LABOUR RELATIONS ACT 66 OF 1995

[ASSENTED TO 29 NOVEMBER 1995]

[DATE OF COMMENCEMENT: 11 NOVEMBER 1996]

(Unless otherwise indicated)

(English text signed by the President)

as amended by

Labour Relations Amendment Act 42 of 1996

Basic Conditions of Employment Act 75 of 1997

Labour Relations Amendment Act 127 of 1998

Labour Relations Amendment Act 12 of 2002

Intelligence Services Act 65 of 2002

Electronic Communications Security (Pty) Ltd Act 68 of 2002

General Intelligence Laws Amendment Act 52 of 2003

Prevention and Combating of Corrupt Activities Act 12 of 2004

Public Service Amendment Act 30 of 2007

General Intelligence Laws Amendment Act 11 of 2013

Superior Courts Act 10 of 2013

Labour Relations Amendment Act 6 of 2014

also amended by

Legal Aid South Africa Act 39 of 2014

[with effect from a date to be proclaimed - see PENDLEX ]

Regulations under this Act

ACT

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 servives [sic] 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.

[Long title amended by s. 43 of Act 6 of 2014.]

ARRANGEMENT OF SECTIONS

[Arrangement of sections amended by s. 29 of Act 127 of 1998.]

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[Schedule 10 substituted by s. 57 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER I PURPOSE, APPLICATION AND INTERPRETATION (ss 1-3)/1  Purpose of this Act

**CHAPTER I  
PURPOSE, APPLICATION AND INTERPRETATION (ss 1-3)**

**1  Purpose of this Act**

The purpose of *this Act*[1](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-339639)  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;

[Para. *(a)* substituted by s. 1 of Act 6 of 2014.]

*(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.

[1](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s1fn1_ref%2527%255d&xhitlist_md=target-id=0-0-0-339637)  An italicised word or phrase indicates that the word or phrase is defined in section 213 of this Act

**Document 2 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER I PURPOSE, APPLICATION AND INTERPRETATION (ss 1-3)/2  Exclusion from application of this Act

**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.

[S. 2 amended by s. 40 (1) of Act 65 of 2002, by s. 26 of Act 68 of 2002 and by s. 25 (2) of Act 52 of 2003 and substituted by s. 53 of Act 11 of 2013.]

**Document 3 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER I PURPOSE, APPLICATION AND INTERPRETATION (ss 1-3)/3  Interpretation of this Act

**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*.

**Document 4 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/4  Employees' right to freedom of association

**CHAPTER II  
FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)**

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/5  Protection of employees and persons seeking employment

**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*.

**Document 6 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/6  Employers' right to freedom of association

**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;

    (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.

**Document 7 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/7  Protection of employers' rights

**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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/8  Rights of trade unions and employers' organisations

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/9  Procedure for disputes

**9  Procedure for disputes**[**2**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-339763)

(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.

[2](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s9fn2_ref%2527%255d&xhitlist_md=target-id=0-0-0-339761)  See flow diagram 1 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER II FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS (ss 4-10)/10  Burden of proof

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/11  Trade union representativeness

**CHAPTER III  
COLLECTIVE BARGAINING (ss 11-63)**

***Part A  
Organisational rights (ss 11-22)***

**11  Trade union representativeness**

In this Part, unless otherwise stated, **'representative *trade union*'** means a registered *trade union*, or two or more registered *trade unions*acting jointly, that are sufficiently representative of the *employees* employed by an employer in a *workplace*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/12  Trade union access to workplace

**12  Trade union access to workplace**

(1) Any *office-bearer* or *official* of a representative *trade union* is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members interests.

(2) A representative *trade union* is entitled to hold meetings with *employees* outside their *working hours* at the employer's premises.

(3) The members of a representative *trade union* are entitled to vote at the employer's premises in any election or ballot contemplated in that*trade union*'s constitution.

(4) The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/13  Deduction of trade union subscriptions or levies

**13  Deduction of trade union subscriptions or levies**

(1) Any *employee* who is a member of a representative *trade union* may authorise the employer in writing to deduct subscriptions or levies payable to that *trade union* from the *employee*'s wages.

(2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative *trade union* by not later than the 15th day of the month first following the date each deduction was made.

(3) An *employee* may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative *trade union* one month's written notice or, if the *employee* works in the *public service*, three months' written notice.

(4) An employer who receives a notice in terms of subsection (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.

(5) With each monthly remittance, the employer must give the representative *trade union*-

*(a)*   a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;

*(b)*   details of the amounts deducted and remitted and the period to which the deductions relate; and

*(c)*   a copy of every notice of revocation in terms of subsection (3).

**Document 14 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/14  Trade union representatives

**14  Trade union representatives**

(1) In this section, **'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*.

(2) In any *workplace* in which at least 10 members of a representative *trade union* are employed, those members are entitled to elect from among themselves-

*(a)*   if there are 10 members of the *trade union* employed in the *workplace*, one *trade union representative*;

*(b)*   if there are more than 10 members of the *trade union* employed in the *workplace*, two *trade union representatives*;

*(c)*   if there are more than 50 members of the *trade union* employed in the *workplace*, two *trade union representatives* for the first 50 members, plus a further one *trade union representative* for every additional 50 members up to a maximum of seven *trade union representatives*;

*(d)*   if there are more than 300 members of the *trade union* employed in the *workplace*, seven *trade union representatives* for the first 300 members, plus one additional *trade union representative* for every 100 additional members up to a maximum of 10 *trade union representatives*;

*(e)*   if there are more than 600 members of the *trade union* employed in the *workplace*, 10 *trade union representatives* for the first 600 members, plus one additional *trade union representative* for every 200 additional members up to a maximum of 12 *trade union representatives*; and

*(f)*   if there are more than 1 000 members of the *trade union* employed in the *workplace*, 12 *trade union representatives* for the first 1 000 members, plus one additional *trade union representative* for every 500 additional members up to a maximum of 20 *trade union representatives*.

(3) The constitution of the representative *trade union* governs the nomination, election, term of office and removal from office of a *trade union representative*.

(4) A *trade union representative* has the right to perform the following functions-

*(a)*   at the request of an *employee* in the *workplace*, to assist and represent the *employee* in grievance and disciplinary proceedings;

*(b)*   to monitor the employer's compliance with the workplace-related provisions of *this Act*, any law regulating terms and conditions of employment and any *collective agreement* binding on the employer;

*(c)*   to report any alleged contravention of the *workplace*-related provisions of *this Act*, any law regulating terms and conditions of employment and any *collective agreement* binding on the employer to-

     (i)   the employer;

    (ii)   the representative *trade union*; and

    (iii)   any responsible authority or agency; and

*(d)*   to perform any other function agreed to between the representative *trade union* and the employer.

(5) Subject to reasonable conditions, a *trade union representative* is entitled to take reasonable time off with pay during *working hours*-

*(a)*   to perform the functions of a *trade union representative*; and

*(b)*   to be trained in any subject relevant to the performance of the functions of a *trade union representative*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/15  Leave for trade union activities

**15  Leave for trade union activities**

(1) An *employee* who is an *office-bearer* of a representative *trade union*, or of a federation of *trade unions* to which the representative *trade union* is affiliated, is entitled to take reasonable leave during *working hours* for the purpose of performing the functions of that office.

(2) The representative *trade union* and the employer may agree to the number of days of leave, the number of days of paid leave and the conditions attached to any leave.

(3) An arbitration award in terms of section 21 (7) regulating any of the matters referred to in subsection (2) remains in force for 12 months from the date of the award.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/16  Disclosure of information

**16  Disclosure of information**

(1) For the purposes of this section, **'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*.

(2) Subject to subsection (5), an employer must disclose to a *trade union representative* all relevant information that will allow the *trade union representative* to perform effectively the functions referred to in section 14 (4).

(3) Subject to subsection (5), whenever an employer is consulting or bargaining with a representative *trade union*, the employer must disclose to the representative *trade union* all relevant information that will allow the representative *trade union* to engage effectively in consultation or collective bargaining.

(4) The employer must notify the *trade union representative* or the representative *trade union* in writing if any information disclosed in terms of subsection (2) or (3) is confidential.

(5) 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.

(6) If there is a *dispute* about what information is required to be disclosed in terms of this section, any party to the *dispute* may refer the*dispute* in writing to the Commission.

(7) 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*.

(8) The Commission must attempt to resolve the *dispute* through conciliation.

(9) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

(10) In any *dispute* about the disclosure of information contemplated in subsection (6), the commissioner must first decide whether or not the information is relevant.

(11) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (5) *(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 a *trade union representative* to perform effectively the functions referred to in section 14 (4) or the ability of a representative *trade union* to engage effectively in consultation or collective bargaining.

(12) 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.

(13) When making an order in terms of subsection (12), 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 which might otherwise be disclosed for a period specified in the arbitration award.

(14) 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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/17  Restricted rights in domestic sector

**17  Restricted rights in domestic sector**

(1) For the purposes of this section, **'domestic sector'** means the employment of *employees* engaged in domestic work in their employers' homes or on the property on which the home is situated.

(2) The rights conferred on representative *trade unions* by this Part in so far as they apply to the domestic sector are subject to the following limitations-

*(a)*   the right of access to the premises of the employer conferred by section 12 on an *office-bearer* or *official* of a representative *trade union* does not include the right to enter the home of the employer, unless the employer agrees; and

*(b)*   the right to the disclosure of information conferred by section 16 does not apply in the domestic sector.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/18  Right to establish thresholds of representativeness

**18  Right to establish thresholds of representativeness**

(1) An employer and a registered *trade union* whose members are a majority of the *employees* employed by that employer in a *workplace*, or the parties to a *bargaining council*, may conclude a *collective agreement* establishing a threshold of representativeness required in respect of one or more of the organisational rights referred to in sections 12, 13 and 15.

(2) A *collective agreement* concluded in terms of subsection (1) is not binding unless the thresholds of representativeness in the *collective agreement* are applied equally to any registered *trade union* seeking any of the organisational rights referred to in that subsection.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/19  Certain organisational rights for trade union party to council

**19  Certain organisational rights for trade union party to council**

Registered *trade unions* that are parties to a *council* automatically have the rights contemplated in sections 12 and 13 in respect of all*workplaces* within the *registered scope* of the *council* regardless of their representativeness in any particular *workplace*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/20  Organisational rights in collective agreements

**20  Organisational rights in collective agreements**

Nothing in this Part precludes the conclusion of a *collective agreement* that regulates organisational rights.

**Document 21 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/21  Exercise of rights conferred by this Part

**21  Exercise of rights conferred by this Part**[**3**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-339887)

(1) Any registered *trade union* may notify an employer in writing that it seeks to exercise one or more of the rights conferred by this Part in a*workplace*.

(2) The notice referred to in subsection (1) must be accompanied by a certified copy of the *trade union's* certificate of registration and must specify-

*(a)*   the *workplace* in respect of which the *trade union* seeks to exercise the rights;

*(b)*   the representativeness of the *trade union* in that *workplace*, and the facts relied upon to demonstrate that it is a representative *trade union*; and

*(c)*   the rights that the *trade union* seeks to exercise and the manner in which it seeks to exercise those rights.

(3) Within 30 days of receiving the notice, the employer must meet the registered *trade union* and endeavour to conclude a *collective agreement* as to the manner in which the *trade union* will exercise the rights in respect of that *workplace*.

(4) If a *collective agreement* is not concluded, either the registered *trade union* or the employer may refer the *dispute* in writing to the Commission.

(5) The party who refers the *dispute* to the Commission must satisfy it that a copy of the referral has been *served* on the other party to the*dispute*.

(6) The Commission must appoint a commissioner to attempt to resolve the *dispute* through conciliation.

(7) If the *dispute* remains unresolved, either party to the *dispute* may request that the *dispute* be resolved through arbitration.

(8) If the unresolved *dispute* is about whether or not the registered *trade union* is a representative *trade union*, the commissioner-

*(a)*   must seek-

     (i)   to minimise the proliferation of *trade union* representation in a single *workplace* and, where possible, to encourage a system of a representative *trade union* in a *workplace*; and

    (ii)   to minimise the financial and administrative burden of requiring an employer to grant organisational rights to more than one registered *trade union*;

*(b)*   must consider-

     (i)   the nature of the *workplace*;

    (ii)   the nature of the one or more organisational rights that the registered *trade union* seeks to exercise;

    (iii)   the nature of the *sector* in which the *workplace* is situated;

   (iv)   the organisational history at the *workplace* or any other *workplace* of the employer; and

    (v)   the composition of the work-force in the *workplace* taking into account the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed-term contracts, part-time *employees* or *employees* in other categories of non-standard employment; and

[Sub-para. (v) added by s. 2 *(a)* of Act 6 of 2014.]

*(c)*   may withdraw any of the organisational rights conferred by this Part and which are exercised by any other registered *trade union* in respect of that *workplace*, if that other *trade union* has ceased to be a representative *trade union*.

(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered*trade union* that does not have as members the majority of *employees* employed by an employer in a *workplace*-

*(a)*   the rights referred to in section 14, despite any provision to the contrary in that section, if-

     (i)   the *trade union* is entitled to all of the rights referred to in sections 12, 13 and 15 in that *workplace*; and

    (ii)   no other *trade union* has been granted the rights referred to in section 14 in that *workplace*.

*(b)*   the rights referred to in section 16, despite any provision to the contrary in that section, if-

     (i)   the *trade union* is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that *workplace*; and

    (ii)   no other *trade union* has been granted the rights referred to in section 16 in that workplace.

[Sub-s. (8A) inserted by s. 2 *(b)* of Act 6 of 2014.]

(8B) A right granted in terms of subsection (8A) lapses if the *trade union* concerned is no longer the most representative *trade union* in the*workplace*.

[Sub-s. (8B) inserted by s. 2 *(b)* of Act 6 of 2014.]

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered *trade union*, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a *collective agreement* in terms of section 18, if-

*(a)*   all parties to the *collective agreement* have been given an opportunity to participate in the arbitration proceedings; and

*(b)*   the *trade union*, or *trade unions* acting jointly, represent a significant interest, or a substantial number of *employees*, in the*workplace*.

[Sub-s. (8C) inserted by s. 2 *(b)* of Act 6 of 2014.]

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.

[Sub-s. (8D) inserted by s. 2 *(b)* of Act 6 of 2014.]

(9) In order to determine the membership or support of the registered *trade union*, the commissioner may-

*(a)*   make any necessary inquiries;

*(b)*   where appropriate, conduct a ballot of the relevant *employees*; and

*(c)*   take into account any other relevant information.

(10) The employer must co-operate with the commissioner when the commissioner acts in terms of subsection (9), and must make available to the commissioner any information and facilities that are reasonably necessary for the purposes of that subsection.

(11) An employer who alleges that a *trade union* is no longer a representative *trade union* may apply to the Commission to withdraw any of the organisational rights conferred by this Part, in which case the provisions of subsections (5) to (10) apply, read with the changes required by the context.

(12) If a *trade union* seeks to exercise the rights conferred by Part A in respect of *employees* of a temporary employment service, it may seek to exercise those rights in a *workplace* of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a *workplace* of a client of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises.

[Sub-s. (12) added by s. 2 *(c)* of Act 6 of 2014.]

[3](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s21fn3_ref%2527%255d&xhitlist_md=target-id=0-0-0-339885)  See flow diagram 2 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part A Organisational rights (ss 11-22)/22  Disputes about organisational rights

**22  Disputes about organisational rights**

(1) Any party to a *dispute* about the interpretation or application of any provision of this Part, other than a *dispute* contemplated in section 21, may refer the *dispute* in writing to the Commission.

(2) The party who refers a *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 as soon as possible.

(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to-

*(a)*   the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and

*(b)*   any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.

[Sub-s. (5) added by s. 3 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part B Collective agreements (ss 23-26)/23  Legal effect of collective agreement

***Part B  
Collective agreements (ss 23-26)***

**23  Legal effect of collective agreement**

(1) A *collective agreement* binds-

*(a)*   the parties to the *collective agreement*;

*(b)*   each party to the *collective agreement* and the members of every other party to the *collective agreement*, in so far as the provisions are applicable between them;

*(c)*   the members of a registered *trade union* and the employers who are members of a registered *employers' organisation* that are party to the *collective agreement* if the *collective agreement* regulates-

     (i)   terms and conditions of employment; or

    (ii)   the conduct of the employers in relation to their *employees* or the conduct of the *employees* in relation to their employers;

*(d)*   employees who are not members of the registered *trade union* or *trade unions* party to the agreement if-

     (i)   the employees are identified in the agreement;

    (ii)   the agreement expressly binds the employees; and

    (iii)   that *trade union* or those *trade unions* have as their members the majority of *employees* employed by the employer in the*workplace*.

(2) A *collective agreement* binds for the whole period of the *collective agreement* every person bound in terms of subsection (1) *(c)* who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered *trade union* or registered *employers' organisation* for the duration of the *collective agreement*.

(3) Where applicable, a *collective agreement* varies any contract of employment between an *employee* and employer who are both bound by the *collective agreement*.

(4) Unless the *collective agreement* provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice in writing to the other parties.

[Sub-s. (4) substituted by s. 1 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part B Collective agreements (ss 23-26)/24  Disputes about collective agreements

**24  Disputes about collective agreements**

(1) Every *collective agreement* excluding an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26 or a settlement agreement contemplated in either section 142A or 158 (1) *(c)*, must provide for a procedure to resolve any dispute about the interpretation or application of the *collective agreement*. The procedure must first require the parties to attempt to resolve the*dispute* through conciliation and, if the *dispute* remains unresolved, to resolve it through arbitration.

[Sub-s. (1) substituted by s. 2 *(a)* of Act 12 of 2002.]

(2) If there is a *dispute* about the interpretation or application of a *collective agreement*, any party to the *dispute* may refer the *dispute* in writing to the Commission if-

*(a)*   the *collective agreement* does not provide for a procedure as required by subsection (1);

*(b)*   the procedure provided for in the *collective agreement* is not operative; or

*(c)*   any party to the *collective agreement* has frustrated the resolution of the *dispute* in terms of the *collective agreement*.

(3) 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*.

(4) The Commission must attempt to resolve the *dispute* through conciliation.

(5) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.[4](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-339997)

(6) If there is a *dispute* about the interpretation or application of an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26, any party to the *dispute* may refer the *dispute* in writing to the Commission, and subsections (3) to (5) will apply to that *dispute*.[5](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340001)

(7) Any person bound by an arbitration award about the interpretation or application of section 25 (3) *(c)* and *(d)* or section 26 (3) *(d)* may appeal against that award to the Labour Court.

(8) If there is a *dispute* about the interpretation or application of a settlement agreement contemplated in either section 142A or 158 (1) *(c)*, a party may refer the *dispute* to a *council* or the Commission and subsections (3) to (5), with the necessary changes, apply to that *dispute*.

[Sub-s. (8) added by s. 2 *(b)* of Act 12 of 2002.]

[4](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s24fn4_ref%2527%255d&xhitlist_md=target-id=0-0-0-339995)  See flow diagram 3 in Schedule 4

[5](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s24fn5_ref%2527%255d&xhitlist_md=target-id=0-0-0-339999)  See flow diagram 4 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part B Collective agreements (ss 23-26)/25  Agency shop agreements

**25  Agency shop agreements**

(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as an agency shop agreement, requiring the employer to deduct an agreed agency fee from the wages of *employees* identified in the agreement who are not members of the *trade union* but are eligible for membership thereof.

[Sub-s. (1) substituted by s. 1 *(a)* of Act 42 of 1996.]

(2) For the purposes of this section, **'representative trade union'** means a registered *trade union*, or two or more registered *trade unions*acting jointly, whose members are a majority of the *employees* employed-

*(a)*   by an employer in a *workplace*; or

*(b)*   by the members of an *employers' organisation* in a *sector* and *area* in respect of which the agency shop agreement applies.

(3) An agency shop agreement is binding only if it provides that-

*(a)*   employees who are not members of the representative *trade union* are not compelled to become members of that *trade union*;

*(b)*   the agreed agency fee must be equivalent to, or less than-

     (i)   the amount of the subscription payable by the members of the representative *trade union*;

    (ii)   if the subscription of the representative *trade union* is calculated as a percentage of an *employee*'s salary, that percentage; or

    (iii)   if there are two or more registered *trade unions* party to the agreement, the highest amount of the subscription that would apply to an *employee*;

*(c)*   the amount deducted must be paid into a separate account administered by the representative *trade union*; and

*(d)*   no agency fee deducted may be-

     (i)   paid to a political party as an affiliation fee;

    (ii)   contributed in cash or kind to a political party or a person standing for election to any political office; or

    (iii)   used for any expenditure that does not advance or protect the socio-economic interests of *employees*.

[Para. *(d)* amended by s. 1 *(b)* of Act 42 of 1996.]

(4) *(a)* Despite the provisions of any law or contract, an employer may deduct the agreed agency fee from the wages of an *employee* without the *employee*'s authorisation.

*(b)* Despite subsection (3) *(c)*, a conscientious objector may request the employer to pay the amount deducted from that employee's wages into a fund administered by the Department of Labour.

(5) The provisions of sections 98 and 100 *(b)* and *(c)* apply, read with the changes required by the context, to the separate account referred to in subsection (3) *(c)*.

(6) Any person may inspect the *auditor's* report, in so far as it relates to an account referred to in subsection (3) *(c)*, in the *registrar's* office.

(7) The *registrar* must provide a certified copy of, or extract from, any of the documents referred to in subsection (6) to any person who has paid the prescribed fees.

(8) An employer or *employers' organisation* that alleges that a *trade union* is no longer a representative *trade union* in terms of subsection (1) must give the *trade union* written notice of the allegation, and must allow the *trade union* 90 days from the date of the notice to establish that it is a representative *trade union*.

(9) If, within the 90-day period, the *trade union* fails to establish that it is a representative *trade union*, the employer must give the *trade union* and the *employees* covered by the agency shop agreement 30 days' notice of termination, after which the agreement will terminate.

(10) If an agency shop agreement is terminated, the provisions of subsection (3) *(c)* and *(d)* and (5) apply until the money in the separate account is spent.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part B Collective agreements (ss 23-26)/26  Closed shop agreements

**26  Closed shop agreements**

(1) A representative *trade union* and an employer or *employers' organisation* may conclude a *collective agreement*, to be known as a closed shop agreement, requiring all *employees* covered by the agreement to be members of the *trade union*.

(2) For the purposes of this section, **'representative trade union'** means a registered *trade union*, or two or more registered *trade unions*acting jointly, whose members are a majority of the *employees* employed-

*(a)*   by an employer in a *workplace*; or

*(b)*   by the members of an *employers' organisation* in a *sector* and *area* in respect of which the closed shop agreement applies.

(3) A closed shop agreement is binding only if-

*(a)*   a ballot has been held of the *employees* to be covered by the agreement;

*(b)*   two thirds of the *employees* who voted have voted in favour of the agreement;

*(c)*   there is no provision in the agreement requiring membership of the representative *trade union* before employment commences; and

*(d)*   it provides that no membership subscription or levy deducted may be-

     (i)   paid to a political party as an affiliation fee;

    (ii)   contributed in cash or kind to a political party or a person standing for election to any political office; or

    (iii)   used for any expenditure that does not advance or protect the socio-economic interests of *employees*.

[Para. *(d)* amended by s. 2 of Act 42 of 1996.]

(4) Despite subsection (3) *(b)*, a closed shop agreement contemplated in subsection (2) *(b)* may be concluded between a registered *trade union*and a registered *employers' organisation* in respect of a *sector* and *area* to become binding in every *workplace* in which-

*(a)*   a ballot has been held of the *employees* to be covered by the agreement; and

*(b)*   two thirds of the *employees* who voted have voted in favour of the agreement.

(5) No *trade union* that is party to a closed shop agreement may refuse an *employee* membership or expel an *employee* from the *trade union*unless-

*(a)*   the refusal or expulsion is in accordance with the *trade union's* constitution; and

*(b)*   the reason for the refusal or expulsion is fair, including, but not limited to, conduct that undermines the *trade union's* collective exercise of its rights.

(6) It is not unfair to dismiss an *employee*-

*(a)*   for refusing to join a *trade union* party to a closed shop agreement;

*(b)*   who is refused membership of a *trade union* party to a closed shop agreement if the refusal is in accordance with the provisions of subsection (5); or

*(c)*   who is expelled from a *trade union* party to a closed shop agreement if the expulsion is in accordance with the provisions of subsection (5).

(7) Despite subsection (6)-

*(a)*   the *employees* at the time a closed shop agreement takes effect may not be dismissed for refusing to join a *trade union* party to the agreement; and

*(b)*   employees may not be dismissed for refusing to join a *trade union* party to the agreement on grounds of conscientious objection.

(8) The *employees* referred to in subsection (7) may be required by the closed shop agreement to pay an agreed agency fee, in which case the provisions of section 25 (3) *(b)*, *(c)* and *(d)* and (4) to (7) apply.

(9) If the Labour Court decides that a *dismissal* is unfair because the refusal of membership of or the expulsion from a *trade union* party to a closed shop agreement was unfair, the provisions of Chapter VIII apply, except that any order of compensation in terms of that Chapter must be made against the *trade union*.

(10) A registered *trade union* that represents a significant interest in, or a substantial number of, the *employees* covered by a closed shop agreement may notify the parties to the agreement of its intention to apply to become a party to the agreement and, within 30 days of the notice, the employer must convene a meeting of the parties and the registered *trade union* in order to consider the application.

(11) If the parties to a closed shop agreement do not admit the registered *trade union* as a party, the *trade union* may refer the *dispute* in writing to the Commission.

(12) The registered *trade union* must satisfy the Commission that a copy of the referral has been *served* on all the parties to the closed shop agreement.

(13) The Commission must attempt to resolve the *dispute* through conciliation.

(14) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

(15) The representative *trade union* must conduct a ballot of the *employees* covered by the closed shop agreement to determine whether the agreement should be terminated if-

*(a)*   one third of the *employees* covered by the agreement sign a petition calling for the termination of the agreement; and

*(b)*   three years have elapsed since the date on which the agreement commenced or the last ballot was conducted in terms of this section.

(16) If a majority of the *employees* who voted, have voted to terminate the closed shop agreement, the agreement will terminate.

(17) Unless a *collective agreement* provides otherwise, the ballot referred to in subsections (3) *(a)* and (15) must be conducted in accordance with the guidelines published by the Commission.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/27  Establishment of bargaining councils

***Part C  
Bargaining councils (ss 27-34)***

**27  Establishment of bargaining councils**

(1) One or more registered *trade unions* and one or more registered *employers' organisations* may establish a *bargaining council* for a *sector*and *area* by-

*(a)*   adopting a constitution that meets the requirements of section 30; and

*(b)*   obtaining registration of the *bargaining council* in terms of section 29.

(2) The State may be a party to any *bargaining council* established in terms of this section if it is an employer in the *sector* and *area* in respect of which the *bargaining council* is established.

(3) If the State is a party to a *bargaining council* in terms of subsection (2), any reference to a registered *employers' organisation* includes a reference to the State as a party.

(4) A *bargaining council* may be established for more than one *sector*.

[Sub-s. (4) added by s. 3 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/28  Powers and functions of bargaining council

**28  Powers and functions of bargaining council**

(1) The powers and functions of a *bargaining council* in relation to its *registered scope* include the following-

*(a)*   to conclude *collective agreements*;

*(b)*   to enforce those *collective agreements*;

*(c)*   to prevent and resolve labour *disputes*;

*(d)*   to perform the *dispute* resolution functions referred to in section 51;

*(e)*   to establish and administer a fund to be used for resolving *disputes*;

*(f)*   to promote and establish training and education schemes;

*(g)*   to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *bargaining council* or their members;

*(h)*   to develop proposals for submission to *NEDLAC* or any other appropriate forum on policy and legislation that may affect the *sector* and*area*;

*(i)*   to determine by *collective agreement* the matters which may not be an issue in *dispute* for the purposes of a *strike* or a *lock-out* at the*workplace*;

*(j)*   to confer on *workplace forums* additional matters for consultation;

*(k)*   to provide industrial support services within the sector; and

[Para. *(k)* added by s. 3 *(b)* of Act 12 of 2002.]

*(l)*   to extend the services and functions of the *bargaining council* to workers in the informal sector and home workers.

[Para. *(l)* added by s. 3 *(b)* of Act 12 of 2002.]

(2) From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1) *(g)*.

[Sub-s. (2) added by s. 1 of Act 127 of 1998.]

(3) The laws relating to pension, provident or medical aid schemes or funds will apply in respect of any pension, provident or medical aid scheme or fund established in terms of subsection (1) *(g)* after the coming into operation of the Labour Relations Amendment Act, 1998.

[Sub-s. (3) added by s. 1 of Act 127 of 1998.]

**Document 29 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/29  Registration of bargaining councils

**29  Registration of bargaining councils**

(1) The parties referred to in section 27 may apply for registration of a *bargaining council* by submitting to the *registrar*-

*(a)*   the *prescribed* form that has been properly completed;

*(b)*   a copy of its constitution; and

*(c)*   any other information that may assist the *registrar* to determine whether or not the *bargaining council* meets the requirements for registration.

(2) The *registrar* may require further information in support of the application.

(3) As soon as practicable after receiving the application, the *registrar* must publish a notice containing the material particulars of the application in the *Government Gazette* and send a copy of the notice to *NEDLAC*. The notice must inform the general public that they-

*(a)*   may object to the application on any of the grounds referred to in subsection (4); and

*(b)*   have 30 days from the date of the notice to *serve* any objection on the *registrar* and a copy on the applicant.

[Sub-s. (3) substituted by s. 4 *(a)* of Act 12 of 2002.]

(4) Any person who objects to the application must satisfy the *registrar* that a copy of the objection has been *served* on the applicant and that the objection is on any of the following grounds-

*(a)*   the applicant has not complied with the provisions of this section;

*(b)*   the *sector* and *area* in respect of which the application is made is not appropriate;

*(c)*   the applicant is not sufficiently representative in the *sector* and *area* in respect of which the application is made.

(5) The *registrar* may require further information in support of the objection.

(6) The applicant may respond to an objection within 14 days of the expiry of the period referred to in subsection (3) *(b)*, and must satisfy the*registrar* that a copy of that response has been *served* on the person who objected.

(7) The *registrar*, as soon as practicable, must send the application and any objections, responses and further information to *NEDLAC* to consider.

(8) *NEDLAC*, within 90 days of receiving the documents from the *registrar*, must-

*(a)*   consider the appropriateness of the *sector* and *area* in respect of which the application is made;

*(b)*   demarcate the appropriate *sector* and *area* in respect of which the *bargaining council* should be registered; and

*(c)*   report to the *registrar* in writing.

(9) If *NEDLAC* fails to agree on a demarcation as required in subsection (8) *(b)*, the *Minister* must demarcate the appropriate *sector* and *area*and advise the *registrar*.

(10) In determining the appropriateness of the *sector* and *area* for the demarcation contemplated in subsection (8) *(b)*, *NEDLAC* or the *Minister*must seek to give effect to the primary objects of *this Act*.

(11) The *registrar*-

*(a)*   must consider the application and any further information provided by the applicant;

*(b)*   must determine whether-

     (i)   the applicant has complied with the provisions of this section;

    (ii)   the constitution of the *bargaining council* complies with section 30;

    (iii)   adequate provision is made in the constitution of the *bargaining council* for the representation of small and medium enterprises;

   (iv)   the parties to the *bargaining council* are sufficiently representative of the *sector* and *area* determined by *NEDLAC* or the*Minister*; and

    (v)   there is no other *council* registered for the *sector* and *area* in respect of which the application is made; and

*(c)*   if satisfied that the applicant meets the requirements for registration, must register the *bargaining council* by entering the applicant's name in the register of *councils*.

(12) If the *registrar* is not satisfied that the applicant meets the requirements for registration, the *registrar*-

*(a)*   must send the applicant a written notice of the decision and the reasons for that decision; and

*(b)*   in that notice, must inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(13) If, within that 30-day period, the applicant meets those requirements, the *registrar* must register the applicant by entering the applicant's name in the register of *councils*.

(14) If, after the 30-day period, the *registrar* concludes that the applicant has failed to meet the requirements for registration, the *registrar*must-

*(a)*   refuse to register the applicant; and

*(b)*   notify the applicant and any person that objected to the application of that decision in writing.

(15) After registering the applicant, the *registrar* must-

*(a)*   issue a certificate of registration in the applicant's name that must specify the *registered scope* of the applicant; and

*(b)*   send the registration certificate and a certified copy of the registered constitution to the applicant.

(16) Subsections (3) to (10) and (11) *(b)* (iii) and (iv) do not apply to the registration or amalgamation of *bargaining councils* in the public service.

[Sub-s. (16) added by s. 4 *(b)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/30  Constitution of bargaining council

**30  Constitution of bargaining council**

(1) The constitution of every *bargaining council* must at least provide for-

*(a)*   the appointment of representatives of the parties to the *bargaining council*, of whom half must be appointed by the *trade unions* that are party to the *bargaining council* and the other half by the *employers' organisations* that are party to the *bargaining council*, and the appointment of alternates to the representatives;

*(b)*   the representation of small and medium enterprises;

*(c)*   the circumstances and manner in which representatives must vacate their seats' [sic] and the procedure for replacing them;

*(d)*   rules for the convening and conducting of meetings of representatives, including the quorum required for, and the minutes to be kept of, those meetings;

*(e)*   the manner in which decisions are to be made;

*(f)*   the appointment or election of *office-bearers* and *officials*, their functions, and the circumstances and manner in which they may be removed from office;

*(g)*   the establishment and functioning of committees;

*(h)*   the determination through arbitration of any *dispute* arising between the parties to the *bargaining council* about the interpretation or application of the *bargaining council*'s constitution;

*(i)*   the procedure to be followed if a *dispute* arises between the parties to the *bargaining council*;

*(j)*   the procedure to be followed if a *dispute* arises between a registered *trade union* that is a party to the *bargaining council*, or its members, or both, on the one hand, and employers who belong to a registered *employers' organisation* that is a party to the*bargaining council*, on the other hand;

*(k)*   the procedure for exemption from *collective agreements*;

*(l)*   the banking and investment of its funds;

*(m)*   the purposes for which its funds may be used;

*(n)*   the delegation of its powers and functions;

*(o)*   the admission of additional registered trade *unions* and registered *employers' organisations* as parties to the *bargaining council*, subject to the provisions of section 56;[6](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340245)

*(p)*   a procedure for changing its constitution; and

*(q)*   a procedure by which it may resolve to wind up.

[Sub-s. (1) amended by s. 5 *(a)* of Act 42 of 1996.]

(2) The requirements for the constitution of a *bargaining council* in subsection (1) apply to the constitution of a *bargaining council* in the *public service* except that-

*(a)*   any reference to an '*employers' organisation*' must be read as a reference to the State as employer; and

*(b)*   the requirement in subsection (1) *(b)* concerning the representation of small and medium enterprises does not apply.

(3) The constitution of the Public Service Co-ordinating Bargaining Council must include a procedure for establishing a *bargaining council* in a*sector* of the *public service* designated in terms of section 37 (1).

(4) The constitution of a *bargaining council* in the *public service* may include provisions for the establishment and functioning of chambers of a*bargaining council* on national and regional levels.

(5) The procedures for the resolution of *disputes* referred to in subsection (1) *(h)*, *(i)* and *(j)* may not entrust dispute resolution functions to the Commission unless the governing body of the Commission has agreed thereto.

[Sub-s. (5) added by s. 5 *(b)* of Act 42 of 1996.]

[6](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s30fn6_ref%2527%255d&xhitlist_md=target-id=0-0-0-340243)  Section 56 provides for a procedure for the admission of parties to a council

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/31  Binding nature of collective agreement concluded in bargaining council

**31  Binding nature of collective agreement concluded in bargaining council**

Subject to the provisions of section 32 and the constitution of the *bargaining council*, a *collective agreement* concluded in a *bargaining council*binds-

*(a)*   the parties to the *bargaining council* who are also parties to the *collective agreement*;

*(b)*   each party to the *collective agreement* and the members of every other party to the *collective agreement* in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and

*(c)*   the members of a registered *trade union* that is a party to the *collective agreement* and the employers who are members of a registered *employers' organisation* that is such a party, if the *collective agreement* regulates-

     (i)   terms and conditions of employment; or

    (ii)   the conduct of the employers in relation to their *employees* or the conduct of the *employees* in relation to their employers.

[S. 31 substituted by s. 6 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/32  Extension of collective agreement concluded in bargaining council

**32  Extension of collective agreement concluded in bargaining council**

(1) A *bargaining council* may ask the *Minister* in writing to extend a *collective agreement* concluded in the *bargaining council* to any non-parties to the *collective agreement* that are within its *registered scope* and are identified in the request, if at a meeting of the *bargaining council*-

*(a)*   one or more registered *trade unions* whose members constitute the majority of the members of the *trade unions* that are party to the*bargaining council* vote in favour of the extension; and

*(b)*   one or more registered *employers' organisations*, whose members employ the majority of the *employees* employed by the members of the *employers' organisations* that are party to the *bargaining council*, vote in favour of the extension.

(2) Within 60 days of receiving the request, the *Minister* must extend the *collective agreement*, as requested, by publishing a notice in the*Government Gazette* declaring that, from a specified date and for a specified period, the *collective agreement* will be binding on the non-parties specified in the notice.

(3) A *collective agreement* may not be extended in terms of subsection (2) unless the *Minister* is satisfied that-

*(a)*   the decision by the *bargaining council* to request the extension of the *collective agreement* complies with the provisions of subsection (1);

*(b)*   the majority of all the *employees* who, upon extension of the *collective agreement*, will fall within the scope of the agreement, are members of the *trade unions* that are parties to the *bargaining council*;

[Para. *(b)* substituted by s. 7 *(a)* of Act 42 of 1996.]

*(c)*   the members of the *employers' organisations* that are parties to the *bargaining council* will, upon the extension of the *collective agreement*, be found to employ the majority of all the *employees* who fall within the scope of the *collective agreement*;

[Para. *(c)* substituted by s. 7 *(a)* of Act 42 of 1996.]

*(d)*   the non-parties specified in the request fall within the *bargaining council*'s *registered scope*;

*(d*A*)*   the *bargaining council* has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the *collective agreement* and is able to decide an application for an exemption within 30 days;

[Para. *(d*A*)* inserted by s. 4 *(a)* of Act 6 of 2014.]

*(e)*   provision is made in the *collective agreement* for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against-

     (i)   the *bargaining council's* refusal of a non-party's application for exemption from the provisions of the *collective agreement*;

    (ii)   the withdrawal of such an exemption by the *bargaining council*;

[Para. *(e)* substituted by s. 2 *(a)* of Act 127 of 1998 and amended by s. 4 *(b)* of Act 6 of 2014.]

*(f)*   the *collective agreement* contains criteria that must be applied by the independent body when it considers an appeal, and that those criteria are fair and promote the primary objects of *this Act*; and

[Para. *(f)* substituted by s. 2 *(a)* of Act 127 of 1998.]

*(g)*   the terms of the *collective agreement* do not discriminate against non-parties.

(3A) No representative, office-bearer or official of a *trade union* or *employers' organisation* party to the *bargaining council* may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3) *(e)*.

[Sub-s. (3A) inserted by s. 4 *(c)* of Act 6 of 2014.]

(4) ......

[Sub-s. (4) deleted by s. 2 *(b)* of Act 127 of 1998.]

(5) Despite subsection (3) *(b)* and *(c)*, the *Minister* may extend a *collective agreement* in terms of subsection (2) if-

*(a)*   the parties to the *bargaining council* are sufficiently representative within the *registered scope* of the *bargaining council*;

[Para. *(a)* substituted by s. 7 *(b)* of Act 42 of 1996 and by s. 5 *(a)* of Act 12 of 2002.]

*(b)*   the *Minister* is satisfied that failure to extend the agreement may undermine collective bargaining at *sectoral* level or in the *public service* as a whole;

[Para. *(b)* substituted by s. 7 *(b)* of Act 42 of 1996.]

*(c)*   the *Minister* has published a notice in the *Government Gazette* stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and

[Para. *(c)* added by s. 4 *(d)* of Act 6 of 2014.]

*(d)*   the *Minister* has considered all comments received during the period referred to in paragraph *(c)*.

[Para. *(d)* added by s. 4 *(d)* of Act 6 of 2014.]

(5A) When determining whether the parties to the *bargaining council* are sufficiently representative for the purposes of subsection (5) *(a)*, the*Minister* may take into account the composition of the workforce in the sector, including the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed-term contracts, part-time *employees* or *employees* in other categories of non-standard employment.

[Sub-s. (5A) inserted by s. 4 *(e)* of Act 6 of 2014.]

(6) *(a)* After a notice has been published in terms of subsection (2), the *Minister*, at the request of the *bargaining council*, may publish a further notice in the *Government Gazette*-

     (i)   extending the period specified in the earlier notice by a further period determined by the *Minister*; or

    (ii)   if the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective.

*(b)* The provisions of subsections (3) and (5), read with the changes required by the context, apply in respect of the publication of any notice in terms of this subsection.

(7) The *Minister*, at the request of the *bargaining council*, must publish a notice in the *Government Gazette* cancelling all or part of any notice published in terms of subsection (2) or (6) from a date specified in the notice.

(8) Whenever any *collective agreement* in respect of which a notice has been published in terms of subsection (2) or (6) is amended, amplified or replaced by a new *collective agreement*, the provisions of this section apply to that new *collective agreement*.

(9) For the purposes of extending *collective agreements* concluded in the Public Service Co-ordinating Bargaining Council or any *bargaining council* contemplated in section 37 (3) or (4)-

*(a)*   any reference in this section to an *employers' organisation* must be read as a reference to the State as employer; and

*(b)*   subsections (3) *(c)*, *(e)* and *(f)* and (4) of this section will not apply.

[Sub-s. (9) added by s. 7 *(c)* of Act 42 of 1996.]

(10) If the parties to a *collective agreement* that has been extended in terms of this section terminate the agreement, they must notify the Minister in writing.

[Sub-s. (10) added by s. 5 *(b)* of Act 12 of 2002.]

(11) A *bargaining council* that has a *collective agreement* extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3) *(f)*.

[Sub-s. (11) added by s. 4 *(f)* of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/33  Appointment and powers of designated agents of bargaining councils

**33  Appointment and powers of designated agents of bargaining councils**

(1) The *Minister* may at the request of a *bargaining council* appoint any person as the designated agent of that *bargaining council* to promote, monitor and enforce compliance with any *collective agreement* concluded in that *bargaining council*.

[Sub-s. (1) substituted by s. 6 *(a)* of Act 12 of 2002.]

(1A) A designated agent may-

*(a)*   secure compliance with the council's *collective agreements* by-

     (i)   publicising the contents of the agreements;

    (ii)   conducting inspections;

    (iii)   investigating complaints; or

   (iv)   any other means the council may adopt; and

*(b)*   perform any other functions that are conferred or imposed on the agent by the council.

[Sub-s. (1A) inserted by s. 6 *(b)* of Act 12 of 2002.]

(2) A *bargaining council* must provide each designated agent with a certificate signed by the secretary of the *bargaining council* stating that the agent has been appointed in terms of *this Act* as a designated agent of that *bargaining council*.

(3) Within the *registered scope* of a *bargaining council*, a designated agent of the *bargaining council* has all the powers set out in Schedule 10.

[Sub-s. (3) substituted by s. 6 *(c)* of Act 12 of 2002.]

(4) The *bargaining council* may cancel the certificate provided to a designated agent in terms of subsection (2) and the agent then ceases to be a designated agent of the *bargaining council* and must immediately surrender the certificate to the secretary of the *bargaining council*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/33A  Enforcement of collective agreements by bargaining councils

**33A  Enforcement of collective agreements by bargaining councils**

(1) Despite any other provision in this Act, a *bargaining council* may monitor and enforce compliance with its *collective agreements* in terms of this section or a *collective agreement* concluded by the parties to the council.

(2) For the purposes of this section, a *collective agreement* is deemed to include-

*(a)*   any basic condition of employment which in terms of section 49 (1) of the *Basic Conditions of Employment Act* constitutes a term of employment of any employee covered by the *collective agreement*; and

*(b)*   the rules of any fund or scheme established by the *bargaining council*.

(3) A *collective agreement* in terms of this section may authorise a designated agent appointed in terms of section 33 to issue a compliance order requiring any person bound by that *collective agreement* to comply with the *collective agreement* within a specified period.

(4) *(a)* The *council* may refer any unresolved *dispute* concerning compliance with any provision of a *collective agreement* to arbitration by an arbitrator appointed by the council.

*(b)* If a party to an arbitration in terms of this section, that is not a party to the council, objects to the appointment of an arbitrator in terms of paragraph *(a)*, the Commission, on request by the council, must appoint an arbitrator.

*(c)* If an arbitrator is appointed in terms of subparagraph *(b)*-

     (i)   the Council remains liable for the payment of the arbitrator's fee; and

    (ii)   the arbitration is not conducted under the auspices of the Commission.

(5) An arbitrator conducting an arbitration in terms of this section has the powers of a commissioner in terms of section 142, read with the changes required by the context.

(6) Section 138, read with the changes required by the context, applies to any arbitration conducted in terms of this section.

(7) An arbitrator acting in terms of this section may determine any *dispute* concerning the interpretation or application of a *collective agreement*.

(8) An arbitrator conducting an arbitration in terms of this section may make an appropriate award, including-

*(a)*   ordering any person to pay any amount owing in terms of a *collective agreement*;

*(b)*   imposing a fine for a failure to comply with a *collective agreement* in accordance with subsection (13);

*(c)*   charging a party an arbitration fee;

*(d)*   ordering a party to pay the costs of the arbitration;

*(e)*   confirming, varying or setting aside a compliance order issued by a designated agent in accordance with subsection (4);

*(f)*   any award contemplated in section 138 (9).

(9) Interest on any amount that a person is obliged to pay in terms of a *collective agreement* accrues from the date on which the amount was due and payable at the rate prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), unless the arbitration award provides otherwise.

(10) An award in an arbitration conducted in terms of this section is final and binding and may be enforced in terms of section 143.

(11) Any reference in section 138 or 142 to the *director* must be read as a reference to the secretary of the *bargaining council*.

(12) If an employer upon whom a fine has been imposed in terms of this section files an application to review and set aside an award made in terms of subsection (8), any obligation to pay a fine is suspended pending the outcome of the application.

(13) *(a)* The Minister may, after consulting *NEDLAC*, publish in the *Government Gazette* a notice that sets out the maximum fines that may be imposed by an arbitrator acting in terms of this section.

*(b)* A notice in terms of paragraph *(a)* may specify the maximum fine that may be imposed-

     (i)   for a breach of a *collective agreement*-

*(aa)*   not involving a failure to pay any amount of money;

*(bb)*   involving a failure to pay any amount of money; and

    (ii)   for repeated breaches of the *collective agreement* contemplated in subparagraph (i).

[S. 33A inserted by s. 7 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part C Bargaining councils (ss 27-34)/34  Amalgamation of bargaining councils

**34  Amalgamation of bargaining councils**

(1) Any *bargaining council* may resolve to amalgamate with one or more other *bargaining councils*.

(2) The amalgamating *bargaining councils* may apply to the *registrar* for registration of the amalgamated *bargaining council* and the *registrar*must treat the application as an application in terms of section 29.

(3) If the *registrar* has registered the amalgamated *bargaining council*, the *registrar* must cancel the registration of each of the amalgamating*bargaining councils* by removing their names from the register of *councils*.

(4) The registration of an amalgamated *bargaining council* takes effect from the date that the *registrar* enters its name in the register of*councils*.

(5) When the *registrar* has registered an amalgamated *bargaining council*-

*(a)*   all the assets, rights, liabilities and obligations of the amalgamating *bargaining councils* devolve upon and vest in the amalgamated*bargaining council*; and

*(b)*   all the *collective agreements* of the amalgamating *bargaining councils*, regardless of whether or not they were extended in terms of section 32, remain in force for the duration of those *collective agreements*, unless amended or terminated by the amalgamated*bargaining council*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part D Bargaining councils in the Public Service (ss 35-38)/35  Bargaining councils in public service

***Part D  
Bargaining councils in the Public Service (ss 35-38)***

**35  Bargaining councils in public service**

There will be a *bargaining council* for-

*(a)*   the *public service* as a whole, to be known as the Public Service Co-ordinating Bargaining Council; and

*(b)*   any *sector* within the *public service* that may be designated in terms of section 37.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part D Bargaining councils in the Public Service (ss 35-38)/36  Public Service Co-ordinating Bargaining Council

**36  Public Service Co-ordinating Bargaining Council**

(1) The Public Service Co-ordinating Bargaining Council must be established in accordance with Schedule 1.[7](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340427)

(2) The Public Service Co-ordinating Bargaining Council may perform all the functions of a *bargaining council* in respect of those matters that-

*(a)*   are regulated by uniform rules, norms and standards that apply across the *public service*; or

*(b)*   apply to terms and conditions of service that apply to two or more *sectors*; or

*(c)*   are assigned to the State as employer in respect of the *public service* that are not assigned to the State as employer in any *sector*.

[7](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s36fn7_ref%2527%255d&xhitlist_md=target-id=0-0-0-340425)  Schedule 1 deals with the procedure for the establishment of the Public Service Co-ordinating Bargaining Council

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part D Bargaining councils in the Public Service (ss 35-38)/37  Bargaining councils in sectors in public service

**37  Bargaining councils in sectors in public service**

(1) The Public Service Co-ordinating Bargaining Council may, in terms of its constitution and by resolution-

*(a)*   designate a *sector* of the *public service* for the establishment of a *bargaining council*; and

*(b)*   vary the designation of, amalgamate or disestablish *bargaining councils* so established.

(2) A *bargaining council* for a *sector* designated in terms of subsection (1) *(a)* must be established in terms of the constitution of the Public Service Co-ordinating Bargaining Council.

(3) If the parties in the *sector* cannot agree to a constitution for the *bargaining council* for a *sector* designated in terms of subsection (1) *(a)*, the Registrar must determine its constitution.

(4) The relevant resolution made in terms of subsection (1) must accompany any application to register or vary the registration of a *bargaining council* or to register an amalgamated *bargaining council*.

(5) A *bargaining council* established in terms of subsection (2) has exclusive jurisdiction in respect of matters that are specific to that *sector*and in respect of which the State as employer in that *sector*, has the requisite authority to conclude *collective agreements* and resolve labour*disputes*.

[S. 37 amended by s. 8 of Act 42 of 1996 and substituted by s. 8 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part D Bargaining councils in the Public Service (ss 35-38)/38  Disputes between bargaining councils in public service

**38  Disputes between bargaining councils in public service**

(1) If there is a jurisdictional *dispute* between two or more *bargaining councils* in the *public service*, including the Public Service Co-ordinating Bargaining Council, any party to the *dispute* may refer the *dispute* in writing to the Commission.

(2) The party who refers the *dispute* to the Commission must satisfy the Commission that a copy of the referral has been served on all other*bargaining councils* that are parties to the *dispute*.

(3) The Commission must attempt to resolve the *dispute* as soon as possible through conciliation.

(4) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration by the Commission.

[S. 38 amended by s. 9 of Act 42 of 1996 and substituted by s. 9 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/39  Application to establish statutory council

***Part E  
Statutory councils (ss 39-48)***

**39  Application to establish statutory council**

(1) For the purposes of this Part-

*(a)*   **'representative *trade union*'** means a registered *trade union*, or two or more registered *trade unions* acting jointly, whose members constitute at least 30 per cent of the *employees* in a *sector* and *area*; and

*(b)*   **'representative *employers' organisation*'** means a registered *employers' organisation*, or two or more registered *employers' organisations* acting jointly, whose members employ at least 30 per cent of the *employees* in a *sector* and *area*.

(2) A representative *trade union* or representative *employers' organisation* may apply to the *registrar* in the *prescribed* form for the establishment of a *statutory council* in a *sector* and *area* in respect of which no *council* is registered.

(3) The *registrar* must apply the provisions of section 29 (2) to (10)[8](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340467)  to the application-

*(a)*   read with the changes required by the context; and

*(b)*   subject to the deletion of the word 'sufficiently' in section 29 (4) *(c)*.

(4) The *registrar* must-

*(a)*   consider the application and any further information provided by the applicant; and

*(b)*   determine whether-

     (i)   the applicant has complied with section 29 and of this section [sic];

    (ii)   the applicant is representative of the *sector* and *area* determined by *NEDLAC* or the *Minister*; and

    (iii)   there is no other *council* registered for the *sector* and *area* in respect of which the application is made.

(5) If the *registrar* is not satisfied that the applicant meets the requirements for establishment, the *registrar* must-

*(a)*   send the applicant a written notice of the decision and the reasons for that decision; and

*(b)*   in that notice, inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(6) If, after the 30-day period, the *registrar* concludes that the applicant has failed to meet the requirements for establishment, the *registrar*must-

*(a)*   refuse to register the applicant; and

*(b)*   notify the applicant and any person that objected to the application in writing of that decision.

[8](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s39fn8_ref%2527%255d&xhitlist_md=target-id=0-0-0-340465)  The provisions of section 29 deal with the procedure for the registration of a bargaining council

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/40  Establishment and registration of statutory council

**40  Establishment and registration of statutory council**

(1) If the *registrar* is satisfied that the applicant meets the requirements for the establishment of a *statutory council*, the *registrar*, by notice in the *Government Gazette*, must establish the *statutory council* for a *sector* and *area*.

(2) The notice must invite-

*(a)*   registered *trade unions* and registered *employers' organisations* in that *sector* and *area* to attend a meeting; and

*(b)*   any interested parties in that *sector* and *area* to nominate representatives for the *statutory council*.

(3) The Commission must appoint a commissioner to chair the meeting and facilitate the conclusion of an agreement on-

*(a)*   the registered *trade unions* and registered *employers' organisations* to be parties to the *statutory council*; and

*(b)*   a constitution that meets the requirements of section 30, read with the changes required by the context.

(4) If an agreement is concluded, the *Minister* may advise the *registrar* to register the *statutory council* in accordance with the agreement if the *Minister* is satisfied that-

*(a)*   every registered *trade union* and registered *employers' organisation* that ought to have been included has been included in the agreement; and

*(b)*   the constitution meets the requirements of section 30, read with the changes required by the context.

(5) In considering the requirements in subsection (4) *(a)*, the *Minister* must take into account-

*(a)*   the primary objects of *this Act*;

*(b)*   the diversity of registered *trade unions* and registered *employers' organisations* in the *sector* and *area*; and

*(c)*   the principle of proportional representation.

(6) If the *Minister* is not satisfied in terms of subsection (4), the *Minister* must advise the Commission of the decision and the reasons for that decision and direct the Commission to reconvene the meeting in terms of subsection (3) in order to facilitate the conclusion of a new agreement.

(7) If advised by the *Minister* in terms of subsection (4), the *registrar* must register the *statutory council* by entering its name in the register of*councils*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/41  Establishment and registration of statutory council in absence of agreement

**41  Establishment and registration of statutory council in absence of agreement**

(1) If no agreement is concluded in terms of section 40 (3), the commissioner must convene separate meetings of the registered *trade unions*and *employers' organisations* to facilitate the conclusion of agreements on-

*(a)*   the registered *trade unions* to be parties to the *statutory council*;

*(b)*   the registered *employers' organisations* to be parties to the *statutory council*; and

*(c)*   the allocation to each party of the number of representatives of the *statutory council*.

(2) If an agreement is concluded on-

*(a)*   the registered *trade unions* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council* the agreed registered *trade unions*;

*(b)*   the registered *employers' organisations* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council* the agreed registered *employers' organisations*.

(3) If no agreement is concluded on-

*(a)*   the registered *trade unions* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council*-

     (i)   the applicant, if it is a registered *trade union*; and

    (ii)   any other registered *trade union* in the *sector* and *area* that ought to be admitted, taking into account the factors referred to in section 40 (5);

*(b)*   the registered *employers' organisations* to be parties to the *statutory council*, the *Minister* must admit as parties to the *statutory council*-

     (i)   the applicant, if it is a registered *employers' organisation*; and

    (ii)   any other registered *employers' organisation* in the *sector* and *area* that ought to be admitted, taking into account the factors referred to in section 40 (5).

(4) *(a)* The *Minister* must determine an even number of representatives of the *statutory council*, taking into account the factors referred to in section 40 (5).

*(b)* One half of the representatives must be allocated to the registered *trade unions* that are parties to the *statutory council* and the other half of the representatives must be allocated to the registered *employers' organisations* that are parties to the *statutory council*.

(5) If no agreement is concluded in respect of the allocation of the number of representatives of the *statutory council*-

*(a)*   between the registered *trade unions* that are parties to the *council*, the *Minister* must determine this allocation on the basis of proportional representation;

*(b)*   between the registered *employers' organisations* that are parties to the *council*, the *Minister* must determine this allocation on the basis of proportional representation and taking into account the interests of small and medium enterprises.

(6) If the applicant is a *trade union* and there is no registered *employers' organisation* that is a party to the *statutory council*, the *Minister*, after consulting the Commission, must appoint suitable persons as representatives and alternates, taking into account the nominations received from employers and *employers' organisations* in terms of section 40 (2).

(7) If the applicant is an *employers' organisation* and there is no registered *trade union* that is a party to the *statutory council*, the *Minister*, after consulting the Commission, must appoint suitable persons as representatives and alternates, taking into account the nominations received from *employees* and *trade unions* in terms of section 40 (2).

(8) The *Minister* must notify the *registrar* of agreements concluded and decisions made in terms of this section, and the *registrar* must-

*(a)*   adapt the model constitution referred to in section 207 (3) to the extent necessary to give effect to the agreements and decisions made in terms of this section;

*(b)*   register the *statutory council* by entering its name in the register of *councils*; and

*(c)*   certify the constitution as the constitution of the *statutory council*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/42  Certificate of registration of statutory council

**42  Certificate of registration of statutory council**

After registering a *statutory council*, the *registrar* must-

*(a)*   issue a certificate of registration that must specify the *registered scope* of the *statutory council*; and

*(b)*   send the certificate and a certified copy of the registered constitution to all the parties to the *statutory council* and any representatives appointed to the *statutory council*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/43  Powers and functions of statutory councils

**43  Powers and functions of statutory councils**

(1) The powers and functions of a *statutory council* are-

*(a)*   to perform the *dispute* resolution functions referred to in section 51;

*(b)*   to promote and establish training and education schemes; and

*(c)*   to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the *statutory council* or their members; and

*(d)*   to conclude collective agreements to give effect to the matters mentioned in paragraphs *(a)*, *(b)*, and *(c)*.

(2) A *statutory council*, in terms of its constitution, may agree to the inclusion of any of the other functions of a *bargaining council* referred to in section 28.

(3) If a *statutory council* concludes a collective agreement in terms of subsection (1) *(d)*, the provisions of sections 31, 32 and 33 apply, read with the changes required by the context.

[Sub-s. (3) substituted by s. 10 of Act 42 of 1996.]

(4) *(a)* From the date on which the Labour Relations Amendment Act, 1998, comes into operation, the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund in terms of subsection (1) *(c)*.

*(b)* The provisions of the laws relating to pension, provident or medical aid schemes or funds will apply in relation to any pension, provident or medical aid scheme or fund established in terms of subsection (1) *(c)* after the coming into operation of the Labour Relations Amendment Act, 1998.

[Sub-s. (4) added by s. 3 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/44  Ministerial determinations

**44  Ministerial determinations**

(1) A *statutory council* that is not sufficiently representative within its *registered scope* may submit a *collective agreement* on any of the matters mentioned in section 43 (1) *(a)*, *(b)* or *(c)* to the *Minister*. The *Minister* must treat the *collective agreement* as a recommendation made by the Employment Conditions Commission in terms of section 54 (4) of the *Basic Conditions of Employment Act*.

[Sub-s. (1) substituted by s. 10 *(a)* of Act 12 of 2002.]

(2) The *Minister* may promulgate the *statutory council*'s recommendations as a determination under the *Basic Conditions of Employment Act* if satisfied that the *statutory council* has complied with section 54 (3) of the *Basic Conditions of Employment Act*, read with the changes required by the context.

[Sub-s. (2) substituted by s. 10 *(b)* of Act 12 of 2002.]

(3) The determination must provide for-

*(a)*   exemptions to be considered by an independent body appointed by the *Minister*; and

*(b)*   criteria for exemption that are fair and promote the primary objects of *this Act*.

(4) The *Minister* may in a determination impose a levy on all employers and *employees* in the *registered scope* of the *statutory council* to defray the operational costs of the *statutory council*.

(5) A *statutory council* may submit a proposal to the *Minister* to amend or extend the period of any determination and the *Minister* may make the amendment to the determination or extend the period by notice in the *Government Gazette*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/45  Disputes about determinations

**45  Disputes about determinations**

(1) If there is a *dispute* about the interpretation or application of a determination promulgated in terms of section 44 (2), any party to the*dispute* may refer the *dispute* in writing to the Commission.

(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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/46  Withdrawal of party from statutory council

**46  Withdrawal of party from statutory council**

(1) If a registered *trade union* or registered *employers' organisation* that is a party to a *statutory council* withdraws from that *statutory council*, the *Minister* may request the Commission to convene a meeting of the remaining registered *trade unions* or registered *employers' organisations* in the *sector* and *area*, in order to facilitate the conclusion of an agreement on the registered *trade unions* or the registered*employers' organisations* to be parties and the allocation of representatives to the *statutory council*.

(2) If no agreement is concluded, the provisions of section 41 apply, read with the changes required by the context.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/47  Appointment of new representative of statutory council

**47  Appointment of new representative of statutory council**

(1) If a representative appointed in terms of section 41 (6) or (7) for any reason no longer holds office, the *Minister* must publish a notice in the *Government Gazette* inviting interested parties within the *registered scope* of the *statutory council* to nominate a new representative.

(2) The provisions of section 41 (6) or (7) apply, read with the changes required by the context, in respect of the appointment of a new representative.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part E Statutory councils (ss 39-48)/48  Change of status of statutory council

**48  Change of status of statutory council**

(1) A *statutory council* may resolve to apply to register as a *bargaining council*.

(2) The *registrar* must deal with the application as if it were an application in terms of section 29[9](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340633), except for section 29 (4) *(b)*, (7) to (10) and (15).

(3) If the *registrar* has registered the *statutory council* as a *bargaining council*, the *registrar* must alter the register of *councils* and its certificate to reflect its change of status.

(4) Any determination in force at the time of the registration of the *bargaining council* or any agreement extended by the *Minister* in terms of section 43 (3)-

*(a)*   continues to have force for the period of its operation unless superseded by a *collective agreement*; and

*(b)*   may be extended for a further period.

(5) The *bargaining council* must perform any function or duty of the *statutory council* in terms of a determination during the period in which the determination is still in effect.

(6) If any *dispute* in terms of a determination is unresolved at the time the determination ceases to have effect, the *dispute* must be dealt with as if the determination was still in effect.

[9](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s48fn9_ref%2527%255d&xhitlist_md=target-id=0-0-0-340631)  Section 29 deals with the procedure for the registration of bargaining councils

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/49  Representativeness of council

***Part F  
General provisions concerning councils (ss 49-63)***

**49  Representativeness of council**

(1) When considering the representativeness of the parties to a *council*, or parties seeking registration of a *council*, the *registrar*, having regard to the nature of the *sector* and the situation of the *area* in respect of which registration is sought, may regard the parties to a *council* as representative in respect of the whole *area*, even if a *trade union* or *employers' organisation* that is a party to the *council* has no members in part of that *area*.

(2) A *bargaining council*, having a *collective agreement* that has been extended by the *Minister* in terms of section 32, must inform the*registrar* annually, in writing, on a date to be determined by the *registrar* as to the information specified in subsection (3) and the number of*employees* who are-

*(a)*   covered by the *collective agreement*;

*(b)*   members of the *trade unions* that are parties to the agreement;

*(c)*   employed by members of the *employers' organisations* that are party to the agreement.

[Sub-s. (2) substituted by s. 11 *(a)* of Act 12 of 2002 and amended by s. 5 *(a)* of Act 6 of 2014.]

(3) A *bargaining council* other than one contemplated in subsection (2) must on request by the *registrar*, inform the *registrar* in writing within the period specified in the request as to the number of *employees* who are-

*(a)*   employed within the *registered scope* of the *council*;

*(b)*   members of the *trade unions* that are parties to the *council*;

*(c)*   employed by members of the *employers' organisations* that are party to the *council*.

[Sub-s. (3) substituted by s. 11 *(b)* of Act 12 of 2002 and amended by s. 5 *(b)* of Act 6 of 2014.]

(4) A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the*council* for the year following the determination for any purpose in terms of *this Act*, including a decision by the *Minister* in terms of sections 32 (3) *(b)*, 32 (3) *(c)* and 32 (5).

[Sub-s. (4) added by s. 11 *(c)* of Act 12 of 2002 and substituted by s. 5 *(c)* of Act 6 of 2014.]

(5) This section does not apply to the *public service*.

[Sub-s. (5) added by s. 11 *(c)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/50  Effect of registration of council

**50  Effect of registration of council**

(1) A certificate of registration is sufficient proof that a registered *council* is a body corporate.

(2) A *council* has all the powers, functions and duties that are conferred or imposed on it by or in terms of *this Act*, and it has jurisdiction to exercise and perform those powers, functions and duties within its *registered scope*.

(3) A party to a *council* is not liable for any of the obligations or liabilities of the *council* by virtue of it being a party to the *council*.

(4) A party to, or *office-bearer* or *official* of, a *council* is not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by a party to, or *office-bearer* or *official* of, a *council* while performing their functions for the *council*.

(5) *Service* of any document directed to a *council* at the address most recently provided to the *registrar* will be for all purposes *service* of that document on that *council*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/51  Dispute resolution functions of council

**51  Dispute resolution functions of council**

(1) In this section, *dispute* means any *dispute* about a matter of mutual interest between-

*(a)*   on the one side-

     (i)   one or more *trade unions*;

    (ii)   one or more *employees*; or

    (iii)   one or more *trade unions* and one or more *employees*; and

*(b)*   on the other side-

     (i)   one or more *employers' organisations*;

    (ii)   one or more employers; or

    (iii)   one or more *employers' organisations* and one or more employers.

(2) *(a)* (i) The parties to a *council* must attempt to resolve any *dispute* between themselves in accordance with the constitution of the *council*.

(ii) For the purposes of subparagraph (i), a party to a *council* includes the members of any registered *trade union* or registered*employers' organisation* that is a party to the *council*.

[Sub-para. (ii) added by s. 11 *(a)* of Act 42 of 1996.]

*(b)* Any party to a *dispute* who is not a party to a *council* but who falls within the registered scope of the *council* may refer the *dispute* to the *council* in writing.

*(c)* The party who refers the *dispute* to the *council* must satisfy it that a copy of the referral has been *served* on all the other parties to the*dispute*.

(3) If a *dispute* is referred to a *council* in terms of *this Act*[10](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340703)  and any party to that *dispute* is not a party to that *council*, the *council* must attempt to resolve the *dispute*-

*(a)*   through conciliation; and

*(b)*   if the *dispute* remains unresolved after conciliation, the *council* must arbitrate the *dispute* if-

     (i)   *this Act* requires arbitration and any party to the *dispute* has requested that it be resolved through arbitration; or

    (ii)   all the parties to the *dispute* consent to arbitration under the auspices of the *council*.

(4) If one or more of the parties to a *dispute* that has been referred to the *council* do not fall within the *registered scope* of that *council*, it must refer the *dispute* to the Commission.

(5) The date on which the referral in terms of subsection (4) was received by a *council* is, for all purposes, the date on which the *council*referred the *dispute* to the Commission.

(6) A *council* may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the *council*, its dispute resolution functions in terms of this section.

[Sub-s. (6) added by s. 11 *(b)* of Act 42 of 1996.]

(7) Subject to this Act, a *council* may not provide in a *collective agreement* for the referral of *disputes* to the Commission, without prior consultation with the director.

[Sub-s. (7) added by s. 12 of Act 12 of 2002.]

(8) Unless otherwise agreed to in a *collective agreement*, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a *bargaining council*.

[Sub-s. (8) added by s. 12 of Act 12 of 2002.]

(9) A *bargaining council* may, by *collective agreement-*

*(a)*   establish procedures to resolve any *dispute* contemplated in this section;

*(b)*   provide for payment of a dispute resolution levy; and

*(c)*   provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115 (2A) *(l)*, which may not exceed the fee provided for in that section.

[Sub-s. (9) added by s. 12 of Act 12 of 2002 and substituted by s. 6 of Act 6 of 2014.]

The following disputes contemplated by subsection (3) may not be referred to a council: disputes about organisational rights (see sections 16, 21 and 22); disputes about collective agreements where the agreement does not provide for a procedure or the procedure is inoperative or any party frustrates the resolution of the dispute (see section 24 (2) to (5)); disputes about agency shops and closed shops (see section 24 (6) and (7) and section 26 (11)); disputes about determinations made by the Minister in respect of proposals made by a statutory council (see section 45); disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled (see section 61 (5) to (8)); disputes about the demarcation of sectors and areas of councils (see section 62); disputes about the interpretation or application of Part C (bargaining councils), Part D (bargaining councils in the public service), Part E (statutory councils) and Part F (general provisions concerning councils) (see section 63); disputes concerning pickets (see section 69 (8) to (10)); disputes about proposals that are the subject of joint decision-making in workplace forums (see section 86); disputes about the disclosure of information to workplace forums (see section 89); and disputes about the interpretation or application of the provisions of Chapter V which deals with workplace forums (see section 94).[Footnote amended by Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/52  Accreditation of council or appointment of accredited agency

**52  Accreditation of council or appointment of accredited agency**

(1) With a view to performing its dispute resolution functions in terms of section 51 (3), every *council* must-

*(a)*   apply to the governing body of the Commission for accreditation to perform those functions; or

*(b)*   appoint an accredited agency to perform those of the functions referred to in section 51 (3) for which the council is not accredited.

(2) The *council* must advise the Commission in writing as soon as possible of the appointment of an accredited agency in terms of subsection (1) *(b)*, and the terms of that appointment.

[S. 52 substituted by s. 12 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/53  Accounting records and audits

**53  Accounting records and audits**

(1) Every *council* must, to the standards of generally accepted accounting practice, principles and procedures-

*(a)*   keep books and records of its income, expenditure, assets and liabilities; and

*(b)*   within six months after the end of each financial year, prepare financial statements, including at least-

     (i)   a statement of income and expenditure for the previous financial year; and

    (ii)   a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Each *council* must arrange for an annual audit of its books and records of account and its financial statements by an *auditor* who must-

*(a)*   conduct the audit in accordance with generally accepted auditing standards; and

*(b)*   report in writing to the *council* and in that report express an opinion as to whether or not the *council* has complied with those provisions of its constitution relating to financial matters.

(3) Every *council* must-

*(a)*   make the financial statements and the *auditor's* report available to the parties to the *council* or their representatives for inspection; and

*(b)*   submit those statements and the *auditor's* report to a meeting of the *council* as provided for in its constitution.

(4) Every *council* must preserve each of its books of account, supporting vouchers, income and expenditure statements, balance sheets, and*auditor's* reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

(5) The money of a *council* or of any fund established by a *council* that is surplus to its requirements or the expenses of the fund may be invested only in-

*(a)*   savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;

*(b)*   internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act 66 of 1975);

*(c)*   a registered unit trust; or

*(d)*   any other manner approved by the *registrar*.

[Sub-s. (5) amended by s. 13 of Act 42 of 1996.]

(6) A *council* must comply with subsections (1) to (5) in respect of all funds established by it, except funds referred to in section 28 (3).

[Sub-s. (6) added by s. 13 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/54  Duty to keep records and provide information to registrar

**54  Duty to keep records and provide information to registrar**

(1) In addition to the records required by section 53 (4), every *council* must keep minutes of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

(2) Every *council* must provide to the *registrar*-

*(a)*   within 30 days of receipt of its *auditor's* report, a certified copy of that report and of the financial statements;

*(b)*   within 30 days of receipt of a written request by the *registrar*, an explanation of anything relating to the *auditor's* report or the financial statements;

*(c)*   upon registration, an address within the *Republic* at which it will accept *service* of any document that is directed to it;

*(d)*   within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers*, even if their appointment or election did not result in any changes to its *office-bearers*;

*(e)*   30 days before a new address for *service* of documents will take effect, notice of that change of address; and

*(f)*   each year and on a date to be determined by the *registrar*, a report in the prescribed form specifying-

     (i)   the number of employees who are employed by small enterprises that fall within the *registered scope* of the *council* and the number of *employees* of those enterprises who are members of *trade unions*;

    (ii)   the number of *employees* employed by small enterprises that are covered by a *collective agreement* that was concluded by the *council* and extended by the *Minister* in terms of section 32;

    (iii)   the number of small enterprises that are members of the *employers' organisations* that are parties to the *council*; and

   (iv)   the number of applications for exemptions received from small enterprises and the number of applications that were granted and the number rejected.

[Para. *(f)* added by s. 14 *(b)* of Act 12 of 2002.]

(3) Every *council* must provide to the Commission-

*(a)*   certified copies of every *collective agreement* concluded by the parties to the *council*, within 30 days of the signing of that *collective agreement*; and

*(b)*   the details of the admission and resignation of parties to the *council*, within 30 days of their admission or resignation.

(4) If a *council* fails to comply with any of the provisions of section 49 (2) or (3), section 53 or subsections (1) or (2) of this section, the*registrar* may-

*(a)*   conduct an inquiry into the affairs of that council;

*(b)*   order the production of the *council's* financial records and any other relevant documents;

*(c)*   deliver a notice to the *council* requiring the council to comply with the provisions concerned;

*(d)*   compile a report on the affairs of the *council*; or

*(e)*   submit the report to the Labour Court in support of any application made in terms of section 59 (1) *(b)*.

[Sub-s. (4) added by s. 14 *(c)* of Act 12 of 2002.]

(5) The *registrar* may use the powers referred to in subsection (4) in respect of any fund established by a *council*, except a fund referred to in section 28 (3).

[Sub-s. (5) added by s. 14 *(c)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/55  Delegation of functions to committee of council

**55  Delegation of functions to committee of council**

(1) A *council* may delegate any of its powers and functions to a committee on any conditions imposed by the *council* in accordance with its constitution.

[Sub-s. (1) substituted by s. 14 *(a)* of Act 42 of 1996.]

(2) A committee contemplated by subsection (1) must consist of equal numbers of representatives of *employees* and employers.

(3) ......

[Sub-s. (3) deleted by s. 14 *(b)* of Act 42 of 1996.]

**Document 57 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/56  Admission of parties to council

**56  Admission of parties to council**[**11**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-340823)

(1) Any registered *trade union* or registered *employers' organisation* may apply in writing to a *council* for admission as a party to that *council*.

(2) The application must be accompanied by a certified copy of the applicant's registered constitution and certificate of registration and must include-

*(a)*   details of the applicant's membership within the *registered scope* of the *council* and, if the applicant is a registered *employers' organisation*, the number of *employees* that its members employ within that *registered scope*;

*(b)*   the reasons why the applicant ought to be admitted as a party to the *council*; and

*(c)*   any other information on which the applicant relies in support of the application.

(3) A *council*, within 90 days of receiving an application for admission, must decide whether to grant or refuse an applicant admission, and must advise the applicant of its decision, failing which the *council* is deemed to have refused the applicant admission.

(4) If the *council* refuses to admit an applicant it must within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

(5) The applicant may apply to the Labour Court for an order admitting it as a party to the *council*.

(6) The Labour Court may admit the applicant as a party to the *council*, adapt the constitution of the *council* and make any other appropriate order.

[11](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s56fn11_ref%2527%255d&xhitlist_md=target-id=0-0-0-340821)  See flow diagram 5 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/57  Changing constitution or name of council

**57  Changing constitution or name of council**

(1) Any *council* may resolve to change or replace its constitution.

(2) The *council* must send the *registrar* a copy of the resolution and a certificate signed by its secretary stating that the resolution complies with its constitution.

(3) The *registrar* must-

*(a)*   register the changed or new constitution of a *council* if it meets the requirements of section 30 or if it is a *statutory council* established in terms of section 41 if it meets the requirements of the model constitution referred to in section 207 (3); and

*(b)*   send the *council* a copy of the resolution endorsed by the *registrar*, certifying that the change or replacement has been registered.

(4) The changed or new constitution takes effect from the date of the *registrar's* certification.

(5) Any *council* may resolve to change its name.

(6) The *council* must send the *registrar* a copy of the resolution and the original of its current certificate of registration.

(7) The *registrar* must-

*(a)*   enter the new name in the register of *councils*, and issue a certificate of registration in the new name of the *council*;

*(b)*   remove the old name from that register and cancel the earlier certificate of registration; and

*(c)*   send the new certificate to the *council*.

(8) The new name takes effect from the date that the *registrar* enters it in the register of *councils*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/58  Variation of registered scope of council

**58  Variation of registered scope of council**

(1) If the *registrar* is satisfied that the *sector* and *area* within which a *council* is representative does not coincide with the *registered scope* of the *council*, the *registrar*, acting independently or in response to an application from the council, may vary the *registered scope* of the *council*.

[Sub-s. (1) substituted by s. 15 of Act 42 of 1996.]

(2) The provisions of section 29 apply, read with the changes required by the context, to a variation in terms of this section.

(3) Despite subsection (2), if within the stipulated period no material objection is lodged to any notice published by the *registrar* in terms of section 29 (3), the *registrar*-

     (i)   may vary the *registered scope* of the council;

    (ii)   may issue a certificate specifying the scope of the council as varied; and

   (iii)   need not comply with the procedure prescribed by section 29.

[Sub-s. (3) added by s. 15 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/59  Winding-up of council

**59  Winding-up of council**

(1) The Labour Court may order a *council* to be wound up if-

*(a)*   the *council* has resolved to wind up its affairs and has applied to the Court for an order giving effect to that resolution; or

*(b)*   the *registrar* of labour relations or any party to the *council* has applied to the Court and the Court is satisfied that the *council* is unable to continue to function for any reason that cannot be remedied.

(2) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must-

*(a)*   consider those interests before deciding whether or not to grant the order; and

*(b)*   if it grants the order, include provisions in the order disposing of each of those interests.

(3) If it makes an order in terms of subsection (1), the Labour Court may appoint a suitable person as liquidator, on appropriate conditions.

(4) *(a)* The *registrar* of the Labour Court must determine the liquidator's fees.

*(b)* The Labour Court, in chambers, may review the determination of the *registrar* of the Labour Court.

*(c)* The liquidator's fees are a first charge against the assets of the *council*.

(5) If, after all the liabilities of the *council* have been discharged, any assets remain that cannot be disposed of in accordance with the constitution of that *council*, the liquidator must realise those assets and pay the proceeds to the Commission for its own use.

(6) For the purposes of this section, the assets and liabilities of any pension, provident or medical aid scheme or fund established by a *council*will be regarded and treated as part of the assets and liabilities of the *council* unless-

*(a)*   the parties to the *council* have agreed to continue with the operation of the pension, provident or medical aid scheme or fund as a separate scheme or fund despite the winding-up of the *council*; and

*(b)*   the *Minister* has approved the continuation of the scheme or fund; and

*(c)*   application has been made in accordance with the provisions of the laws applicable to pension, provident or medical aid schemes or funds, for the registration of that scheme or fund in terms of those provisions.

[Sub-s. (6) added by s. 4 of Act 127 of 1998.]

(7) A pension, provident or medical aid scheme or fund registered under the provisions of those laws after its application in terms of subsection (6) *(c)*, will continue to be a separate scheme or fund despite the winding-up of the *council* by which it was established.

[Sub-s. (7) added by s. 4 of Act 127 of 1998.]

(8) The *Minister* by notice in the *Government Gazette* may declare the rules of a pension, provident or medical aid scheme or fund mentioned in subsection (7), to be binding on any *employees* and employer or employers that fell within the *registered scope* of the relevant *council*immediately before it was wound up.

[Sub-s. (8) added by s. 4 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/60  Winding-up of council by reason of insolvency

**60  Winding-up of council by reason of insolvency**

Any person who seeks to wind-up a *council* by reason of insolvency must comply with the Insolvency Act, 1936 (Act 24 of 1936), and, for the purposes of this section, any reference to the court in that Act must be interpreted as referring to the Labour Court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/61  Cancellation of registration of council

**61  Cancellation of registration of council**

(1) The *registrar* of the Labour Court must notify the registrar of labour relations if the Court has ordered a *council* to be wound up.

(2) When the *registrar* receives a notice from the Labour Court in terms of subsection (1), the *registrar* must cancel the registration of the*council* by removing its name from the register of *councils*.

(3) The *registrar* may notify a *council* and every party to the *council* that the *registrar* is considering cancelling the *council's* registration, if the*registrar* believes that-

*(a)*   the *council* has ceased to perform its functions in terms of *this Act* for a period longer than 90 days before the date of the notice; or

*(b)*   the *council* has ceased to be representative in terms of the provisions of the relevant Part, for a period longer than 90 days prior to the date of the notice.

(4) In a notice in terms of subsection (3), the *registrar* must state the reasons for the notice and inform the *council* and every party to the*council* that they have 60 days to show cause why the *council's* registration should not be cancelled.

(5) After the expiry of the 60-day period, the *registrar*, unless cause has been shown why the *council's* registration should not be cancelled, must notify the *council* and every party to the *council* that the registration will be cancelled unless an appeal to the Labour Court is noted and the Court reverses the decision.

(6) The cancellation takes effect-

*(a)*   if no appeal to the Labour Court is noted within the time contemplated in section 111 (3), on the expiry of that period; or

*(b)*   if the *council* or any party has appealed and the Labour Court has confirmed the decision of the *registrar*, on the date of the Labour Court's decision.

(7) If either event contemplated in subsection (6) occurs, the *registrar* must cancel the *council's* registration by removing the name of the*council* from the register of *councils*.

(8) Any *collective agreement* concluded by parties to a *council* whose registration has been cancelled, whether or not the *collective agreement*has been extended to non-parties by the *Minister* in terms of section 32, lapses 60 days after the *council's* registration has been cancelled.

(9) Despite subsection (8), the provisions of a *collective agreement* that regulates terms and conditions of employment remain in force for one year after the date that the *council's* registration was cancelled, or until the expiry of the agreement, if earlier.

(10) Any party to a *dispute* about the interpretation or application of a *collective agreement* that regulates terms and conditions of employment referred to in subsection (8) may refer the *dispute* in writing to the Commission.

(11) 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*.

(12) The Commission must attempt to resolve the *dispute* through conciliation.

(13) If the *dispute* remains unresolved, any party to the *dispute* may request that the *dispute* be resolved through arbitration.

(14) The *registrar* must cancel the registration of a *bargaining council* in the *public service* by removing its name from the register of *councils*when the *registrar* receives a resolution from the Public Service Co-ordinating Bargaining Council disestablishing a *bargaining council* established in terms of section 37 (2).

[Sub-s. (14) added by s. 16 of Act 12 of 2002.]

(15) The provisions of subsections (3) to (7) do not apply to *bargaining council*s in the *public service*.

[Sub-s. (15) added by s. 16 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/62  Disputes about demarcation between sectors and areas

**62  Disputes about demarcation between sectors and areas**

(1) Any registered *trade union*, employer, *employee*, registered *employers' organisation* or *council* that has a direct or indirect interest in the application contemplated in this section may apply to the Commission in the *prescribed* form and manner for a determination as to-

*(a)*   whether any *employee*, employer, class of *employees* or class of employers, is or was employed or engaged in a *sector* or *area*;

*(b)*   whether any provision in any arbitration award, *collective agreement* or wage determination made in terms of the *Wage Act* is or was binding on any *employee*, employer, class of *employees* or class of employers.

[Sub-s. (1) amended by s. 16 *(a)* of Act 42 of 1996.]

(2) If two or more *councils* settle a *dispute* about a question contemplated in subsection (1) *(a)* or *(b)*, the *councils* must inform the *Minister* of the provisions of their agreement and the *Minister* may publish a notice in the *Government Gazette* stating the particulars of the agreement.

(3) In any proceedings in terms of *this Act* before the Labour Court, if a question contemplated in subsection (1) *(a)* or *(b)* is raised, the Labour Court must adjourn those proceedings and refer the question to the Commission for determination if the Court is satisfied that-

*(a)*   the question raised-

     (i)   has not previously been determined by arbitration in terms of this section; and

    (ii)   is not the subject of an agreement in terms of subsection (2); and

*(b)*   the determination of the question raised is necessary for the purposes of the proceedings.

(3A) In any proceedings before an arbitrator about the interpretation or application of a *collective agreement*, if a question contemplated in subsection (1) *(a)* or *(b)* is raised, the arbitrator must adjourn those proceedings and refer the question to the Commission if the arbitrator is satisfied that-

*(a)*   the question raised-

     (i)   has not previously been determined by arbitration in terms of this section; and

    (ii)   is not the subject of an agreement in terms of subsection (2); and

*(b)*   the determination of the question raised is necessary for the purposes of the proceedings.

[Sub-s. (3A) inserted by s. 16 *(b)* of Act 42 of 1996.]

(4) When the Commission receives an application in terms of subsection (1) or a referral in terms of subsection (3), it must appoint a commissioner to hear the application or determine the question, and the provisions of section 138 apply, read with the changes required by the context.

(5) In any proceedings in terms of *this Act* before a commissioner, if a question contemplated in subsection (1) *(a)* or *(b)* is raised, the commissioner must adjourn the proceedings and consult the *director*, if the commissioner is satisfied that-

*(a)*   the question raised-

     (i)   has not previously been determined by arbitration in terms of this section; and

    (ii)   is not the subject of an agreement in terms of subsection (2); and

*(b)*   the determination of the question raised is necessary for the purposes of the proceedings.

(6) The *director* must either order the commissioner concerned to determine the question or appoint another commissioner to do so, and the provisions of section 138 apply, read with the changes required by the context.

(7) If the Commission believes that the question is of substantial importance, the Commission must publish a notice in the *Government Gazette*stating the particulars of the application or referral and stating the period within which written representations may be made and the address to which they must be directed.

(8) If a notice contemplated in subsection (7) has been published, the commissioner may not commence the arbitration until the period stated in the notice has expired.

(9) Before making an award, the commissioner must consider any written representations that are made, and must consult *NEDLAC*.

(10) The commissioner must send the award, together with brief reasons, to the Labour Court and to the Commission.

(11) If the Commission believes that the nature of the award is substantially important, it may publish notice of the award in the *Government Gazette*.

(12) The *registrar* must amend the certificate of registration of a *council* in so far as is necessary in light of the award.

**Document 64 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER III COLLECTIVE BARGAINING (ss 11-63)/Part F General provisions concerning councils (ss 49-63)/63  Disputes about Parts A and C to F

**63  Disputes about Parts A and C to F**

(1) Any party to a *dispute* about the interpretation or application of Parts A and C to F of this Chapter, may refer the *dispute* in writing to the Commission unless-

*(a)*   the *dispute* has arisen in the course of arbitration proceedings or proceedings in the Labour Court; or

[Para. *(a)* substituted by s. 17 of Act 42 of 1996.]

*(b)*   the *dispute* is otherwise to be dealt with in terms of Parts A and C to F.

(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 refer it to the Labour Court for adjudication.

**Document 65 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/64  Right to strike and recourse to lock-out

**CHAPTER IV  
STRIKES AND LOCK-OUTS (ss 64-77)**

**64  Right to strike and recourse to lock-out**

(1) Every *employee* has the right to *strike* and every employer has recourse to *lock-out* if-

*(a)*   the *issue* in *dispute* has been referred to a *council* or to the Commission as required by *this Act*, and-

     (i)   a certificate stating that the *dispute* remains unresolved has been issued; or

    (ii)   a period of 30 days, or any extension of that period agreed to between the parties to the *dispute*, has elapsed since the referral was received by the *council* or the Commission; and after that-

*(b)*   in the case of a proposed *strike*, at least 48 hours' notice of the commencement of the *strike*, in writing, has been given to the employer, unless-

     (i)   the issue in *dispute* relates to a *collective agreement* to be concluded in a *council*, in which case, notice must have been given to that *council*; or

    (ii)   the employer is a member of an *employers' organisation* that is a party to the *dispute*, in which case, notice must have been given to that *employers' organisation*; or

*(c)*   in the case of a proposed *lock-out*, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any*trade union* that is a party to the *dispute*, or, if there is no such *trade union*, to the *employees*, unless the *issue in dispute* relates to a*collective agreement* to be concluded in a *council*, in which case, notice must have been given to that *council*; or

*(d)*   in the case of a proposed *strike* or *lock-out* where the State is the employer, at least seven days' notice of the commencement of the*strike* or *lock-out* has been given to the parties contemplated in paragraphs *(b)* and *(c)*.

(2) If the *issue in dispute* concerns a refusal to bargain, an advisory award must have been made in terms of section 135 (3) *(c)* before notice is given in terms of subsection (1) *(b)* or *(c)*. A refusal to bargain includes-

*(a)*   a refusal-

     (i)   to recognise a *trade union* as a collective bargaining agent; or

    (ii)   to agree to establish a *bargaining council*;

*(b)*   a withdrawal of recognition of a collective bargaining agent;

*(c)*   a resignation of a party from a *bargaining council*;

*(d)*   a *dispute* about-

     (i)   appropriate bargaining units;

    (ii)   appropriate bargaining levels; or

    (iii)   bargaining subjects.

(3) The requirements of subsection (1) do not apply to a *strike* or a *lock-out* if-

*(a)*   the parties to the *dispute* are members of a *council*, and the *dispute* has been dealt with by that *council* in accordance with its constitution;

*(b)*   the *strike* or *lock-out* conforms with the procedures in a *collective agreement*;

*(c)*   the *employees strike* in response to a *lock-out* by their employer that does not comply with the provisions of this Chapter;

*(d)*   the employer locks out its *employees* in response to their taking part in a *strike* that does not conform with the provisions of this Chapter; or

*(e)*   the employer fails to comply with the requirements of subsections (4) and (5).

(4) Any *employee* who or any *trade union* that refers a *dispute* about a unilateral change to terms and conditions of employment to a *council* or the Commission in terms of subsection (1) *(a)* may, in the referral, and for the period referred to in subsection (1) *(a)*-

*(a)*   require the employer not to implement unilaterally the change to terms and conditions of employment; or

*(b)*   if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.

(5) The employer must comply with a requirement in terms of subsection (4) within 48 hours of *service* of the referral on the employer.

**Document 66 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/65  Limitations on right to strike or recourse to lock-out

**65  Limitations on right to strike or recourse to lock-out**

(1) No person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a *strike* or a *lock-out* if-

*(a)*   that person is bound by a *collective agreement* that prohibits a *strike* or *lock-out* in respect of the *issue in dispute*;

*(b)*   that person is bound by an agreement that requires the *issue in dispute* to be referred to arbitration;

*(c)*   the *issue in dispute* is one that a party has the right to refer to arbitration or to the Labour Court in terms of *this Act* or any other*employment law*;

[Para. *(c)* substituted by s. 7 *(a)* of Act 6 of 2014.]

*(d)*   that person is engaged in-

     (i)   an *essential service*; or

    (ii)   a maintenance service.[12](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341035)

(2) *(a)* Despite section 65 (1) *(c)*, a person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or in furtherance of a*strike* or *lock-out* if the *issue in dispute* is about any matter dealt with in sections 12 to 15.[13](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341039)

*(b)* If the registered *trade union* has given notice of the proposed *strike* in terms of section 64 (1) in respect of an *issue in dispute* referred to in paragraph *(a)*, it may not exercise the right to refer the *dispute* to arbitration in terms of section 21 for a period of 12 months from the date of the notice.

(3) Subject to a *collective agreement*, no person may take part in a *strike* or a *lock-out* or in any conduct in contemplation or furtherance of a*strike* or *lock-out*-

*(a)*   if that person is bound by-

     (i)   any arbitration award or *collective agreement* that regulates the *issue in dispute*; or

    (ii)   any determination made in terms of section 44 by the *Minister* that regulates the issue in *dispute*; or

*(b)*   any determination made in terms of Chapter Eight of the *Basic Conditions of Employment Act* and that regulates the *issue in dispute*, during the first year of that determination.

[Para. *(b)* substituted by s. 7 *(b)* of Act 6 of 2014.]

[12](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s65fn12_ref%2527%255d&xhitlist_md=target-id=0-0-0-341033)  Essential services, agreed minimum services and maintenance services are regulated in sections 71 to 75

[13](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s65fn13_ref%2527%255d&xhitlist_md=target-id=0-0-0-341037)  These sections deal with organisational rights

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/66  Secondary strikes

**66  Secondary strikes**

(1) In this section **'secondary *strike*'** means a *strike*, or conduct in contemplation or furtherance of a *strike*, that is in support of a *strike* by other *employees* against their employer but does not include a *strike* in pursuit of a demand that has been referred to a *council* if the striking*employees*, employed within the *registered scope* of that *council*, have a material interest in that demand.

[Sub-s. (1) substituted by s. 19 of Act 42 of 1996.]

(2) No person may take part in a secondary *strike* unless-

*(a)*   the *strike* that is to be supported complies with the provisions of sections 64 and 65;

*(b)*   the employer of the *employees* taking part in the secondary *strike* or, where appropriate, the *employers' organisation* of which that employer is a member, has received written notice of the proposed secondary *strike* at least seven days prior to its commencement; and

*(c)*   the nature and extent of the secondary *strike* is reasonable in relation to the possible direct or indirect effect that the secondary *strike*may have on the business of the primary employer.

(3) Subject to section 68 (2) and (3), a secondary employer may apply to the Labour Court for an interdict to prohibit or limit a secondary*strike* that contravenes subsection (2).

(4) Any person who is a party to proceedings in terms of subsection (3), or the Labour Court, may request the Commission to conduct an urgent investigation to assist the Court to determine whether the requirements of subsection (2) *(c)* have been met.

(5) On receipt of a request made in terms of subsection (4), the Commission must appoint a suitably qualified person to conduct the investigation, and then submit, as soon as possible, a report to the Labour Court.

(6) The Labour Court must take account of the Commission's report in terms of subsection (5) before making an order.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/67  Strike or lock-out in compliance with this Act

**67  Strike or lock-out in compliance with this Act**

(1) In this Chapter, **'protected *strike*'** means a *strike* that complies with the provisions of this Chapter and **'protected *lock-out*'** means a*lock-out* that complies with the provisions of this Chapter.

(2) A person does not commit a delict or a breach of contract by taking part in-

*(a)*   a protected *strike* or a protected *lock-out*; or

*(b)*   any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out*.

(3) Despite subsection (2), an employer is not obliged to remunerate an *employee* for services that the *employee* does not render during a protected *strike* or a protected *lock-out*, however-

*(a)*   if the *employee's remuneration* includes payment in kind in respect of accommodation, the provision of food and other basic amenities of life, the employer, at the request of the *employee*, must not discontinue payment in kind during the *strike* or *lock-out*; and

*(b)*   after the end of the *strike* or lock out, the employer may recover the monetary value of the payment in kind made at the request of the *employee* during the *strike* or *lock-out* from the *employee* by way of civil proceedings instituted in the Labour Court.

(4) An employer may not dismiss an *employee* for participating in a protected *strike* or for any conduct in contemplation or in furtherance of a protected *strike*.

(5) Subsection (4) does not preclude an employer from fairly dismissing an *employee* in accordance with the provisions of Chapter VIII for a reason related to the *employee's* conduct during the *strike*, or for a reason based on the employer's *operational requirements*.

(6) Civil legal proceedings may not be instituted against any person for-

*(a)*   participating in a protected *strike* or a protected *lock-out*; or

*(b)*   any conduct in contemplation or in furtherance of a protected *strike* or a protected *lock-out*.

(7) The failure by a registered *trade union* or a registered *employers' organisation* to comply with a provision in its constitution requiring it to conduct a ballot of those of its members in respect of whom it intends to call a *strike* or *lock-out* may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the *strike* or *lock-out*.

(8) The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a *strike* or a *lock-out*, if that act is an offence.

(9) ......

[Sub-s. (9) deleted by s. 8 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/68  Strike or lock-out not in compliance with this Act

**68  Strike or lock-out not in compliance with this Act**

(1) In the case of any *strike* or *lock-out*, or any conduct in contemplation or in furtherance of a *strike* or *lock-out*, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction-

*(a)*   to grant an interdict or order to restrain-[14](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341063)

     (i)   any person from participating in a *strike* or any conduct in contemplation or in furtherance of a *strike*; or

    (ii)   any person from participating in a *lock-out* or any conduct in contemplation or in furtherance of a *lock-out*;

*(b)*   to order the payment of just and equitable compensation for any loss attributable to the *strike* or *lock-out*, or conduct, having regard to*-*

     (i)   whether-

*(aa)*   attempts were made to comply with the provisions of this Chapter and the extent of those attempts;

*(bb)*   the *strike* or *lock-out* or conduct was premeditated;

*(cc)*   the *strike* or *lock-out* or conduct was in response to unjustified conduct by another party to the *dispute*; and

*(dd)*   there was compliance with an order granted in terms of paragraph *(a)*;

    (ii)   the interests of orderly collective bargaining;

    (iii)   the duration of the *strike* or *lock-out* or conduct; and

   (iv)   the financial position of the employer, *trade union* or *employees* respectively.

[Para. *(b)* substituted by s. 17 of Act 12 of 2002.]

(2) The Labour Court may not grant any order in terms of subsection (1) *(a)* unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice if-

*(a)*   the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;

*(b)*   the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and

*(c)*   the applicant has shown good cause why a period shorter than 48 hours should be permitted.

(3) Despite subsection (2), if written notice of the commencement of the proposed *strike* or *lock-out* was given to the applicant at least 10 days before the commencement of the proposed *strike* or *lock-out*, the applicant must give at least five days' notice to the respondent of an application for an order in terms of subsection (1) *(a)*.

(4) Subsections (2) and (3) do not apply to an employer or an *employee* engaged in an *essential service* or a maintenance service.

(5) Participation in a *strike* that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that*strike*, may constitute a fair reason for *dismissal*. In determining whether or not the *dismissal* is fair, the Code of Good Practice: Dismissal in Schedule 8 must be taken into account.

[14](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s68fn14_ref%2527%255d&xhitlist_md=target-id=0-0-0-341061)  See flow diagram 6 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/69  Picketing

**69  Picketing**[**15**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341095)

(1) A registered *trade union* may authorise a picket by its members and supporters for the purposes of peacefully demonstrating-

*(a)*   in support of any protected *strike*; or

*(b)*   in opposition to any *lock-out*.

(2) Despite any law regulating the right of assembly, a picket authorised in terms of subsection (1), may be held-

*(a)*   in any place to which the public has access but outside the premises of an employer; or

*(b)*   with the permission of the employer, inside the employer's premises.

[Sub-s. (2) amended by s. 20 of Act 42 of 1996.]

(3) The permission referred to in subsection (2) *(b)* may not be unreasonably withheld.

(4) If requested to do so by the registered *trade union* or the employer, the Commission must attempt to secure an agreement between the parties to the *dispute* on rules that should apply to any picket in relation to that *strike* or *lock-out*.

(5) If there is no agreement, the Commission must establish picketing rules, and in doing so must take account of-

*(a)*   the particular circumstances of the *workplace* or other premises where it is intended that the right to picket is to be exercised; and

*(b)*   any relevant *code of good practice*.

(6) The rules established by the Commission may provide for picketing by *employees*-

*(a)*   in a place contemplated in section 69 (2) *(a)* which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or

*(b)*   on their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld.

[Sub-s. (6) substituted by s. 9 *(a)* of Act 6 of 2014.]

(7) The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section.

(8) Any party to a *dispute* about any of the following issues, including a person contemplated in subsection (6) *(a)*, may refer the *dispute* in writing to the Commission-

*(a)*   an allegation that the effective use of the right to picket is being undermined;

*(b)*   an alleged material contravention of subsection (1) or (2);

*(c)*   an alleged material breach of an agreement concluded in terms of subsection (4); or

*(d)*   an alleged material breach of a rule established in terms of subsection (5).

[Sub-s. (8) amended by s. 9 *(b)* of Act 6 of 2014.]

(9) 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*.

(10) The Commission must attempt to resolve the *dispute* through conciliation.

(11) If the *dispute* remains unresolved, any party to the *dispute* may refer it to the Labour Court for adjudication.

(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include-

*(a)*   an order directing any party, including a person contemplated in subsection (6) *(a)*, to comply with a picketing agreement or rule; or

*(b)*   an order varying the terms of a picketing agreement or rule.

[Sub-s. (12) added by s. 9 *(c)* of Act 6 of 2014.]

(13) The Labour Court may not grant an order in terms of subsection (12) unless-

*(a)*   48 hours' notice of an application seeking relief referred to in subsection (12) *(a)* or *(b)* has been given to the respondent; or

*(b)*   72 hours' notice of an application seeking relief referred to in subsection (12) *(c)* or *(d)* has been given to the respondent.

[Sub-s. (13) added by s. 9 *(c)* of Act 6 of 2014.]

(14) The Labour Court may permit a shorter period of notice than required by subsection (13) if the-

*(a)*   applicant has given written notice to the respondent of its intention to apply for the order;

*(b)*   respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and

*(c)*   applicant has shown good cause why a period shorter than that contemplated by subsection (13) should be permitted.

[Sub-s. (14) added by s. 9 *(c)* of Act 6 of 2014.]

[15](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s69fn15_ref%2527%255d&xhitlist_md=target-id=0-0-0-341093)  See flow diagram 7 in Schedule 4

**Document 71 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70  Essential services committee

**70  Essential services committee**

The *Minister*, after consulting *NEDLAC*, must establish an essential services committee under the auspices of the Commission in accordance with the provisions of *this Act*.

[S. 70 amended by s. 5 of Act 127 of 1998 and substituted by s. 10 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70A  Composition of essential services committee

**70A  Composition of essential services committee**

(1) The *Minister* must appoint to the essential services committee on terms that the Minister considers fit-

*(a)*   a chairperson, who is independent from the constituencies contemplated in subsection (3) and who may be a senior commissioner;

*(b)*   a deputy chairperson, who must be a senior commissioner; and

*(c)*   six persons nominated in accordance with the provisions of subsections (3) and (4).

(2) A member of the essential services committee-

*(a)*   must be a citizen of South Africa, who is ordinarily resident in South Africa, or a permanent resident of South Africa;

*(b)*   must have suitable qualifications or experience in labour law, labour relations, commerce, public affairs, the administration of justice, industry or a sector of the economy;

*(c)*   must not be an unrehabilitated insolvent; and

*(d)*   must not be subject to an order of a competent court holding that person to be mentally unfit or disordered.

(3) Organised business, labour and government at *NEDLAC* must each nominate to the *Minister* the names of two persons to be appointed to the essential services committee.

(4) The *Minister* must appoint the persons nominated by organised business, labour and government at *NEDLAC* if these persons meet the requirements set out in subsection (2).

(5) The *Minister* may fill any vacancy that arises in accordance with the provisions of this section.

(6) A member of the essential services committee may not represent any person before a panel of the essential services committee, but may be appointed by the *trade union* and employer parties to serve as an assessor in terms of section 70C.

[S. 70A inserted by s. 11 of Act 6 of 2014.]

**Document 73 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70B  Powers and functions of essential services committee

**70B  Powers and functions of essential services committee**

(1) The powers and functions of the essential services committee are to-

*(a)*   monitor the implementation and observance of essential services determinations, minimum services agreements, maintenance services agreements and determinations;

*(b)*   promote effective *dispute resolution* in essential services;

*(c)*   develop guidelines for the negotiation of minimum services agreements;

*(d)*   decide, on its own initiative or at the reasonable request of any interested party, whether to institute investigations as to whether or not the whole or a part of any service is an essential service;

*(e)*   manage its caseload; and

*(f)*   appoint the panels contemplated in section 70C to perform one or more of the functions set out in section 70D.

(2) At the request of a *bargaining council*, the essential services committee must establish a panel to perform any function in terms of section 70D (1).

(3) The essential services committee may request the Commission or any other appropriate person to conduct an investigation to assist the essential services committee in an investigation and to submit a report to it.

[S. 70B inserted by s. 11 of Act 6 of 2014.]

**Document 74 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70C  Appointment of panels

**70C  Appointment of panels**

(1) The essential services committee must, taking into account the nature and complexity of the issue, assign each matter before it to a panel consisting of either three or five persons, including the assessors referred to in subsections (3) and (4).

(2) A panel must be presided over by the chairperson or deputy chairperson of the essential services committee or by a senior commissioner referred to in subsection (3).

(3) The Commission must compile a list of suitably trained senior commissioners who may preside at panel hearings.

(4) If the essential services committee constitutes a three-member panel, it must either-

*(a)*   appoint two of its members to serve as assessors; or

*(b)*   invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

(5) If the essential services committee constitutes a five-member panel, it must-

*(a)*   appoint two of its members to serve as its assessors; and

*(b)*   invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

(6) If the essential services committee appoints assessors from its members to serve on a panel, it must appoint one who was nominated to the essential services committee by-

*(a)*   organised labour; and

*(b)*   organised business or government, depending on the sector concerned.

(7) A member of the essential services committee may be nominated to serve as an assessor in terms of subsections (4) *(b)* and (5) *(b)*.

(8) The essential services committee may appoint an assessor if the *trade union* or employer parties participating in the hearing fail to nominate an assessor in terms of subsections (4) *(b)* and (5) *(b)* within the prescribed period.

(9) When appointing or nominating an assessor in terms of subsections (4) to (8), the essential services committee, and any party to a matter before it, must take into account the person's skills, experience, expertise and knowledge of the sector concerned.

[S. 70C inserted by s. 11 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70D  Powers and functions of panel

**70D  Powers and functions of panel**

(1) The powers and functions of a panel appointed by the essential services committee are to-

*(a)*   conduct investigations as to whether or not the whole or a part of any service is an essential service;

*(b)*   determine whether or not to designate the whole or a part of that service as an essential service;

*(c)*   determine *disputes* as to whether or not the whole or a part of any service falls within the scope of a designated essential service;

*(d)*   determine whether or not the whole or a part of any service is a maintenance service;

*(e)*   ratify a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service; and

*(f)*   determine, in accordance with the provisions of *this Act*, the minimum services required to be maintained in the service that is designated as an essential service.

(2) The presiding member of the panel must determine any question of procedure or law, including whether an issue is a question of procedure or law.

(3) The chairperson of the essential services committee or any person contemplated in section 70C (2) presiding at a hearing may, sitting alone, make an order-

*(a)*   extending or reducing any period prescribed by the rules of the essential services committee; and

*(b)*   condoning the late performance of an act contemplated by the rules of the essential services committee.

(4) Subject to subsections (2) and (3), the decision or finding of the majority of the panel is the decision of the essential services committee.

(5) The decision of a panel must be in writing and signed by the person referred to in section 70C (2), and include the reasons for that decision.

(6) A panel appointed by the essential services committee may make any appropriate order relating to its functions.

[S. 70D inserted by s. 11 of Act 6 of 2014.]

**Document 76 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70E  Jurisdiction and administration of essential services committee

**70E  Jurisdiction and administration of essential services committee**

(1) The essential services committee has jurisdiction throughout the Republic.

(2) The seat of the essential services committee is the Commission's head office.

(3) The functions of the essential services committee, including the functions of the panels, may be performed at any place in the Republic.

(4) The Commission must administer the essential services committee.

(5) The *director* is the accounting officer of the essential services committee and must allocate adequate resources to the essential services committee in order for it to perform its functions.

(6) The *director* may appoint staff to the essential services committee after consulting the essential services committee and the governing body, and the governing body must determine their remuneration and other terms and conditions of appointment.

(7) The allowances of members of the essential services committee, assessors and persons appointed to investigate matters are determined by the Minister of Finance.

(8) The essential services committee will be financed and provided with working capital from-

*(a)*   the monies that Parliament may appropriate to the Commission in terms of section 122; and

*(b)*   grants, donations and bequests made to it.

[S. 70E inserted by s. 11 of Act 6 of 2014.]

**Document 77 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/70F  Regulations for essential services committee

**70F  Regulations for essential services committee**

(1) The Minister, after consulting the essential services committee, may make regulations concerning the-

*(a)*   functioning of the essential services committee; and

*(b)*   panels appointed by the essential services committee.

(2) The rules made by the Commission in terms of section 115 (2) *(c*A*)* (ii) remain in force until replaced by regulations made in terms of subsection (1).

[S. 70F inserted by s. 11 of Act 6 of 2014.]

**Document 78 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/71  Designating a service as an essential service

**71  Designating a service as an essential service**

(1) The essential services committee must give notice in the *Government Gazette* of any investigation that it is to conduct as to whether the whole or a part of a service is an *essential service*.

(2) The notice must indicate the service or the part of a service that is to be the subject of the investigation and must invite interested parties, within a period stated in the notice-

*(a)*   to submit written representations; and

*(b)*   to indicate whether or not they require an opportunity to make oral representations.

(3) Any interested party may inspect any written representations made pursuant to the notice, at the Commission's offices.

(4) The Commission must provide a certified copy of, or extract from, any written representations to any person who has paid the *prescribed*fee.

(5) The essential services committee must advise parties who wish to make oral representations of the place and time at which they may be made.

(6) Oral representations must be made in public.

(7) After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an *essential service*.

(8) If the panel appointed by the essential services committee designates the whole or a part of a service as an *essential service*, the essential services committee must publish a notice to that effect in the *Government Gazette*.

[Sub-s. (8) substituted by s. 12 of Act 6 of 2014.]

(9) A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an*essential service* or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.

[Sub-s. (9) substituted by s. 12 of Act 6 of 2014.]

(10) The Parliamentary service and the South African Police Service are deemed to have been designated an *essential service* in terms of this section.

[Date of commencement of s. 71: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/72  Minimum services

**72  Minimum services**

(1) When making a determination in terms of section 71, a panel of the essential services committee may issue an order-

*(a)*   directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order;

*(b)*   if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a *bargaining council* having jurisdiction.

(2) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.

(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the*employees* involved in that service-

*(a)*   the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*; and

*(b)*   the provisions of section 74 do not apply.

(4) A minimum service determination-

*(a)*   is valid until varied or revoked by the essential services committee; and

*(b)*   may not be varied or revoked for a period of 12 months after it has been made.

(5) Despite subsections (3) and (4), section 74 applies to a designated essential service in respect of which the essential services committee has made a determination of minimum services if the majority of *employees* employed in the essential services voted in a ballot in favour of this.

(6) Subsection (5) does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.

(7) Despite subsection (4), a panel may vary a determination by ratifying a *collective agreement* concluded between or on behalf of one or more-

*(a)   trade unions* representing a majority of the *employees* covered by the determination; and

*(b)*   employers employing the majority of the *employees* covered by the determination.

(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable *collective agreement*, refer a *dispute*arising from those negotiations to the Commission or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.

[S. 72 substituted by s. 13 of Act 6 of 2014.]

**Document 80 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/73  Disputes about minimum services and about whether a service is an essential service

**73  Disputes about minimum services and about whether a service is an essential service**

[Heading substituted by s. 14 *(a)* of Act 6 of 2014.]

(1) Any party to a *dispute* about one or more of the following issues may refer the *dispute* in writing to the essential services committee-

*(a)*   whether or not a service is an *essential service*;

*(b)*   whether or not an *employee* or employer is engaged in a service designated as an *essential service*;

*(c)*   whether or not the employer and a registered *trade union* or trade unions representing *employees* in the *essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service; and

[Para. *(c)* added by s. 14 *(c)* of Act 6 of 2014.]

*(d)*   the terms of such a collective agreement.

[Para. *(d)* added by s. 14 *(c)* of Act 6 of 2014.]

[Sub-s. (1) amended by s. 14 *(b)* of Act 6 of 2014.]

(2) The party who refers the *dispute* to the essential services committee must satisfy it that a copy of the referral has been *served* on all the other parties to the *dispute*.

(3) The essential services committee must determine the *dispute* as soon as possible.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/74  Disputes in essential services

**74  Disputes in essential services**[**16**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341345)

(1) Subject to section 73 (1), any party to a *dispute* that is precluded from participating in a *strike* or a *lock-out* because that party is engaged in an *essential service* 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.

[Sub-s. (1) amended by s. 15 of Act 6 of 2014.]

(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 request that the *dispute* be resolved through arbitration by the *council* or the Commission.

(5) Any arbitration award in terms of subsection (4) made in respect of the State and that has financial implications for the State becomes binding-

*(a)*   14 days after the date of the award, unless a Minister has tabled the award in Parliament within that period; or

*(b)*   14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding.

(6) If Parliament passes a resolution that the award is not binding, the *dispute* must be referred back to the Commission for further conciliation between the parties to the *dispute* and if that fails, any party to the *dispute* may request the Commission to arbitrate.

(7) If Parliament is not in session on the expiry of-

*(a)*   the period referred to in subsection (5) *(a)*, that period or the balance of that period will run from the beginning of the next session of Parliament;

*(b)*   the period referred to in subsection (5) *(b)*, that period will run from the expiry of the period referred to in paragraph *(a)* of this subsection or from the beginning of the next session of Parliament.

[Para. *(b)* substituted by s. 21 *(b)* of Act 42 of 1996.]

[16](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s74fn16_ref%2527%255d&xhitlist_md=target-id=0-0-0-341343)  See flow diagram 8 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/75  Maintenance services

**75  Maintenance services**

(1) A service is a maintenance service if the interruption of that service has the effect of material physical destruction to any working *area*, plant or machinery.

(2) If there is no *collective agreement* relating to the provision of a maintenance service, an employer may apply in writing to the essential services committee for a determination that the whole or a part of the employer's business or service is a maintenance service.

[Sub-s. (2) substituted by s. 22 *(a)* of Act 42 of 1996.]

(3) The employer must satisfy the essential services committee that a copy of the application has been *served* on all interested parties.

(4) The essential services committee must determine, as soon as possible, whether or not the whole or a part of the employer's business or service is a maintenance service.

[Sub-s. (4) substituted by s. 22 *(b)* of Act 42 of 1996.]

(5) As part of its determination in terms of subsection (4), the essential services committee may direct that any *dispute* in respect of which the*employees* engaged in a maintenance service would have had the right to strike, but for the provisions of section 65 (1) *(d)* (ii), be referred to arbitration.

[Sub-s. (5) added by s. 22 *(c)* of Act 42 of 1996.]

(6) The committee may not make a direction in terms of subsection (5) if-

*(a)*   the terms and conditions of employment of the *employees* engaged in the maintenance service are determined by collective bargaining; or

*(b)*   the number of *employees* prohibited from striking because they are engaged in the maintenance service does not exceed the number of *employees* who are entitled to strike.

[Sub-s. (6) added by s. 22 *(c)* of Act 42 of 1996.]

(7) If a direction in terms of subsection (5) requires a *dispute* to be resolved by arbitration-

*(a)*   the provisions of section 74 will apply to the arbitration; and

*(b)*   any arbitration award will be binding on the *employees* engaged in the maintenance service and their employer, unless the terms of the award are varied by a *collective agreement*.

[Sub-s. (7) added by s. 22 *(c)* of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/76  Replacement labour

**76  Replacement labour**

(1) An employer may not take into employment any person-

*(a)*   to continue or maintain production during a protected *strike* if the whole or a part of the employer's service has been designated a maintenance service; or

*(b)*   for the purpose of performing the work of any *employee* who is locked out, unless the *lock-out* is in response to a *strike*.

(2) For the purpose of this section, 'take into employment' includes engaging the services of a temporary employment service or an independent contractor.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IV STRIKES AND LOCK-OUTS (ss 64-77)/77  Protest action to promote or defend socio-economic interests of workers

**77  Protest action to promote or defend socio-economic interests of workers**

(1) Every *employee* who is not engaged in an *essential service* or a maintenance service has the right to take part in *protest action* if-

*(a)*   the *protest action* has been called by a registered *trade union* or federation of *trade unions*;

*(b)*   the registered *trade union* or federation of *trade unions* has *served* a notice on *NEDLAC* stating-

     (i)   the reasons for the *protest action*; and

    (ii)   the nature of the *protest action*;

*(c)*   the matter giving rise to the intended *protest action* has been considered by *NEDLAC* or any other appropriate forum in which the parties concerned are able to participate in order to resolve the matter; and

*(d)*   at least 14 days before the commencement of the *protest action*, the registered *trade union* or federation of *trade unions* has *served* a notice on *NEDLAC* of its intention to proceed with the *protest action*.

(2) The Labour Court has exclusive jurisdiction-

*(a)*   to grant any order to restrain any person from taking part in *protest action* or in any conduct in contemplation or in furtherance of*protest action* that does not comply with subsection (1);

*(b)*   in respect of protest action that complies with subsection (1), to grant a declaratory order contemplated by subsection (4), after having considered-

     (i)   the nature and duration of the *protest action*;

    (ii)   the steps taken by the registered *trade union* or federation of *trade unions* to minimise the harm caused by the *protest action*; and

    (iii)   the conduct of the participants in the *protest action*.

(3) A person who takes part in *protest action* or in any conduct in contemplation or in furtherance of *protest action* that complies with subsection (1), enjoys the protections conferred by section 67.

(4) Despite the provisions of subsection (3), an *employee* forfeits the protection against *dismissal* conferred by that subsection, if the*employee*-

*(a)*   takes part in *protest action* or any conduct in contemplation or in furtherance of *protest action* in breach of an order of the Labour Court; or

*(b)*   otherwise acts in contempt of an order of the Labour Court made in terms of this section.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/78  Definitions in this Chapter

**CHAPTER V  
WORKPLACE FORUMS (ss 78-94)**

**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)   ......

[Sub-para. (i) deleted by s. 23 of Act 42 of 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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/79  General functions of workplace forum

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/80  Establishment of workplace forum

**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.

[Sub-s. (8) amended by s. 24 of Act 42 of 1996.]

(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).

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/81  Trade union based workplace forum

**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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/82  Requirements for constitution of workplace forum

**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 *workplace*; 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 1 000 *employees* in a *workplace*;

[Para. *(s)* substituted by s. 25 *(a)* of Act 42 of 1996.]

*(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;

[Para. *(t)* substituted by s. 25 *(b)* of Act 42 of 1996.]

*(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.

[Para. *(w)* added by s. 25 *(e)* of Act 42 of 1996.]

(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).

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/83  Meetings of workplace forum

**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)* The 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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/84  Specific matters for consultation

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/85  Consultation

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/86  Joint decision-making

**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.[17](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341645)

(8) *(a)* An arbitration award is [sic] 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*.

[17](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s86fn17_ref%2527%255d&xhitlist_md=target-id=0-0-0-341643)  See flow diagram 9 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/87  Review at request of newly established workplace forum

**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.

[Sub-s. (4) substituted by s. 26 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/88  Matters affecting more than one workplace forum in an employer's operation

**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.

[Sub-s. (1) substituted by s. 27 of Act 42 of 1996.]

(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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/89  Disclosure of information

**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.

[Sub-s. (2A) inserted by s. 28 of Act 42 of 1996.]

(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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/90  Inspection and copies of documents

**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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/91  Breach of confidentiality

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/92  Full-time members of workplace forum

**92  Full-time members of workplace forum**

(1) In a *workplace* in which 1 000 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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/93  Dissolution of workplace forum

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER V WORKPLACE FORUMS (ss 78-94)/94  Disputes about workplace forums

**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*;

*(a*A*)*   a *workplace forum*;

[Para. *(a*A*)* inserted by s. 29 of Act 42 of 1996.]

*(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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/95  Requirements for registration of trade unions or employers' organisations

**CHAPTER VI  
TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)**

***Part A  
Registration and regulation of trade unions and employers' organisations (ss 95-106)***

**95  Requirements for registration of trade unions or employers' organisations**

(1) Any *trade union* may apply to the *registrar* for registration if-

*(a)*   it has adopted a name that meets the requirements of subsection (4);

*(b)*   it has adopted a constitution that meets the requirements of subsections (5) and (6);

*(c)*   it has an address in the *Republic*; and

*(d)*   it is independent.

(2) A *trade union* is independent if-

*(a)*   it is not under the direct or indirect control of any employer or *employers' organisation*; and

*(b)*   it is free of any interference or influence of any kind from any employer or *employers' organisation*.

(3) Any *employers' organisation* may apply to the *registrar* for registration if-

*(a)*   it has adopted a name that meets the requirements of subsection (4);

*(b)*   it has adopted a constitution that meets the requirements of subsections (5) and (6), and

*(c)*   it has an address in the *Republic*.

(4) Any *trade union* or *employers' organisation* that intends to register may not have a name or shortened form of the name that so closely resembles the name or shortened form of the name of another *trade union* or *employers' organisation* that it is likely to mislead or cause confusion.

(5) The constitution of any *trade union* or *employers' organisation* that intends to register must-

*(a)*   state that the *trade union* or *employers' organisation* is an association not for gain;

*(b)*   prescribe qualifications for, and admission to, membership;

*(c)*   establish the circumstances in which a member will no longer be entitled to the benefits of membership;

*(d)*   provide for the termination of membership;

*(e)*   provide for appeals against loss of the benefits of membership or against termination of membership, prescribe a procedure for those appeals and determine the body to which those appeals may be made;

*(f)*   provide for membership fees and the method for determining membership fees and other payments by members;

*(g)*   prescribe rules for the convening and conducting of meetings of members and meetings of representatives of members, including the quorum required for, and the minutes to be kept of, those meetings;

*(h)*   establish the manner in which decisions are to be made;

*(i)*   establish the office of secretary and define its functions;

*(j)*   provide for other *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, and define their respective functions;

*(k)*   prescribe a procedure for nominating or electing *office-bearers* and, in the case of a *trade union*, *trade union representatives*;

*(l)*   prescribe a procedure for appointing, or nominating and electing, *officials*;

*(m)*   establish the circumstances and manner in which *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, may be removed from office;

*(n)*   provide for appeals against removal from office of *office-bearers*, *officials* and, in the case of a *trade union*, *trade union representatives*, *prescribe* a procedure for those appeals and determine the body to which those appeals may be made;

*(o)*   establish the circumstances and manner in which a ballot must be conducted;

*(p)*   provide that the *trade union* or *employers' organisation*, before calling a *strike* or *lock-out*, must conduct a ballot of those of its members in respect of whom it intends to call the *strike* or *lock-out*;

*(q)*   provide that members of the *trade union* or *employers' organisation* may not be disciplined or have their membership terminated for failure or refusal to participate in a *strike* or *lock-out* if-

     (i)   no ballot was held about the *strike* or *lock-out*; or

    (ii)   a ballot was held but a majority of the members who voted did not vote in favour of the *strike* or *lock-out*;

*(r)*   provide for banking and investing its money;

*(s)*   establish the purposes for which its money may be used;

*(t)*   provide for acquiring and controlling property;

*(u)*   determine a date for the end of its financial year;

*(v)*   prescribe a procedure for changing its constitution; and

*(w)*   prescribe a procedure by which it may resolve to wind up.

(6) The constitution of any *trade union* or *employers' organisation* which intends to register may not include any provision that discriminates directly or indirectly against any person on the grounds of race or sex.

(7) The *registrar* must not register a *trade union* or an *employers' organisation* unless the *registrar* is satisfied that the applicant is a genuine*trade union* or a genuine *employers' organisation*.

[Sub-s. (7) added by s. 18 of Act 12 of 2002.]

(8) The *Minister*, in consultation with *NEDLAC*, may by notice in the *Government Gazette* publish guidelines to be applied by the *registrar* in determining whether an applicant is a genuine *trade union* or a genuine *employers' organisation*.

[Sub-s. (8) added by s. 18 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/96  Registration of trade unions or employers' organisations

**96  Registration of trade unions or employers' organisations**

(1) Any *trade union* or *employers' organisation* may apply for registration by submitting to the *registrar*-

*(a)*   a *prescribed* form that has been properly completed;

*(b)*   a copy of its constitution; and

*(c)*   any other information that may assist the *registrar* to determine whether or not the *trade union* or *employers' organisation* meets the requirements for registration.

(2) The *registrar* may require further information in support of the application.

(3) The *registrar*-

*(a)*   must consider the application and any further information provided by the applicant; and

*(b)*   if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant's name in the register of *trade unions* or the register of *employers' organisations*.

(4) If the *registrar* is not satisfied that the applicant meets the requirements for registration, the *registrar*-

*(a)*   must send the applicant a written notice of the decision and the reasons for that decision; and

*(b)*   in that notice, must inform the applicant that it has 30 days from the date of the notice to meet those requirements.

(5) If, within that 30-day period, the applicant meets the requirements for registration, the *registrar* must register the applicant by entering the applicant's name in the appropriate register.

(6) If, within that 30-day period, an applicant has attempted to meet the requirements for registration but the *registrar* concludes that the applicant has failed to do so, the *registrar* must-

*(a)*   refuse to register the applicant; and

*(b)*   notify the applicant in writing of that decision.

(7) After registering the applicant, the *registrar* must-

*(a)*   issue a certificate of registration in the applicant's name; and

*(b)*   send the certificate and a certified copy of the registered constitution to the applicant.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/97  Effect of registration of trade union or employers' organisation

**97  Effect of registration of trade union or employers' organisation**

(1) A certificate of registration is sufficient proof that a registered *trade union* or registered *employers' organisation* is a body corporate.

(2) The fact that a person is a member of a registered *trade union* or a registered *employers' organisation* does not make that person liable for any of the obligations or liabilities of the *trade union* or *employers' organisation*.

(3) A member, *office-bearer* or *official* of a registered *trade union* or a registered *employers' organisation* or, in the case of a *trade union*, a*trade union representative* is not personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith by the member, *office-bearer*, *official* or *trade union representative* while performing their functions for or on behalf of the *trade union* or*employers' organisation*.

(4) *Service* of any document directed to a registered *trade union* or *employers' organisation* at the address most recently provided to the*registrar* will be for all purposes *service* of that document on that *trade union* or *employers' organisation*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/98  Accounting records and audits

**98  Accounting records and audits**

(1) Every registered *trade union* and every registered *employers' organisation* must, to the standards of generally accepted accounting practice, principles and procedures-

*(a)*   keep books and records of its income, expenditure, assets and liabilities; and

*(b)*   within six months after the end of each financial year, prepare financial statements, including at least-

     (i)   a statement of income and expenditure for the previous financial year; and

    (ii)   a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.

(2) Every registered *trade union* and every registered *employers' organisation* must arrange for an annual audit of its books and records of account and its financial statements by an *auditor* who must-

*(a)*   conduct the audit in accordance with generally accepted auditing standards; and

*(b)*   report in writing to the *trade union* or *employers' organisation* and in that report-

     (i)   express an opinion as to whether or not the *trade union* or *employers' organisation* has complied with those provisions of its constitution relating to financial matters; and

    (ii)   if the *trade union* is a party to an agency shop agreement referred to in section 25 or a closed shop agreement referred to in section 26 express an opinion as to whether or not the *trade union* has complied with the provisions of those sections.

(3) Every registered *trade union* and every registered *employers' organisation* must-

*(a)*   make the financial statements and the *auditor's* report available to its members for inspection; and

*(b)*   submit those statements and the *auditor's* report to a meeting or meetings of its members or their representatives as provided for in its constitution.

(4) Every registered *trade union* and every registered *employers' organisation* must preserve each of its books of account, supporting vouchers, records of subscriptions or levies paid by its members, income and expenditure statements, balance sheets, and *auditor's* reports, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/99  Duty to keep records

**99  Duty to keep records**

In addition to the records required by section 98, every registered *trade union* and every registered *employers' organisation* must keep-

*(a)*   a list of its members;

*(b)*   the minutes of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and

*(c)*   the ballot papers for a period of three years from the date of every ballot.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/100  Duty to provide information to registrar

**100  Duty to provide information to registrar**

Every registered *trade union* and every registered *employers' organisation* must provide to the *registrar*-

*(a)*   by 31 March each year, a statement, certified by the secretary that it accords with its records, showing the number of members as at 31 December of the previous year and any other related details that may be required by the *registrar*;

*(b)*   within 30 days of receipt of its *auditor's* report, a certified copy of that report and of the financial statements;

*(c)*   within 30 days of receipt of a written request by the *registrar*, an explanation of anything relating to the statement of membership, the*auditor's* report or the financial statements;

*(d)*   within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers*, even if their appointment or election did not result in any changes to its *office-bearers*; and

*(e)*   30 days before a new address for *service* of documents will take effect, notice of that change of address.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/101  Changing constitution or name of registered trade unions or employers' organisations

**101  Changing constitution or name of registered trade unions or employers' organisations**

(1) A registered *trade union* or a registered *employers' organisation* may resolve to change or replace its constitution.

(2) The registered *trade union* or the registered *employers' organisation* must send the *registrar* a copy of the resolution and a certificate signed by its secretary stating that the resolution complies with its constitution.

(3) The *registrar* must-

*(a)*   register the changed or new constitution if it meets the requirements for registration; and

*(b)*   send the registered *trade union* or registered *employers' organisation* a copy of the resolution endorsed by the *registrar*, certifying that the change or replacement has been registered.

(4) The changed or new constitution takes effect from the date of the *registrar's* certification.

(5) A registered *trade union* or registered *employers' organisation* may resolve to change its name.

(6) The registered *trade union* or registered *employers' organisation* must send the *registrar* a copy of the resolution and the original of its current certificate of registration.

(7) If the new name of the *trade union* or *employers' organisation* meets the requirements of section 95 (4),[18](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-341939)  the *registrar* must-

*(a)*   enter the new name in the appropriate register and issue a certificate of registration in the new name of the *trade union* or *employers' organisation*;

*(b)*   remove the old name from that register and cancel the earlier certificate of registration; and

*(c)*   send the new certificate to the *trade union* or *employers' organisation*.

(8) The new name takes effect from the date that the *registrar* enters it in the appropriate register.

[18](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s101fn18_ref%2527%255d&xhitlist_md=target-id=0-0-0-341937)  These are the requirements relating to the name of a trade union or employers' organisation to be registered

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/102  Amalgamation of trade unions or employers' organisations

**102  Amalgamation of trade unions or employers' organisations**

(1) Any registered-

*(a)   trade union* may resolve to amalgamate with one or more other *trade unions*, whether or not those other *trade unions* are registered; and

*(b)   employers' organisation* may resolve to amalgamate with one or more other *employers' organisations*, whether or not those other*employers' organisations* are registered.

(2) The amalgamating *trade unions* or amalgamating *employers' organisations* may apply to the *registrar* for registration of the amalgamated*trade union* or amalgamated *employers' organisation*, even if any of the amalgamating *trade unions* or amalgamating *employers' organisations* is itself already registered, and the *registrar* must treat the application as an application in terms of section 96.

(3) After the *registrar* has registered the amalgamated *trade union* or amalgamated *employers' organisation*, the *registrar* must cancel the registration of each of the amalgamating *trade unions* or amalgamating *employers' organisations* by removing their names from the appropriate register.

(4) The registration of an amalgamated *trade union* or an amalgamated *employers' organisation* takes effect from the date that the *registrar*enters its name in the appropriate register.

(5) When the *registrar* has registered an amalgamated *trade union* or amalgamated *employers' organisation*-

*(a)*   all the assets, rights, obligations and liabilities of the amalgamating *trade unions* or the amalgamating *employers' organisations*devolve upon and vest in the amalgamated *trade union* or amalgamated *employers' organisation*; and

*(b)*   the amalgamated *trade union* or amalgamated *employers' organisation* succeeds the amalgamating *trade unions* or the amalgamating*employers' organisations* in respect of-

     (i)   any right that the amalgamating *trade unions* or the amalgamating *employers' organisations* enjoyed;

    (ii)   any fund established in terms of *this Act* or any other law;

    (iii)   any arbitration award or court order;

   (iv)   any *collective agreement* or other agreement;

    (v)   membership of any *council*; and

   (vi)   any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating *trade unions* or amalgamating *employers' organisations*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/103  Winding-up of trade unions or employers' organisations

**103  Winding-up of trade unions or employers' organisations**

(1) The Labour Court may order a *trade union* or *employers' organisation* to be wound up if-

*(a)*   the *trade union* or *employers' organisation* has resolved to wind-up its affairs and has applied to the Court for an order giving effect to that resolution; or

*(b)*   the *registrar* or any member of the *trade union* or *employers' organisation* has applied to the Court for its winding up and the Court is satisfied that the *trade union* or *employers' organisation* for some reason that cannot be remedied is unable to continue to function.

[Sub-s. (1) substituted by s. 19 *(b)* of Act 12 of 2002.]

(1A) If the *registrar* has cancelled the registration of a *trade union* or *employers' organisation* in terms of section 106 (2A), any person opposing its winding-up is required to prove that the *trade union* or *employers' organisation* is able to continue to function.

[Sub-s. (1A) inserted by s. 19 *(c)* of Act 12 of 2002.]

(2) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must-

*(a)*   consider those interests before deciding whether or not to grant the order applied for; and

*(b)*   if it grants the order applied for, include provisions in the order disposing of each of those interests.

(3) In granting an order in terms of subsection (1), the Labour Court may appoint a suitable person as liquidator, on appropriate conditions.

[Sub-s. (3) amended by s. 30 of Act 42 of 1996.]

(4) *(a)* The *registrar* of the Labour Court must determine the liquidator's fees.

*(b)* The Labour Court, in chambers, may review the determination of the *registrar* of the Labour Court.

*(c)* The liquidator's fees are a first charge against the assets of the *trade union* or *employers' organisation*.

(5) If, after all the liabilities of the *trade union* or *employers' organisation* have been discharged, any assets remain which cannot be disposed of in accordance with the constitution of that *trade union* or *employers' organisation*, the liquidator must realise those assets and pay the proceeds to the Commission for its own use.

[Sub-s. (5) substituted by s. 19 *(d)* of Act 12 of 2002.]

(6) *(a)* The Labour Court may direct that the costs of the *registrar* or any other person who has brought an application in terms of subsection (1) *(b)* be paid from the assets of the *trade union* or *employers' organisation*.

*(b)* Any costs in terms of paragraph *(a)* rank concurrently with the liquidator's fees.

[Sub-s. (6) added by s. 19 *(e)* of Act 12 of 2002.]

[S. 103 amended by s. 19 *(a)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/103A  Appointment of administrator

**103A  Appointment of administrator**

(1) The Labour Court may order that a suitable person, who may be a Commissioner, be appointed to administer a *trade union* or *employers' organisation* on such conditions as the Court may determine if the-

*(a)*   Court is satisfied that it is just and equitable to do so; and

*(b)   trade union* or *employers' organisation* has resolved that an administrator be appointed and has applied to the Court for an order to give effect to that resolution; or

*(c)*   registrar has applied to the Court to appoint an administrator.

(2) Without limiting the generality of subsection (1) *(a)*, it may be just and equitable to make an order in terms of subsection (1) if-

*(a)*   the *trade union* or *employers' organisation* fails materially to perform its functions; or

*(b)*   there is serious mismanagement of the finances of the *trade union* or *employers' organisation*.

(3) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must consider their interests before deciding whether or not to grant the order.

(4) *(a)* The registrar of the Labour Court must determine the administrator's fees.

*(b)* The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

*(c)* The administrator's fees will be paid as an expense of the *trade union* or *employers' organisation*.

(5) The Labour Court may, on the application by the trade union, employer's organisation or registrar-

*(a)*   vary or amend any prior order made in terms of this section; or

*(b)*   if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions.

[S. 103A inserted by s. 16 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/104  Winding-up of trade unions or employers organisations by reason of insolvency

**104  Winding-up of trade unions or employers organisations by reason of insolvency**

Any person who seeks to wind-up a *trade union* or *employers' organisation* by reason of insolvency must comply with the Insolvency Act, 1936 (Act 24 of 1936), and, for the purposes of this section, any reference to the court in that Act must be interpreted as referring to the Labour Court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/105  Declaration that trade union is no longer independent

**105  Declaration that trade union is no longer independent**

(1) Any registered *trade union* may apply to the Labour Court for an order declaring that another *trade union* is no longer independent.

(2) If the Labour Court is satisfied that a *trade union* is not independent, the Court must make a declaratory order to that effect.

[S. 105 amended by s. 20 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part A Registration and regulation of trade unions and employers' organisations (ss 95-106)/106  Cancellation of registration of trade unions or employers' organisations

**106  Cancellation of registration of trade unions or employers' organisations**

(1) The registrar of the Labour Court must notify the *registrar* if the Court-

*(a)*   in terms of section 103 or 104 has ordered a registered *trade union* or a registered *employers' organisation* to be wound up; or

*(b)*   in terms of section 105 has declared that a registered *trade union* is not independent.

[Sub-s. (1) substituted by s. 21 *(a)* of Act 12 of 2002.]

(2) When the *registrar* receives a notice from the Labour Court in terms of subsection (1), the *registrar* must cancel the registration of the*trade union* or *employers' organisation* by removing its name from the appropriate register.

(2A) The *registrar* may cancel the registration of a *trade union* or *employers' organisation* by removing its name from the appropriate register if the *registrar*-

*(a)*   is satisfied that the *trade union* or *employers' organisation* is not, or has ceased to function as, a genuine *trade union* or *employers' organisation*, as the case may be; or

*(b)*   has issued a written notice requiring the *trade union* or *employers' organisation* to comply with sections 98, 99 and 100 within a period of 60 days of the notice and the *trade union* or *employers' organisation* has, despite the notice, not complied with those sections.

[Sub-s. (2A) inserted by s. 21 *(b)* of Act 12 of 2002.]

(2B) The *registrar* may not act in terms of subsection (2A) unless the *registrar* has published a notice in the *Government Gazette* at least 60 days prior to such action-

*(a)*   giving notice of the *registrar*'s intention to cancel the registration of the *trade union* or *employers' organisation*; and

*(b)*   inviting the *trade union* or *employers' organisation* or any other interested parties to make written representations as to why the registration should not be cancelled.

[Sub-s. (2B) inserted by s. 21 *(b)* of Act 12 of 2002.]

(3) When a *trade union's* or *employers' organisation's* registration is cancelled, all the rights it enjoyed as a result of being registered will end.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part B Regulation of federations of trade unions and employers' organisations (s 107)/107  Regulation of federations of trade unions or employers' organisations

***Part B  
Regulation of federations of trade unions and employers' organisations (s 107)***

**107  Regulation of federations of trade unions or employers' organisations**

(1) Any federation of *trade unions* that has the promotion of the interests of *employees* as a primary object, and any federation of *employers' organisations* that has the promotion of the interests of employers as a primary object, must provide to the *registrar*-

*(a)*   within three months of its formation, and after that by 31 March each year, the names and addresses of its members and the number of persons each member in the federation represents;

*(b)*   within three months of its formation, and after that within 30 days of any appointment or election of its national *office-bearers*, the names and work addresses of those *office-bearers*, even if their appointment or election did not result in any changes to its *office-bearers*;

*(c)*   within three months of its formation, a certified copy of its constitution and an address in the *Republic* at which it will accept *service* of any document that is directed to it;

*(d)*   within 30 days of any change to its constitution, or of the address provided to the *registrar* as required in paragraph *(c)*, notice of that change; and

*(e)*   within 14 days after it has resolved to wind up, a copy of that resolution.

(2) *Service* of any document directed to a federation of *trade unions* or a federation of *employers' organisations* at the address most recently provided to the *registrar* will be, for all purposes, *service* of that document on that federation.

(3) The *registrar* must remove from the appropriate register the name of any federation that the *registrar* believes has been wound up or sequestrated.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part C Registrar of labour relations (ss 108-110)/108  Appointment of registrar of labour relations

***Part C  
Registrar of labour relations (ss 108-110)***

**108  Appointment of registrar of labour relations**

(1) The *Minister* must designate an officer of the Department of Labour as the *registrar* of labour relations to perform the functions conferred on the registrar by or in terms of *this Act*.

(2) *(a)* The *Minister* may designate any number of officers in the Department as deputy *registrars* of labour relations to assist the registrar to perform the functions of *registrar* in terms of *this Act*.

*(b)* A deputy registrar may exercise any of the functions of the *registrar* that have been generally or specifically delegated to the deputy.

(3) The deputy *registrar* of labour relations or if there is more than one, the most senior of them, will act as *registrar* whenever-

*(a)*   the *registrar* is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of *registrar*; or

*(b)*   the office of *registrar* is vacant.

[Date of commencement of s. 108: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part C Registrar of labour relations (ss 108-110)/109  Functions of registrar

**109  Functions of registrar**

(1) The *registrar* must keep-

*(a)*   a register of registered *trade unions*;

*(b)*   a register of registered *employers' organisations*;

*(c)*   a register of federations of *trade unions* containing the names of the federations whose constitutions have been submitted to the*registrar*;

*(d)*   a register of federations of *employers' organisations* containing the names of the federations whose constitutions have been submitted to the *registrar*; and

*(e)*   a register of *councils*.

(2) Within 30 days of making an entry in, or deletion from, a register, the *registrar* must give notice of that entry or deletion in the*Government Gazette*.

(3) The *registrar*, on good cause shown, may extend or condone late compliance with any of the time periods established in this Chapter, except the period within which a person may note an appeal against a decision of the *registrar*.

(4) The *registrar* must perform all the other functions conferred on the *registrar* by or in terms of *this Act*.

[Date of commencement of s. 109: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part C Registrar of labour relations (ss 108-110)/110  Access to information

**110  Access to information**

(1) Any person may inspect any of the following documents in the *registrar's* office-

*(a)*   the registers of registered *trade unions*, registered *employers' organisations*, federations of *trade unions*, federations of *employers' organisations* and *councils*;

*(b)*   the certificates of registration and the registered constitutions of registered *trade unions*, registered *employers' organisations*, and*councils*, and the constitutions of federations of *trade unions* and federations of *employers' organisations*; and

*(c)*   the *auditor's* report in so far as it expresses an opinion on the matters referred to in section 98 (2) *(b)* (ii).

(2) The *registrar* must provide a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the *prescribed* fee.

(3) Any person who is a member, *office-bearer* or *official* of a registered *trade union* or of a registered *employers' organisation*, or is a member of a party to a *council*, may inspect any document that has been provided to the *registrar* in compliance with *this Act* by that person's registered *trade union*, registered *employers' organisation* or *council*.

(4) The *registrar* must provide a certified copy of, or extract from, any document referred to in subsection (3) to any person who has a right in terms of that subsection to inspect that document and who has paid the *prescribed* fee.

(5) The *registrar* must provide any of the following information to any person free of charge-

*(a)*   the names and work addresses of persons who are national *office-bearers* of any registered *trade union*, registered *employers' organisation*, federation or *council*;

*(b)*   the address in the Republic at which any registered *trade union*, registered *employers' organisation*, federation or *council* will accept service of any document that is directed to it; and

*(c)*   any of the details of a federation of *trade unions* or a federation of *employers' organisations* referred to in section 107 (1) *(a)*, *(c)*, and*(e)*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VI TRADE UNIONS AND EMPLOYERS' ORGANISATIONS (ss 95-111)/Part D Appeals from registrar's decision (s 111)/111  Appeals from registrar's decision

***Part D  
Appeals from registrar's decision (s 111)***

**111  Appeals from registrar's decision**

(1) Within 30 days of the written notice of a decision of the *registrar*, any person who is aggrieved by the decision may demand in writing that the *registrar* provide written reasons for the decision.

(2) The *registrar* must give the applicant written reasons for the decision within 30 days of receiving a demand in terms of subsection (1).

(3) Any person who is aggrieved by a decision of the *registrar* may appeal to the Labour Court against that decision, within 60 days of-

*(a)*   the date of the *registrar's* decision; or

*(b)*   if written reasons for the decision are demanded, the date of those reasons.

(4) The Labour Court, on good cause shown, may extend the period within which a person may note an appeal against a decision of the*registrar*.

(5) An appeal in terms of this section against a decision by the *registrar* in terms of section 106 does not suspend the operation of the*registrar's* decision.

[Sub-s. (5) added by s. 17 of Act 6 of 2014.]

**Document 120 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/112  Establishment of Commission for Conciliation, Mediation and Arbitration

**CHAPTER VII  
DISPUTE RESOLUTION (ss 112-184)**

***Part A  
Commission for Conciliation, Mediation and Arbitration (ss 112-126)***

**112  Establishment of Commission for Conciliation, Mediation and Arbitration**

The Commission for Conciliation, Mediation and Arbitration is hereby established as a juristic person.

[Date of commencement of s. 112: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/113  Independence of Commission

**113  Independence of Commission**

The Commission is independent of the State, any political party, *trade union*, employer, *employers' organisation*, federation of *trade unions* or federation of *employers' organisations*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/114  Area of jurisdiction and offices of Commission

**114  Area of jurisdiction and offices of Commission**

(1) The Commission has jurisdiction in all the provinces of the *Republic*.

(2) The *Minister*, after consulting the governing body, must determine the location for the Commission's head office.

(3) The Commission must maintain an office in each province of the *Republic* and as many local offices as it considers necessary.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/115  Functions of Commission

**115  Functions of Commission**

(1) The Commission must-

*(a)*   attempt to resolve, through conciliation, any *dispute* referred to it in terms of *this Act*;

*(b)*   if a *dispute* that has been referred to it remains unresolved after conciliation, arbitrate the *dispute* if-

     (i)   *this Act* requires arbitration and any party to the *dispute* has requested that the *dispute* be resolved through arbitration; or

    (ii)   all the parties to a *dispute* in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the Commission;

*(c)*   assist in the establishment of *workplace forums* in the manner contemplated in Chapter V;

*(d)*   compile and publish information and statistics about its activities; and

*(e)*   at least every second year, review any rules made in terms of this section.

[Para. *(e)* added by s. 18 *(a)* of Act 6 of 2014.]

(2) The Commission may-

*(a)*   if asked, advise a party to a *dispute* about the procedure to follow in terms of *this Act*;[19](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342163)

*(b)*   if asked, assist a party to a *dispute* to obtain legal advice, assistance or representation;[20](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342169)

*(b*A*)*   if requested, provide assistance of an administrative nature to an *employee* earning less than the threshold prescribed by the*Minister* under section 6 (3) of the *Basic Conditions of Employment Act* to serve any notice or document in respect of conciliation or arbitration proceedings in terms of *this Act*, provided that the *employee* remains responsible in law for any such service;

[Para. *(b*A*)* inserted by s. 18 *(b)* of Act 6 of 2014.]

*(c)*   offer to resolve a *dispute* that has not been referred to the Commission through conciliation;[21](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342175)

*(c*A*)*   make rules-

     (i)   to regulate, subject to Schedule 3, the proceedings at its meetings and at the meetings of any committee of the Commission;

    (ii)   ......

[Sub-para. (ii) deleted by s. 18 *(c)* of Act 6 of 2014.]

    (iii)   regulating the practice and procedure-

*(aa)*   for any process to resolve a *dispute* through conciliation;

*(bb)*   at arbitration proceedings; and

   (iv)   determining the amount of any fee that the Commission may charge under section 147, and regulating the payment of such a fee in detail;

[Para. *(c*A*)* inserted by s. 6 *(a)* of Act 127 of 1998.]

*(d)*   and *(e)*......

[Paras. *(d)* and *(e)* deleted by s. 31 *(a)* of Act 42 of 1996.]

*(f)*   conduct, oversee or scrutinise any election or ballot of a registered *trade union* or registered *employers' organisation* if asked to do so by that *trade union* or employers' organisation;

*(g)*   publish guidelines in relation to any matter dealt with in *this Act*; and

*(h)*   conduct and publish research into matters relevant to its functions; and

*(i)*   ......

[Para. *(i)* deleted by s. 31 *(a)* of Act 42 of 1996.]

(2A) The Commission may make rules regulating-

*(a)*   the practice and procedure in connection with the resolution of a *dispute* through conciliation or arbitration;

*(b)*   the process by which conciliation is initiated, and the form, content and use of that process;

*(c)*   the process by which arbitration or arbitration proceedings are initiated, and the form, content and use of that process;

*(d)*   the joinder of any person having an interest in the *dispute* in any conciliation and arbitration proceedings;

*(e)*   the intervention of any person as an applicant or respondent in conciliation or arbitration proceedings;

*(f)*   the amendment of any citation and the substitution of any party for another in conciliation or arbitration proceedings;

*(g)*   the hours during which offices of the Commission will be open to receive any process;

*(h)*   any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to any proceedings;

*(i)*   the forms to be used by parties and the Commission;

*(j)*   the basis on which a commissioner may make any order as to costs in any arbitration;

*(k)*   the right of any party to be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;

[Para. *(k)* substituted by s. 18 *(d)* of Act 6 of 2014.]

*(k*A*)*   the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings;

[Para. *(k*A*)* inserted by s. 18 *(e)* of Act 6 of 2014.]

*(l)*   the circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and

*(m)*   all other matters incidental to performing the functions of the Commission.

[Sub-s. (2A) inserted by s. 22 *(a)* of Act 12 of 2002.]

(3) The Commission may provide *employees*, employers, registered *trade unions*, registered *employers' organisations*, federations of *trade unions*, federations of *employers' organisations* or *councils* with advice or training relating to the primary objects of *this Act* or any other employment law, including but not limited to-

*(a)*   establishing collective bargaining structures;

*(b)*   designing, establishing and electing *workplace forums* and creating deadlock-breaking mechanisms;

*(c)*   the functioning of *workplace forums*;

*(d)*   preventing and resolving *disputes* and *employees*' grievances;

*(e)*   disciplinary procedures;

*(f)*   procedures in relation to *dismissals*;

*(g)*   the process of restructuring the *workplace*;

*(h)*   affirmative action and equal opportunity programmes; and

*(i)*   the prevention of sexual harassment in the *workplace*.

[Para. *(i)* substituted by s. 31 *(b)* of Act 42 of 1996.]

[Sub-s. (3) amended by s. 18 *(f)* of Act 6 of 2014.]

(4) The Commission must perform any other duties imposed, and may exercise any other powers conferred, on it by or in terms of *this Act*and is competent to perform any other function entrusted to it by any other law.

(5) The governing body's rules of procedure, the terms of appointment of its members and other administrative matters are dealt with in Schedule 3.

(6) *(a)* A rule made under subsection (2) *(c*A*)* or (2A) must be published in the *Government Gazette*. The Commission will be responsible to ensure that the publication occurs.

*(b)* A rule so made will not have any legal force or effect unless it has been so published.

*(c)* A rule so made takes effect from the date of publication unless a later date is stipulated.

[Sub-s. (6) added by s. 6 *(b)* of Act 127 of 1998 and substituted by s. 22 *(b)* of Act 12 of 2002.]

[19](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s115fn19_ref%2527%255d&xhitlist_md=target-id=0-0-0-342161)  See section 148

[20](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s115fn20_ref%2527%255d&xhitlist_md=target-id=0-0-0-342167)  See section 149

[21](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s115fn21_ref%2527%255d&xhitlist_md=target-id=0-0-0-342173)  See section 150

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/116  Governing body of Commission

**116  Governing body of Commission**

(1) The Commission will be governed by the governing body, whose acts are acts of the Commission.[22](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342251)

(2) The governing body consists of-

*(a)*   a chairperson and nine other members, each nominated by *NEDLAC* and appointed[23](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342259)  by the *Minister* to hold office for a period of three years; and

*(b)*   the *director* of the Commission, who-

     (i)   is a member of the governing body only by virtue of having been appointed *director*; and

    (ii)   may not vote at meetings of the governing body.

(3) *NEDLAC* must nominate-

*(a)*   one independent person for the office of chairperson;

*(b)*   three persons proposed by those voting members of *NEDLAC* who represent organised labour; and

*(c)*   three persons proposed by those voting members of *NEDLAC* who represent organised business;

*(d)*   three persons proposed by those voting members of *NEDLAC* who represent the State.

[Date of commencement of s. 116: 1 January 1996.]

[22](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s116fn22_ref%2527%255d&xhitlist_md=target-id=0-0-0-342249)  See item 4 of Schedule 3 for the governing body's rules of procedure

[23](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s116fn23_ref%2527%255d&xhitlist_md=target-id=0-0-0-342257)  See items 1 to 3 of Schedule 3 for the terms of appointment of members of the governing body

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/117  Commissioners of Commission

**117  Commissioners of Commission**

(1) The governing body must appoint as commissioners as many adequately qualified persons as it considers necessary to perform the functions of commissioners by or in terms of *this Act* or any other law.

(2) The governing body-

*(a)*   may appoint each commissioner-

     (i)   on either a full-time or a part-time basis; and

    (ii)   to be either a commissioner or a senior commissioner;

*(b)*   must appoint each commissioner for a fixed term determined by the governing body at the time of appointment;

*(c)*   may appoint a commissioner, who is not a senior commissioner, for a probationary period; and

*(d)*   when making appointments, must have due regard to the need to constitute a Commission that is independent and competent and representative in respect of race and gender.

(3) Any reference in *this Act* to a commissioner must be interpreted also to mean a senior commissioner, unless otherwise indicated.

(4) The governing body must determine the commissioners' *remuneration*, allowances and any other terms and conditions of appointment not contained in this section.

(5) A commissioner may resign by giving written notice to the governing body.

(6) The governing body must prepare a code of conduct for the commissioners and ensure that they comply with the code of conduct in performing their functions.

(7) The governing body may remove a commissioner from office for-

*(a)*   serious misconduct;

*(b)*   incapacity; or

*(c)*   a material violation of the Commission's code of conduct.

(8) Each commissioner is responsible to the *director* for the performance of the commissioner's functions.

[Date of commencement of s. 117: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/118  Director of Commission

**118  Director of Commission**

(1) The governing body must appoint, as *director* of the Commission, a person who-

*(a)*   is skilled and experienced in labour relations and dispute resolution; and

*(b)*   has not been convicted of any offence involving dishonesty.

(2) The *director* must-

*(a)*   perform the functions that are-

     (i)   conferred on the *director* by or in terms of *this Act* or by any other law;

    (ii)   delegated to the *director* by the governing body;

*(b)*   manage and direct the activities of the Commission; and

*(c)*   supervise the Commission's staff.

(3) The governing body must determine the *director's remuneration*, allowances and any other terms and conditions of appointment not contained in Schedule 3.

(4) A person appointed *director* automatically holds the office of a senior commissioner.

(5) Despite subsection (4), the provisions of section 117, with the exception of section 117 (6), do not apply to the *director*.

[Date of commencement of s. 118: 1 January 1996.]

(6) The *director*, in consultation with the governing body, may delegate any of the functions of that office, except the functions mentioned in sections 120 and 138 (8), to a commissioner.

[Sub-s. (6) added by s. 7 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/119  Acting director of Commission

**119  Acting director of Commission**

(1) The chairperson of the governing body may appoint any suitable person to act as *director* whenever-

*(a)*   the *director* is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of *director*; or

*(b)*   the office of *director* is vacant.

(2) Only a senior commissioner may be appointed as acting director.

(3) An acting director is competent to exercise and perform any of the powers and functions of the *director*.

[Date of commencement of s. 119: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/120  Staff of Commission

**120  Staff of Commission**

(1) The *director* may appoint staff after consulting the governing body.

(2) The governing body must determine the *remuneration* and allowances and any other terms and conditions of appointment of staff members.

[Date of commencement of s. 120: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/121  Establishment of committees of Commission

**121  Establishment of committees of Commission**

(1) The governing body may establish committees to assist the Commission.

(2) A committee may consist of any combination of the following persons-

*(a)*   a member of the governing body;

*(b)*   the *director*;

*(c)*   a commissioner;

*(d)*   a staff member of the Commission; and

*(e)*   any other person.

(3) The governing body must determine the *remuneration* and allowances and any other terms and conditions of appointment of committee members referred to in subsection (2) *(e)*.

(4) The governing body may at any time vary or set aside a decision of a committee.

(5) The governing body may dissolve any committee.

[Date of commencement of s. 121: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/122  Finances of Commission

**122  Finances of Commission**

(1) The Commission will be financed and provided with working capital from-

*(a)*   the moneys that the *Minister*, with the agreement of the *Minister* of Finance, must allocate to the Commission from public funds at the commencement of *this Act*;

*(b)*   the moneys that Parliament may appropriate to the Commission from time to time;

*(c)*   fees payable to the Commission in terms of *this Act*;

*(d)*   grants, donations and bequests made to it; and

*(e)*   income earned on the surplus moneys deposited or invested.

(2) The financial year of the Commission begins on 1 April in each year and ends on 31 March of the following year, except the first financial year which begins on the day *this Act* commences and ends on the first following 31 March.

(3) In each financial year, at a time determined by the *Minister*, the Commission must submit to the *Minister* a statement of the Commission's estimated income and expenditure, and requested appropriation from Parliament, for the following financial year.

[Date of commencement of s. 122: 13 September 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/123  Circumstances in which Commission may charge fees

**123  Circumstances in which Commission may charge fees**

(1) The Commission may charge a fee only for-

*(a)*   resolving *disputes* which are referred to it, in circumstances in which *this Act* allows the Commission, or a commissioner, to charge a fee;

*(b)*   conducting, overseeing or scrutinising any election or ballot at the request of a registered *trade union* or employers' organisation; and

*(c)*   providing advice or training in terms of section 115 (3).

(2) The Commission may not charge a fee unless-

*(a)*   the governing body has established a tariff of fees; and

*(b)*   the fee that is charged is in accordance with that tariff.

(3) The Commission must publish the tariff in the *Government Gazette*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/124  Contracting by Commission, and Commission working in association with any person

**124  Contracting by Commission, and Commission working in association with any person**

(1) The governing body may-

*(a)*   contract with any person to do work for the Commission or contract with an accredited agency to perform, whether for reward or otherwise, any function of the Commission on its behalf; and

[Para. *(a)* substituted by s. 32 of Act 42 of 1996.]

*(b)*   perform any function of the Commission in association with any person.

(2) Every person with whom the Commission contracts or associates is bound by the requirement of independence that binds the Commission.

[Date of commencement of s. 124: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/125  Delegation of governing body's powers, functions and duties

**125  Delegation of governing body's powers, functions and duties**

(1) The governing body may delegate in writing any of its functions, other than the functions listed below, to any member of the governing body, the *director*, a commissioner, or any committee established by the Commission. The functions that the governing body may not delegate are-

*(a)*   appointing the *director*;

*(b)*   appointing commissioners, or removing a commissioner from office;

*(c)*   depositing or investing surplus money;

*(d)*   accrediting *councils* or private agencies, or amending, withdrawing or renewing their accreditation; or

*(e)*   subsidising accredited *councils* or accredited agencies.

(2) The governing body may attach conditions to a delegation and may amend or revoke a delegation at any time.

(3) A function delegated to the *director* may be performed by any commissioner or staff member of the Commission authorised by the*director*, unless the terms of that delegation prevent the *director* from doing so.

(4) The governing body may vary or set aside any decision made by a person acting in terms of any delegation made in terms of subsection (1).

(5) The governing body, by delegating any function, is not divested of any of its powers, nor is it relieved of any function or duty that it may have delegated. This rule also applies if the *director* sub-delegates the performance of a function in terms of subsection (3).

[Date of commencement of s. 125: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part A Commission for Conciliation, Mediation and Arbitration (ss 112-126)/126  Limitation of liability and limitation on disclosure of information

**126  Limitation of liability and limitation on disclosure of information**

(1) In this section, **'the Commission'** means-

*(a)*   the governing body;

*(b)*   a member of the governing body;

*(c)*   the *director*;

*(d)*   a commissioner;

*(e)*   a staff member of the Commission;

*(f)*   a member of any committee established by the governing body; and

*(g)*   any person with whom the governing body has contracted to do work for, or in association with whom it performs a function of, the Commission.

(2) The Commission is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.

(3) The Commission may not disclose to any person or in any court any information, knowledge or document that it acquired on a confidential basis or without prejudice in the course of performing its functions except on the order of a court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/127  Accreditation of councils and private agencies

***Part B  
Accreditation of and subsidy to councils and private agencies (ss 127-132)***

**127  Accreditation of councils and private agencies**

(1) Any *council* or private agency may apply to the governing body in the *prescribed* form for accreditation to perform any of the following functions-

*(a)*   resolving *disputes* through conciliation; and

*(b)*   arbitrating *disputes* that remain unresolved after conciliation, if *this Act* requires arbitration.

(2) For the purposes of this section, the reference to *disputes* must be interpreted to exclude *disputes* as contemplated in-

*(a)*   sections 16, 21 and 22;[24](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342461)

*(b)*   section 24 (2) to (5);[25](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342467)

*(c)*   section 24 (6) and (7) and section 26 (11);[26](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342473)

*(d)*   section 45;[27](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342479)

*(e)*   section 61 (5) to (8);[28](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342485)

*(f)*   section 62;[29](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342491)

*(g)*   section 63;[30](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342497)

*(h)*   section 69 (8) to (10);[31](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342503)

*(i)*   section 86;[32](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342509)

*(j)*   section 89;[33](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342515)

*(k)*   section 94.[34](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342521)

(3) The governing body may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the governing body.

(4) The governing body may accredit an applicant to perform any function for which it seeks accreditation, after considering the application, any further information provided by the applicant and whether-

*(a)*   the services provided by the applicant meet the Commission's standards;

*(b)*   the applicant is able to conduct its activities effectively;

*(c)*   the persons appointed by the applicant to perform those functions will do so in a manner independent of the State, any political party,*trade union*, employer, *employers' organisation*, federation of *trade unions* or federation of *employers' organisations*;

*(d)*   the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers;

*(e)*   the applicant has an acceptable code of conduct to govern the persons whom it appoints to perform those functions;

*(f)*   the applicant uses acceptable disciplinary procedures to ensure that each person it appoints to perform those functions will subscribe, and adhere, to the code of conduct; and

*(g)*   the applicant promotes a service that is broadly representative of South African society.

*(h)*   ......

[Para. *(h)* deleted by s. 33 *(c)* of Act 42 of 1996.]

(5) If the governing body decides-

*(a)*   to accredit the applicant, the governing body must-

     (i)   enter the applicant's name in the register of accredited *councils* or the register of accredited agencies;

    (ii)   issue a certificate of accreditation in the applicant's name stating the period and other terms of accreditation;

    (iii)   send the certificate to the applicant; and

   (iv)   ......

[Sub-para. (iv) deleted by s. 23 *(a)* of Act 12 of 2002.]

*(b)*   not to accredit the applicant, the governing body must advise the unsuccessful applicant in writing of its decision.

(5A) The governing body must annually publish a list of accredited councils and accredited agencies.

[Sub-s. (5A) inserted by s. 23 *(b)* of Act 12 of 2002.]

(6) The terms of accreditation must state the extent to which the provisions of each section in Part C of this Chapter apply to the accredited*council* or accredited agency.

(7) *(a)* Any person may inspect the registers and certificates of accredited *councils* and accredited agencies kept in the Commission's offices.

*(b)* The Commission must provide a certified copy of, or extract from, any of the documents referred to in paragraph *(a)* to any person who has paid the *prescribed* fee.

[Date of commencement of s. 127: 13 September 1996.]

[24](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn24_ref%2527%255d&xhitlist_md=target-id=0-0-0-342459)  These sections deal with disputes about organisational rights

[25](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn25_ref%2527%255d&xhitlist_md=target-id=0-0-0-342465)  These subsections deal with disputes about collective agreements where the agreement does not provide for a procedure, the procedure is inoperative or any party frustrates the resolution of the dispute

[26](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn26_ref%2527%255d&xhitlist_md=target-id=0-0-0-342471)  These sections deal with disputes about agency shops and closed shops

[27](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn27_ref%2527%255d&xhitlist_md=target-id=0-0-0-342477)  This section deals with disputes about determinations made by the Minister in respect of proposals made by a statutory council

[28](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn28_ref%2527%255d&xhitlist_md=target-id=0-0-0-342483)  These subsections deal with disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled

[29](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn29_ref%2527%255d&xhitlist_md=target-id=0-0-0-342489)  This section deals with disputes about the demarcation of sectors and areas of councils

[30](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn30_ref%2527%255d&xhitlist_md=target-id=0-0-0-342495)  This section deals with disputes about the interpretation or application of Parts C to F of Chapter III. Part C deals with bargaining councils, Part D with bargaining councils in the public service, Part E with statutory councils and Part F with general provisions concerning councils

[31](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn31_ref%2527%255d&xhitlist_md=target-id=0-0-0-342501)  This section concerns disputes about pickets during strikes and lock-outs

[32](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn32_ref%2527%255d&xhitlist_md=target-id=0-0-0-342507)  This section deals with disputes about proposals that are the subject of joint decision-making

[33](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn33_ref%2527%255d&xhitlist_md=target-id=0-0-0-342513)  This section deals with disputes about the disclosure of information to workplace forums

[34](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s127fn34_ref%2527%255d&xhitlist_md=target-id=0-0-0-342519)  This section deals with disputes about the interpretation or application of Chapter V which deals with workplace forums

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/128  General provisions relating to accreditation

**128  General provisions relating to accreditation**

(1) *(a)* An accredited *council* or accredited agency may charge a fee for performing any of the functions for which it is accredited in circumstances in which this Act allows a commissioner to charge a fee.

[Para. *(a)* substituted by s. 34 of Act 42 of 1996 and by s. 24 *(a)* of Act 12 of 2002.]

*(b)* A fee charged in terms of paragraph *(a)* must be in accordance with the tariff of fees determined by the Commission.

(2) *(a)* An accredited *council*, accredited agency, or any person engaged by either of them to perform the functions for which it has been accredited, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising those functions.

*(b)* An accredited *council*, accredited agency, or any person engaged by either of them to perform the functions for which it has been accredited, may not disclose to any person or in any court any information, knowledge or document that it or that person acquired on a confidential basis or without prejudice in the course of performing those functions except on the order of a court.

(3) *(a)* (i) An accredited *council* may confer on any person appointed by it to resolve a *dispute*, the powers of a commissioner in terms of section 142, read with the changes required by the context.

(ii) For this purpose, any reference in that section to the *director* must be read as a reference to the secretary of the *bargaining council*.

*(b)* An accredited private agency may confer on any person appointed by it to resolve a *dispute*, the powers of a commissioner in terms of section 142 (1) *(a)* to *(e)*, (2) and (7) to (9), read with the changes required by the context.

[Sub-s. (3) added by s. 24 *(b)* of Act 12 of 2002.]

[Date of commencement of s. 128: 13 September 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/129  Amendment of accreditation

**129  Amendment of accreditation**

(1) An accredited *council* or accredited agency may apply to the governing body in the *prescribed* form to amend its accreditation.

(2) The governing body must treat the application as an application in terms of section 127.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/130  Withdrawal of accreditation

**130  Withdrawal of accreditation**

If an accredited *council* or accredited agency fails to comply to a material extent with the terms of its accreditation, the governing body may withdraw its accreditation after having given reasonable notice of the withdrawal to that *council* or accredited agency.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/131  Application to renew accreditation

**131  Application to renew accreditation**

(1) An accredited *council* or accredited agency may apply to the governing body in the *prescribed* form to renew its accreditation either in the current or in an amended form.

(2) The governing body must treat the application for renewal as an application in terms of section 127.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part B Accreditation of and subsidy to councils and private agencies (ss 127-132)/132  Subsidy to council or private agency

**132  Subsidy to council or private agency**

(1) *(a)* Any *council* may apply to the governing body in the *prescribed* form for a subsidy for performing any dispute resolution functions that the *council* is required to perform in terms of *this Act*, and for training persons to perform those functions.

*(b)* Any accredited agency, or a private agency that has applied for accreditation, may apply to the governing body in the *prescribed* form for a subsidy for performing any dispute resolution functions for which it is accredited or has applied for accreditation, and for training persons to perform those functions.

[Sub-s. (1) substituted by s. 35 of Act 42 of 1996.]

(2) The governing body may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the governing body.

(3) The governing body may grant a subsidy to the applicant after considering the application, any further information provided by the applicant and-

*(a)*   the need for the performance by the applicant of the functions for which it is accredited;

*(b)*   the extent to which the public uses the applicant to perform the functions for which it is accredited;

*(c)*   the cost to users for the performance by the applicant of the functions for which it is accredited;

*(d)*   the reasons for seeking the subsidy;

*(e)*   the amount requested; and

*(f)*   the applicant's ability to manage its financial affairs in accordance with established accounting practice, principles and procedures.

(4) If the governing body decides-

*(a)*   to grant a subsidy to the applicant, the governing body must-

     (i)   notify the applicant in writing of the amount, duration and the terms of the subsidy; and

    (ii)   as soon as practicable after the decision, publish the written notice in the *Government Gazette*; or

*(b)*   not to grant a subsidy to the applicant, the governing body must advise the unsuccessful applicant in writing of its decision.

(5) A subsidy granted in terms of subsection (4) *(a)*-

*(a)*   may not be paid to a *council* or private agency unless it has been accredited; and

*(b)*   lapses at the end of the Commission's financial year within which it was granted.

(6) *(a)* Any person may inspect a written notice referred to in subsection (4) *(a)* in the Commission's offices.

*(b)* The Commission must provide a certified copy of, or extract from, any written notice referred to in paragraph *(a)* to any person who has paid the *prescribed* fee.

(7) If an accredited *council* or accredited agency fails to comply to a material extent with the terms of its subsidy, the governing body may withdraw the subsidy after having given reasonable notice of the withdrawal to that *council* or agency.

(8) *(a)* An accredited *council* or accredited agency that has been granted a subsidy may apply to the governing body in the *prescribed* form to renew its subsidy, either in the current or in an amended form and amount.

*(b)* The governing body must treat the application for renewal as an application in terms of subsections (1) to (4).

[Date of commencement of s. 132: 13 September 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/133  Resolution of disputes under auspices of Commission

***Part C  
Resolution of disputes under auspices of Commission (ss 133-150)***

**133  Resolution of disputes under auspices of Commission**

(1) The Commission must appoint a commissioner to attempt to resolve through conciliation-

*(a)*   any *dispute* referred to it in terms of section 134; and

*(b)*   any other *dispute* that has been referred to it in terms of *this Act*.

(2) If a *dispute* remains unresolved after conciliation, the Commission must arbitrate the *dispute* if-

*(a)*   this Act requires the *dispute* to be arbitrated and any party to the *dispute* has requested that the *dispute* be resolved through arbitration; or

*(b)*   all the parties to the *dispute* in respect of which the Labour Court has jurisdiction consent in writing to arbitration under the auspices of the Commission.

[Sub-s. (2) substituted by s. 25 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/134  Disputes about matters of mutual interest

**134  Disputes about matters of mutual interest**

(1) Any party to a *dispute* about a matter of mutual interest may refer the *dispute* in writing to the Commission, if the parties to the *dispute*are-

*(a)*   on the one side-

     (i)   one or more *trade unions*;

    (ii)   one or more *employees*; or

    (iii)   one or more *trade unions* and one or more *employees*; and

*(b)*   on the other side-

     (i)   one or more employers' organisations;

    (ii)   one or more employers; or

    (iii)   one or more *employers' organisations* and one or more employers.

(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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/135  Resolution of disputes through conciliation

**135  Resolution of disputes through conciliation**

(1) When a *dispute* has been referred to the Commission, the Commission must appoint a commissioner to attempt to resolve it through conciliation.

(2) The appointed commissioner must attempt to resolve the *dispute* through conciliation within 30 days of the date the Commission received the referral: However the parties may agree to extend the 30-day period.

(3) The commissioner must determine a process to attempt to resolve the *dispute*, which may include-

*(a)*   mediating the *dispute*;

*(b)*   conducting a fact-finding exercise; and

*(c)*   making a recommendation to the parties, which may be in the form of an advisory arbitration award.

(3A) If a single commissioner has been appointed, in terms of subsection (1), in respect of more than one *dispute* involving the same parties, that commissioner may consolidate the conciliation proceedings so that all the *disputes* concerned may be dealt with in the same proceedings.

[Sub-s. (3A) inserted by s. 8 *(a)* of Act 127 of 1998.]

(4) ......

[Sub-s. (4) substituted by s. 8 *(b)* of Act 127 of 1998 and deleted by s. 26 of Act 12 of 2002.]

(5) When conciliation has failed, or at the end of the 30-day period or any further period agreed between the parties-

*(a)*   the commissioner must issue a certificate stating whether or not the *dispute* has been resolved;

*(b)*   the Commission must *serve* a copy of that certificate on each party to the *dispute* or the person who represented a party in the conciliation proceedings; and

*(c)*   the commissioner must file the original of that certificate with the Commission.

[Sub-s. (5) amended by s. 36 *(b)* of Act 42 of 1996.]

(6) *(a)* If a *dispute* about a matter of mutual interest has been referred to the Commission and the parties to the *dispute* are engaged in an*essential service* then, despite subsection (1), the parties may consent within seven days of the date the Commission received the referral-

     (i)   to the appointment of a specific commissioner by the Commission to attempt to resolve the *dispute* through conciliation; and

    (ii)   to that commissioner's terms of reference.

*(b)* If the parties do not consent to either of those matters within the seven-day period, the Commission must as soon as possible-

     (i)   appoint a commissioner to attempt to resolve the *dispute*; and

    (ii)   determine the commissioner's terms of reference.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/136  Appointment of commissioner to resolve dispute through arbitration

**136  Appointment of commissioner to resolve dispute through arbitration**

(1) If *this Act* requires a *dispute* to be resolved through arbitration, the Commission must appoint a commissioner to arbitrate that *dispute*, if-

*(a)*   a commissioner has issued a certificate stating that the *dispute* remains unresolved; and

*(b)*   within 90 days after the date on which that certificate was issued, any party to the *dispute* has requested that the *dispute* be resolved through arbitration. However, the Commission, on good cause shown, may condone a party's non-observance of that timeframe and allow a request for arbitration filed by the party after the expiry of the 90-day period.

[Para. *(b)* substituted by s. 9 *(a)* of Act 127 of 1998.]

(2) A commissioner appointed in terms of subsection (1) may be the same commissioner who attempted to resolve the *dispute* through conciliation.

(3) Any party to the *dispute* who wants to object to the arbitration also being conducted by the commissioner who had attempted to resolve the*dispute* through conciliation, may do so by filing an objection in that regard with the Commission within seven days after the date on which the commissioner's certificate was issued, and must satisfy the Commission that a copy of the objection has been *served* on all the other parties to the *dispute*.

[Sub-s. (3) substituted by s. 9 *(b)* of Act 127 of 1998.]

(4) When the Commission receives an objection it must appoint another commissioner to resolve the *dispute* by arbitration.

(5) *(a)* The parties to a *dispute* may request the Commission, in appointing a commissioner in terms of subsection (1) or (4), to take into account their stated preference, to the extent that this is reasonably practicable in all the circumstances.

*(b)* The stated preference contemplated in paragraph *(a)* must-

     (i)   be in writing;

    (ii)   list no more than five commissioners;

   (iii)   state that the request is made with the agreement of all the parties to the *dispute*; and

   (iv)   be submitted within 48 hours of the date of the certificate referred to in subsection (1) *(a)*.

(6) If the circumstances contemplated in subsection (1) exist and the parties to the *dispute* are engaged in an *essential service*, then the provisions of section 135 (6) apply, read with the changes required by the context, to the appointment of a commissioner to resolve the *dispute*through arbitration.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/137  Appointment of senior commissioner to resolve dispute through arbitration

**137  Appointment of senior commissioner to resolve dispute through arbitration**

(1) In the circumstances contemplated in section 136 (1), any party to the *dispute* may apply to the *director* to appoint a senior commissioner to attempt to resolve the *dispute* through arbitration.

(2) When considering whether the *dispute* should be referred to a senior commissioner, the *director* must hear the party making the application, any other party to the *dispute* and the commissioner who conciliated the *dispute*.

(3) The *director* may appoint a senior commissioner to resolve the *dispute* through arbitration, after having considered-

*(a)*   the nature of the questions of law raised by the *dispute*;

*(b)*   the complexity of the *dispute*;

*(c)*   whether there are conflicting arbitration awards that are relevant to the *dispute*; and

*(d)*   the public interest.

(4) The *director* must notify the parties to the *dispute* of the decision and-

*(a)*   if the application has been granted, appoint a senior commissioner to arbitrate the *dispute*; or

*(b)*   if the application has been refused, confirm the appointment of the commissioner initially appointed, subject to section 136 (4).

[Para. *(b)* substituted by s. 37 of Act 42 of 1996.]

(5) The *director's* decision is final and binding.

(6) No person may apply to any court of law to review the *director's* decision until the *dispute* has been arbitrated.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/138  General provisions for arbitration proceedings

**138  General provisions for arbitration proceedings**

(1) The commissioner may conduct the arbitration in a manner that the commissioner considers appropriate in order to determine the *dispute*fairly and quickly, but must deal with the substantial merits of the *dispute* with the minimum of legal formalities.

(2) Subject to the discretion of the commissioner as to the appropriate form of the proceedings, a party to the *dispute* may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the commissioner.

(3) If all the parties consent, the commissioner may suspend the arbitration proceedings and attempt to resolve the *dispute* through conciliation.

(4) ......

[Sub-s. (4) substituted by s. 10 of Act 127 of 1998 and deleted by s. 27 *(a)* of Act 12 of 2002.]

(5) If a party to the *dispute* fails to appear in person or to be represented at the arbitration proceedings, and that party-

*(a)*   had referred the *dispute* to the Commission, the commissioner may dismiss the matter; or

*(b)*   had not referred the *dispute* to the Commission, the commissioner may-

     (i)   continue with the arbitration proceedings in the absence of that party; or

    (ii)   adjourn the arbitration proceedings to a later date.

(6) The commissioner must take into account any *code of good practice* that has been issued by *NEDLAC* or guidelines published by the Commission in accordance with the provisions of *this Act* that is relevant to a matter being considered in the arbitration proceedings.

(7) Within 14 days of the conclusion of the arbitration proceedings-

*(a)*   the commissioner must issue an arbitration award with brief reasons, signed by that commissioner; and

*(b)*   the Commission must *serve* a copy of that award on each party to the *dispute* or the person who represented a party in the arbitration proceedings.

*(c)*   ......

[Para. *(c)* deleted by s. 19 of Act 6 of 2014.]

(8) On good cause shown, the *director* may extend the period within which the arbitration award and the reasons are to be *served* and filed.

(9) The commissioner may make any appropriate arbitration award in terms of *this Act*, including, but not limited to, an award-

*(a)*   that gives effect to any *collective agreement*;

*(b)*   that gives effect to the provisions and primary objects of *this Act*;

*(c)*   that includes, or is in the form of, a declaratory order.

(10) The commissioner may make an order for the payment of costs according to the requirements of law and fairness in accordance with rules made by the Commission in terms of section 115 (2A) *(j)* and having regard to-

*(a)*   any relevant Code of Good Practice issued by *NEDLAC* in terms of section 203;

*(b)*   any relevant guideline issued by the Commission.

[Sub-s. (10) substituted by s. 27 *(b)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/139  Special provisions for arbitrating disputes in essential services

**139  Special provisions for arbitrating disputes in essential services**

(1) If a *dispute* about a matter of mutual interest proceeds to arbitration and any party is engaged in an *essential service*-

*(a)*   within 30 days of the date of the certificate referred to in section 136 (1) *(a)*, or within a further period agreed between the parties to the *dispute*, the commissioner must complete the arbitration and issue an arbitration award with brief reasons signed by that commissioner;

*(b)*   the Commission must *serve* a copy of that award on each party to the *dispute* or the person who represented a party in the arbitration proceedings; and

*(c)*   the Commission must file the original of that award with the registrar of the Labour Court.

(2) The commissioner may not include an order for costs in the arbitration award unless a party, or the person who represented the party in the arbitration proceedings, acted in a frivolous or vexatious manner in its conduct during the arbitration proceedings.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/140  Special provisions for arbitrations about dismissals for reasons related to conduct or capacity

**140  Special provisions for arbitrations about dismissals for reasons related to conduct or capacity**

(1) ......

[Sub-s. (1) deleted by s. 28 of Act 12 of 2002.]

(2) If, in terms of section 194 (1), the commissioner finds that the *dismissal* is procedurally unfair, the commissioner may charge the employer an arbitration fee.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/141  Resolution of disputes if parties consent to arbitration under auspices of Commission

**141  Resolution of disputes if parties consent to arbitration under auspices of Commission**

(1) If a *dispute* remains unresolved after conciliation, the Commission must arbitrate the *dispute* if a party to the *dispute* would otherwise be entitled to refer the *dispute* to the Labour Court for adjudication and, instead, all the parties agree in writing to arbitration under the auspices of the Commission.

[Sub-s. (1) substituted by s. 29 *(a)* of Act 12 of 2002.]

(2) The arbitration proceedings must be conducted in accordance with the provisions of sections 136, 137 and 138, read with the changes required by the context.

(3) The arbitration agreement contemplated in subsection (1) may be terminated only with the written consent of all the parties to that agreement, unless the agreement itself provides otherwise.

[Sub-s. (3) substituted by s. 29 *(b)* of Act 12 of 2002.]

(4) Any party to the arbitration agreement may apply to the Labour Court at any time to vary or set aside that agreement, which the Court may do on good cause.

(5) *(a)* If any party to an arbitration agreement commences proceedings in the Labour Court against any other party to that agreement about any matter that the parties agreed to refer to arbitration, any party to those proceedings may ask the Court-

     (i)   to stay those proceedings and refer the *dispute* to arbitration; or

    (ii)   with the consent of the parties and where it is expedient to do so, continue with the proceedings with the Court acting as arbitrator, in which case the Court may only make an order corresponding to the award that an arbitrator could have made.

*(b)* If the Court is satisfied that there is sufficient reason for the *dispute* to be referred to arbitration in accordance with the arbitration agreement, the Court may stay those proceedings, on any conditions.

(6) If the provisions of subsection (1) apply, the commissioner may make an award that the Labour Court could have made.

[Sub-s. (6) amended by s. 39 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/142  Powers of commissioner when attempting to resolve disputes

**142  Powers of commissioner when attempting to resolve disputes**

(1) A commissioner who has been appointed to attempt to resolve a *dispute* may-

*(a)*   subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the *dispute*;

*(b)*   subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the*dispute*, to appear before the commissioner to be questioned or to produce that book, document or object;

*(c)*   call, and if necessary subpoena, any expert to appear before the commissioner to give evidence relevant to the resolution of the*dispute*;

*(d)*   call any person present at the conciliation or arbitration proceedings or who was or could have been subpoenaed for any purpose set out in this section, to be questioned about any matter relevant to the *dispute*;

*(e)*   administer an oath or accept an affirmation from any person called to give evidence or be questioned;

*(f)*   at any reasonable time, but only after obtaining the necessary written authorisation-

     (i)   enter and inspect any premises on or in which any book, document or object, relevant to the resolution of the *dispute* is to be found or is suspected on reasonable grounds of being found there; and

    (ii)   examine, demand the production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the *dispute*; and

    (iii)   take a statement in respect of any matter relevant to the resolution of the *dispute* from any person on the premises who is willing to make a statement; and

[Sub-para. (iii) added by s. 40 of Act 42 of 1996.]

*(g)*   inspect, and retain for a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the Commission.

(2) A subpoena issued for any purpose in terms of subsection (1) must be signed by the *director* and must-

*(a)*   specifically require the person named in it to appear before the commissioner;

*(b)*   sufficiently identify the book, document or object to be produced; and

*(c)*   state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in subsection (1) *(f)*-

*(a)*   if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 13 of the Constitution[35](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342823), and then only on the application of the commissioner setting out under oath or affirmation the following information-

     (i)   the nature of the *dispute*;

    (ii)   the relevance of any book, document or object to the resolution of the *dispute*;

    (iii)   the presence of any book, document or object on the premises; and

   (iv)   the need to enter, inspect or seize the book, document or object; and

*(b)*   in all other cases, may be given by the *director*.

(4) The owner or occupier of any premises that a commissioner is authorised to enter and inspect, and every person employed by that owner or occupier, must provide any facilities that a commissioner requires to enter those premises and to carry out the inspection or seizure.

(5) The commissioner must issue a receipt for any book, document or object seized in terms of subsection (4).

(6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this section.

(7) *(a)* The Commission must pay the *prescribed* witness fee to each person who appears before a commissioner in response to a subpoena issued by the commissioner.

*(b)* Any person who requests the Commission to issue a subpoena must pay the *prescribed* witness fee to each person who appears before a commissioner in response to the subpoena and who remains in attendance until excused by the commissioner.

*(c)* The Commission may on good cause shown waive the requirement in paragraph *(b)* and pay to the witness the *prescribed* witness fee.

[Sub-s. (7) substituted by s. 30 *(a)* of Act 12 of 2002.]

(8) A person commits contempt of the Commission-

*(a)*   if, after having been subpoenaed to appear before the commissioner, the person without good cause does not attend at the time and place stated in the subpoena;

*(b)*   if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the commissioner;

*(c)*   by refusing to take the oath or to make an affirmation as a witness when a commissioner so requires;

*(d)*   by refusing to answer any question fully and to the best of that person's knowledge and belief subject to subsection (6);

*(e)*   if the person, without good cause, fails to produce any book, document or object specified in a subpoena to a commissioner;

*(f)*   if the person wilfully hinders a commissioner in performing any function conferred by or in terms of *this Act*;

*(g)*   if the person insults, disparages or belittles a commissioner, or prejudices or improperly influences the proceedings or improperly anticipates the commissioner's award;

*(h)*   by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;

*(i)*   by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

(9) *(a)* A commissioner may make a finding that a party is in contempt of the Commission for any of the reasons set out in subsection (8).

*(b)* The commissioner may refer the finding, together with the record of the proceedings, to the Labour Court for its decision in terms of subsection (11).

[Sub-s. (9) substituted by s. 30 *(b)* of Act 12 of 2002.]

(10) Before making a decision in terms of subsection (11), the Labour Court-

*(a)*   must subpoena any person found in contempt to appear before it on a date determined by the Court;

*(b)*   may subpoena any other person to appear before it on a date determined by the Court; and

*(c)*   may make any order that it deems appropriate, including an order in the case of a person who is not a legal practitioner that the person's right to represent a party in the Commission and the Labour Court be suspended.

[Sub-s. (10) added by s. 30 *(c)* of Act 12 of 2002.]

(11) The Labour Court may confirm, vary or set aside the finding of a commissioner.

[Sub-s. (11) added by s. 30 *(c)* of Act 12 of 2002.]

(12) If any person fails to appear before the Labour Court pursuant to a subpoena issued in terms of subsection (10) *(a)*, the Court may make any order that it deems appropriate in the absence of that person.

[Sub-s. (12) added by s. 30 *(c)* of Act 12 of 2002.]

[35](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s142fn35_ref%2527%255d&xhitlist_md=target-id=0-0-0-342821)  The Constitution referred to is the Constitution of the Republic of South Africa, 1993, which was repealed by the Constitution of the Republic of South Africa, 1996. The reference in this Act will remain until such time as the legislature shall amend it. The Constitution of the Republic of South Africa, 1996 deals with privacy in section 14.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/142A  Making settlement agreement arbitration award

**142A  Making settlement agreement arbitration award**

(1) The Commission may, by agreement between the parties or on application by a party, make any settlement agreement in respect of any*dispute* that has been referred to the Commission, an arbitration award.

(2) For the purposes of subsection (1), a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is entitled to refer to arbitration in terms of either section 74 (4) or 75 (7).

[S. 142A inserted by s. 31 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/143  Effect of arbitration awards

**143  Effect of arbitration awards**

(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.

[Sub-s. (1) substituted by s. 32 *(a)* of Act 12 of 2002 and by s. 20 *(a)* of Act 6 of 2014.]

(2) If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), unless the award provides otherwise.

(3) An arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1).

[Sub-s. (3) added by s. 32 *(b)* of Act 12 of 2002.]

(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court.

[Sub-s. (4) added by s. 32 *(b)* of Act 12 of 2002 and substituted by s. 20 *(b)* of Act 6 of 2014.]

(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

[Sub-s. (5) added by s. 20 *(c)* of Act 6 of 2014.]

(6) Subsections (1), (4) and (5), as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014, and applies to an arbitration award issued after such commencement date.

[Sub-s. (6) added by s. 20 *(c)* of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/144  Variation and rescission of arbitration awards and rulings

**144  Variation and rescission of arbitration awards and rulings**

Any commissioner who has issued an arbitration award or ruling, or any other commissioner appointed by the *director* for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling-

*(a)*   erroneously sought or erroneously made in the absence of any party affected by that award;

*(b)*   in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission;

*(c)*   granted as a result of a mistake common to the parties to the proceedings; or

*(d)*   made in the absence of any party, on good cause shown.

[Para. *(d)* added by s. 21 of Act 6 of 2014.]

[S. 144 substituted by s. 33 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/145  Review of arbitration awards

**145  Review of arbitration awards**

(1) Any party to a *dispute* who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award-

*(a)*   within six weeks of the date that the award was *served* on the applicant, unless the alleged defect involves the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004; or

[Para. *(a)* substituted by s. 36 (1) of [Act 12 of 2004](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a12y2004%2527%255d&xhitlist_md=target-id=0-0-0-63647).]

*(b)*   if the alleged defect involves an offence referred to in paragraph *(a)*, within six weeks of the date that the applicant discovers such offence.

[Para. *(b)* substituted by s. 36 (1) of [Act 12 of 2004](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a12y2004%2527%255d&xhitlist_md=target-id=0-0-0-63647).]

(1A) The Labour Court may on good cause shown condone the late filing of an application in terms of subsection (1).

[Sub-s. (1A) inserted by s. 34 of Act 12 of 2002.]

(2) A defect referred to in subsection (1), means-

*(a)*   that the commissioner-

     (i)   committed misconduct in relation to the duties of the commissioner as an arbitrator;

    (ii)   committed a gross irregularity in the conduct of the arbitration proceedings; or

    (iii)   exceeded the commissioner's powers; or

*(b)*   that an award has been improperly obtained.

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) If the award is set aside, the Labour Court may-

*(a)*   determine the *dispute* in the manner it considers appropriate; or

*(b)*   make any order it considers appropriate about the procedures to be followed to determine the *dispute*.

(5) Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

[Sub-s. (5) added by s. 22 of Act 6 of 2014.]

(6) Judgment in an application brought under subsection (1) must be handed down as soon as reasonably possible.

[Sub-s. (6) added by s. 22 of Act 6 of 2014.]

(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).

[Sub-s. (7) added by s. 22 of Act 6 of 2014.]

(8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must-

*(a)*   in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

*(b)*   in the case of an order of compensation, be equivalent to the amount of compensation awarded.

[Sub-s. (8) added by s. 22 of Act 6 of 2014.]

(9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act 68 of 1969), in respect of that award.

[Sub-s. (9) added by s. 22 of Act 6 of 2014.]

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and subsection (9) applies to an arbitration award issued after such commencement date.

[Sub-s. (10) added by s. 22 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/146  Exclusion of Arbitration Act

**146  Exclusion of Arbitration Act**

The Arbitration Act, 1965 ([Act 42 of 1965](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a42y1965%2527%255d&xhitlist_md=target-id=0-0-0-21751)), does not apply to any arbitration under the auspices of the Commission.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/147  Performance of dispute resolution functions by Commission in exceptional circumstances

**147  Performance of dispute resolution functions by Commission in exceptional circumstances**

(1) *(a)* If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* is about the interpretation or application of a *collective agreement*, the Commission may-

     (i)   refer the *dispute* for resolution in terms of the procedures provided for in that *collective agreement*; or

    (ii)   appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

*(b)* The Commission may charge the parties to a *collective agreement* a fee for performing the dispute resolution functions if-

     (i)   their *collective agreement* does not provide a procedure as required by section 24 (1);[36](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342925)  or

    (ii)   the procedure provided in the *collective agreement* is not operative.

*(c)* The Commission may charge a party to a *collective agreement* a fee if that party has frustrated the resolution of the *dispute*.

(2) *(a)* If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the parties to the *dispute* are parties to a*council*, the Commission may-

     (i)   refer the *dispute* to the *council* for resolution; or

    (ii)   appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

*(b)* The Commission may charge the parties to a *council* a fee for performing the dispute resolution functions if the *council's* dispute resolution procedures are not operative.

(3) *(a)* If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the parties to the *dispute* fall within the*registered scope* of a *council* and that one or more parties to the *dispute* are not parties to the *council*, the Commission may-

     (i)   refer the *dispute* to the *council* for resolution; or

    (ii)   appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the *dispute* in terms of *this Act*.

*(b)* The Commission may charge the parties to a *council* a fee for performing the *dispute* resolution functions if the *council's* dispute resolution procedures are not operative.

(4) *(a)* If a *dispute* has been referred to the Commission and not all the parties to the *dispute* fall within the *registered scope* of a *council* or fall within the *registered scope* of two or more *councils*, the Commission must resolve the *dispute* in terms of *this Act*.

*(b)* In the circumstances contemplated in paragraph *(a)*, the Commission has exclusive jurisdiction to resolve that *dispute*.

(5) *(a)* If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been referred to an accredited agency, the Commission may-

     (i)   refer the *dispute* to the accredited agency for resolution; or

    (ii)   appoint a commissioner to resolve the *dispute* in terms of *this Act*.

[Para. *(a)* amended by s. 41 *(a)* of Act 42 of 1996.]

*(b)* The Commission may-

     (i)   charge the accredited agency a fee for performing the dispute resolution functions if the accredited agency's dispute resolution procedures are not operative; and

    (ii)   review the continued accreditation of that agency.

(6) If at any stage after a *dispute* has been referred to the Commission, it becomes apparent that the *dispute* ought to have been resolved through private dispute resolution in terms of a private agreement between the parties to the *dispute*, the Commission may-

*(a)*   refer the *dispute* to the appropriate person or body for resolution through private dispute resolution procedures; or

*(b)*   appoint a commissioner to resolve the *dispute* in terms of *this Act*.

[Sub-s. (6) substituted by s. 41 *(b)* of Act 42 of 1996.]

(6A) For the purpose of making a decision in terms of subsection (6), the Commission must appoint a commissioner to resolve the *dispute*-

*(a)*   if an *employee* earning less than the threshold prescribed by the *Minister*, in terms of section 6 (3) of the *Basic Conditions of Employment Act*, is required to pay any part of the cost of the private *dispute* resolution procedures; or

*(b)*   if the person or body appointed to resolve the *dispute* is not independent of the employer.

[Sub-s. (6A) inserted by s. 23 of Act 6 of 2014.]

(7) Where the Commission refers the *dispute* in terms of this section to a person or body other than a commissioner the date of the Commission's initial receipt of the *dispute* will be deemed to be the date on which the Commission referred the *dispute* elsewhere.

(8) The Commission may perform any of the dispute resolution functions of a *council* or an accredited agency appointed by the *council* if the*council* or accredited agency fails to perform its dispute resolution functions in circumstances where, in law, there is an obligation to perform them.

[Sub-s. (8) added by s. 41 *(c)* of Act 42 of 1996.]

(9) For the purposes of subsections (2) and (3), a party to a *council* includes the members of a registered *trade union* or registered *employers*'*organisation* that is a party to the *council*.

[Sub-s. (9) added by s. 41 *(c)* of Act 42 of 1996.]

[36](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s147fn36_ref%2527%255d&xhitlist_md=target-id=0-0-0-342923)  Section 24 (1) states that every collective agreement must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/148  Commission may provide advice

**148  Commission may provide advice**

(1) If asked, the Commission may advise any party to a *dispute* in terms of *this Act* about the procedure to be followed for the resolution of that *dispute*.

(2) In response to a request for advice, the Commission may provide the advice that it considers appropriate.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/149  Commission may provide assistance

**149  Commission may provide assistance**

(1) If asked, the Commission may assist an *employee* or employer who is a party to a *dispute*-

*(a)*   together with the Legal Aid Board,[37](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-342987)  to arrange for advice or assistance by a *legal practitioner*;

**[NB:** Para. *(a)* has been amended by s. 25 (1) of the Legal Aid South Africa Act 39 of 2014, a provision which will be put into operation by proclamation. See PENDLEX.**]**

*(b)*   together with the Legal Aid Board, to arrange for a *legal practitioner*-

     (i)   to attempt to avoid or settle any proceedings being instituted against an *employee* or employer in terms of *this Act*;

    (ii)   to attempt to settle any proceedings instituted against an *employee* or employer in terms of *this Act*;

    (iii)   to institute on behalf of the *employee* or employer any proceedings in terms of *this Act*;

   (iv)   to defend or oppose on behalf of the *employee* or employer any proceedings instituted against the *employee* or employer in terms of *this Act*; or

**[NB:** Para. *(b)* has been amended by s. 25 (1) of the Legal Aid South Africa Act 39 of 2014, a provision which will be put into operation by proclamation. See PENDLEX.**]**

*(c)*   by providing any other form of assistance that the Commission considers appropriate.

(2) The Commission may provide the assistance referred to in subsection (1) after having considered-

*(a)*   the nature of the questions of law raised by the *dispute*;

*(b)*   the complexity of the *dispute*;

*(c)*   whether there are conflicting arbitration awards that are relevant to the *dispute*; and

*(d)*   the public interest.

(3) As soon as practicable after having received a request in terms of subsection (1), but not later than 30 days of the date the Commission received the request, the Commission must advise the applicant in writing whether or not it will assist the applicant and, if so, the form that the assistance will take.

[37](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s149fn37_ref%2527%255d&xhitlist_md=target-id=0-0-0-342985)  The Legal Aid Board established in terms of section 2 of the Legal Aid Act, 1969 (Act 22 of 1969)

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part C Resolution of disputes under auspices of Commission (ss 133-150)/150  Commission may appoint commissioner to conciliate in public interest

**150  Commission may appoint commissioner to conciliate in public interest**

(1) Despite any provision to the contrary in *this Act*, the *director* may appoint one or more commissioners who must attempt to resolve the*dispute* through conciliation, whether or not that *dispute* has been referred to the Commission or a *bargaining council*-

*(a)*   with the consent of the parties; or

*(b)*   in the absence of consent by the parties, if the *director* believes it is in the public interest to do so.

(2) Before appointing a commissioner in terms of this section, the *director* must consult-

*(a)*   the parties to the *dispute*; and

*(b)*   the secretary of a *bargaining council* with jurisdiction over the parties to the *dispute*.

(3) The *director* may appoint a commissioner who has already conciliated that *dispute*.

(4) In addition, to assist a commissioner appointed in terms of subsection (1), the *director* may appoint-

*(a)*   one person from a list of at least five names submitted by the representatives of organised labour on the governing body of the Commission; and

*(b)*   one person from a list of at least five names submitted by the representatives of organised business on the governing body of the Commission.

(5) Unless the parties to the *dispute* agree otherwise, the appointment of a commissioner in terms of this section does not affect any entitlement, of an *employee* to *strike* or an employer to *lock-out*, that the party to the dispute may have acquired in terms of Chapter IV.

[S. 150 amended by s. 35 *(a)* and *(b)* of Act 12 of 2002 and substituted by s. 24 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/151  Establishment and status of Labour Court

***Part D  
Labour Court (ss 151-166)***

**151  Establishment and status of Labour Court**

(1) The Labour Court is hereby established as a court of law and equity.

[Sub-s. (1) amended by s. 11 of Act 127 of 1998.]

(2) The Labour Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a Division of the High Court of South Africa has in relation to matters under its jurisdiction.

[Sub-s. (2) substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(3) The Labour Court is a court of record.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/152  Composition of Labour Court

**152  Composition of Labour Court**

(1) The Labour Court consists of-

*(a)*   a Judge President;

*(b)*   a Deputy Judge President; and

*(c)*   as many judges as the President may consider necessary, acting on the advice of *NEDLAC* and in consultation with the Minister of Justice and the Judge President of the Labour Court.

(2) The Labour Court is constituted before a single judge.

(3) The Labour Court may sit in as many separate courts as the available judges may allow.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/153  Appointment of judges of Labour Court

**153  Appointment of judges of Labour Court**

(1) *(a)* The President, acting on the advice of *NEDLAC* and the Judicial Service Commission provided for in the Constitution of the Republic of South Africa, 1996 ([Act 108 of 1996](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a108y1996%2527%255d&xhitlist_md=target-id=0-0-0-22525)), (in this Part and Part E called the Judicial Service Commission), and after consultation with the Minister of Justice, must appoint a Judge President of the Labour Court.

[Para. *(a)* substituted by s. 12 *(a)* (i) of Act 127 of 1998.]

*(b)* The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, and after consultation with the Minister of Justice and the Judge President of the Labour Court must appoint the Deputy Judge President of the Labour Court.

[Para. *(b)* amended by s. 12 *(a)* (ii) of Act 127 of 1998.]

(2) The Judge President and the Deputy Judge President of the Labour Court-

*(a)*   must be judges of the Supreme Court; and

*(b)*   must have knowledge, experience and expertise in labour law.

(3) The Deputy Judge President must act as Judge President of the Labour Court whenever the Judge President is unable to do so for any reason.

(4) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, and after consultation with the Minister of Justice and the Judge President of the Labour Court may appoint one or more persons who meet the requirements of subsection (6) as judges of the Labour Court.

[Sub-s. (4) amended by s. 12 *(b)* of Act 127 of 1998.]

(5) The Minister of Justice, after consultation with the Judge President of the Labour Court, may appoint one or more persons who meet the requirements of subsection (6) to serve as acting judges of the Labour Court for such a period as the Minister of Justice in each case may determine.

[Sub-s. (5) substituted by s. 42 *(a)* of Act 42 of 1996.]

(6) A judge of the Labour Court must-

*(a)*      (i)   be a judge of the High Court; or

[Sub-para. (i) amended by s. 12 *(c)* of Act 127 of 1998.]

    (ii)   be a person who is a *legal practitioner*; and

[Sub-para. (ii) substituted by s. 42 *(b)* of Act 42 of 1996.]

*(b)*   have knowledge, experience and expertise in labour law.

[Date of commencement of s. 153: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/154  Tenure, remuneration and terms and conditions of appointment of Labour Court judges

**154  Tenure, remuneration and terms and conditions of appointment of Labour Court judges**

(1) A judge of the Labour Court holds office until discharged from active service in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001).

[Sub-s. (1) substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(2) A judge of the Labour Court who is also a judge of the High Court may resign as a judge of the Labour Court by giving written notice to the President.

[Sub-s. (2) substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(3) ......

[Sub-s. (3) amended by s. 13 of Act 127 of 1998 and deleted by s. 55 (1) *(b)* of Act 10 of 2013.]

(4) Neither the tenure of office nor the *remuneration* and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 2001, is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Court.

[Sub-s. (4) amended by s. 13 of Act 127 of 1998 and substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(5) The Judges' Remuneration and Conditions of Employment Act, 2001, as applicable to a judge of the High Court, apply, read with the changes required by the context, to a judge of the Labour Court who is not a judge of the High Court.

[Sub-s. (5) amended by s. 43 *(a)* of Act 42 of 1996 and by s. 13 of Act 127 of 1998 and substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(6) A person who has been appointed a judge of the Labour Court and who is not a judge of the High Court may perform the functions of a judge of the Labour Court only after having taken an oath or made a solemn affirmation in the *prescribed* form before the Judge President of the Labour Court.

[Sub-s. (6) amended by s. 13 of Act 127 of 1998.]

(7) *......*

[Sub-s. (7) amended by s. 13 of Act 127 of 1998 and deleted by s. 55 (1) *(b)* of Act 10 of 2013.]

(8) Despite the expiry of the period of a person's appointment as a judge of the Labour Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only-

*(a)*   for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person's appointment or which, having been so disposed of before or after the expiry of that person's appointment, have been re-opened; and

*(b)*   for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.

[Sub-s. (8) added by s. 43 *(b)* of Act 42 of 1996.]

(9) The provisions of subsections (4), (5), (6) and (8) apply, read with the changes required by the context, to acting judges appointed in terms of section 153 (5).

[Sub-s. (9) added by s. 43 *(b)* of Act 42 of 1996 and substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(10) *(a)* Any judge of the Labour Court holding office immediately before the commencement of Schedule 2 of the Superior Courts Act, 2013, who is not a judge of the High Court, may not later than 30 days after such commencement, inform the Minister of Justice in writing that he or she chooses to continue in office in terms of this section as it existed prior to such commencement.

*(b)* Any judge referred to in paragraph *(a)* who does not choose to continue in office in terms of this section as it existed prior to such commencement-

     (i)   shall continue to hold that office in accordance with this section as amended by Schedule 2 to the Superior Courts Act, 2013; and

    (ii)   his or her period of service as a Labour Court judge prior to such commencement shall, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001, be deemed to be active service as contemplated in that Act.

[Sub-s. (10) added by s. 55 (1) *(b)* of Act 10 of 2013.]

[Date of commencement of s. 154: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/155  Officers of Labour Court

**155  Officers of Labour Court**

(1) The Minister of Justice, subject to the laws governing the *public service*, must appoint the following officers of the Labour Court-

*(a)*   a person who has experience and expertise in labour law and administration to be the registrar of the Labour Court; and

*(b)*   one or more deputy registrars and so many other officers of the Labour Court as the administration of justice requires.

(2) *(a)* The officers of the Labour Court, under the supervision and control of the registrar of that Court must perform the administrative functions of the Labour Court.

*(b)* A deputy registrar of the Labour Court may perform any of the functions of the registrar of that Court that have been delegated generally or specifically to the deputy registrar.

(3) The deputy registrar of the Labour Court or, if there is more than one, the most senior will act as registrar of the Labour Court whenever-

*(a)*   the registrar is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of registrar; or

*(b)*   the office of registrar is vacant.

(4) The officers of the Labour Court must provide secretarial and administrative assistance to the Rules Board for Labour Courts.

[Date of commencement of s. 155: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/156  Area of jurisdiction and seat of Labour Court

**156  Area of jurisdiction and seat of Labour Court**

(1) The Labour Court has jurisdiction in all the provinces of the *Republic*.

(2) The Minister of Justice, acting on the advice of *NEDLAC*, must determine the seat of the Labour Court.

(3) The functions of the Labour Court may be performed at any place in the *Republic*.

[Date of commencement of s. 156: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/157  Jurisdiction of Labour Court

**157  Jurisdiction of Labour Court**

(1) Subject to the Constitution and section 173, and except where *this Act* provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of *this Act* or in terms of any other law are to be determined by the Labour Court.

(2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-

*(a)*   employment and from labour relations;

*(b)*   any *dispute* over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and

*(c)*   the application of any law for the administration of which the *Minister* is responsible.

[Sub-s. (2) substituted by s. 14 of Act 127 of 1998.]

(3) Any reference to the court in the Arbitration Act, 1965 ([Act 42 of 1965](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a42y1965%2527%255d&xhitlist_md=target-id=0-0-0-21751)), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any *dispute* that may be referred to arbitration in terms of *this Act*.

(4) *(a)* The Labour Court may refuse to determine any *dispute*, other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the *dispute* through conciliation.

*(b)* A certificate issued by a commissioner or a *council* stating that a *dispute* remains unresolved is sufficient proof that an attempt has been made to resolve that *dispute* through conciliation.

(5) Except as provided for in section 158 (2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if *this Act* or any*employment law* requires the *dispute* to be resolved through arbitration.

[Sub-s. (5) substituted by s. 25 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/158  Powers of Labour Court

**158  Powers of Labour Court**

(1) The Labour Court may-

*(a)*   make any appropriate order, including-

     (i)   the grant of urgent interim relief;

    (ii)   an interdict;

    (iii)   an order directing the performance of any particular act which order, when implemented, will remedy a wrong and give effect to the primary objects of *this Act*;

   (iv)   a declaratory order;

    (v)   an award of compensation in any circumstances contemplated in *this Act*;

   (vi)   an award of damages in any circumstances contemplated in *this Act*; and

   (vii)   an order for costs;

*(b)*   order compliance with any provision of *this Act* or any *employment law*;

[Para. *(b)* substituted by s. 26 *(a)* of Act 6 of 2014.]

*(c)*   make any arbitration award or any settlement agreement an order of the Court;

[Para. *(c)* substituted by s. 36 *(a)* of Act 12 of 2002.]

*(d)*   request the Commission to conduct an investigation to assist the Court and to submit a report to the Court;

*(e)*   determine a *dispute* between a registered *trade union* or registered *employers' organisation* and any one of the members or applicants for membership thereof, about any alleged non-compliance with-

     (i)   the constitution of that *trade union* or *employers*' *organisation* (as the case may be); or

    (ii)   section 26 (5) *(b)*;

[Para. *(e)* substituted by s. 44 of Act 42 of 1996.]

*(f)*   subject to the provisions of *this Act*, condone the late filing of any document with, or the late referral of any *dispute* to, the Court;

*(g)*   subject to section 145, review the performance or purported performance of any function provided for in *this Act* on any grounds that are permissible in law;

[Para. *(g)* substituted by s. 36 *(b)* of Act 12 of 2002.]

*(h)*   review any decision taken or any act performed by the State in its capacity as employer, on such grounds as are permissible in law;

*(i)*   hear and determine any appeal in terms of [section 35](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a85y1993s35%2527%255d&xhitlist_md=target-id=0-0-0-230541) of the Occupational Health and Safety Act, 1993 ([Act 85 of 1993](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a85y1993%2527%255d&xhitlist_md=target-id=0-0-0-5511)); and

*(j)*   deal with all matters necessary or incidental to performing its functions in terms of *this Act* or any other law.

(1A) For the purposes of subsection (1) *(c)*, a settlement agreement is a written agreement in settlement of a *dispute* that a party has the right to refer to arbitration or to the Labour Court, excluding a *dispute* that a party is only entitled to refer to arbitration in terms of section 22 (4), 74 (4) or 75 (7).

[Sub-s. (1A) inserted by s. 36 *(c)* of Act 12 of 2002.]

(1B) The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any *bargaining council* in terms of the provisions of *this Act* before the issue in dispute has been finally determined by the Commission or the *bargaining council,* as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.

[Sub-s. (1B) inserted by s. 26 *(b)* of Act 6 of 2014.]

(2) If at any stage after a *dispute* has been referred to the Labour Court, it becomes apparent that the *dispute* ought to have been referred to arbitration, the Court may-

*(a)*   stay the proceedings and refer the *dispute* to arbitration; or

*(b)*   if it is expedient to do so, continue with the proceedings, in which case the Court may only make any order that a commissioner or arbitrator would have been entitled to make: Provided that in relation to the question of costs, the provisions of section 162 (2) *(a)* are applicable.

[Para. *(b)* substituted by s. 26 *(c)* of Act 6 of 2014.]

(3) The reference to 'arbitration' in subsection (2) must be interpreted to include arbitration-

*(a)*   under the auspices of the Commission;

*(b)*   under the auspices of an accredited *council*;

*(c)*   under the auspices of an accredited agency;

*(d)*   in accordance with a private *dispute* resolution procedure; or

*(e)*   if the *dispute* is about the interpretation or application of a *collective agreement*.

(4) *(a)* The Labour Court, on its own accord or, at the request of any party to the proceedings before it may reserve for the decision of the Labour Appeal Court any question of law that arises in those proceedings.

*(b)* A question may be reserved only if it is decisive for the proper adjudication of the *dispute*.

*(c)* Pending the decision of the Labour Appeal Court on any question of law reserved in terms of paragraph *(a)*, the Labour Court may make any interim order.

(5) A judgment of the Labour Court must be handed down as soon as reasonably possible.

[Sub-s. (5) added by s. 26 *(d)* of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/159  Rules Board for Labour Courts and rules for Labour Court

**159  Rules Board for Labour Courts and rules for Labour Court**

(1) The Rules Board for Labour Courts is hereby established.

(2) The Board consists of-

*(a)*   the Judge President of the Labour Court, who is the chairperson;

*(b)*   the Deputy Judge President of the Labour Court; and

*(c)*   the following persons, to be appointed for a period of three years by the Minister of Justice, acting on the advice of *NEDLAC*-

     (i)   a practising advocate with knowledge, experience and expertise in labour law;

    (ii)   a practising attorney with knowledge, experience and expertise in labour law;

    (iii)   a person who represents the interests of *employees*;

   (iv)   a person who represents the interests of employers; and

    (v)   a person who represents the interests of the State.

(3) The Board may make rules to regulate the conduct of proceedings in the Labour Court, including, but not limited to-

*(a)*   the process by which proceedings are brought before the Court, and the form and content of that process;

*(b)*   the period and process for noting appeals;

*(c)*   the taxation of bills of costs;

*(d)*   after consulting with the Minister of Finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of the Labour Court, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and

*(e)*   all other matters incidental to performing the functions of the Court, including any matters not expressly mentioned in this subsection that are similar to matters about which the Rules Board for Courts of Law may make rules in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985).

[Para. *(e)* amended by s. 45 *(a)* of Act 42 of 1996.]

(4) The Board may alter or repeal any rule that it makes.

(5) Five members of the Board are a quorum at any meeting of the Board.

(6) The Board must publish any rules that it makes, alters or repeals in the *Government Gazette*.

(7) *(a)* A member of the Board who is a judge of the High Court may be paid an allowance determined in terms of subsection (9) in respect of the performance of the functions of a member of the Board.

*(b)* Notwithstanding anything to the contrary in any other law, the payment, in terms of paragraph *(a)*, of an allowance to a member of the Board who is a judge of the High Court, will be in addition to any salary or allowances, including allowances for reimbursement of travelling and subsistence expenses, that is paid to that person in the capacity of a judge of that Court.

[Sub-s. (7) added by s. 45 *(b)* of Act 42 of 1996 and amended by s. 15 of Act 127 of 1998.]

(8) A member of the Board who is not a judge of the High Court nor subject to the Public Service Act, 1994, will be entitled to the remuneration, allowances (including allowances for reimbursement of travelling and subsistence expenses), benefits and privileges determined in terms of subsection (9).

[Sub-s. (8) added by s. 45 *(b)* of Act 42 of 1996 and amended by s. 15 Act 127 of 1998.]

(9) The remuneration, allowances, benefits and privileges of the members of the Board-

*(a)*   are determined by the Minister of Justice with the concurrence of the Minister of Finance;

*(b)*   may vary according to rank, functions to be performed and whether office is held in a full-time or part-time capacity; and

*(c)*   may be varied by the Minister of Justice under any law in respect of any person or category of persons.

[Sub-s. (9) added by s. 45 *(b)* of Act 42 of 1996.]

(10) *(a)* Pending publication in the *Government Gazette* of rules made by the Board, matters before the Court will be dealt with in accordance with such general directions as the Judge President of the Labour Court, or any other judge or judges of that Court designated by the Judge President for that purpose, may consider appropriate and issue in writing;

*(b)* Those directions will cease to be of force on the date of the publication of the Board's rules in the *Government Gazette*, except in relation to proceedings already instituted before that date. With regard to those proceedings, those directions will continue to apply unless the Judge President of the Labour Court has withdrawn them in writing.

[Sub-s. (10) added by s. 45 *(b)* of Act 42 of 1996.]

(11) The Judge President must ensure that the Rules Board for Labour Courts meet at least once every two years to review the rules of the Labour Court.

[Sub-s. (11) added by s. 27 of Act 6 of 2014.]

[Date of commencement of s. 159: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/160  Proceedings of Labour Court to be carried on in open court

**160  Proceedings of Labour Court to be carried on in open court**

(1) The proceedings in the Labour Court must be carried on in open court.

(2) Despite subsection (1), the Labour Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a court of a provincial division of the Supreme Court could have done so.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/161  Representation before Labour Court

**161  Representation before Labour Court**

(1) In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented only by-

*(a)*   a *legal practitioner*;

*(b)*   a *director* or *employee* of the party;

*(c)*   any *office-bearer* or *official* of that party's registered *trade union* or registered *employers' organisation*;

[Para. *(c)* substituted by s. 28 *(a)* of Act 6 of 2014.]

*(d)*   a designated agent or official of a *council*; or

[Para. *(d)* substituted by s. 37 of Act 12 of 2002.]

*(e)*   an official of the Department of Labour.

[Sub-s. (1), previously s. 161, renumbered by s. 28 *(b)* of Act 6 of 2014.]

(2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs *(b)* to *(e)* of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court.

[Sub-s. (2) added by s. 28 *(b)* of Act 6 of 2014.]

[S. 161 substituted by s. 16 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/162  Costs

**162  Costs**

(1) The Labour Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Court may take into account-

*(a)*   whether the matter referred to the Court ought to have been referred to arbitration in terms of *this Act* and, if so, the extra costs incurred in referring the matter to the Court; and

*(b)*   the conduct of the parties-

     (i)   in proceeding with or defending the matter before the Court; and

    (ii)   during the proceedings before the Court.

(3) The Labour Court may order costs against a party to the *dispute* or against any person who represented that party in those proceedings before the Court.

**Document 172 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/163  Service and enforcement of orders of Labour Court

**163  Service and enforcement of orders of Labour Court**

Any decision, judgment or order of the Labour Court may be *served* and executed as if it were a decision, judgment or order of the High Court.

[S. 163 amended by s. 17 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/164  Seal of Labour Court

**164  Seal of Labour Court**

(1) The Labour Court for use as occasion may require will have an official seal of a design prescribed by the President by proclamation in the*Government Gazette*.

(2) The registrar of the Labour Court must keep custody of the official seal of the Labour Court.

**Document 174 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/165  Variation and rescission of orders of Labour Court

**165  Variation and rescission of orders of Labour Court**

The Labour Court, acting of its own accord or on the application of any affected party may vary or rescind a decision, judgment or order-

*(a)*   erroneously sought or erroneously granted in the absence of any party affected by that judgment or order;

*(b)*   in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or

*(c)*   granted as a result of a mistake common to the parties to the proceedings.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part D Labour Court (ss 151-166)/166  Appeals against judgment or order of Labour Court

**166  Appeals against judgment or order of Labour Court**

(1) Any party to any proceedings before the Labour Court may apply to the Labour Court for leave to appeal to the Labour Appeal Court against any final judgment or final order of the Labour Court.

(2) If the application for leave to appeal is refused, the applicant may petition the Labour Appeal Court for leave to appeal.

(3) Leave to appeal may be granted subject to any conditions that the Court concerned may determine.

(4) Subject to the Constitution and despite any other law, an appeal against any final judgment or final order of the Labour Court in any matter in respect of which the Labour Court has exclusive jurisdiction may be brought only to the Labour Appeal Court.

**Document 176 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/167  Establishment and status of Labour Appeal Court

***Part E  
Labour Appeal Court (ss 167-183)***

**167  Establishment and status of Labour Appeal Court**

(1) The Labour Appeal Court is hereby established as a court of law and equity.

(2) The Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court in respect of the matters within its exclusive jurisdiction.

(3) The Labour Appeal Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which the Supreme Court of Appeal has in relation to matters under its jurisdiction.

[Sub-s. (3) amended by s. 18 of Act 127 of 1998.]

(4) The Labour Appeal Court is a court of record.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/168  Composition of Labour Appeal Court

**168  Composition of Labour Appeal Court**

(1) The Labour Appeal Court consists of-

*(a)*   the Judge President of the Labour Court, who by virtue of that office is Judge President of the Labour Appeal Court;

*(b)*   the Deputy Judge President, who by virtue of that office is Deputy Judge President of the Labour Appeal Court; and

*(c)*   such number of other judges who are judges of the Labour Court or High Court, as may be required for the effective functioning of the Labour Appeal Court.

[Para. *(c)* substituted by s. 46 of Act 42 of 1996, amended by s. 19 of Act 127 of 1998 and substituted by s. 29 of Act 6 of 2014.]

(2) The Labour Appeal Court is constituted before any three judges whom the Judge President designates from the panel of judges contemplated in subsection (1).

(3) No judge of the Labour Appeal Court may sit in the hearing of an appeal against a judgment or an order given in a case that was heard before that judge.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/169  Appointment of other judges of Labour Appeal Court

**169  Appointment of other judges of Labour Appeal Court**

(1) The President, acting on the advice of *NEDLAC* and the Judicial Service Commission, after consultation with the Minister of Justice and the Judge President of the Labour Appeal Court, must appoint the judges of the Labour Appeal Court referred to in section 168 (1) *(c)*.

[Sub-s. (1) amended by s. 20 *(a)* of Act 127 of 1998.]

(2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the High Court to serve as acting judges of the Labour Appeal Court.

[Sub-s. (2) amended by s. 20 *(b)* of Act 127 of 1998.]

[S. 169 substituted by s. 47 of Act 42 of 1996.]

[Date of commencement of s. 169: 1 January 1996.]

**Document 179 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/170  Tenure, remuneration and terms and conditions of appointment of Labour Appeal Court judges

**170  Tenure, remuneration and terms and conditions of appointment of Labour Appeal Court judges**

(1) A judge of the Labour Appeal Court must be appointed for a fixed term determined by the President at the time of appointment.

(2) A judge of the Labour Appeal Court may resign from that office by giving written notice to the President.

[Sub-s. (2) substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(3) *(a)* A judge of the Labour Appeal Court holds office until-

     (i)   the judge's term of office in the Labour Appeal Court ends;

    (ii)   the judge's resignation takes effect;

   (iii)   the judge is removed from office;

   (iv)   the judge ceases to be a judge of the High Court; or

    (v)   the judge dies.

*(b)* The Judge President and the Deputy Judge President of the Labour Appeal Court hold their offices for as long as they hold their respective offices of Judge President and Deputy Judge President of the Labour Court.

[Sub-s. (3) amended by s. 21 of Act 127 of 1998.]

(4) Neither the tenure of office nor the *remuneration* and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001), is affected by that judge's appointment and concurrent tenure of office as a judge of the Labour Appeal Court.

[Sub-s. (4) amended by s. 21 of Act 127 of 1998 and substituted by s. 55 (1) *(b)* of Act 10 of 2013.]

(5) ......

[Sub-s. (5) amended by s. 21 of Act 127 of 1998 and deleted by s. 55 (1) *(b)* of Act 10 of 2013.]

(6) Despite the expiry of the period of a person's appointment as a judge of the Labour Appeal Court, that person may continue to perform the functions of a judge of that Court, and will be regarded as such in all respects, only-

*(a)*   for the purposes of disposing of any proceedings in which that person has taken part as a judge of that Court and which are still pending upon the expiry of that person's appointment or which, having been so disposed of before or after the expiry of that person's appointment, have been re-opened; and

*(b)*   for as long as that person will be necessarily engaged in connection with the disposal of the proceedings so pending or re-opened.

[Sub-s. (6) added by s. 48 of Act 42 of 1996.]

(7) The provisions of subsections (2) to (6) apply, read with the changes required by the context, to acting judges appointed in terms of section 169 (2).

[Sub-s. (7) added by s. 48 of Act 42 of 1996.]

[Date of commencement of s. 170: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/171  Officers of Labour Appeal Court

**171  Officers of Labour Appeal Court**

(1) The registrar of the Labour Court is also the registrar of the Labour Appeal Court.

(2) Each of the deputy registrars and other officers of the Labour Court also holds the corresponding office in relation to the Labour Appeal Court.

(3) *(a)* The officers of the Labour Appeal Court, under the supervision and control of the registrar of that Court must perform the administrative functions of the Labour Appeal Court.

*(b)* A deputy registrar of the Labour Appeal Court may perform any of the functions of the registrar of that Court that have been delegated generally or specifically to the deputy registrar.

(4) The deputy registrar of the Labour Appeal Court or, if there is more than one, the most senior will act as registrar of the Labour Appeal Court whenever-

*(a)*   the registrar is absent from the *Republic* or from duty, or for any reason is temporarily unable to perform the functions of registrar; or

*(b)*   the office of registrar is vacant.

[Date of commencement of s. 171: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/172  Area of jurisdiction and seat of Labour Appeal Court

**172  Area of jurisdiction and seat of Labour Appeal Court**

(1) The Labour Appeal Court has jurisdiction in all the provinces of the *Republic*.

(2) The seat of the Labour Court is also the seat of the Labour Appeal Court.

(3) The functions of the Labour Appeal Court may be performed at any place in the *Republic*.

[Date of commencement of s. 172: 1 January 1996.]

**Document 182 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/173  Jurisdiction of Labour Appeal Court

**173  Jurisdiction of Labour Appeal Court**

(1) Subject to the Constitution and despite any other law, the Labour Appeal Court has exclusive jurisdiction-

*(a)*   to hear and determine all appeals against the final judgments and the final orders of the Labour Court; and

*(b)*   to decide any question of law reserved in terms of section 158 (4).

(2) ......

[Sub-s. (2) deleted by s. 22 *(a)* of Act 127 of 1998.]

(3) ......

[Sub-s. (3) amended by s. 22 *(b)* of Act 127 of 1998 and deleted by s. 38 of Act 12 of 2002.]

(4) A decision to which any two judges of the Labour Appeal Court agree is the decision of the Court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/174  Powers of Labour Appeal Court on hearing of appeals

**174  Powers of Labour Appeal Court on hearing of appeals**

The Labour Appeal Court has the power-

*(a)*   on the hearing of an appeal to receive further evidence, either orally or by deposition before a person appointed by the Labour Appeal Court, or to remit the case to the Labour Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Labour Appeal Court considers necessary; and

*(b)*   to confirm, amend or set aside the judgment or order that is the subject of the appeal and to give any judgment or make any order that the circumstances may require.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/175  Labour Appeal Court may sit as court of first instance

**175  Labour Appeal Court may sit as court of first instance**

Despite the provisions of this Part, the Judge President may direct that any matter before the Labour Court be heard by the Labour Appeal Court sitting as a court of first instance, in which case the Labour Appeal Court is entitled to make any order that the Labour Court would have been entitled to make.

**Document 185 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/176  Rules for Labour Appeal Court

**176  Rules for Labour Appeal Court**

(1) The Rules Board for Labour Courts established by section 159 may make rules to regulate the conduct of proceedings in the Labour Appeal Court.

(2) The Board has all the powers referred to in section 159 when it makes rules for the Labour Appeal Court.

(3) The Board must publish in the *Government Gazette* any rules that it makes, alters or repeals.

[Date of commencement of s. 176: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/177  Proceedings of Labour Appeal Court to be carried on in open court

**177  Proceedings of Labour Appeal Court to be carried on in open court**

(1) The proceedings in the Labour Appeal Court must be carried on in open court.

(2) Despite subsection (1), the Labour Appeal Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a High Court could have done so.

[Sub-s. (2) amended by s. 23 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/178  Representation before Labour Appeal Court

**178  Representation before Labour Appeal Court**

Any person who, in terms of section 161, may appear before the Labour Court has the right to appear before the Labour Appeal Court.

**Document 188 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/179  Costs

**179  Costs**

(1) The Labour Appeal Court may make an order for the payment of costs, according to the requirements of the law and fairness.

(2) When deciding whether or not to order the payment of costs, the Labour Appeal Court may take into account-

*(a)*   whether the matter referred to the Court should have been referred to arbitration in terms of *this Act* and, if so, the extra costs incurred in referring the matter to the Court; and

*(b)*   the conduct of the parties-

     (i)   in proceeding with or defending the matter before the Court; and

    (ii)   during the proceedings before the Court.

(3) The Labour Appeal Court may order costs against a party to the *dispute* or against any person who represented that party in those proceedings before the Court.

**Document 189 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/180  Service and enforcement of orders

**180  Service and enforcement of orders**

Any decision, judgment or order of the Labour Appeal Court may be *served* and executed as if it were a decision, judgment or order of the High Court.

[S. 180 amended by s. 24 of Act 127 of 1998.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/181  Seal of Labour Appeal Court

**181  Seal of Labour Appeal Court**

(1) The Labour Appeal Court for use as the occasion may require will have an official seal of a design prescribed by the President by proclamation in the *Government Gazette*.

(2) The registrar of the Labour Appeal Court must keep custody of the official seal of the Labour Appeal Court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/182  Judgments of Labour Appeal Court binding on Labour Court

**182  Judgments of Labour Appeal Court binding on Labour Court**

A judgment of the Labour Appeal Court is binding on the Labour Court.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part E Labour Appeal Court (ss 167-183)/183  Labour Appeal Court final court of appeal

**183  Labour Appeal Court final court of appeal**

Subject to the Constitution and despite any other law, no appeal lies against any decision, judgment or order given by the Labour Appeal Court in respect of-

*(a)*   any appeal in terms of section 173 (1) *(a)*;

*(b)*   its decision on any question of law in terms of section 173 (1) *(b)*; or

*(c)*   any judgment or order made in terms of section 175.

**Document 193 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VII DISPUTE RESOLUTION (ss 112-184)/Part F General provisions applicable to courts established by this Act (s 184)/184  General provisions applicable to courts established by this Act

***Part F  
General provisions applicable to courts established by this Act (s 184)***

**184  General provisions applicable to courts established by this Act**

Sections 5,[38](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343393)  18,[39](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343397)  25,[40](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343401)  30,[41](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343405)  31,[42](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343409)  39[43](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343413), 40[44](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343417)  and 42[45](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343421)  of the Supreme Court Act, 1959 (Act 59 of 1959) apply, read with the changes required by the context, in relation to the Labour Court, or the Labour Appeal Court, or both, to the extent that they are not inconsistent with *this Act*.

[38](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn38_ref%2527%255d&xhitlist_md=target-id=0-0-0-343391)  Scope and execution of process

[39](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn39_ref%2527%255d&xhitlist_md=target-id=0-0-0-343395)  Certified copies of court records admissible as evidence

[40](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn40_ref%2527%255d&xhitlist_md=target-id=0-0-0-343399)  No process to be issued against judge except with consent of court

[41](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn41_ref%2527%255d&xhitlist_md=target-id=0-0-0-343403)  Manner of securing attendance of witnesses or the production of any document

[42](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn42_ref%2527%255d&xhitlist_md=target-id=0-0-0-343407)  Manner in which witness may be dealt with on refusal to give evidence or produce document

[43](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn43_ref%2527%255d&xhitlist_md=target-id=0-0-0-343411)  Property not liable to be seized in execution

[44](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn44_ref%2527%255d&xhitlist_md=target-id=0-0-0-343415)  Offences relating to execution

[45](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s184fn45_ref%2527%255d&xhitlist_md=target-id=0-0-0-343419)  Witness fees

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)

**CHAPTER VIII  
UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)**

[Heading substituted by s. 39 of Act 12 of 2002.]

**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.

[S. 185 substituted by s. 40 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/186  Meaning of dismissal and 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;

[Para. *(a)* substituted by s. 30 *(a)* of Act 6 of 2014.]

*(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*;

[Para. *(b)* substituted by s. 30 *(a)* of Act 6 of 2014.]

*(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)   ......

[Sub-para. (ii) deleted by s. 95 (4) of [Act 75 of 1997](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a75y1997%2527%255d&xhitlist_md=target-id=0-0-0-5563).]

*(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

[Para. *(e)* substituted by s. 30 *(b)* of Act 6 of 2014.]

*(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.

[Para. *(f)* added by s. 41 *(b)* of Act 12 of 2002 and substituted by s. 30 *(b)* of Act 6 of 2014.]

(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)*   the 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 re-instate 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 26 of 2000](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a26y2000%2527%255d&xhitlist_md=target-id=0-0-0-7683)), on account of the *employee* having made a protected disclosure defined in that Act.

[Sub-s. (2) added by s. 41 *(c)* of Act 12 of 2002.]

[S. 186 amended by s. 41 *(a)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/187  Automatically unfair dismissals

**187  Automatically unfair dismissals**

(1) A *dismissal* is automatically unfair if the employer, in dismissing the *employee*, acts contrary to section 5[46](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343441)  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;[47](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343445)

*(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;

[Para. *(c)* substituted by s. 31 of Act 6 of 2014.]

*(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

[Para. *(g)* added by s. 42 of Act 12 of 2002.]

*(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.

[Para. *(h)* added by s. 42 of Act 12 of 2002.]

(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.

[46](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s187fn46_ref%2527%255d&xhitlist_md=target-id=0-0-0-343439)  Section 5 confers protections relating to the right to freedom of association and on members of workplace forums

'A person who takes part in protest action or in any conduct in contemplation or in furtherance of protest action that complies with subsection (1), enjoys the protections conferred by section 67.'

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/188  Other unfair dismissals

**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*.[48](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343453)

[48](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s188fn48_ref%2527%255d&xhitlist_md=target-id=0-0-0-343451)  See Schedule 8, the Code of Good Practice: Dismissal

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/188A  Inquiry by arbitrator

**188A  Inquiry by arbitrator**

[Heading substituted by s. 32 *(a)* of Act 6 of 2014.]

(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*.

[Sub-s. (1) substituted by s. 32 *(b)* of Act 6 of 2014.]

(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.

[Sub-s. (4) substituted by s. 32 *(c)* of Act 6 of 2014.]

(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

[Para. *(c)* substituted by s. 32 *(e)* of Act 6 of 2014.]

*(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.

[Para. *(d)* substituted by s. 32 *(e)* of Act 6 of 2014.]

[Sub-s. (5) amended by s. 32 *(d)* of Act 6 of 2014.]

(6) Section 138, read with the changes required by the context, applies to any inquiry in terms of this section.

[Sub-s. (6) substituted by s. 32 *(f)* of Act 6 of 2014.]

(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*;

[Para. *(a)* substituted by s. 32 *(g)* of Act 6 of 2014.]

*(b)*   the *director* of the accredited agency, if the inquiry is held under the auspices of an accredited agency.

[Para. *(b)* substituted by s. 32 *(g)* of Act 6 of 2014.]

(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.

[Sub-s. (8) substituted by s. 32 *(h)* of Act 6 of 2014.]

(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*.

[Sub-s. (9) substituted by s. 32 *(h)* of Act 6 of 2014.]

(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.

[Sub-s. (10) substituted by s. 32 *(h)* of Act 6 of 2014.]

(11) Despite subsection (1), if an *employee* alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 ([Act 26 of 2000](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a26y2000%2527%255d&xhitlist_md=target-id=0-0-0-7683)), 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.

[Sub-s. (11) added by s. 32 *(i)* of Act 6 of 2014.]

(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 26 of 2000](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a26y2000%2527%255d&xhitlist_md=target-id=0-0-0-7683)).

[Sub-s. (12) added by s. 32 *(i)* of Act 6 of 2014.]

[S. 188A inserted by s. 43 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/189  Dismissals based on operational requirements

**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 issue a written notice inviting the other consulting party to consult with it 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.

[S. 189 substituted by s. 44 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/189A  Dismissals based on operational requirements by employers with more than 50 employees

**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.

[Para. *(d)* added by s. 33 *(a)* of Act 6 of 2014.]

(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).

(10) *(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.

(11) 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-

     (i)   section 64 (1) *(a)* does not apply if a facilitator is appointed in terms of this section;

    (ii)   an employer may only *lock out* in respect of a *dispute* in which a *strike* notice has been issued;

*(b)*   subsection (2) *(a)*, section 65 (1) and (3);

*(c)*   section 66 except that written notice of any proposed secondary strike must be given at least 14 days prior to the commencement of the *strike*;

*(d)*   sections 67, 68, 69 and 76.

(12) *(a)* 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.

*(b)* 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) *(a)* 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.

*(b)* The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph *(a)*.

(18) The Labour Court may not adjudicate a *dispute* about the procedural fairness of a *dismissal* based on the employer's *operational requirements* in any *dispute* referred to it in terms of section 191 (5) *(b)* (ii).

(19) ......

[Sub-s. (19) deleted by s. 33 *(b)* of Act 6 of 2014.]

(20) 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 byProclamation 103 of 1994).

[S. 189A inserted by s. 45 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/190  Date of dismissal

**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.

[Para. *(d)* added by s. 34 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/191  Disputes about unfair dismissals and unfair labour practices

**191  Disputes about unfair dismissals and unfair labour practices**[**49**](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343677)

(1) *(a)* If there is a *dispute* about the fairness of a *dismissal*, or a *dispute* about an unfair labour practice, the dismissed *employee* or the*employee* alleging the unfair labour practice may refer the *dispute* in writing 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.

[Sub-s. (1) substituted by s. 46 *(b)* of Act 12 of 2002.]

(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.

[Sub-s. (2) substituted by s. 46 *(c)* of Act 12 of 2002.]

(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.

[Sub-s. (2A) inserted by s. 46 *(d)* of Act 12 of 2002.]

(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;

[Sub-para. (ii) substituted by s. 46 *(e)* of Act 12 of 2002.]

    (iii)   the *employee* does not know the reason for *dismissal*; or

   (iv)   the *dispute* concerns an unfair labour practice; or

[Sub-para. (iv) added by s. 46 *(f)* of Act 12 of 2002.]

*(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.

[Sub-s. (5) amended by s. 35 *(a)* of Act 6 of 2014.]

(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.

[Sub-s. (5A) inserted by s. 46 *(g)* of Act 12 of 2002.]

(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.

[Sub-s. (6) substituted by s. 46 *(h)* of Act 12 of 2002.]

(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 good cause shown.

[Sub-s. (11) added by s. 25 of Act 127 of 1998.]

(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.

[Sub-s. (12) added by s. 46 *(i)* of Act 12 of 2002 and substituted by s. 35 *(b)* of Act 6 of 2014.]

(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)*.

[Sub-s. (13) added by s. 46 *(i)* of Act 12 of 2002.]

[S. 191 amended by s. 46 *(a)* of Act 12 of 2002.]

[49](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s191fn49_ref%2527%255d&xhitlist_md=target-id=0-0-0-343675)  See flow diagrams 10, 11, 12 and 13 in Schedule 4

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/192  Onus in dismissal disputes

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/193  Remedies for unfair dismissal and unfair labour practice

**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.[50](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343741)

(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.

[Sub-s. (4) added by s. 47 *(b)* of Act 12 of 2002.]

[S. 193 amended by s. 47 *(a)* of Act 12 of 2002.]

[50](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s193fn50_ref%2527%255d&xhitlist_md=target-id=0-0-0-343739)  The Court, for example, in the case of a dismissal that constitutes an act of discrimination may wish to issue an interdict obliging the employer to stop the discriminatory practice in addition to one of the other remedies it may grant

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/194  Limits on 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*.

[Sub-s. (1) substituted by s. 48 *(a)* of Act 12 of 2002.]

(2) ......

[Sub-s. (2) deleted by s. 48 *(b)* of Act 12 of 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*.

[Sub-s. (4) added by s. 48 *(c)* of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/195  Compensation is in addition to any other amount

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/196  ......

**196  ......**

[S. 196 repealed by s. 95 (5) of [Act 75 of 1997](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a75y1997%2527%255d&xhitlist_md=target-id=0-0-0-5563).]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/197  Transfer of contract of employment

**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 24 of 1956), are satisfied.[51](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343751)

(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.

[S. 197 substituted by s. 49 of Act 12 of 2002.]

[51](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s197fn51_ref%2527%255d&xhitlist_md=target-id=0-0-0-343749)  Section 14 (1) *(c)* of the Pension Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable, and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in term of the fund rules, and to additional benefits which have become established practice

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/197A  Transfer of contract of employment in circumstances of insolvency

**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 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.[52](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343811)

(5) Section 197 (7), (8) and (9) does not apply to a transfer in accordance with this section.

[S. 197A inserted by s. 50 of Act 12 of 2002.]

[52](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s197afn52_ref%2527%255d&xhitlist_md=target-id=0-0-0-343809)  Section 14 (1) *(c)* of the Pension Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable, and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in terms of the fund rules, and to additional benefits which have become established practice

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE (ss 185-197B)/197B  Disclosure of information concerning insolvency

**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.

[S. 197B inserted by s. 50 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)

**CHAPTER IX  
REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)**

[Heading substituted by s. 36 of Act 6 of 2014.]

**198  Temporary employment service**

(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

[Para. *(a)* substituted by s. 37 *(a)* of Act 6 of 2014.]

*(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.

[Para. *(d)* substituted by s. 37 *(b)* of Act 6 of 2014.]

(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.

[Sub-s. (4A) inserted by s. 37 *(c)* of Act 6 of 2014.]

(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.

[Sub-s. (4B) inserted by s. 37 *(c)* of Act 6 of 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.

[Sub-s. (4C) inserted by s. 37 *(c)* of Act 6 of 2014.]

(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.

[Sub-s. (4D) inserted by s. 37 *(c)* of Act 6 of 2014.]

(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.

[Sub-s. (4E) inserted by s. 37 *(c)* of Act 6 of 2014.]

(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.

[Sub-s. (4F) inserted by s. 37 *(c)* of Act 6 of 2014.]

[Date of commencement of sub-s. (4F): to be proclaimed. [53](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-343865)]

(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)*   a temporary employment service;

*(b)*   a person employed by a temporary employment service; and

*(c)*   a temporary employment services 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* may agree to bind the following persons, who fall within their combined *registered scope*, to a *collective agreement*-

*(a)*   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 agreement*s 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.

[53](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s198fn53_ref%2527%255d&xhitlist_md=target-id=0-0-0-343863)  The coming into operation of sub-s. (4F) is suspended until the date when the applicable legislation contemplated in sub-s. (4F) enters into force - see s. 45 (2) of Act 6 of 2014 and Proc R87 in *GG* 38317 of 19 December 2014)

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/198A  Application of section 198 to employees earning below earnings threshold

**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.

[S. 198A inserted by s. 38 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/198B  Fixed-term contracts with employees earning below earnings threshold

**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.

[S. 198B inserted by s. 38 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/198C  Part-time employment of employees earning below earnings threshold

**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 *employee*s 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 *employee*s or that employs less than 50 *employee*s 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*.

[S. 198C inserted by s. 38 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/198D  General provisions applicable to sections 198A to 198C

**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 55 of 1998](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a55y1998%2527%255d&xhitlist_md=target-id=0-0-0-5529)).

(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).

[S. 198D inserted by s. 38 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/199  Contracts of employment may not disregard or waive collective agreements or arbitration awards

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/200  Representation of employees or employers

**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.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/200A  Presumption as to who is employee

**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 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.

[Sub-s. (1) amended by s. 39 of Act 6 of 2014.]

(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*.

[S. 200A inserted by s. 51 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/200B  Liability for employer's obligations

**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*.

[S. 200B inserted by s. 40 of Act 6 of 2014.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/201  Confidentiality

**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.

*(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)*.

[Sub-s. (3) substituted by s. 49 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/202  Service of documents

**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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/203  Codes of good practice

**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.

[Sub-s. (2A) inserted by s. 41 of Act 6 of 2014.]

(2B) Subsection (2A) applies to the amendment or replacement of an existing *code of good practice.*

[Sub-s. (2B) inserted by s. 41 of Act 6 of 2014.]

(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.

[Sub-s. (4) added by s. 52 of Act 12 of 2002.]

[Date of commencement of s. 203: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/204  Collective agreement, arbitration award or wage determination to be kept by employer

**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*.

[S. 204 amended by s. 53 of Act 12 of 2002.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/205  Records to be kept by employer

**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*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/206  Effect of certain defects and irregularities

**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.

[Date of commencement of s. 206: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/207  Ministers empowered to add and change to Schedules

**207  Ministers empowered to add and change to Schedules**

(1) The *Minister*, after consulting *NEDLAC*, by notice in the *Government Gazette* may change, replace or add to Schedules 2 and 4 to *this Act*and the Schedule envisaged in subsection (3).

[Sub-s. (1) substituted by s. 50 *(a)* of Act 42 of 1996 and by s. 26 *(a)* of Act 127 of 1998.]

(2) ......

[Sub-s. (2) deleted by s. 26 *(b)* of Act 127 of 1998.]

(3) The *Minister*, after consulting *NEDLAC*, by notice in the *Government Gazette*, may add to *this Act* a further Schedule containing a model constitution for a statutory *council*.

(4) The Minister for the Public Service and Administration, after consulting the Public Service Co-ordinating Bargaining Council, by notice in the*Government Gazette*, may add to *this Act* a further schedule regulating the establishment and the constitutions of *workplace forums* in the *public service*.

(5) The *Minister* may add to, change or replace any page header or footnote.

[Sub-s. (5) substituted by s. 50 *(b)* of Act 42 of 1996.]

(6) ......

[Sub-s. (6) substituted by s. 50 *(b)* of Act 42 of 1996 and deleted by s. 26 *(b)* of Act 127 of 1998.]

[Date of commencement of s. 207: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/208  Regulations

**208  Regulations**

The *Minister*, after consulting *NEDLAC* and when appropriate, the Commission, may make regulations not inconsistent with *this Act* relating to-

*(a)*   any matter that in terms of *this Act* may or must be *prescribed*; and

*(b)*   any matter that the *Minister* considers necessary or expedient to *prescribe* or have governed by regulation in order to achieve the primary objects of *this Act*.

[Date of commencement of s. 208: 1 January 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/208A  Delegations

**208A  Delegations**

(1) The *Minister*, in writing, may delegate to the Director General or any other officer of the Department of Labour any power, function or duty conferred or imposed upon the *Minister* in terms of *this Act*, except the powers, functions and duties contemplated in section 32 (but excluding subsection (6)), and sections 44, 207 and 208.

(2) A delegation in terms of subsection (1) does not limit or restrict the competence of the *Minister* to exercise or perform any power, function or duty that has been delegated.

(3) The *Minister* may make a delegation subject to any conditions or restrictions that are deemed fit.

(4) The *Minister* may at any time-

*(a)*   withdraw a delegation made in terms of subsection (1); and

*(b)*   withdraw or amend any decision made by a person in exercising a power or performing a function or duty delegated in terms of subsection (1).

[S. 208A inserted by s. 51 of Act 42 of 1996.]

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/209  This Act binds the State

**209  This Act binds the State**

*This Act* binds the State.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/210  Application of Act when in conflict with other laws

**210  Application of Act when in conflict with other laws**

(1) 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.

**Document 231 of 245  
  
Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/211  Amendment of laws

**211  Amendment of laws**

Each of the laws referred to in items 1 and 2 of Schedule 5 is hereby amended to the extent specified in those items.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/212  Repeal of laws, and transitional arrangements

**212  Repeal of laws, and transitional arrangements**

(1) Each of the laws referred to in the first two columns of Schedule 6 is hereby repealed to the extent specified opposite that law in the third column of that Schedule.

(2) The repeal of those laws does not affect any transitional arrangements made in Schedule 7.

(3) The transitional arrangements in Schedule 7 must be read and applied as substantive provisions of *this Act*.

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/213  Definitions

**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 Employment Act, 1997 ([Act 75 of 1997](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a75y1997%2527%255d&xhitlist_md=target-id=0-0-0-5563));

[Definition of 'Basic Conditions of Employment Act' substituted by s. 54 *(a)* of Act 12 of 2002.]

**'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;

[Definition of 'Commission' inserted by s. 42 *(a)* of Act 6 of 2014.]

**'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'**[54](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-344211)  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 63 of 2001](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a63y2001%2527%255d&xhitlist_md=target-id=0-0-0-7443));

[Para. *(a)* substituted by s. 42 *(b)* of Act 6 of 2014.]

*(b)*   the Skills Development Act, 1998 ([Act 97 of 1998](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a97y1998%2527%255d&xhitlist_md=target-id=0-0-0-5589));

*(c)*   the Employment Equity Act, 1998 ([Act 55 of 1998](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a55y1998%2527%255d&xhitlist_md=target-id=0-0-0-5529));

*(d)*   the Occupational Health and Safety Act, 1993 ([Act 85 of 1993](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a85y1993%2527%255d&xhitlist_md=target-id=0-0-0-5511));

*(e)*   the Compensation for Occupational Injuries and Diseases Act, 1993 ([Act 130 of 1993](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a130y1993%2527%255d&xhitlist_md=target-id=0-0-0-5513)); and

*(f)*   the Unemployment Insurance Contributions Act, 2002 ([Act 4 of 2002](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a4y2002%2527%255d&xhitlist_md=target-id=0-0-0-19913));

[Para. *(f)* added by s. 42 *(c)* of Act 6 of 2014.]

[Definition of 'employment law' inserted by s. 54 *(b)* of Act 12 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 Service;

**'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](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a35y1994s2%2527%255d&xhitlist_md=target-id=0-0-0-249781) of the National Economic, Development and Labour Council Act, 1994 ([Act 35 of 1994](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a35y1994%2527%255d&xhitlist_md=target-id=0-0-0-22545));

**'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 government components contemplated in section 7 (2) of the Public Service Act, 1994 (promulgated by Proclamation 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.

[Definition of 'public service' substituted by s. 54 *(c)* of Act 12 of 2002 and amended by s. 42 of Act 30 of 2007.]

**'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 council*s established for *sectors* in the *public service*, the *sector* designated by the Public Service Co-ordinating Bargaining Council in terms of section 37 (1);

[Para. *(b)* substituted by s. 54 *(d)* of Act 12 of 2002.]

*(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[55](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-344221); and

*(b)*   when used in the territorial sense, means the national territory of the Republic as defined in section 1 of the Constitution[56](http://ipproducts.jutalaw.co.za/nxt/view.asp?nxtscript=nxt/gateway.dll&nxthost=ipproducts.jutalaw.co.za&d=labl/22063/22064/22776(22777,22781,22789,22850,22871,22889,22912,22993,23010)&multi=1&pb=0&isrc=yes&f=viewselect&#end_0-0-0-344225);

**'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*.

[Definition of 'serve' substituted by s. 42 *(d)* of Act 6 of 2014.]

**'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 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 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;

[Para. *(a)* substituted by s. 54 *(e)* of Act 12 of 2002.]

*(b)*   ......

[Para. *(b)* deleted by s. 54 *(f)* of Act 12 of 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.

[54](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s213fn54_ref%2527%255d&xhitlist_md=target-id=0-0-0-344209)  'Employee' is given a different and specific meaning in section 78 in Chapter V

[55](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s213fn55_ref%2527%255d&xhitlist_md=target-id=0-0-0-344219)  The Constitution referred to is the Constitution of the Republic of South Africa, 1993, which was repealed by the Constitution of the Republic of South Africa, 1996. The reference in this Act will remain until such time as the legislature shall amend it

[56](http://ipproducts.jutalaw.co.za/nxt/foliolinks.asp?f=xhitlist&xhitlist_x=advanced&xhitlist_vpc=first&xhitlist_xsl=querylink.xsl&xhitlist_sel=title;path;content-type;home-title&xhitlist_d=%257blabl%257d&xhitlist_q=%255bfield%2520folio-destination-name:%2527a66y1995s213fn56_ref%2527%255d&xhitlist_md=target-id=0-0-0-344223)  The Constitution referred to is the Constitution of the Republic of South Africa, 1993, which was repealed by the Constitution of the Republic of South Africa, 1996. The reference in this Act will remain until such time as the legislature shall amend it

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Source:**Labour Library, Juta's/Statutes/Acts/LABOUR RELATIONS ACT 66 OF 1995/CHAPTER IX REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS (ss 198-214)/214  Short title and commencement

**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*.

[Sub-s. (2) substituted by s. 53 of Act 42 of 1996.]