

Strikes: Know your rights as employer

Strikes are a last resort for employees after all possible remedies to a dispute of interest have been exhausted. These include issues that are not regarded as rights, such as wage increases. Employers are occasionally left uncertain when receiving a notice of intention to strike as to whether the strike is protected or unprotected. The distinction is key as an unprotected strike may lead to the dismissal of participants in the strike and interdicting of the union initiating such a strike as well as its members.

Strikes do not all look the same. Some strikes include picketing and a complete work stoppage. Others include a stayaway, return to work and then another stoppage. Another permutation is the go-slow, which is exactly as it sounds. All of these are forms of strikes, and none of them may be embarked upon without following a set procedure. Firstly, all internal mechanisms for breaking the dispute must have been exhausted. In negotiations about wage increases this would mean that the parties must have deadlocked. The union representing employees would usually refer the dispute to the CCMA, where a conciliation will take place. The sole aim of this conciliation is attempting to settle the dispute by way of agreement between the parties. Should this process not succeed, a strike certificate will be issued to the union. Normally the relevant CCMA commissioner will encourage parties to agree on picketing rules at this point. These include when and where picketing will take place at the workplace (if at all). After this, a strike certificate will be issued to the union.

A strike certificate allows a union to go on strike after providing 48 hours' notice to the employer. This would mean that a strike embarked upon after following the set-out procedure, would be a protected strike and union members cannot be disciplined for participating. They also do not have to be paid when they are not working (no work, no pay). It is important to note that unions carry the responsibility of marshalling pickets and can be held responsible for any damage to the employer's operations or equipment committed in the course of a strike or picket.

It would follow that when a strike occurs without the above-mentioned procedure being followed, that strike is unprotected and employees participating may be disciplined and dismissed if found guilty.

In terms of section 77 of the Labour Relations, employees have the right to engage in a strike on matters that affect their socio-economic interests. The entity tabling the Section 77 notice must be a registered trade union or federation. Furthermore, the notice of protest action has to be on a specific form, and must contain the reasons for and nature of the intended action. The matter(s) giving rise to the notice must be considered in Nedlac in an attempt to reach resolution. If attempts at resolution fail, the union or federation must serve a second notice on Nedlac of its intention to proceed with the protest action. This second notice must be served on Nedlac at least 14-days before the protest action starts. One of the reasons for this fairly substantial period is that the cost of this type of protest action to the economy is usually greater than that of a strike and parties must be given adequate warning. The certificate issued does not have an expiry date, and it is unfortunately common that these certificates are used more than once and years after issuing.

Strikes are complex, and it is very important that employers do everything in their power to attempt to settle disputes before they lead to strikes. Where unavoidable, ensure sound picketing rules and legal support, and do not stop negotiations until a resolution is reached.