of section 198(1) before the commencement of the Labour Relations Amendment Act, 2014, acquire the rights contemplated in subsections (3), (4) and (5) with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

198B. Fixed term contracts with employees earning below earnings threshold

(1) For the purpose of this section, a 'fixed term contract' means a contract of employment that terminates on—
(a) the occurrence of a specified event;
(b) the completion of a specified task or project; or
(c) a fixed date, other than an employee's normal or agreed retirement age, subject to subsection (3).
(2) This section does not apply to—
(a) employees earning in excess of the threshold prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act;
(b) an employer that employs less than 10 employees, or that employs less than 50 employees and whose business has been in operation for less than two years, unless—
(i) the employer conducts more than one business; or
(ii) the business was formed by the division or dissolution for any reason of an existing business; and
(c) an employee employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or collective agreement.
(3) An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment only if—
(a) the nature of the work for which the employee is employed is of a limited or definite duration; or
(b) the employer can demonstrate any other justifiable reason for fixing the term of the contract.
(4) Without limiting the generality of subsection (3), the conclusion of a fixed term contract will be justified if the employee—
(a) is replacing another employee who is temporarily absent from work;
(b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
(c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
(d) is employed to work exclusively on a specific project that has a limited or defined duration;
(e) is a non-citizen who has been granted a work permit for a defined period;
(f) is employed to perform seasonal work;
(g) is employed for the purpose of an official public works scheme or similar public job creation scheme;
(h) is employed in a position which is funded by an external source for a limited period; or
(i) has reached the normal or agreed retirement age applicable in the employer's business.
(5) Employment in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration.
(6) An offer to employ an employee on a fixed term contract or to renew or extend a fixed term contract, must—
(a) be in writing; and
(b) state the reasons contemplated in subsection (3)(a) or (b).
(7) If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract as contemplated in subsection (3) and that the term was agreed.
(8) (a) An employee employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an employee employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.
(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.
(9) As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an employee employed in terms of a fixed term contract and an employee employed on a permanent basis with equal access to opportunities to apply for vacancies.
(10) (a) An employer who employs an employee in terms of a fixed term contract for a reason contemplated in subsection (4)(d) for a period exceeding 24 months must, subject to the terms of any applicable collective agreement, pay the employee on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the Basic Conditions of Employment Act.
(b) An employee employed in terms of a fixed-term contract, as contemplated in paragraph (a), before the commencement of the Labour Relations Amendment Act, 2014, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.
(11) An employee is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed term contract, the employer offers the employee employment or procures employment for the employee with a different employer, which commences at the expiry of the contract and on the same or similar terms.

198C. Part-time employment of employees earning below earnings threshold

(1) For the purpose of this section—
(a) a part-time employee is an employee who is remunerated wholly or partly by reference to the time that the employee works and who works less hours than a comparable full-time employee; and
(b) a comparable full-time employee—
(i) is an employee who is remunerated wholly or partly by reference to the time that the employee works and who is identifiable as a full-time employee in terms of the custom and practice of the employer of that employee; and
(ii) does not include a full-time employee whose hours of work are temporarily reduced for operational requirements as a result of an agreement.
(2) This section does not apply—
(a) to employees earning in excess of the threshold determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act;
(b) to an employer that employs less than 10 employees or that employs less than 50 employees and whose business has been in operation for less than two years, unless—
(i) the employer conducts more than one business; or
(ii) the business was formed by the division or dissolution, for any reason, of an existing business;
(c) to an employee who ordinarily works less than 24 hours a month for an employer; and
(d) during an employee's first three months of continuous employment with an employer.
(3) Taking into account the working hours of a part-time employee, irrespective of when the part-time employee was employed, an employer must—
(a) treat a part-time employee on the whole not less favourably than a comparable full-time employee doing the same or similar work, unless there is a justifiable reason for different treatment; and
(b) provide a part-time employee with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time employee.
(4) Subsection (3) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time employees employed before the commencement of the Labour Relations Amendment Act, 2014.
(5) After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time employee with the same access to opportunities to apply for vacancies as it provides to full-time employees.
(6) For the purposes of identifying a comparable full-time employee, regard must be had to a full-time employee employed by the employer on the same type of employment relationship who performs the same or similar work—
(a) in the same workplace as the part-time employee; or
(b) if there is no comparable full-time employee who works in the same workplace, a comparable full-time employee employed by the employer in any other workplace.

198D. General provisions applicable to sections 198A to 198C

(1) Any dispute arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or a bargaining council with jurisdiction for conciliation and, if not resolved, to arbitration.
(2) For the purposes of sections 198A(5), 198B(8) and 198C(3)(a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account—
(a) seniority, experience or length of service;
(b) merit;
(c) the quality or quantity of work performed; or
(d) any other criteria of a similar nature,
and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).
(3) A party to a dispute contemplated in subsection (1), other than a dispute about a dismissal in terms of section 198A(4), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.
(4) The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.
(5) If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.
(6) The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in subsection (3) or (5).

199. Contracts of employment may not disregard or waive collective agreements or arbitration awards

(1) A contract of employment, whether concluded before or after the coming into operation of any applicable collective agreement or arbitration award, may not—
(a) permit an employee to be paid remuneration that is less than that prescribed by that collective agreement or arbitration award;
(b) permit an employee to be treated in a manner, or to be granted any benefit, that is less favourable than that prescribed by that collective agreement or arbitration award; or
(c) waive the application of any provision of that collective agreement or arbitration award.
(2) A provision in any contract that purports to permit or grant any payment, treatment, benefit, waiver or exclusion prohibited by subsection (1) is invalid.

200. Representation of employees or employers

(1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party—
(a) in its own interest;
(b) on behalf of any of its members;
(c) in the interest of any of its members.
(2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to those proceedings.

200A. Presumption as to who is employee

(1) Until the contrary is proved, for the purposes of this Act, any employment law and section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936), a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present:
(a) the manner in which the person works is subject to the control or direction of another person;
(b) the person's hours of work are subject to the control or direction of another person;
(c) in the case of a person who works for an organisation, the person forms part of that organisation;
(d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;
(e) the person is economically dependent on the other person for whom he or she works or renders services;
(f) the person is provided with tools of trade or work equipment by the other person; or
(g) the person only works for or renders services to one person.
(2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.
(3) If a proposed or existing work arrangement involves persons who earn amounts equal to or below the amounts determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, any of the contracting parties may approach the Commission for an advisory award on whether the persons involved in the arrangement are employees.
(4) NEDLAC must prepare and issue a Code of Good Practice that sets out guidelines for determining whether persons, including those who earn in excess of the amount determined in subsection (2) are employees.

200B. Liability for employer's obligations

(1) For the purposes of this Act and any other employment law, 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.
(2) If more than one person is held to be the employer of an employee in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law.

201. Confidentiality

(1) A person commits an offence by disclosing any information relating to the financial or business affairs of any other person or any business, trade or undertaking if the information was acquired by the first-mentioned person in the performance of any function or exercise of any power in terms of this Act, in any capacity, by or on behalf of—
(a) a council;
(b) any independent body established by a collective agreement or determination to grant exemptions from the provisions of the collective agreement or determination;
(c) the registrar;
(d) the Commission; and
(e) an accredited agency.
(2) Subsection (1) does not apply if the information was disclosed to enable a person to perform a function or exercise a power in terms of this Act.
(3) (a) A person convicted of an offence in terms of this section may be sentenced to a fine not exceeding R10,000.00.
(b) The Minister, in consultation with the Minister of Justice, may from time to time by notice in the Government Gazette, amend the maximum amount of the fine referred to in paragraph (a).

202. Service of documents

(1) If a registered trade union or a registered employers' organisation acts on behalf of any of its members in a dispute, service on that trade union or employers' organisation of any document directed to those members in connection with that dispute, will be sufficient service on those members for the purposes of this Act.
(2) Service on the Office of the State Attorney of any legal process directed to the State in its capacity as an employer is service on the State for the purposes of this Act.

203. Codes of good practice

(1) NEDLAC may—
(a) prepare and issue codes of good practice; and
(b) change or replace any code of good practice.
(2) Any code of good practice, or any change to or replacement of a code of good practice, must be published in the Government Gazette.
(2A) The Minister may issue a code of good practice by publishing it in the Government Gazette in accordance with the provisions of this section, if—
(a) proposals relating to the code of good practice have been tabled and considered by NEDLAC; and
(b) NEDLAC has reported to the Minister that it has been unable to reach agreement on the matter.
(2B) Subsection (2A) applies to the amendment or replacement of an existing code of good practice.
(3) Any person interpreting or applying this Act must take into account any relevant code of good practice.
(4) A Code of Good Practice issued in terms of this section may provide that the code must be taken into account in applying or interpreting any employment law.

204. Collective agreement, arbitration award or wage determination to be kept by employer

Unless a collective agreement, arbitration award or determination made in terms of the Basic Conditions of Employment Act provides otherwise, every employer on whom the collective agreement, arbitration award, or determination is binding must—
(a) keep a copy of that collective agreement, arbitration award or determination available in the workplace at all times;
(b) make that copy available for inspection by any employee; and
(c) give a copy of that collective agreement, arbitration award or determination—
(i) to an employee who has paid the prescribed fee; and
(ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

205. Records to be kept by employer

(1) Every employer must keep the records that an employer is required to keep in compliance with any applicable—
(a) collective agreement;
(b) arbitration award;
(c) determination made in terms of the Wage Act.
(2) An employer who is required to keep records in terms of subsection (1) must—
(a) retain those records in their original form or a reproduced form for a period of three years from the date of the event or end of the period to which they relate; and
(b) submit those records in their original form or a reproduced form in response to a demand made at any reasonable time, to any agent of a bargaining council, commissioner or any person whose functions in terms of this Act include the resolution of disputes.
(3) (a) An employer must keep a record of the prescribed details of any strike, lock-out or protest action involving its employees.
(b) An employer must submit those records in the prescribed manner to the registrar.

206. Effect of certain defects and irregularities

(1) Despite any provision in this Act or any other law, a defect does not invalidate—
(a) the constitution or the registration of any registered trade union, registered employers' organisation or council;
(b) any collective agreement or arbitration award that would otherwise be binding in terms of this Act;
(c) any act of a council; or
(d) any act of the director or a commissioner.
(2) A defect referred to in subsection (1) means—
(a) a defect in, or omission from, the constitution of any registered trade union, registered employers' organisation or council;
(b) a vacancy in the membership of any council; or
(c) any irregularity in the appointment or election of—
(i) a representative to a council;
(ii) an alternate to any representative to a council;
(iii) a chairperson or any other person presiding over any meeting of a council or a committee of a council; or
(iv) the director or a commissioner.

210. Application of Act when in conflict with other laws

If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act will prevail.

213. Definitions

In this Act, unless the context otherwise indicates—
"area" includes any number of areas, whether or not contiguous;
"auditor" means any person who is registered to practise in the Republic as a public accountant and auditor;
"bargaining council" means a bargaining council referred to in section 27 and includes, in relation to the public service, the bargaining councils referred to in section 35;
"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
"code of good practice" means a code of practice issued by NEDLAC in terms of section 203(1) of this Act;
"collective agreement" means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand—
(a) one or more employers;
(b) one or more registered employers' organisations; or
(c) one or more employers and one or more registered employers' organisations;
"Commission" means the Commission for Conciliation, Mediation and Arbitration established by section 112;
"council" includes a bargaining council and a statutory council;
"director" means the director of the Commission appointed in terms of section 118(1) and includes any acting director appointed in terms of section 119;
"dismissal" means dismissal as defined in section 186;
"dispute" includes an alleged dispute;
"employee" means—
(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; 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 meanings corresponding to that of "employee";
"employers' organisation" means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions;
"employment law" includes this Act, any other Act the administration of which has been assigned to the Minister, and any of the following Acts:
(a) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
(b) the Skills Development Act, 1998 (Act No. 97 of 1998);
(c) the Employment Equity Act, 1998 (Act No. 55 of 1998);
(d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
(e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and
(f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002];
"essential service" means—
(a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
(b) the Parliamentary service;
(c) the South African Police Services;
"issue in dispute", in relation to a strike or lock-out, means the demand, the grievance or the dispute that forms the subject matter of the strike or lock-out;
"legal practitioner" means any person admitted to practise as an advocate or an attorney in the Republic;
"lock-out" means the exclusion by an employer of employees from the employer's workplace, for the purpose of compelling the employees to accept a demand in respect of any matter of mutual interest between employer and employee, whether or not the employer breaches those employees' contracts of employment in the course of or for the purpose of that exclusion;
"Minister" means the Minister of Labour;
"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);
"office-bearer" means a person who holds office in a trade union, employers' organisation, federation of trade unions, federation of employers' organisations or council and who is not an official;
"official" in relation to a trade union, employers' organisation, federation of trade unions or federation of employers' organisations means a person employed as the secretary, assistant secretary or organiser of a trade union, employers' organisation or federation, or in any other prescribed capacity, whether or not that person is employed in a full-time capacity. And, in relation to a council means a person employed by a council as secretary or in any other prescribed capacity, whether or not that person is employed in a full-time capacity;
"operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer;
"prescribed" means prescribed from time to time by regulation in terms of section 208;
"protest action" means the partial or complete concerted refusal to work, or the retardation or obstruction of work, for the purpose of promoting or defending the socio-economic interests of workers, but not for a purpose referred to in the definition of strike;
"public service" means the national departments, provincial administrations, provincial departments and organisational components contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), but excluding—
(a) the members of the South African National Defence Force;
(b) the National Intelligence Agency; and
(c) the South African Secret Service.
"registered scope" means—
(a) in the case of the Public Service Co-ordinating Bargaining Council, the public service as a whole, subject to section 36;
(b) in the case of bargaining councils established for sectors in the public service, the sector designated by the Public Service Co-ordinating Bargaining Council in terms of section 37(1);
(c) in the case of any other council, the sector and area in respect of which it is registered in terms of this Act;
"registrar" means the registrar of labour relations appointed in terms of section 108 and includes—
(a) any deputy registrar appointed in terms of that section when acting on the direction or under a general or special delegation of the registrar; and
(b) any acting registrar appointed in terms of that section;
"remuneration" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and 'remunerate' has a corresponding meaning;
"Republic" (a) when used to refer to the State as a constitutional entity, means the Republic of South Africa as defined in section 1 of the Constitution; and
(b) when used in the territorial sense, means the national territory of the Republic as defined in section 1 of the Constitution;
"sector" means, subject to section 37, an industry or a service;
"serve" means to send by electronic mail, registered post, telegram, telex, telefax or to deliver by hand, and—
(a) in respect of the Labour Courts, any other method of service specified in the rules of the Labour Court;
(b) in respect of the Commission, any other method of service specified in the Rules of the Commission;
(c) in respect of a bargaining council, any other method of service specified in a collective agreement concluded in the bargaining council.
"statutory council" means a council established in terms of Part E of Chapter III;
"strike" means 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;
"this Act" includes the section numbers, the Schedules, except Schedules 4 and 8, and any regulations made in terms of section 208, but does not include the page headers, the headings or footnotes;
"trade union" means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations;
"trade union representative" means a member of a trade union who is elected to represent employees in a workplace;
"Wage Act" means the Wage Act, 1957 (Act No. 5 of 1957);
"working hours" means those hours during which an employee is obliged to work;
"workplace" (a) in relation to the public service—
(i) for the purposes of collective bargaining and dispute resolution, the registered scope of the Public Service Co-ordinating Bargaining Council or a bargaining council in a sector in the public service, as the case may be; or
(ii) for any other purpose, a national department, provincial administration, provincial department or organisational component contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), or any other part of the public service that the Minister for Public Service and Administration, after consultation with the Public Service Co-ordinating Bargaining Council, demarcates as a workplace;
(b) *[deleted by the Labour Relations Amendment Act, 2002]*
(c) 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 reason 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; and
"workplace forum" means a workplace forum established in terms of Chapter V.

214. Short title and commencement

(1) This Act is called the Labour Relations Act, 1995.
(2) This Act will come into operation on a date to be determined by the President by proclamation in the *Government Gazette*, except in the case of any provision in relation to which some other arrangement regarding commencement is made elsewhere in this Act.

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