

# Basic guidelines to unfair dismissal

The first question to establish in any case involving an alleged unfair dismissal is whether a dismissal actually occurred. A dismissal takes place when an employment contract is terminated at the instance of the employer and entails communication by the employer to the employee that the contract has come to an end. This communication can either be in words or conduct. [\[1\]](#) It is important to note that the Labour Relations Act (LRA) does not confer on employees the right not to be dismissed, but only not to be unfairly dismissed. Therefore, the next question begging an answer is whether the identified dismissal is unfair. [\[2\]](#)

The LRA makes provision for what we call an automatic unfair dismissal, which contains a list of reasons for dismissal that will never be an acceptable reason, this will always be an unfair dismissal. Examples of such automatic unfair dismissal is dismissal for the reason relating to: pregnancy, unfair discrimination, transfer or reasons related to transfer, participation in supported strikes ect. This is only to name a few examples. A full list can be found in Section 187 of the LRA. [\[3\]](#)

A dismissal that is not automatically unfair, may be unfair if the employer fails to prove that the reason for dismissal is: [\[4\]](#)

- a fair reason related to the employees conduct or capacity; or
- a fair reason based on the operational requirements;
- further that the dismissal was effected in accordance with a fair procedure.

It is necessary to emphasize that no matter how compelling the reason for dismissal may have been, if a fair procedure was not followed it will lead to unfair dismissal. [\[5\]](#)

## **The procedure to follow to challenge the unfair dismissal:**

This procedure is set out in Section 191 of the LRA and can be summarized as follows: A dismissed employee may refer the dispute in writing to the CCMA or relevant Bargaining Council within 30 days from date of dismissal. This referral is

effected by completing a form from the CCMA or any office of the Department of Labour or their respective websites. Should the employee be out of time, he may still refer the dispute, but he will have to make an application for condonation confirming the reasons for the delay. After the form was served on the employer the first step in the dispute-resolution process is conciliation. The sole function of conciliation is to settle the matter. If the employee accepted a settlement offer, he cannot normally proceed to litigate against the employer, because acceptance of the offer constitutes a waiver of his rights against the employer. [\[6\]](#) If the dispute remains unresolved, the dispute may on the request of the employee be referred to arbitration.

### **Remedies for unfair dismissal:**

If it is found that the dismissal was unfair, the Court or the Arbitrator may order that: [\[7\]](#)

- the employer reinstates the employee on the same terms and conditions of employment before the dismissal;
- The employer re-employs the employee on new terms and conditions of employment; or
- For the employer to pay compensation to the employee.

To conclude, it is important to take immediate action if you are under the impression that you were unfairly dismissed. Take further note that an attorney or your relevant Trade Union will be able to assist you during above mentioned proceedings. The CCMA is open to the public and will also assist you to the best of their abilities.

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[\[1\]](#) John Grogan: *Workplace law, tenth edition* - page 144

[\[2\]](#) John Grogan: *Workplace law, tenth edition* - page 165

[\[3\]](#) Section 187 of the Labour Relations Act

[\[4\]](#) Section 188 of the Labour Relations Act

[\[5\]](#) John Grogan: *Workplace law, tenth edition* - page 167

[\[6\]](#) John Grogan: *Workplace law, tenth edition* - page 180

[\[7\]](#) Section 193(1) of the Labour Relations Act