



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



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Basic Guide to Strikes, Lockouts and Picketing

Workers have a right to strike, and employers have a right to lock out workers, if a dispute cannot be resolved. Certain procedures and certain limitations apply under certain conditions. Secondary strikes and pickets may also be held.

Application

The Labour Relations Act applies to all employers, workers, trade unions and employers' organisations, but does not apply to -

- members of the:
 - National Defence Force;
 - National Intelligence Agency; or
 - South African Secret Service.

See

- [Labour Relations Act](#)

Applies to all workers and employers and aims to advance economic development, social justice, labour peace and the democracy of the workplace.

Legal Strikes and Lockouts

Every worker has the right to strike, and every employer has the option to lock out workers, if -

1. a dispute has been referred to a council or the Commission for Conciliation, Mediation and Arbitration (CCMA);
2. a certificate that a dispute remains unresolved has been issued;
3. 30 days have elapsed since the referral; and
4. 48 hours' written notice of a strike is given to
 - a. the employer; or
 - b. a council (if the dispute relates to a collective agreement to be concluded in a council); or
 - c. to an employers' organisation (if the employer is a member of an organisation that is a party to the dispute); or
5. 48 hours' written notice of a lockout is given to
 - a. the trade union; or
 - b. to the workers (if they are not trade union members); or
 - c. a council (if the dispute relates to a collective agreement to be concluded in a council).

Workers' Rights

During legal strikes workers may not -

- be dismissed; or
- have civil legal proceedings brought against them.

Employers' Rights

During legal strikes employers -

- do not have to pay workers, unless workers ask that payment in kind (accommodation, food, basic amenities) be continued; and
- may fairly dismiss a worker for misconduct or for operational needs.

After a strike has ended, an employer may recover the monetary value of payment in kind through civil proceedings in the Labour Court.

During legal lockouts, employers may -

- not have civil legal proceedings brought against them during legal lockouts; and
- recover the monetary value of payment in kind through civil proceedings in the Labour Court after legal lockouts.

Special Procedure for Refusal to Bargain

When a party refuses to bargain, an advisory award must be obtained before a strike can be held. An award cannot force a party to bargain.

When Strike or Lockout Procedures Do Not Apply

Strike or Lockout Procedures do not apply if -

- members follow the procedure in a council's constitution;
- a strike or lockout follows a collective agreement procedure;
- workers strike in response to an illegal lockout;
- employers lock workers out in response to an illegal strike; and
- employers one-sidedly change workers' working conditions and refuse to restore them.

Illegal Strikes and Lockouts

Strikes and lockouts will be illegal if -

- a collective agreement or arbitration award binds the parties;
- an agreement must be referred for arbitration or to the Labour Court;
- a wage determination binds the parties and it is less than 1 year old; or
- the parties are providing an essential or maintenance service.

Labour Court Action

If a strike or lockout is illegal, the matter must be referred to the Labour Court, which may grant an interdict or a restraining order.

Secondary Strikes

When workers strike in support of a legal strike held by other workers, it is called a secondary strike.

Secondary strikers must give their employers or employers' organisation 7 days' notice of their intention to strike.

A secondary strike cannot be held if -

- the dispute has been referred to a council;
- the workers work within the registered scope of the council; and

- they have a material interest in the dispute.

Picketing

A registered trade union may authorise its members and supporters to picket. The aim of picketing is to peacefully support a legal strike or to oppose a lockout. Pickets may be held –

- in public access areas outside an employer's premises; or
- inside an employer's premises (with the employer's permission).

The parties or the CCMA must agree on the picketing rules.

Disputes

Any disputes on picketing rights may be referred to the CCMA.

Records to be Kept by Employer

All employers must keep records of the details of strikes, lockouts or protest actions according to the requirements of –

- collective agreements
- arbitration awards
- Wage Act determinations

All employers must keep the original or reproduced records –

- for 3 years from the date of an event; or
- from the date of an event; or
- from the end of a specified period.

All employers must submit records when requested by –

- a bargaining council; or
- commissioner; or
- any dispute resolution agent.

Related Links

- **Basic Guide to Bargaining Councils**
Under the Labour Relations Act, bargaining councils conclude agreements, resolve labour disputes, make proposals on labour policies, etc.
- **Basic Guide to Collective Agreements**
The Labour Relations Act provides for agreements that alter conditions of employment
- **Basic Guide to Trade Unions**
Trade unions are necessary for bargaining for workers' rights and benefits and they regulate industrial relations.
- **The Commission for Conciliation, Mediation and Arbitration (CCMA)**
Visit the website of the Commission for Conciliation, Mediation and Arbitration (CCMA)