

ISSUE

JULY 2023



UNDERSTANDING AND ADDRESSING UNFAIR LABOUR PRACTICES

What is Unfair Labour Practice?

Unfair labour practices occur when an employer treats an employee or job applicant unfairly. The Labour Relations Act (LRA) outlines several forms of unfair labour practices, providing employees with protections against unjust treatment in the workplace.

Employee Rights Under Section 185 of the LRA

Section 185 of the Labour Relations Act, 66 of 1995, grants employees the right to fair treatment at work and states that every employee has the right not to be subjected to an unfair labour practice. This includes any unjust act or omission by an employer that affects an employee's work conditions, including:

- Unfair treatment in matters of promotion, demotion, training, or employee benefits
 - Unjust suspension or other disciplinary actions short of dismissal
 - Refusal or failure to reinstate or rehire a former employee in terms of an agreement
 - Retaliation against an employee who has made a protected disclosure under the Protected Disclosures Act, 2000
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Common Examples of Unfair Labour Practices

Unfair Promotion, Demotion, or Training

When a company deviates from its standard promotion policy to deny an employee advancement based on race, gender, or sexual orientation, this may be considered unfair and can be reported to the Employment Equity Commission. Similarly, demotion without an employee's consent or blocking access to training opportunities can also constitute unfair practices. An employee overlooked for promotion must demonstrate that there was no reasonable explanation for the employer's decision.

Unjust Suspension

Suspending an employee without following fair procedures or for an unreasonable duration can be deemed unfair. The suspension process must have a justifiable reason and follow established procedures. Suspensions that lack legitimate grounds or are unduly prolonged may qualify as unfair labour practices.

Failure to Reinstate or Re-Employ

If an agreement states that an employee will be rehired if their previous position becomes available following retrenchment, failure to reinstate them to this role breaches the agreement and constitutes an unfair labour practice.


Protected Disclosures and Retaliation

The Protected Disclosures Act protects employees who report crimes or unfair practices harmful to workplace health and safety. If an employee reports suspected illegal activities and faces prejudice or retaliation, this is considered an unfair labour practice.

Time Limit for Referring Unfair Labour Practices

Under Section 191 of the LRA, employees have 90 days from the date of the act or omission they consider an unfair labour practice to file a complaint with the CCMA or relevant bargaining council. If the unfair action was discovered later, the referral must be made within 90 days of when the employee became aware of it.

Keeping up with employment regulations ensures a fair and just work environment for all employees.



CONTACT DETAILS

Address: 7 Olivier Str, Noordheuwel, Krugersdorp, 1739

Landlines: 011 954 6206 / 011 954 1501

E-mail: judy@ward-es.co.za

Website: www.ward-es.co.za

