
PROCEDURAL REQUIREMENTS FOR A STRIKE

The Labour Relations Act¹ (LRA) stipulates the procedural requirements for a strike, which should be followed in order for a strike action by employees to be protected. This procedure is regulated by section 64 of the Labour Relations Act, which sets two requirements that must be met for a strike to be protected.

Firstly, it requires that the issue in dispute should be referred for conciliation to a bargaining council with jurisdiction or to the CCMA². Secondly, that the required notice of the intended strike action be given to the other party to the dispute.

The Labour Relations Act provides that once the conciliation has failed, or 30 days period has lapsed from date on which the dispute was referred to the council or the CCMA for conciliation, the employees or their trade union must give the employer at least a 48 hours' notice if the employer is a private employer or a 7 days' notice if the employer is the State. The Act expressly stipulates that such notice must be in writing. Thus, a verbal strike notice will render the strike to be unprotected.

To whom should the notice be given?:

As a general rule, the strike notice must be given to the employer. However, section 64(1)(b) of the LRA provides for two exceptions to this general rule. In cases where the issue in dispute related to a collective agreement to be concluded in a bargaining council, notice must be given to that bargaining council, and where the employer is a member of an employers' organization that is a party to the dispute, notice must be given to the employers' organisation.

¹ Labour Relations Act 66 of 1995

² Commission for Conciliation, Mediation and Arbitration

What should be included in the notice?:

The Labour Relations Act does not stipulate what should be included in the notice. This has led to some confusion. For instance in **Tiger Wheels Babelegi v NUMSA (1999) 20 ILJ 677 (LC)**, the Labour Court had to deal with the issue regarding the timing of the strike. In this case the employees commenced 3 days after the day specified in the strike notice. The employer argued that by failing to resume their strike on the day specified in the notice, the employees have waived their right to strike.

The Labour Court held that it was not the intention of the legislature to deprive the employees of the right to strike for failing to act on a strike notice. The Court further held that non-commencement of the strike on the specified day does not necessarily defeat the purpose of the notice.

In **Western Platinum Ltd v National Union of Mineworkers and Others (2000) 21 ILJ 2502 (LC)**, the Court held that a strike notice which stated that the strike will commence on Wednesday, 15 March on or before 15:00 complied with the provisions of section 64 (1)(b) because the notice did indicate the date of commencement of the strike and gave the employer some indication of the time of the commencement of the strike although not the exact time.

Circumstances when parties may dispense with the strike notice requirement:

In conclusion section 64 (3) of the LRA provides for circumstances which parties may dispense with the strike notice requirement. It provides that the provisions of Section 64(1) are not applicable if –

- a) the parties to the dispute are members of the bargaining council and the dispute has been dealt with by the bargaining council in accordance with the Constitution.

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- b) the strike or lock-out conforms with the procedure in a collective agreement;
 - c) the employees strike in a response to a lockout by their employer that does not comply with the provisions of the LRA;
 - d) the employer's lockout is in response to the employees strike that does not comply with the provisions of the LRA;
 - e) the employee fails to comply with the provision of section 64(4) and section 64 (5) of the LRA.

Article by,

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