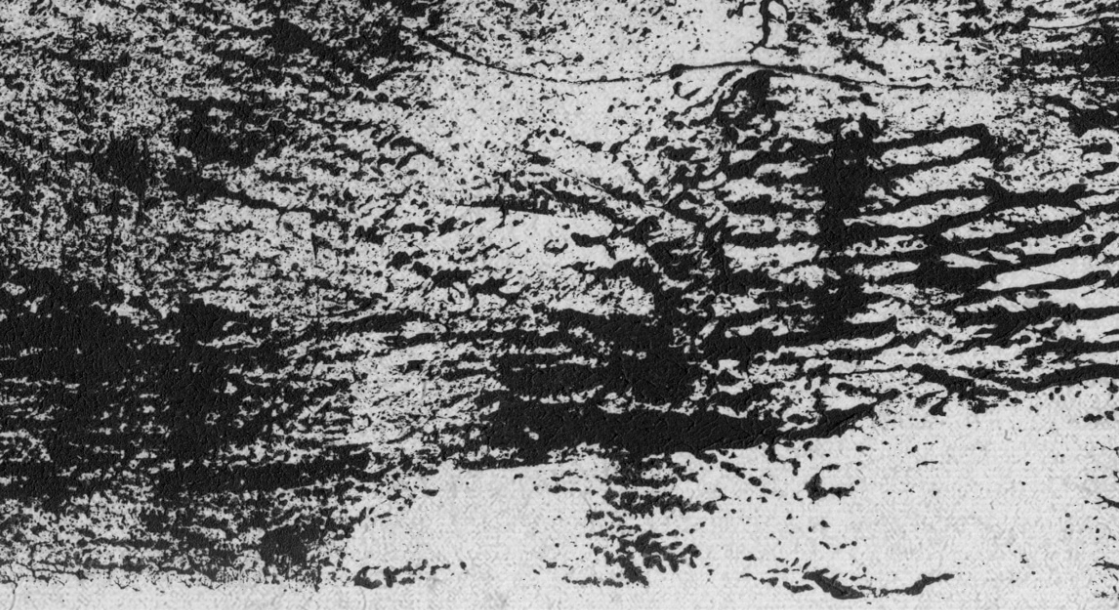

Strategies to inspire, organise and represent workers.

The Negotiator's Guide

LRS Labour Research Service

NSF National Skills Fund
FUNDING TO SKILL OUR NATION

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4

Using the law to support bargaining strategies

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Glossary of terms

Mediation: A mode of dispute settlement which brings together two disputing parties to negotiate and settle their differences.

Arbitration: This is different from mediation and conciliation because the neutral arbitrator has the authority to make a decision about the dispute.

Retrenchment: A process whereby the employer reviews its business needs in order to increase profits or limit losses, which leads to reducing its employees.

Dispute: An argument among employers and employees, or between an employer and employee, on a subject of mutual interest.

Misconduct: Unacceptable or improper behaviour, especially by an employee in the workplace.

Dismissal: The termination of employment by an employer against the will of the employee.

Going concern: A business in operation

Acronyms

CCMA: Commission for Conciliation, Mediation and Arbitration

PSCBC: Public Service Coordinating Bargaining Council

BC: Bargaining Council

SD: Sectoral Determination

Labour law often seems intimidating but is in fact, a really important tool and an ally in the fight for workers' rights. Using the law to your members' advantage requires you to be familiar with all the acts and to stay up to date with any changes to these laws. It also requires you to understand which laws you can use to back you in the different challenges you are likely to face in the negotiation process.

This section of the guide includes:

Labour legislation in South Africa

Challenges negotiators might encounter

Problem scenarios and which labour law to use

Over the past few years our labour legislation has grown in complexity, with many rules and regulations that can lead to uncertainty and confusion.

Labour Legislation in South Africa

A textbook definition of labour law is that it is the framework in which industrial relations are practiced. Labour law gives structure to the workplace, defines what both employees and employers are responsible for and outlines regulations to give both parties the necessary tools for resolving workplace conflict.

1995 was an important year for labour relations in South Africa, with both the passing of the Labour Relations Act (LRA) and the introduction of the Commission for Conciliation, Mediation and Arbitration (CCMA), providing workers with legal and cost-free easy access to just treatment in employment and in a retrenchment process.

Over the past few years, our labour legislation has grown in complexity, with many rules and regulations that can lead to uncertainty and confusion. It is a union's responsibility to keep up to date with all new amendments and aspects of the law and to support workers to understand and exercise their rights and responsibilities.

For worker leaders involved in organising and bargaining, labour law is an important tool to both

defend and advance the interests of workers. This approach is captured in the sentiments of a worker leader participating in a LRS workshop in 2019:

> *"This is a struggle! We aren't promising it'll all be good. You must be prepared for anything. In the event that anything happens, know there's a law that protects you. As a union member, you need to know exactly what the law is. Use labour law as a resource, i.e. for organising, defending and improving working conditions. There are things that are not within the labour law, but if we have a collective agreement, you are able to cover what is not in the labour law. We negotiate for extras, those things that are not covered in the labour laws."*

What exists within the labour legislation are **minimum rights**. When bargaining, **we start with these minimums as our floor** and then bargain for more. It is important that when signing collective agreements, we are clear that the agreement is not restating what already exists in the law – and that it captures the gains we have won over and above what exists in the law. **To remind us of this, we always need to have key legislation that can support our bargaining and organising at hand.**

Key SA Legislation 2020

Labour Relations

- Labour Relations Act (LRA)
- Codes of good practice on dismissals; arrangement of overtime

Conditions of Employment

- Basic Conditions of Employment Act (BCEA)
- Occupational Health and Safety Act (OHSA)
- Compensation for Occupational Injuries and Diseases Act (COIDA) of 1993
- National Minimum Wage Act
- Codes of Good Practice on pregnancy and afterbirth; sexual harassment; HIV & Aids

Redressing the inequalities of the past

- Employment Equity Act (EEA)
- Codes of Good Practice

Training and development

- Skills Development Act (SDA)
- Skills Development Levies Act (SDLvA)
- South African Qualifications Authority Act (SAQA)

Unemployment Insurance

- Unemployment Insurance Fund (UIF)

Which labour laws for which problems?

16 examples of challenges that negotiators might encounter:

1. An employer refuses to recognise a trade union
2. A worker is dismissed on the basis of operational requirements
3. A worker is unfairly dismissed for misconduct
4. The union and company are in dispute about unfair dismissals and unfair labour practices
5. A woman feels that she is paid less because she is a woman
6. A worker experiences unfair discrimination
7. An employer is not paying UIF for the employee
8. A worker is not remunerated fairly for night shift and overtime
9. Casual workers are not receiving the same wage and benefits as full-time workers

10 A company makes unilateral changes to the terms and conditions of employment of its employees

11 A company refuses to disclose information

12 An employer refuses to honour a collective agreement

13 A worker has no formal contract of employment

14 In a company, the contracts of employment of workers are transferred to a new owner

15 Workers are locked out as a result of strike action

16 There is a lack of health and safety in the workplace

1 An employer refuses to recognise a trade union

A company in the retail sector has an estimated 50 workers, and they do not have a trade union representing them in their workplace. Due to the unfavourable conditions of employment they face, the workers decide to approach the union of their choice to request representation. The trade union sends a letter to the company stating its intentions, but the company refuses to meet the union.

What does the law say?

Labour Relations Act (LRA) Chapter 2 Section 4: Employees' right to freedom of association. The Labour Relations Act stipulates that all workers or employees have the right to participate in forming a union or to join a union. Members of a union have the right, subject to the constitution of the union, to participate in its lawful activities. No worker or employee may be discriminated against by employers for exercising any right conferred by the Act. Workers or employees have the right to take part in the election of shop stewards, stand for election and be eligible for appointment as a shop steward. If elected, they need to carry out the functions of the trade union.

Dispute procedures

If there is a dispute about the employees' right to join a union or for a union to be established in the workplace, the issue may be referred to the CCMA. The party that refers

the dispute must satisfy the CCMA that a copy of the referral has been served on all the other parties involved in the dispute. The CCMA must attempt to resolve the dispute through conciliation. If the dispute remains unresolved, any party to the dispute may refer it to the labour court for adjudication.

The obstacles the negotiator could face:

- If the employer is stubborn, the union will need to declare a dispute and approach the CCMA;
- The employer might not attend the hearing at the CCMA, and the CCMA would then issue a certificate stating that the matter is unresolved.

When to call for legal advice:

When there is a dispute, the union will need to consult their legal advisors in order to take further steps like picketing or strike action.

The negotiator's ideal outcome:

The trade union and employer meet and discuss organisational rights as part of recognition in the workplace.

2 Retrenchment

The Company wants to retrench **24** employees. **Two** employees have accepted voluntary retrenchment before the process starts. There is **one** position available for a receptionist, which will be given to one of the affected employees. This leaves the company with **21** employees to be retrenched. The company is offering one week's severance pay to the retrenched employees.

What does the law say?

The Labour Relations Act states that when the employer contemplates retrenching employees based on operational requirements, he or she must consider Section 189-195 of the Labour Relations Act, which provides accepted reasons for retrenchments and the procedures that need to be followed.

The LRA states that there must be a good reason for retrenchment based on operational requirements. The retrenchments must relate to the economic situation, technological changes in the workplace, and/or new management structures.

The Act provides procedural steps to be taken before embarking on retrenchment. The employer must consult with the worker representative from the union or workplace forum if there are no unions in the workplace. The consulting parties must attempt to reach consensus on the following:

- appropriate measures to avoid the retrenchments
- appropriate measures to minimise the number of retrenchments
- the timing of the retrenchment
- ways to mitigate the adverse effect of the retrenchments
- the criteria to be used in selecting which employees to retrench, for example, last in first out, or those close to retirement
- terms of the severance package to be issued to retrenched workers.

The employer must provide relevant information in writing to the other consulting party, which might include: reasons for the proposed retrenchment, the alternatives that the employer considered before proposing retrenchment, and the reasons for rejecting each of those alternatives.

Dispute Procedures

If there's a dispute regarding retrenchment based on operational requirements, the aggrieved party can refer the matter to the CCMA and then go directly to the labour court if no settlement is reached through conciliation and mediation.

The obstacles the negotiator could face:

- Unions cannot stop retrenchments and can only defend and minimise the hardship which it causes;
- When the employer embarks on the process of retrenchment, there is often not a proper consultation - often they have already decided on the outcome, but fo through the motions of consultation merely as a formality;
- Employers can hide and use external factors (like the COVID-19 pandemic or new technology) as excuses for retrenchments.

When to call for legal advice:

When the employer and union are not in agreement, the union can seek legal advice about the legality of the entire process which the employer had followed.

The negotiator's ideal outcomes:

- Jobs are saved and workers are satisfied with their retrenchment packages;
- Potential retrenchments are converted to deployment into other departments, or to other regions or provinces through consultation with employees;
- Workers are reskilled and retrained for deployment into other positions;
- Workers are provided with skills training for re-entering the labour market.

3 A worker is unfairly dismissed for misconduct

A worker worked for a company for 20 years. In March 2020, he was dismissed for absenteeism and alcohol abuse in the workplace.

What does the law say?

The Labour Relations Act: Section 7 guidelines in cases of dismissal for misconduct states that any person who is determining whether a dismissal for misconduct is unfair should consider:

(a) Whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and

(b) If the rule or standard was contravened, whether or not:

i. The rule was a valid or reasonable rule or standard;

ii. The employee was aware, or could reasonably have been expected to be aware, of the rule or standard;

iii. The rule or standard has been consistently applied by the employer; and

iv. The dismissal was an appropriate sanction for the contravention of the rule or standard.

Dispute Procedures

In the case of an unfair dismissal dispute, you have only 30 days from the date on which the dispute arose to refer the case to the CCMA or bargaining council for conciliation.

If no agreement is reached, the commissioner will issue a certificate to that effect. Depending on the nature of the dispute, the case may be referred to the CCMA for arbitration or the labour court as the next step.

The obstacles the negotiator could face:

- Sometimes, the company can use dismissal because they are purposefully trying to remove a specific employee from the company (especially a shop steward);
- If a worker committed an offence, but the worker is not honest, or the company has substantial evidence like video footage, this can compromise the case.

When to call for legal advice:

Only when a case is reviewed in the labour court.

The negotiator's ideal outcomes:

The negotiator is able to prove that the worker has been unfairly dismissed, and the worker is retrospectively reinstated.

4 The union and company are in dispute over unfair dismissals

A company embarks on a retrenchment process and agrees to first retrench those close to retirement and those who volunteer themselves for retrenchment. The company finds that there are more volunteers than necessary for the process but nonetheless retrenches employees that did not volunteer, especially those active in the union.

What does the law say?

In accordance with the Labour Relations Act (LRA) Section 191 (1), unfair dismissal means that an employment contract is terminated by the employer without fair reasons to do so and/or without using an appropriate procedure.

Dispute Procedure

When a worker is unfairly dismissed, they have to open a case within 30 days from the date on which the dismissal arose.

The obstacles the negotiator could face:

- The company might not attend the hearing and the CCMA will then still continue with the case and issue a certificate for reinstatement. In such a case, the company is likely to dispute the reinstatement certificate and will continue to frustrate the process.

- The company might not comply with the CCMA award and take it for review, which can take a long time, during which workers might become demotivated.

When to call for legal advice:

If the company approaches the labour court to set aside the arbitration award in favour of the workers, then the union needs to consult their legal department to appear in the labour court.

The negotiator's ideal outcomes:

The company is forced to comply with the award issued by the CCMA.

5 A woman feels that she is paid less because she is a woman

Women are still paid less than men in South Africa. "In my company I am not being remunerated for the work I am doing. I know this, because the men doing the same kind of work that I am doing are being paid a higher salary."

What does the law say?

The Employment Equity Act states that an employer must submit a report to the Employment Equity Commission that shows wages and benefits for each employee. Where disproportionate income differentials are reflected in the report, an employer must take measures to progressively reduce such differentials subject to guidance as may be given by the minister. Parties to a collective bargaining process may request the report employers submit to the Employment Equity Commission for collective bargaining purposes.

The obstacles the negotiator could face:

- The company does not consult the union while drafting the report for the Employment Equity Commission, and merely calls the shop steward to sign the report once it is done;
- Discrimination is difficult to prove.

When to call for legal advice:

Legal advice is almost always necessary when dealing with discrimination cases, as these are often difficult to prove.

The negotiator's ideal outcomes:

- Proper consultation in the drafting of the Employment Equity Report;
- The union successfully proves the company is discriminating on the basis of gender and the worker is remunerated appropriately going forward and retrospectively.

6 A worker experiences unfair discrimination

A worker has been in a lesbian relationship for the past seven years and wants the company to put her partner on her medical aid. The company refuses, claiming that she has no legal proof that they are a couple. The worker believes she is being discriminated against because she is in a same-sex relationship, especially since her heterosexual colleagues' partners get put on their medical aids.

What does the law say?

- Employment Equity Act (EEA) Chapter 2 Elimination of unfair discrimination Section 56 states that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.
- No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

Dispute Procedures

Any party to a dispute concerning this chapter may refer the dispute in writing to the CCMA within six months after the act or omission that allegedly constituted unfair

discrimination. If the dispute remains unresolved after conciliation, (a) any party to the dispute may refer it to the labour court for adjudication; or (b) all the parties to the dispute may consent to arbitration of the dispute.

The obstacles the negotiator could face:

- The burden of proof is on the employee, who might already feel intimidated about proving their partnership;
- The worker needs to reveal aspects of their private life, exposing themselves to potential homophobia;
- Union representatives and commissioners might struggle with their own prejudices and lack of knowledge.

When to call for legal advice:

The union negotiator might bring in a lawyer from the beginning of the process as the negotiator might lack the necessary knowledge and sensitivity.

The negotiator's ideal outcomes:

The company complies with the employee's request and refrains from discrimination. Partner gets put on her medical aid.

7 An employer is not paying UIF for the employee

"As a domestic worker, how will I access UIF if my employer has not been paying UIF?"

What does the law say?

Unemployment Insurance Fund Section 38 - 42 (Chapter 4 enforcement)

- The employer needs to register their employees with the UIF and make monthly contributions. An employee and his/her employer must each contribute 1% (total of 2%) of the employee's income to the UIF.
- Since 1 April 2003, domestic workers and their employers have been included under the Act. If an employer does not deduct these contributions, they will be held personally liable to pay it over to the UIF.

The obstacles the negotiator could face:

It might be difficult to convince an employer to comply with the UIF Act since the employer is in a private household and the union, therefore, does not have easy access to the employer.

When to call for legal advice:

When the union is struggling to contact and/or negotiate with the employer.

The negotiator's ideal outcomes:

The Department of Labour takes up the issue and gets the employer to understand it is an offence, thereby obliging the employer to pay UIF for all years of employment retrospectively.

8 A worker is not remunerated fairly for overtime

"There is an issue with the calculation for our pay for overtime. We all start work at different times, but the money we are paid is the same. We know that overtime should be paid at 1.5 times the hourly rate. We think that, as a union official, you should be involved in the calculations."

What does the law say?

- **The BCEA Section 9** states an employer may not require or permit an employee to work more than 45 hours in any week; and nine hours in any day of the employee works for five days; or eight hours in any day if the employee works more than five days in a week.
- An employer may not require or permit an employee to work overtime except in accordance with an agreement; no more than ten hours overtime in a week.
- An employer must pay an employee at least 1.5 times the employee's wage for overtime worked.
- An agreement may provide for an employer to: pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes time off on full pay for every hour of overtime worked.. A collective agreement may increase the maximum permitted overtime to 15 hours a week.
- If Sunday is not a normal working day, then overtime on this day must be calculated using the 'double-time'

rate (2x) of an employee's normal working hour's rate. Alternatively, an employee may be given time off during their normal working hours in exchange for work done on a Sunday.

- If an employee agrees to work on public holidays, then overtime on this day must be calculated using the 'double-time' rate (2x) of an employee's normal working hour's rate.

The obstacles the negotiator could face:

Some employers in vulnerable sectors might not be willing to comply with the BCEA.

When to call for legal advice:

If in need of legal advice on an interpretation of the BCEA overtime clause in relation to overtime payment or reduction of hours.

The negotiator's ideal outcomes:

The company complies with the BCEA regulation on overtime payment.

9 Casual workers are not receiving the same wage and benefits as permanently employed workers

A worker in the motor sector working as a petrol attendant says, "We have employees who've worked for 2 years as casuals. They don't receive the benefits other permanent employees receive."

What does the law say?

- **In the Labour Relations Act (LRA) Chapter six, Section 198 temporary employment services**, casual workers' rights are generally very similar to the rights of permanent employees, as long as they work more than 24 hours in a month.
- Anyone who works more than 24 hours a month is covered by the BCEA. This Act specifies the basic rights of all employees regarding things such as working times, leave, remuneration, termination and more.
- The Act does not provide a specific pay rate for casual workers, however, the pay rate will be determined by the sectoral determination, bargaining council agreement or a collective agreement at plant level. South Africa has a national minimum wage that was implemented in 2019, and this applies to casual workers as well.
- Casual workers that work more than 24 hours a month are entitled to the same holiday pay as permanent employees. They are entitled to an amount of paid sick leave equal to the number of days they would normally work in a six week period.

The obstacles the negotiator could face:

- In some companies, the casual workers can outnumber the number of permanent workers, making it difficult for the union to extend the benefits from a minority of permanent workers to a majority of casuals.
- Companies try to hide the length of service of casual workers by, for e.g. moving workers around to franchisees and treating them as newly employed casual workers.

When to call for legal advice:

If in need of legal advice to define the status of workers that have been working for the company for more than 3 months.

The negotiator's ideal outcomes:

The employer complies with the law that workers who have worked for the employer for longer than 3 months are made permanent employees.

10 A company makes unilateral changes to the terms and conditions of employment

After embarking on a retrenchment process, the company sent out a notification to the remaining employees stating that it intended to reduce the meal allowance, living-out accommodation allowance and salaries by 15%.

What does the law say?

The Basic Conditions of Employment Act (BCEA) states that changes to the terms and conditions of employment cannot be made without prior consultation with the employee and/or without the employee's agreement. Any changes need to be agreed to by the affected employees or their union.

The obstacles the negotiator could face:

- Company implements changes without consulting the union.
- Workers might get angry because of the lack of consultation and embark on illegal strikes.

When to call for legal advice:

Union and workers need to consult with the union legal officer before embarking on any kind of action.

The negotiator's ideal outcomes:

The employer reverses any changes to the conditions of employment and engages in a process of negotiations.

11 A company refuses to disclose information

During wage negotiations, the company indicated that profit has declined, and they cannot afford the union demand of a 15% wage increase. The union requests the company financial statements, but the company refuses to provide the financial statements to prove their claim.

What does the law say?

The Labour Relations Act states that an employer must disclose to a trade union representative all relevant information that would allow the trade union representative to perform their functions of representing workers effectively. 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. The employer must notify the representative trade union in writing if any information disclosed is confidential.

Dispute Procedure

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 CCMA. The CCMA must attempt to resolve the dispute through conciliation. If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.

The obstacles the negotiator could face:

- The company might try to find ways of hiding important information.
- The company might provide information that has not been audited and might therefore be skewed or inaccurate.

When to call for legal advice:

If the company refuses to hand over information, it will be necessary to consult with the legal department.

The negotiator's ideal outcomes:

The company discloses information that assists the negotiator to bargain effectively.

12 Employer refuses to honour collective agreement

The South African government reneged on the 2018 multi-year wage agreement signed at the PSCBC and refused to honour the stipulated 2020 salary increase for public service employees.

What does the law say?

The Labour Relations Act (LRA) – Part B Collective Agreement, Section 23 Legal effect of collective agreement states that a collective agreement binds the parties to it. The agreement is binding for the whole period of the collective agreement.

The obstacles the negotiator could face:

The government might argue (publicly) that there is a fiscal crisis and that the public sector wage bill needs to be reduced. This puts the union at a disadvantage, particularly in the time of a crisis like the COVID-19 pandemic.

When to call for legal advice:

When going to the labour or constitutional courts.

The negotiator's ideal outcomes:

The union is able to win public support for its demand and is successful in putting pressure on the government to honour the agreement.

13 A worker has no formal contract of employment

A domestic worker has no contract of employment, and the employer did not mention a contract of employment when she was hired.

What does the law say?

The Basic Conditions of Employment Act (BCEA) Section 28 requires employers to inform employees in writing of their particulars of employment such as:

- The full name and address of the employer;
- The name and occupation of the employee, or a brief description of the work for which the employee is employed;
- The place of work, and, where the employee is required or permitted to work at various places, an indication of this;
- The date on which the employment began;
- The employee's ordinary hours of work and days of work;
- The employee's wage or the rate and method of calculating wages;
- The rate of pay for overtime work;
- Any other cash payments that the employee is entitled to;
- Any payment in kind that the employee is entitled to and the value of the payment in kind;
- How frequently remuneration will be paid;

- Any deductions to be made from the employee's remuneration;
- The leave to which the employee is entitled;
- The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
- A description of any council or sectoral determination which covers the employer's business. The sectoral determination provides details on wages and conditions of employment;
- Any period of employment with a previous employer that counts towards the employee's period of employment;
- A list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

Section 28 of the BCEA does not apply to an employee who works less than 24 hours a month for an employer.

The obstacles the negotiator could face:

- Employer is reluctant to comply with Section 28 and can be difficult and arrogant;
- It is difficult for a negotiator to get in contact with the employer via their private residence;
- The employer threatens to take legal action against the union.

When to call for legal advice:

When the negotiator struggles to get access to the employer or when the employer threatens legal action against the union.

The negotiator's ideal outcomes:

Both parties are made aware of the legal obligation of a contract, and a contract is signed.

14 In a company, the contracts of employment of workers are transferred to a new owner

A transfer of contract of employment happens when an employer sells or transfers his or her company to a new owner. When they sell the company, the employees' contracts of employment are transferred to the new owner without changes. An agreement needs to be concluded between the old employer and the new employer, with all relevant information disclosed.

Steel Products Company was established in 2000 by Mr Gibbs. Steel Products employed about 95 employees. Then in 2020, Trade Steel acquired Steel Products as a going concern. Trade Steel indicated that it can only accept Steel Trade employees on the condition that they sign new employment contracts.

What does the law say?

The Labour Relations Act (LRA) Section 197, Transfer of contract of employment provides that in the event that the old employer sells his or her company as a going concern, the contracts of employment of the existing employees are automatically transferred to the new employer. All the rights and obligations between the old employer and each employee at the time of the transfer remain the same between the new employer and each employee. 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.

The obstacles the negotiator could face:

The new conditions that the company is wanting to implement might not be favourable to workers.

When to call for legal advice:

When the company attempts to dismiss workers or change existing contractual rights and obligations.

The negotiator's ideal outcomes:

Contracts are transferred without losing any benefits i.e. the entire contract is transferred as is, and new rights and obligations are negotiated (if they represent an improvement on benefits).

15 Workers are locked out as a result of strike action

Workers embark on an illegal strike over wage demands. Workers demanded 8%, and management offered 4%. The matter was referred to the CCMA for conciliation and remained unresolved. A certificate was issued, and workers gave the employer 48 hours' notice before embarking on a strike. The employer issued a notice of lockout. The notice of lockout stated that the lockout would continue until such time as the union accepted the employer's counter-offer.

What does the law say?

Labour Relation Act (LRA) Chapter IV Strikes and Lock-Out Section 64, Right to strike and recourse to lock-out states that every employee has the right to strike and every employer has recourse to lock-out if the issue in dispute has been referred to a council or to the CCMA as required by this Act.

The obstacles the negotiator could face:

- It might be difficult to resolve an issue by bringing both parties to the table when the tension is high and both parties are refusing to move on their positions;
- Adherence to picketing rules (LRA) – union members might fail to adhere to the rules and unions could then be faced with fines or being sued;

- The company might be able to use replacement labour, and this could fuel the tension and extend the time needed to settle the dispute.

When to call for legal advice:

- To ensure the legality of the strike and go over picketing rules;
- When there are damages to property during the strike.

The negotiator's ideal outcomes:

The strike is declared legal and the company is forced to allow workers back on to the premises.

16 Lack of health and safety in the workplace

Community health care workers are faced with many challenges when doing home visits: they can be assaulted and are required to work in all kinds of weather without proper protection. A worker is worried about her safety since there are no measures put in place by their employer to protect them from assault at work.

What does the law say?

- **Section 8 of the Occupational Health and Safety Act** provides general duties of employers to their employees. The purpose of the Act is to provide health and safety measures for the activities of persons at work. Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health and safety at work of their employees. They need to provide information, instructions, training and supervision as necessary to ensure, as far as is reasonably practicable, the health and safety at work of their employees.
- The **Compensation for Occupational Injuries and Diseases Act (COIDA)** provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by workers in the course of their employment or death resulting from injuries or diseases.

The obstacles that the negotiator could face:

The employer might refuse to acknowledge an employment relationship and therefore might refuse to take responsibility for the health and safety of their workers.

When to call for legal advice:

If there is any dispute about the employment relationship and the responsibilities of the employer.

The negotiator's ideal outcomes:

Employers make sure that employees are working in a safe and healthy environment regardless of their status as permanent, casual, independent contractors, etc.