

OVERVIEW OF THE CODE OF GOOD PRACTICE: COLLECTIVE BARGAINING, INDUSTRIAL ACTION AND PICKETING

INTRODUCTION AND PURPOSE

The Code of Good Practice is intended to provide practical guidance on collective bargaining, the resolution of disputes of mutual interest and the resort to industrial action. It is intended to be a guide to those who engage or want to engage in collective bargaining or who seek to resolve disputes of mutual interest by mediation, conciliation, arbitration or by means of last resort, industrial action.

The Code is written in the context that the violence that often accompanies strikes and lockouts is unacceptable and that serious measures are needed to prevent this and to induce behaviour change in the way employees, employers and the police and private security, engage with one another during industrial action.

The purpose of the Code is to-

- (a) strengthen and promote orderly collective bargaining by-
 - (i) promoting trust and mutual understanding and constructive engagement;
 - (ii) promoting the maximum involvement of workers and worker representatives in negotiations.
- (b) recognise the importance of workplace democracy and dialogue and promote employee participation in decision-making in the workplace.
- (c) promote the proactive, effective, constructive and speedy resolution of labour disputes.
- (d) promote the peaceful resort to a strike or a lockout free of intimidation and violence, and
- (e) proactively promote steps to avoid or prevent prolonged or violent strikes or lockouts.

The Code must not be interpreted as imposing any unconstitutional limitation on the right to strike or recourse to lockout as provided for in the Labour Relations Act (LRA) or applied in any way that undermines the right to strike or the employer's recourse to lockout.

COLLECTIVE BARGAINING

The Code's guidelines include the following principles of good faith bargaining-

- (i) negotiations should be conducted in a rational and courteous manner and disruptive or abusive behaviour must be avoided;
- (ii) parties should be prepared to modify demands and responses during the course of negotiations;
- (iii) mandating processes should be conducted in facilities that are conducive to collective bargaining. Employers should assist this mandating process by providing facilities where possible and time off as per the LRA or any collective agreement for trade union officials or worker representatives to meet and if need be ballot members provided for in the LRA; and
- (iv) the parties should remain open to continue negotiations after the dispute has been declared.

WORKPLACE DEMOCRACY AND DIALOGUE

The Code recognises that the objective of workplace democracy and dialogue is to develop a culture of mutual respect and trust between those who manage the enterprise and those who work for it. Dialogue with a view to consulting employees in the decision-making process on issues other than those pertaining to collective bargaining. The promotion of employees and trade union involvement in consultative forums should not undermine collective bargaining or existing workplace arrangements.

INDUSTRIAL ACTION: STRIKES AND LOCKOUTS

The Code recognises that unlike most other rights in the Bill of Rights, the right to strike and the recourse to lockout is a right to cause economic harm. While acknowledging that the right to engage in collective bargaining implicitly recognises the right of the parties to exercise economic power, the Code also recognises that prolonged and violent strikes have a serious detrimental effect on the strikers, the families of the strikers, the small businesses that provide services in the community of those strikers, the employer, the economy and community. Workers exercising the right to strike or protest action and employers exercising the recourse to a lockout must, therefore, recognise the constitutional rights of others.

The Code stresses the importance of conciliation in mutual interest disputes and that the primary objective of conciliation is to settle the matter failing which the commissioner or conciliator must propose alternative means to do so, such as arbitration, including advisory arbitration.

The Code recognises the need for notice to be given prior to industrial action taking place and states that since the objective of the notice is to allow the other party to put its house in order, the parties should, notwithstanding the minimum periods set out in the Act, that is of sufficient duration to allow the employer to shut down its plant or services without damage to property and to allow employees to make arrangements to face a period of no income.

PICKETING

The Code recognises that the purpose of a picket is to peacefully encourage non-striking employees and members of the public to oppose a lockout or support a protected strike. The nature of the support can vary. It may be to peacefully encourage employees not to work during the strike or lockout. It may be to peacefully dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer during the strike. The Code provides practical guidance on how this may take place.

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995
- The Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (promulgation date – May 2018).