

Strategies to
inspire, organise
and represent
workers.

The Negotiator's Guide

LRS Labour
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The Negotiator's Guide

Strategies to inspire, organise & represent workers.

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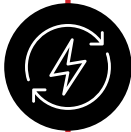
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Introduction



This guide is for **working class leaders** – for the shop steward, organiser and negotiator who wish to organise and represent workers in a world of work that has changed profoundly over time, and which continues to change.



This guide is for **negotiators looking to renew their strategy** and approach in the face of the ongoing reorganisation of work, retrenchments and restructuring, and the increasing precariousness of being a worker.



This guide is for **negotiators looking for ways to inspire workers** to believe in and exercise their individual and collective power in the struggle for social justice.

The content draws inspiration not only from our **member unions**, but from a wide range of **experiences in collective bargaining** as shared by negotiators of:

- Building, Construction and Allied Workers' Union (BCAWU);
- Food and Allied Workers Union (FAWU);
- Health and other Service Personnel Trade Union of South Africa (HOSPERSA);
- Hotel, Liquor, Catering, Commercial and Allied Workers of South Africa (HOTELICA);
- Metal and Electrical Workers Union of South Africa (MEWUSA);
- Migrant Workers Union of South Africa (MIWUSA);
- Media Workers' Association of South Africa (MWASA);
- Namibian Domestic and Allied Workers Union (NDAWU);
- National Education, Health and Allied Workers Union (NEHAWU);
- National Union of Mineworkers (NUM);
- National Union of Metalworkers of South Africa (NUMSA);
- Public Servants Association of South Africa (PSA);
- United National Transport Union (UNTU);
- United Domestic Workers of South Africa (UDWOSA).



After all, organising has little meaning if it does not find expression in bargaining and bargaining will have limited influence if it does not consolidate and expand opportunities for organising.

The ambition of this guide is **to be of service to negotiators in different settings**, ranging from the formal bargaining environment to the more informal bargaining environment.

Quite often, the same negotiator will be faced with different forms of employment in and around a single workplace.

This guide is intended to support negotiators across the spectrum, from the full-time jobs at a lead enterprise to the precarious and informalised jobs at the margins of the formal sector.

Although the main focus of this guide is collective bargaining, several of the chapters deal with the link between bargaining and organising. After all, organising has little meaning if it does not find expression in bargaining, and bargaining will have limited influence if it does not consolidate and expand opportunities for organising.



What is in the guide

1

An Introduction to negotiations breaks down the bargaining process into four parts: **Preparation, Negotiation, Agreement and Implementation**. This chapter offers a series of guiding steps that a negotiator can follow in each part of the process.

2

Recruitment and Organising is a short think piece that invites the negotiator to revisit two key processes behind collective bargaining. This chapter distinguishes between a worker that has been recruited and a worker that is organised, by describing what each of these workers are thinking about, what feelings they might experience and how they might act.

3

Coalitions and Solidarity is a short think piece that looks at building alliances that can further collective bargaining by describing eight leading ideas for building solidarity in and through coalition building.

4

Using the Labour Laws to Support Bargaining Strategies walks the negotiator through 16 common workplace challenges and the labour laws that could help deal with these situations.

5

A Framework for Collective Agreements gives the trade union negotiator a way of thinking about conditions at work. This chapter describes a way of thinking about what is in a collective agreement, how it responds to the needs of workers and what can still be negotiated to improve the quality of life of a worker.

This chapter describes the main conditions of work which should be dealt with in some way in a collective agreement. It also provides the negotiator with benchmarks in South African labour law to help establish a floor of minimum conditions at work. This chapter should be useful for worker leaders in more informal workplaces as they attempt to establish minimum standards.

6

An Introduction to Wage Bargaining is a deep dive into this important aspect of collective bargaining. The chapter provides a set of steps for building a wage and it outlines different approaches to dealing with inflation. It also includes simple formulas which the negotiator can use to calculate percentages and money amounts, and communicate these to workers.

7

Bargaining for Gender Equity examines how collective bargaining is an important tool for representing workers' interests, and how it has the potential to address structural gender inequities in both the workplace and trade union.

The struggle for gender equity is not only about treating men and women equally, but also involves treating the genders differently when necessary. This chapter explains important terms to know, describes specific bargaining demands for gender equity and provides the negotiator with a guide to the bargaining process.

8

Workplace Rights Belong to Everyone explains how trade union negotiators can help protect workers from the experience of oppression and discrimination based on their sexual orientation and gender identity.

This chapter explains important words and terms that we can use when talking about equality, as well as an overview of the legislation that is intended to protect workers from discrimination. It includes suggestions on how trade unions can support and protect LGBT members and examples of how collective agreements can play a role in dealing with discrimination based on sexual orientation and gender identity.

9

Negotiating Restructuring and Retrenchment provides guidance on how the trade union movement can adopt practical strategies to save jobs. This guide contains some ideas for trade unions to consider. It is a base on which unions can build their own strategies.

This chapter will help trade union negotiators think through a plan to save jobs at companies. The guidelines in this chapter describe an early warning system for companies in distress, providing help with understanding what is wrong with the business and deciding on the most important interventions. Furthermore, the chapter describes strategies for minimising the impact of retrenchments when they are unavoidable.

10

Organising and Bargaining in Value Chains introduces the negotiator to the concept of value chains and explains that almost all negotiations take place within a part of a larger value chain. This chapter describes how trade unions can use value chain mapping to make the connections between workers that informalisation might have hidden from view.

11

Negotiating the Future of Work describes the main process features of the future of work and the words and terms used to talk about it. This chapter describes strategies that trade unions can adapt to be more influential in shaping and responding to the future of work.

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

1

An introduction to negotiations

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The bargaining process



1 PREPARATION

Research and information

Mandating

General meeting

Communication

Elect the negotiating team

Timing

Pre-bargaining meeting

The agenda

The timeframe

The rules

2 NEGOTIATION

The process

Trade-offs

Feedback

3 AGREEMENT

The basic structure

4 IMPLEMENTATION

Communicate

Negotiating an agreement

Three golden rules of negotiation:



Never negotiate alone



Maintain unity while negotiating



Never make a deal without the agreement of members



Collective bargaining is the process of a negotiation between employers and workers, aimed at reaching agreement on issues that affect them in the workplace

Collective bargaining is the process of a negotiation between employers and workers, aimed at reaching agreement on issues that affect them in the workplace. This happens in both the formal and informal economy. Trade unions or workers' organisations represent the interest of workers in the collective bargaining process.

Workers join these organisations so that the organisations can raise the workers' issues and protect them from exploitation. Without a strong collective bargaining function, organisations won't be able to meet their goals of representing workers.

The process of negotiations forms the central part of collective bargaining. A union enters negotiations with an employer in the hope of winning a collective

agreement that favours its members. The two parties negotiate until they find a compromise that they both agree on. Behind the talking, there is a power struggle. The workers put whatever pressure they can on management to agree to their demands, and management uses its tactics to try and get the workers to agree to their offer. Sometimes there is an agreement, sometimes there is not. When no agreement is reached, it is called a dispute and the parties involved can then call on a third party to mediate or arbitrate.

Bargaining levels

1) Plant or company level bargaining

Collective bargaining may take place at the plant level, involving one or more workplaces that are part of a larger enterprise.

Bargaining may also take place at company level and may cover more than one workplace. Either way, bargaining can involve one or more trade unions or worker organisations, but only one employer.

2) Centralised sector-level bargaining (bargaining councils)

Section 27 of the Labour Relations Act No 66 of 1995 states that one or more trade union and one or more registered employers' organisation may form a bargaining council in a sector. Some bargaining councils are national, while others are regional.



Often, many of the conditions that exist for bargaining in the more formal workplace do not yet exist in more informal settings.

The purpose of the bargaining council is to regulate (control) wages and conditions of employment in a sector. Agreements reached in these negotiations are called settlements and can be extended by the Minister of Labour to non-parties (workers and employers not registered with the council).

3) Administered wages and conditions at sector level (Sectoral determinations)

This level regulates wages and conditions of employment for vulnerable workers in sectors where they are likely to be exploited or where workers' organisations or trade unions are absent.¹ These sectors include farm workers, domestic workers, the wholesale and retail trade, the hospitality sector, and the taxi industry. A commission established in law conducts research and convenes public hearings in order to collect proposals from workers and employers. This commission then makes recommendations to the Minister of Labour. Once the Minister approves the recommendations, a sectoral determination containing wage rates and conditions of employment is published and applies to all employers and all workers in the sector. Since 2019, this function falls under the National Minimum Wage Act.

4) Informal economy forums

In this instance, the sector itself is informalised (for example street traders and waste reclaimers) or the

1. Haroon Bhorat, Ravi Kanbur, Natasha Mayet, and University Of Cape Town. School Of Economics. Development Policy Research Unit. 2011. Minimum Wage Violation in South Africa. Cape Town: Development Policy Research Unit, University Of Cape Town.

What can we do?

- The agreement should be very tightly worded and signed by the highest authority, plus those responsible for its implementation.
- Ensure that the agreement binds future political parties, policymakers and bureaucrats.
- Insist that the agreement is made known widely throughout the public authority. Ask for proof that this has been done.
- Work towards formalising the negotiating forum so that it is recognised and respected.
- Carry out your side of the bargain! Don't give the other side a chance to say that you have broken the agreement!

employment relationship is informalised (for example, community health workers).

Often, many of the conditions that exist for bargaining in the more formal workplace do not yet exist in more informal settings. The direct employment relationship does not always exist and the bargaining partner is yet to be established. There is no recognition of the worker representatives by employers or those who regulate their workplace. The bargaining unit is not defined. Bargaining levels may range from very localised levels to bargaining with municipalities and with national government.

Usually, your negotiating counterpart is responsible for implementing the agreement. Still, members and the organisation may have responsibilities too – sometimes agreements are not implemented, or only partially so. Other times agreements are manipulated or deliberately misinterpreted.

In the informal economy many of the agreements are with government and public authorities. This creates an unstable situation as they are often disregarded or changed when new parties, people and policies come in.



The four phases of collective bargaining

No matter in which sector you work, or in which part of the economy, there will be some aspects of the four stages of bargaining that can be translated into your experience. Every negotiation, whether in the informal or formal sector, in a small organisation or a multinational corporation, will go through these stages to a greater or lesser degree.

The four phases of collective bargaining

1 PREPARATION

2 NEGOTIATION

3 AGREEMENT

4 IMPLEMENTATION

1 PREPARATION

Preparing for bargaining is key to success, and a vital part of the collective bargaining process. The difference between being reactive and proactive is preparation. The advantage of preparation is that you can manage the problems and challenges that arise better. You will already have the information you need at hand and have thought through various solutions as a team. This is a substantial phase of the collective bargaining process – be warned: it takes a lot of time and energy.

Checklist

Preparing for bargaining:

- ✓ Put together the bargaining team
- ✓ **Gather information and conduct research**
- ✓ Convene a general meeting – the process of collecting demands
- ✓ **Prepare members, allies and the public**
- ✓ Determine your positions
- ✓ **Establish priorities**
- ✓ Clarify mandate
- ✓ **Agree to timing**
- ✓ Hold a pre-bargaining meeting
- ✓ **Set the agenda**
- ✓ Agree to timeframes
- ✓ **Choose a venue**
- ✓ Agree to rules

1. Put together the bargaining team

A bargaining team is elected at the outset of the bargaining process and roles can be assigned to each member of the negotiating team. There are a number of possible roles, including:



The spokesperson
(lead the negotiations)



The scribe
(minute taker)



The observer
(scan the environment)



The interrupter
(disturber)



Don't accept 'No' from a bargaining partner that does not have the authority to say 'Yes'.

The spokesperson will lead the negotiations. They will do the opening and the closing of the negotiations. Strong leadership is important in this role for ensuring compliance and productivity. It is also very important that the spokesperson on each side has the backing of their constituents, and is a representative of the group. This means that an elected leader in a union that is representative of a certain type of worker holds a stronger position in negotiations than someone who does not have this kind of backing.

The scribe will take the minutes for the team.

The observer will read the body language of management, analyse the atmosphere at the bargaining table and call for a caucus when need be.

The interrupter will be the person that steps in to confuse management by saying things that are not relevant to the negotiations. Develop signals to be used by your team when communicating to each other in front of management.

Another member of the union negotiation team can be elected to take accurate notes and keep a record of all decisions and agreements made in the negotiation. You may need this if management later tries to deny that a certain agreement was made.

The union should also plan who will present the argument and motivation for which demand. It is best for as many shop stewards as possible to get direct experience with negotiating. However, the organiser should always be there to give support to the arguments put forward by the shop stewards. Make sure the bargaining team is representative of the workers, especially taking gender representation into account.

2. Gather information and conduct research

It is important that organisations have a clear vision and objective for collective bargaining.

Preparation is a key to successful negotiations and as a negotiator you are required to gather information that will help you understand the members you represent and assist you in representing your collective interests.

Information gathering: what information can I get myself?

This process of gathering information starts with understanding ourselves. Much of what we do in the workplace and in our organisations or groups is informed by the power we hold – and key to this power is our gender identity and roles. Think about the following.

- What linkages can we see between our gender, our position and what we do?
- Is it something you are involved in in any way? How are you involved?
- Is bargaining something that happens over there, something that is done by other people? Who are those people?
- Is what gets onto the bargaining agenda shaped in any way by gender and power relations in the workplace and in the union?
- Is what stays on the bargaining table shaped in any way by gender and power relations in the workplace and in the union?

Information gathering:

What information do I need from others?

Organisations should put mechanisms in place to manage information (like collective agreements, membership, reports and other issues that relate to collective bargaining). This assists the organisations to assess their performance and be able to implement new strategies when facing challenges. It is the duty of the organisation to assess and develop the skills of the workers that could be trained as negotiators.

Research questions

- ✓ What facts and figures can help you motivate your demands?
- ✓ **What experiences can you quote that will support your case?**
- ✓ Are there laws, regulations, agreements or precedents that might assist?
- ✓ **What other factors in the environment might affect your case?**
- ✓ What are the likely reactions of your negotiating counterpart?
- ✓ **Where is your opponent weak and where are they strong?**
- ✓ Where are you weak and where are you strong?
- ✓ **Where are your opponent's decisions taken?**
- ✓ Who are your potential allies and supporters?



Before negotiations can begin it is necessary to put together the demands of all workers from the different departments into one set of common demands.

3. Convene a general meeting – process of collecting demands

When you have all the information, (information that you would like to test with the workers) the next step is to convene a general meeting to hear and collect demands from workers. The purpose of this general meeting is to assist in analysing and quantifying workers' demands using the information collected to build your case. The demands may then be forwarded to the company or management in writing together with the proposed date and time for the meeting.

Facilitate approaches that allow all workers to be heard

At plant level, each shop steward represents a different department or group of workers. Before negotiations can begin it is necessary to put together the demands of all workers from the different departments into one set of common demands.

At plant level, coordination can take place in shop steward committee meetings. Some demands should be coordinated with the advice of an organiser.

At company level, it is very important that the demands of all the different factories are taken into account. Often one factory is in a weaker position than others, and this problem should be corrected

in the company negotiations. At company level, coordination should take place through a company shop steward and council meeting, where all shop stewards from the different factories meet to discuss their problems and formulate their demands and plan their strategy.

At national bargaining council level, there are many differences among the different factories and workplaces represented. Some are small and some are big; some are weak and some are well organised; some are in major industrial areas and some are located in rural areas. These differences have to be considered when a final common set of demands is put together for negotiations. Coordination of national negotiations can be done through national meetings where shop stewards from different regions and companies put forward their region's proposals and develop a national set of demands.

4. Prepare members, allies and the public

Make sure members know when negotiations will take place and when and how they will get a report. Keep them interested and excited. Part of your strategy could include a supportive demonstration by members and/or regular negotiation bulletins.

Inform other workers' organisations and potential allies about the negotiations. Set up channels for technical support.

Highlight the issues within the community and, where appropriate, to the public at large.

5. Determine your positions

Contract zone

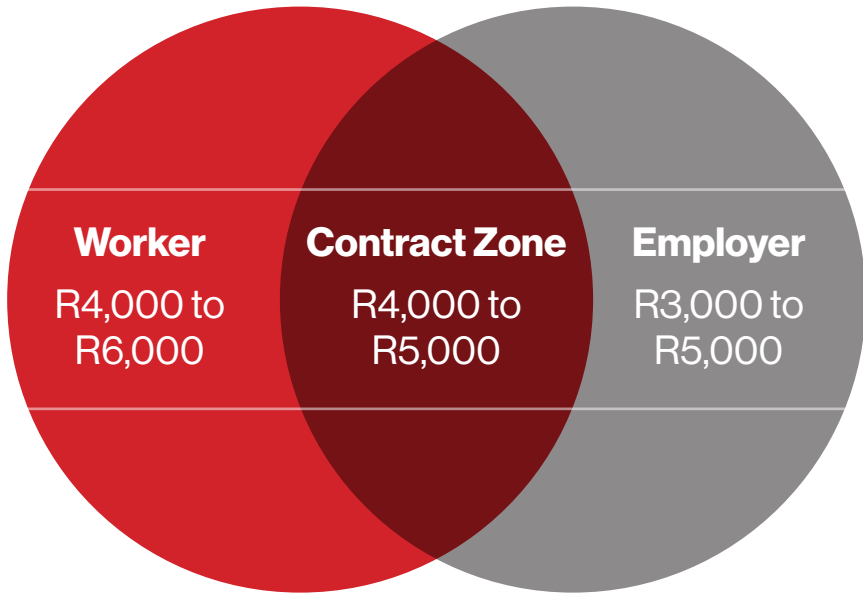
Before going into negotiations, the negotiating team must determine these parameters: what is the ideal settlement, what is a reasonably expected outcome (or reasonable settlement), and what is the least you will be happy with (fall-back position). This provides your team with a framework for negotiations. It is not for sharing with your bargaining partner.

The **fall-back position** is the least favourable outcome – beyond this outcome, some form of conflict would be preferred (e.g. a strike). This position represents the last resort of the parties involved. Johnson (1993:22)² refers to this as the 'worst acceptable deal'. Fall-back positions are made on instructions from constituents and also on principles of fairness.

One of the most important pre-conditions to successful negotiations is the existence of a **contract zone**. This means that some kind of middle ground, or common ground, exists where both parties are satisfied with the outcome. This is the space where the negotiating parties' interests overlap.³ If there were no difference in interests, there would be no point in bargaining:

2. Johnson, Ralph A. 1993. *Negotiation Basics : Concepts, Skills, and Exercises*. Newbury Park: Sage Publications, 22.

3. Atkinson, Gerald Gordon. 1977. *The effective negotiator: a practical guide to the strategies and tactics of conflict bargaining*. London: Quest, 43.



An example

If the employer wants to pay the workers **R5,000** per month, and the workers want **R5,000** per month, there is no point in bargaining.

However, if the workers will accept a range between **R4,000** (fall-back position) per month and **R6,000** (ideal settlement) per month, and the employer wants to pay between **R3,000** (ideal settlement) and **R5,000** (fall-back position) per month, there is an overlap. This overlap is what is called the 'contract zone'. So, in this example, we know the contract zone is between **R4,000** and **R5,000** per month. In order for negotiations to begin, both parties must believe that a solution exists.⁴

4. Zartman, I. William, and Maureen R. Berman. 1982. The practical negotiator. New Haven: Yale University Press, 45.

6. Establish your priorities

When shop stewards meet to discuss which demands to put forward for negotiation, they have to consider which demands are the most important and urgent and which demands are less important and urgent. Once the prioritised demands are agreed upon, the union can unite, mobilise, and campaign around them. When workers choose which demands to put forward and what they are going to fight for, they need to consider their organised strength. It would be no use putting forward a long list of strong demands around major issues if the union is very weak. On the other hand, if the union has a lot of active worker support and there is a militant mood, then it would be a waste for the union just to put forward small demands.

In addition to a set of common demands, workers from a particular company or workplace might have a certain problem that needs to be brought into negotiations, and these specific demands must then be added to the common demands.

7. Clarify your mandates

According to the tradition of democratic worker control that we have built into our trade unions, elected worker leaders and union officials must represent the interests of the worker members. Every union will have its own structures for making sure that whatever the representative takes into

a meeting with employers comes directly from workers, and that whatever is discussed in meetings with employers gets taken back to workers.

For negotiations, a shop steward represents a constituency of workers. What that constituency is depends on the level of negotiations. In preparation for negotiations, shop stewards will collect demands from workers. Once a single list of common demands has been drawn up in shop stewards' meetings, the shop stewards should take these back to workers to make sure that this set of common demands has their support. The union cannot expect to win demands that do not have the support of workers.

8. Agree to timing

The timing of negotiations is very important. While it is difficult to determine the 'perfect' timing, forcing issues too early may weaken the party's negotiating position. The best time to bring up issues is when parties are more equal: when neither party is able to solve the conflict on its own, and each party is necessary to create a solution.

An example of this is when an employer (e.g. a retailer) can't keep its doors open without workers, and that the workers won't have an income without the employer. This means that both parties need the other to come to a solution. Each party holds some of the cards, but no party has the upper hand.

5. Zartman, I. William, and Maureen R. Berman, *The practical negotiator*, 82.

6. Harris, Peter, and Ben Reilly, 1998. *Democracy and deep-rooted conflict: options for negotiators*. Stockholm, Sweden: *International IDEA*, 86 – 87.

7. Rubin, Jeffrey Z., and Bert R. Brown, 1975. *The social psychology of bargaining and negotiation*. New York: *Academic Press*, 121.

8. Harris, Peter, and Ben Reilly, *Democracy and deep-rooted conflict*, 89.

9. Rubin, Jeffrey Z., and Bert R. Brown, *The social psychology of bargaining and negotiation*, 82.

10. Rubin, Jeffrey Z., and Bert R. Brown, *The social psychology of bargaining and negotiation*, 83.

A good tactic here is to make sure the other party (the employer) understands that the situation will only get worse if negotiations don't move forward.⁵

9. Set up a pre-bargaining meeting

Before you begin negotiating you must decide on the topics that you want to explore with the other party at the negotiation table. For example, early settlement, opening offer issues to be negotiated, ground rules, venue, and size of the negotiating teams.

A pre-bargaining meeting is needed to decide on the above-mentioned information. Identifying potential difficulties before the negotiation begins can help boost your confidence, and knowing when to introduce or avoid these difficulties can provide a useful tactical advantage.

10. Set the agenda

Negotiators should be aware ahead of time what issues will be discussed during the negotiations so that they can prepare. Should an issue come up that was not on the agenda, the negotiations may be undermined. It is very important to determine the agenda ahead of time: list and define the issues which are important to both parties.⁶ List demands in order of priority, as it will help all parties to remain focused during the negotiations.

Timeframe options:



1. No time limits – remain in the negotiation stage until everything is resolved.



2. Pre-arrange a time limit.



3. Set a goal-based time frame.

Share the issues to be negotiated among the team members. This is very important as it allows you and your team to be on the same page, preventing a team member from diverting from the objective or goals.

11. Agree to timeframes

Time is very important in most bargaining exchanges.⁷ There are lots of arguments for and against imposing timeframes for negotiations, but the prevailing argument is that timelines and deadlines are necessary in order to ‘push’ bargainers to agreements and to create a sense of urgency. Giving an endless amount of time might lead to bargainers using ‘delaying tactics’.⁸

12. Choose a venue

The choice of venue for the negotiations has an effect on the psychological climate of the negotiations. If the negotiations are held on one party’s territory, that party has power over the physical arrangements, which in turn affects all the parties attending.⁹ This gives the host party an advantage, much like ‘home ground advantage’ in sport. Guests to the site may view themselves as inferior and this might affect their behaviour.¹⁰ A neutral site is often more appropriate.

13. Agree to the rules

11. Atkinson,
Gerald Gordon,
*The effective
negotiator*, 47

It's really important to have a set of rules for the negotiations. Rules provide stability during what can be seen as an unstable situation.¹¹

Here follows a list of basic rules for negotiations:

- ✓ Only the issues on the agenda may be bargained for.
- ✓ All standing agreements must be upheld during negotiations.
- ✓ Determine a time limit, if any, and stick to it.
- ✓ Negotiators should show a willingness to move from their ideal settlement.
- ✓ Bargaining should be fair to all parties.
- ✓ Once an offer is made it should not be withdrawn without sufficient warning or significant changes in circumstances.
- ✓ Only in the case of a failed direct negotiation will parties be allowed to appeal to actors outside of the negotiations (e.g. the opponent's followers).
- ✓ The final settlement should be free of dishonesty and deceit.
- ✓ Once the settlement has been formally agreed upon, it must be implemented as is.

As part of the rules for the above mentioned negotiations, it is important to determine how the decisions would be agreed upon during the negotiations. The parties present must accept the decisions made as being binding once an agreement has been reached. This could be by means of numerical majority, in a system of voting. Regardless, these details need to be clearly stated in the rules.

Preparation checklist



1. Revisit demands

Before you enter the negotiations or bargaining table, always make sure that you have gone over and are familiar with your demands, management offers, trade-offs, your alternatives for each demand/offer. Check in with your team to ensure they are ready for negotiations. to start.



2. Update and consult members

A consultation process with members can also be initiated to update them regarding the outcome of the pre-bargaining meeting. This helps members to feel involved in the whole process and own it. As a negotiator, you enter the negotiations on their behalf, meaning it is their mandate that counts, not yours.

During preparation, a negotiator must get to know and understand their constituency (for example, their workplace, age, gender and challenges).

The negotiator must also be able to forecast the outcome of the negotiation as this will assist in preparing for a dispute if it arises. Make sure members know when the negotiations will be taking place and when and how they will get a report about the outcome.¹²



3. Strategise

Formulate a strategy (a plan to achieve your goals or objectives) and tactics (the methods employed to achieve a strategy) for all stages of the negotiations to assist in marshalling your arguments.



4. Determine the structure of negotiations

The structural components of negotiations are very important and greatly affect the behaviour of bargainers.¹³

The process involved in getting to know each other will consist of negotiators from both sides introducing themselves and their teams. State the objective of the meeting and put down the ground rules that will guide the proceedings.

12. De Silva, Sriyan. 1996. *Collective bargaining negotiations*. International Labour Organisation, 5.

13. Rubin, Jeffrey Z., and Bert R. Brown, *The social psychology of bargaining and negotiation*, 42.

2 NEGOTIATION

The second phase in the collective bargaining process is where you actually engage with the other party face-to-face, across the bargaining table, in order to negotiate the best possible outcomes for your members. Everything you've done in the first phase – all the hours of consultation and preparation – finally pays off. You have the information you need, you are well equipped, and so are your other team members.

This phase calls on another skill set – you are required to:



The process of negotiations

Each side will be given an opportunity to state and make arguments for their proposal (demands and offers). You need to state your case simply and clearly. Show the other party that you know what you are talking about and have confidence while stating your case. Your team members will motivate demands allocated to them to strengthen your case.

There will be agreements and disagreements.

Negotiators' emotions will be tested which can lead to anger, frustration and personal attacks. Stay calm and focus on the issues or offers put forward by management. Do not shy away from asking the opposite negotiating team for clarity or an explanation regarding their position, offer or response.

If you agree with some of the demands from the other party, get agreement 'in principle' to avoid confusion when there's a dispute.

Listen actively to the opposition's comments or responses and watch their body language (little nods of agreement for example) while you are stating your case. This will assist in predicting whether an agreement can be reached without hiccups.

It is very important to keep an open mind when it comes to the kind of agreement you would like to reach. For example, the agreement must



Trade-offs

Identify issues/ demands that can be traded to get something in return from management.

But take note not to give away too much too soon as this can jeopardise your overall plan.

offer an acceptable solution to both parties (workers and management). The agreement must be inclusive (cover all workers in the workplace/sector, including workers in vulnerable sectors). It is worth giving some thought to how you might get movement and agreement.

Caucus

What happens if you feel that you are losing the arguments, or there's disagreement in your team regarding some issues? Shop stewards should never disagree with one another in front of management. You stop the negotiations and request a caucus to allow you to think, get more information or to manage your emotions. This means that you take a break away from the main group to speak among your negotiating team. This mechanism (caucus) will also allow you to touch base with your constituency regarding the progress of the negotiations. Before you take the caucus, summarise what you have discussed so far and where in the process you find yourselves. This will help both parties to resume without hold-ups after the interval.

During negotiations, negotiators may feel the need to alter their position, changing what the workers have mandated. They

need to discuss this in a caucus away from the negotiating table. Even if the negotiator agrees to a new position, they can only take this as a recommendation to workers. The negotiator is not at liberty to make an agreement which has not been approved by the people they represent.

Trust and good faith

Bargaining in good faith means that ‘once a negotiator makes an offer it cannot be retracted, and an agreement, once reached, is enforceable’.¹⁴

In simpler terms, this means that when bargaining in good faith, neither party can withdraw an offer, and once an agreement is made, it has to be put into effect.

Successful processes focus not only on the issues at hand, but also on creating an effective working relationship between parties in order for them to negotiate in good faith.¹⁵ When negotiators trust each other, there is more cooperation.

This is sometimes called the ‘dilemma of trust’.¹⁶ While the parties involved should show their integrity, they should not appear weak or give too much information. Do not make a promise you do not intend to keep, as this shows ‘bad faith’.

14. *Bacharach, Samuel B., and Edward J. Lawler. 1981. Bargaining: power, tactics, and outcomes. San Francisco: Jossey-Bass, 9.*

15. *Harris, Peter, and Ben Reilly, Democracy and deep-rooted conflict, 64.*

16. *Rubin, Jeffrey Z., and Bert R. Brown, The social psychology of bargaining and negotiation, 15.*



After every round of negotiation, the negotiating team must report back to the workers who will be affected by the outcome of the negotiations.

Feedback to members

Always keep in mind that you represent workers and therefore keep them informed about progress in the bargaining table. Identify issues where there's no agreement and request a fresh mandate from members. Make sure that members understand all the processes leading to the dispute mechanism if there's no agreement reached.

After every round of negotiation, the negotiating team must report back to the workers who will be affected by the outcome of the negotiations. In giving a report back it is important to present accurately how management has responded to workers' demands and what offers it is making. The negotiators should also give workers their assessment of how things are going and they should give recommendations about how to move forward. After a full discussion the negotiators should get a new mandate. Sometimes workers will give negotiators a fall-back position that they will accept if they cannot win their first demand.

Reaching agreement with members can be a difficult step, especially if you have not won everything they demanded.

- ✓ **Plan carefully** how you will report back to workers.
- ✓ **Plan collectively.** Make sure every member of the negotiating team has the same understanding and agrees to the chosen report-back approach.
- ✓ **Prepare support materials** such as pamphlets and charts to help you explain what has been agreed or recommended. This is especially important if you are unable to convene all workers at one meeting.
- ✓ **Explain to workers** what happened and why. Give some life and colour to the explanation.
- ✓ **Be honest** in your explanation.
- ✓ **Be calm.** Use emotion and anger in a controlled way.
- ✓ **Put forward options** for workers to consider.
- ✓ **Listen to all viewpoints**, including those of women, and try not to allow one person or position to dominate.
- ✓ If workers are divided, take time to work through the issues and options. **Be positive about progress made.**
- ✓ **Try to reach consensus** amongst workers – or at least consensus amongst the majority. If not, you may have to use a voting process.

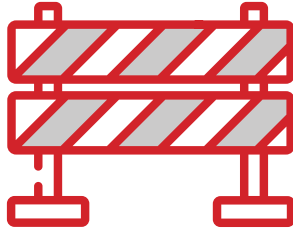
3 AGREEMENT

This is a crucial phase in the collective bargaining process. Before the agreement is signed, make sure to read and understand every clause. Share the agreement with your constituency, leadership and/or legal department to check, amend or give input. File the agreement safely for future referencing. Review the negotiations with your team and address any challenges encountered at the bargaining table.

Checklist

Reaching agreement:

- ✓ The agreement is in writing
- ✓ **The agreement gives clear guidance on what is to be implemented and how it is to be implemented**
- ✓ **The clauses of the agreement worded in a way that lends itself to a single interpretation of what is to be implemented and how it is to be implemented**
- ✓ The clauses of the agreement are not too vague and open to different interpretations of how they should be implemented.
- ✓ **The start and end date of the agreement are clearly stated**
- ✓ It is clear who is covered by the agreement
- ✓ **The agreement is worded in a way that can be understood easily by member**



Reaching deadlock

If no agreement is reached, then negotiators must go back to the workers and discuss what to do. If there is no acceptable compromise that can be seen then the workers need to look at the possibility of declaring a dispute.

If there is a decision to declare a dispute, then it is important to be clear about the courses of action that can be taken legally and which choices there are outside of the law. For this, it is important to know what has already been agreed to in any collective agreement, and to know what the LRA says about dispute procedures and industrial action.

It is also important not to delay taking a course of action. Although there are no longer time limits on cases going to the CCMA (except for unfair dismissals) workers will lose interest and confidence if a dispute is neglected.

4

IMPLEMENTATION

This is a **crucial phase** in the collective bargaining process.

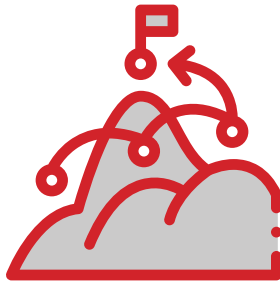


Before the agreement is signed, make sure to read and understand every clause. Share the agreement with your constituency, leadership and/or legal department to check, amend or give input. File the agreement safely for future referencing. Review the negotiations with your team and address any challenges encountered at the bargaining table.



Once agreement has been reached, what happens? It's not only the process of negotiation that is important, but also what happens after an agreement has been reached. For an agreement to be considered legitimate, it should be successfully implemented. In this sense, the agreement itself is only the beginning of the process.

Do follow up and make sure that what was agreed in the bargaining table is being implemented as per the collective agreement. Share the final agreement(s) with your members or constituency.



Use the agreement as catalyst

You have gained a victory for workers. Their spirits are high and they are positive about what the organisation can do. Build on this!

- ✓ **Use it as an educational tool.** What lessons have we learned? Give yourself time to reflect on the experience of negotiating.
- ✓ **Use it to raise awareness** of issues, about negotiations and about the organisation.
- ✓ **Get workers to go out**, spread the word and bring in new members.
- ✓ **Provide publicity** on the agreement.
- ✓ **Celebrate** the victory!

The structure and process of collective bargaining varies considerably across bargaining levels and sectors in the formal and informal economy. Negotiators need to keep enhancing their skills and abilities to adapt to the collective bargaining environment as the world of work is changing.

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The Negotiator's Guide

Strategies to inspire, organise & represent workers.

2

Think piece

Recruitment & organising

A background to bargaining

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Communication is central to recruitment and organising.



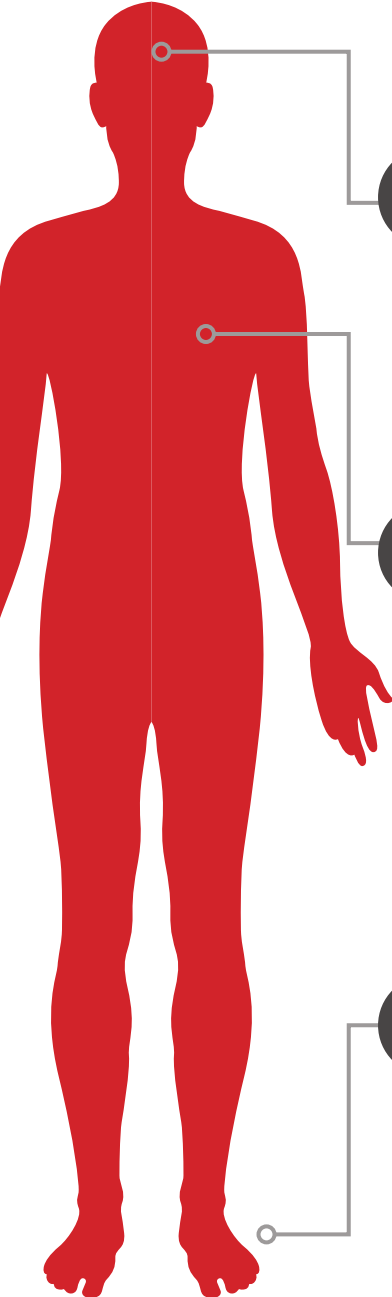
Put simply, organising is an ongoing conversation among workers and between workers and their elected representatives.

Recruitment and organising are vitally important to trade unions. Recruitment and organising are related processes. They are also quite different.

Recruitment is the promise of being part of something greater than oneself. Organising is delivering on that promise.

This chapter distinguishes between recruitment and organising by describing what a worker is likely to think about (the head), feel (the heart) and do (the feet).

A worker that has been recruited



Head level - Thinking

- Understands the story of the union and the rights the union has won in her workplace
- Understands what the union is able to offer her
- Understands what her rights and responsibilities are as a union member



Heart level - Feeling

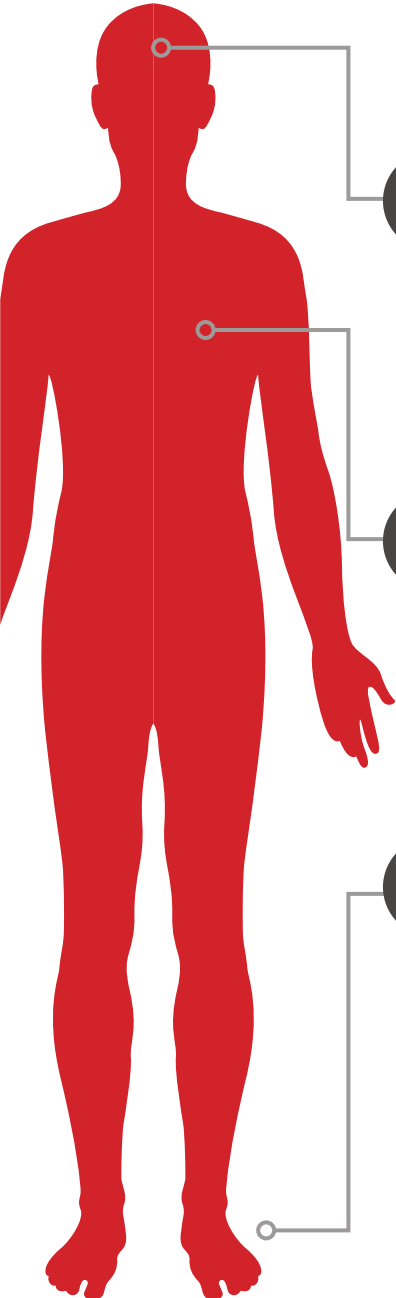
- Has shared her fears, needs and aspirations with the union
- Feels valued as a person and worker
- Feels she has been giving the opportunity to exercise choice
- Feels that she will be able to learn and grow
- Feels that she is joining a collective that she can actively participate in and that will protect her



Feet level - Doing

- Is willing to participate in democratic processes
- Is willing to articulate her needs
- Is willing to support fellow workers
- Is willing to contribute financially to sustain the union

A worker that has been organised into a trade union



Head level - Thinking

- Know her rights and the responsibilities of the employer
- Knows the contents of the most recent collective agreement
- Knows the power and responsibility of the trade union



Heart level - Feeling

- Feels a sense of belonging
- Feels protected from being exploited by the employer
- Feels confident to engage in discussion
- Feels part of a collective voice



Feet level - Doing

- Participates in union activities
- Initiates discussions when necessary with the union
- Participates in the collecting of demands and the organising and mobilising around collective bargaining

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3

Think piece

Solidarity and coalitions

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A background to bargaining

To create coalitions at a local level, unions can work in a collective with representatives from the community and with women's organisations, state institutions, faith-based organisations, sports organisations, school governing bodies and/or traditional healers, among others.

Everyone who joins such a collective should have a shared understanding of what they are trying to achieve. For example, people can come together to reduce the level of gender-based violence in schools. Organisations might come together to develop strategies to keep workers healthy and safe in the workplace during the COVID-19 pandemic.

The following are some of the key actions that can create solidarity and make coalitions work.



Everyone needs to have the intention to work with others

The union has an intention to bring together all the individuals and organisations that care about addressing a challenge, with the aim of creating relationships of trust and opportunities to experiment with approaches to addressing that challenge.

This might involve the coming together of public-sector unions, private-sector unions, formations that organise workers in the extended public works programme and civil society and community-based groups – all with the intention of (for example) addressing the challenge of violence in the workplace.



Create a shared vision through dialogue and collaboration

The groups and organisations participating in the coalition bring different perspectives and ideas for action to the table and, instead of working individually, a common agenda is created where everyone feels committed and passionate about working towards the shared vision.



Share the power and decision-making

For unions, sitting around a table is more likely to be associated with bargaining; a give and take with a focus on who holds power. Solidarity is about shared power – this is an important starting point for solidarity and coalition building.

We are very familiar with organisational rivalries and how the competition for power and status can stand in the way of creating solidarity. Smaller and more poorly funded community organisations often resent

and fear domination by financially powerful unions. Sharing the decision-making table is a central principle in coalition-building. This way, everyone has an opportunity to be heard – an important shift from having to fight to be heard. This opens the space for everyone meeting around the table to offer resources, actions and commitment at both an individual and organisational level, regardless of the organisational membership size.



Be prepared to support and let others lead

As with all coalitions, there is a coordination role. Even though the unions can be institutionally stronger than many other organisations in a coalition, unions do not automatically have to take on the coordination role and can play more of a supportive than leading role. In other contexts, it might be more appropriate or opportune for the union representatives to take on the coordination function, while keeping in mind the importance of harnessing the diversity of everyone participating as they contribute to a common agenda.



Mutual accountability based on commitment

Collective impact does not have formal mandating as central to the process. Because of this, unions that create or participate in coalitions might struggle

to work in a manner that seems to be governed and without clear individual accountability. In coalition-building, participants bring their organisational vision and individual passion to the table. No one is asked to vote or commit to decisions that might be contrary to their organisational mission. Everyone participating in the initiative has a mutual accountability based on the commitments that they have voluntarily made.



Consciously build trust

Accountability can be created through trust. For this to happen, it is important to create honest and supportive interpersonal and inter-organisational relationships. Part of the business of any coalition meeting or gathering is a check-in on how people are feeling and to facilitate physical exercises that help deal with trauma and stress. These processes have equal importance to that of discussions on theory or actions.



Create a space to share stories

We can create spaces where members of organisations come and feel safe to tell their stories. Stories are incredibly powerful and allow people to connect to one another and to other members' purposes at both the heart and head levels. The process of storytelling helps people to understand one another in new and different ways. After sharing

their story, the trade unionist is no longer merely seen as a worker or a union representative – their story offers a window into their life and the other roles they play (they might be a father, brother, mother, partner, community member, etc). Storytelling brings to the fore the layered and multiple identities of those participating and creates fertile ground for a connection most central to creating solidarity.



Create the time to reflect and learn

Coalition building takes time, and ongoing communication, reflection and learning are important for success. Coalition meetings do not follow traditional meeting protocols and are more like places for friends to meet. Special attention is placed on creating a warm and friendly environment. Innovative popular education methods, like small group discussions, storytelling, structured conversations, and work with drawings, are used to create safe and engaging spaces.

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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 go 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.

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

5

A framework for negotiating conditions at work

LRS Labour
Research
Service



How to use this framework

This chapter stands for the possibility of negotiating better conditions at work¹, no matter where the workplace is located, no matter what the status of workers, and no matter how unorganised workers are.

1. Conditions at work: The rules and conditions of service that apply to workers in policy and also in practice. Some rules and conditions might be unwritten or even unspoken, even though they are accepted and enforced.

This chapter provides a framework for thinking about collective agreements and conditions at work. This chapter is for worker leaders and officials, new and old. This chapter should also be useful for worker leaders in more informal workplaces as they attempt to establish minimum standards.

This chapter aims to help negotiators and other roleplayers think about what is in a collective agreement and what they can still negotiate.

Section 1: (page 9 of this document)

The main types of conditions at work and the value of these conditions

Section 1 describes 15 of the main types of conditions at work and the value of each of those conditions. This gives a negotiator a structured way of looking at conditions at work. Are minimum standards in place for each of the main types of conditions at work?

What is the principle behind a condition at work? Conditions at work are not simply a number of days, or a number of hours or an amount of money. Conditions at work always have a principle of well-being, fairness or a social value that underpins them. This principle forms the foundation of arguments in negotiations.

For example, a negotiation about allowances is not just about pay. It is about recognising that some workplaces and some types of work put special demands on workers, and that special allowances should be made for these special demands.

In a similar way, a negotiation about hours of work is not just about pay. It is also about limiting extraordinary hours and compensating workers for anti-social hours of work, like late-trading, weekends and public holidays. Those who work nights and weekends lose opportunities to participate in important family, community and cultural events.



The main types of conditions at work:

1. Allowances

2. Forms of employment

3. Discrimination

4. Health and safety at work

5. Hours of work

6. Leave

7. Legal norms and minimums

8. Parental Rights

9. Pay

10. Security

11. Retrenchment

12. Technology

13. Trade union rights

14. Training and progression

15. Transport

Section 2: (page 16 of this document)

Examples of the main types of conditions at work, the law and other benchmarks

Section 2 provides examples of clauses that deal with the main types of conditions at work using legislated minimums and examples from existing collective agreements.

This is not a complete list of conditions at work. It is a set of minimum conditions at work upon which a negotiator can build.

A negotiator can use this table as a checklist of what to look for in collective agreements and to identify conditions that can still be negotiated. Bear in mind that most of these examples describe minimum conditions of law, and a negotiator would try to go beyond these minimum levels. However, if certain conditions are not yet in an agreement, then the minimum level is a good starting point.



Identifying the right individual, enterprise or organisation to bargain with is a precondition for negotiation.

Negotiating conditions at work in less formal settings

Negotiators who are operating in more informal settings can use this resource to identify conditions of work which could be applied to their workplaces.

The issues of security, parental responsibility, hours of work, and so on are universal and apply in one way or another to all workers and all workplaces, even if the possibilities for workers to win better conditions vary.

Even if there is no collective agreement in your workplace, there are always conditions at work. Even where there is no written contract of employment or formal agreement of conditions at work, there will be a set of rules or conditions which apply in practice and that are enforced by employers in one way or another.

Identifying the right individual, enterprise or organisation to bargain with is a precondition for negotiation. A negotiator can use this framework to try and understand which conditions of work are important to the workers that they wish to represent. Knowing what is important to workers helps define who the best bargaining partner would be.

As an example, for informal traders in public spaces, the site or location of their work and the support or harassment that goes with it might be the central issue. The question then is, who regulates these spaces? In the case of informal traders, this would point you towards the municipality and one or more law enforcement agencies as potential bargaining partners.

Here is another example. Workers supplied by temporary employment services face many challenges, and security of employment is one of them. Amendments to Section 198 of the Labour Relations Act open up the possibility of negotiating their employment status with the client company rather than the temporary employment service.

There is always a possibility for bargaining.

1

The Main Types of Conditions at Work.

The value of these conditions



1. Allowances

Principle

Recognise that certain workplaces and types of work make special demands on workers and that special allowances should be made for this.

Examples

There are different kinds of allowances: shift, fridge, danger, travel, living out, standby, acting and transport allowances.



2. Forms of employment

Principle

- Recognising different types of employment, but understanding that all need security and stability in employment.
- Promoting pay and benefit equity for the different forms of employment.

Examples

Favouring permanent full-time jobs and regulating part-time, temporary employment, limited duration contract and casual work.



3. Discrimination

Principle

- Recognising discriminatory policy and practice in the workplace.
- Recognising and valuing the needs of women and men at work.
- Recognising and valuing differences in sexual identity and orientation in the context of work.

Examples

Clauses in agreements that promote the participation of women and men in trade union life and in work life.

Processes for dealing with discrimination, sexual harassment and gender-based violence.



4. Health and Safety at work

Principle

Maintaining and promoting worker health and safety in the workplace and in the course of workers' duties.

Examples

- Designated health and safety representatives with duties and powers.
- Evaluating hazards in the workplace



5. Hours of Work

Principle

- To provide enough guaranteed hours of work for decent pay.
- To provide a regular schedule of hours of work to allow workers to plan for the fulfilment of family responsibilities and the opportunity to participate in established social and cultural events.
- To limit hours of work so that workers may rest, rejuvenate and stay safe.
- Compensating workers for anti-social hours of work (late-trading, weekends and public holidays).

Examples

Overtime, guaranteed minimum hours, short-time, averaging of hours, compressed working week, shift work.



6. Leave

Principle

- Leave, in all its forms, is a very important indicator of the well being of workers and in establishing a balance between work and life.
- It could mean having time to rest, time to recover from illness, or time to participate in important private, cultural and community events.

Examples

Annual leave, sick leave, family responsibility leave, parental leave, maternity leave and shop stewards' leave.



7. Legal Norms and Minimums

Principle

References to the existing laws which establish minimum conditions and codes of good practice

Examples

- Basic Conditions of Employment Act²
- National Minimum Wage Act³
- Sectoral determinations
- Bargaining Councils
- Labour Relations Act⁴



8. Parental Rights

Principle

Recognising, valuing and sharing the responsibility of raising our children.

Examples

Maternity rights and benefits, paternity leave, parental leave, family responsibility leave, leave for antenatal and postnatal check-ups.

2. "Acts." n.d. <https://bit.ly/3ofOsea>

3. "Government Gazette." 2018. <https://bit.ly/3AOzqAO>

4. "Acts." n.d. www.labour.gov.za. <https://bit.ly/3AQs2oL>



9. Pay

Principle

Compensation for labour and time.

Examples

Wages, annual increases, allowances, overtime, regular and reliable monthly wages.



10. Security

Principle or Purpose

To provide some security of employment (duration) and security in employment (measures that help protect workers from financial shocks resulting from retrenchment, retirement, death and disability).

Examples

This includes secure employment, reliable wages, decent pay, medical benefits and retirement savings.



11. Retrenchment

Principle

To protect workers from disguised dismissal on the basis of operational requirements and to support workers facing retrenchment.

Examples

Labour Relations Act, 2018, Section 189



12. Training and Progression

Principle

Creating opportunities for learning and better pay and conditions of work.

Examples

Study leave, bursaries, financial support for further education, skills programmes and a skills development plan.



13. Technology

Principle

Dealing with new technology in the workplace and the implications for worker health, work intensity, accountability, transparency and fairness.

Examples

- Remote work - The right to disconnect (from time-to-time from online platforms and applications)
 - Transparency and fairness in automation and management by algorithms.
 - The arrangement of shift work.
-



14. Trade Union Rights

Principle

Provide a rational and consistent framework for regulating the relationship between the union and the employer. This gives effect to workers' rights to freedom of association.

Examples

Leave for shop stewards to attend to trade union matters, facilities for shop stewards, the right to communicate with workers and access to workers.



15. Transport

Principle

Recognising the spatial politics of post-Apartheid South Africa and making allowances for the challenges many workers face travelling to and from work, including the danger that travel poses to workers who are on the roads in order to perform their jobs.

Examples

Safe transport arrangements, hours of work that promote safe travel, subsidising transport costs for workers.

2

Main Types of Conditions at Work.

The Law & Other Benchmarks⁵



1. Allowances

Examples

Allowances

Shift, fridge, tool, danger, travel, living out, subsistence, standby, acting and transport allowances.

Legislated Minimums & Other Benchmarks

Night work

An employer may only require or permit an employee to perform night work, if so agreed, and if - (a) The employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours. (b) Transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift. (Basic Conditions of Employment Act, Section 17(2)).

More Benchmarks

- Shift allowance: 30% of basic wage (AWARD average rate).
- Acting allowance: 15% of basic wage (AWARD average rate).
- Night Shift allowance: 13% of basic wage (AWARD average rate).

AWARD is a database of minimum wages and conditions of work in collective agreement in South Africa, maintained by the LRS.

5. "Acts." n.d. www.labour.gov.za. <https://www.labour.gov.za/DocumentCenter/Pages/Acts.aspx>



2. Forms of Employment

Examples

Temporary or permanent

- Section 198A (1) In this section, a “temporary service” means work for a client by an employee —
(a) for a period not exceeding three months; ...
- (3) For the purposes of this Act, an employee—
(b) not performing such temporary service for the client is— (i) deemed to be the employee of that client and the client is deemed to be the employer; and (ii) subject to the provisions of section 198B, employed on an indefinite basis by the client. (Labour Relations Act, 2018, Section 198A).

Legislated Minimums & Other Benchmarks

Pay for casual workers

An employer shall pay a casual employee in respect of each hour or part of an hour (excluding overtime) worked by the employee on any day other than a paid public holiday or a Sunday not less than the hourly wage as calculated in terms of clause 4(7)(b) for an ordinary employee who in the same area performs the same class of work as the casual employee is required to do, plus 15% or not less than the hourly wage or hourly equivalent of the salary actually being paid to the ordinary employee, whichever is the greater amount. (Bargaining Council for the Private Security Sector, Government Gazette #43036 of 20 February 2020).

More Benchmarks

Who is responsible?

Section 198 (4) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any of its employees, contravenes — (a) a collective agreement concluded in a bargaining council that regulates terms and conditions of employment; (c) the Basic Conditions of Employment Act; or (d) a sectoral determination made in terms of the Basic Conditions of Employment Act. (Labour Relations Act, 2018, Section 198).



3. Equality

Examples

Discrimination

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, belief, political opinion, culture, language and birth. (Employment Equity Act, Section 6).

Legislated Minimums & Other Benchmarks

Equal pay for equal work

It is not unfair discrimination if the difference in pay or remuneration is fair and rational and is based on any one or a combination of the following factors - 7.3.1. seniority or length of service; 7.3.2. qualifications, ability, competence or potential; 7.3.3. performance, quantity or quality of work, provided that employees are equally subject to a performance evaluation system that is consistently applied; 7.3.4. where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay/remuneration; 7.3.5. where an individual is employed temporarily to gain experience or training; 7.3.6. there is a shortage of relevant skills in a particular job; and 7.3.7. any other relevant factor that is not unfairly discriminatory in terms of Section 6(1) of the Act. 7.4. These factors may not be used to determine pay /remuneration in a manner that is biased

or indirectly discriminates against an employee or group. (Employment Equity Act: Code of Good Practice on Equal Pay/Remuneration for Work of Equal Value, Gazette 1 June 2015, No. 38837).

More Benchmarks

Violence and harassment in the workplace

- (a) The term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;
 - (b) The term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.
 - (Convention C190, International Labour Organisation, ratified by South Africa).
-



4. Health & Safety at Work

Examples

Eligibility of safety representatives

Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with conditions and activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section. (Occupational Health and Safety Act, Section 17.1).

Threshold for safety representatives

Every employer who has more than 20 employees in his employment at any workplace, shall ... designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof. (Occupational Health and Safety Act, Section 17.1).

Legislated Minimums & Other Benchmarks

Number of health and safety representatives

The number of health and safety representatives for a workplace or section thereof shall, in the case of shops and offices be at least 1 for every 100 employees or part thereof, and in the case of all other workplaces, at least 1 health and safety representative for every 50 employees or part thereof: provided that those employees performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the workplace where they so report for duty. (Occupational Health and Safety Act, Section 17.5).

Hours of work of health and safety representatives
All activities regarding the designation, function and training of representatives must be performed during normal working hours.

More Benchmarks

Role and function of health & safety representatives

Health and safety representatives are entitled to do the following:

- (1) Representatives may check the effectiveness of health and safety measures by means of health and safety audits.
- (2) Representatives may identify potential dangers in the workplace and report them to the health and safety committee or the employer.
- (3) Representatives may, together with the employer, investigate incidents or complaints from workers regarding health and safety matters and report them in writing.
- (4) Representatives may make representations regarding the safety of the workplace to the employer or the health and safety committee or, where the representations are unsuccessful, to an inspector.
- (5) Representatives may (a) inspect the workplace after notifying the employer of the inspection, (b) participate in discussions with inspectors at the workplace and accompany inspectors on inspections, (c) inspect documents, (d) with the consent of his/her employer, be accompanied by a technical advisor during an inspection.
- (6) Representatives must attend health and safety committee meetings. (Department of Employment & Labour, Health & Safety in the Workplace).



5. Hours of Work

Examples

Ordinary hours of work

An employer may not require or permit an employee to work more than 45 hours in a week, or 9 hours on any day if the employee works 5 days or fewer in a week, or 8 hours in any day if the employee works for more than 5 days in a week. (Basic Conditions of Employment Act, Section 9).

Legislated Minimums & Other Benchmarks

Overtime – Collective Agreement and the Basic Conditions of Employment Act

- The legal minimums of the Basic Conditions of Employment Act can be varied further only by collective agreement. A negotiator therefore has an opportunity to resist these variations in collective bargaining.
- Understanding what time is considered ordinary hours and what time is considered overtime can become very complex if a collective agreement includes all the variations that are allowed by the BCEA. This is something to avoid.
- In the Basic Conditions of Employment Act, section 9(2), the maximum ordinary hours of work can be varied by agreement up to 10 hours for a short week (5 days or fewer) and 9 hours per day for a 6 day week.

More Benchmarks

More about overtime

- Sections 11 and 12 allow an employer to require an employee to work very long hours in some weeks, while keeping hours lower in other weeks, and to still meet the limits allowed by the Act. The limits here are (a) an average of 45 ordinary hours per week over the agreed period and (b) an average of 5 hours' overtime in a week over the agreed period.
 - Section 11 (1) Compressed working week: An agreement in writing may require or permit an employee to work up to 12 hours in a day, inclusive of meal intervals (Section 14) without receiving overtime pay. The limits here are (a) maximum 45 hours of work in any week; (b) 10 hours of overtime in any week, or (c) 5 days in any week.
 - Section 12: A collective agreement can allow the averaging of ordinary hours of work and overtime over a period of up to 4 months
-



6. Leave

Examples

Annual leave

- An employer must grant an employee at least 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle of 12 months. (Basic Conditions of Employment Act, section 20(2a)).
- An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked. (Basic Conditions of Employment Act, Section 20(8)).
- The chapter on Leave in the Basic Conditions of Employment Act applies to employees that work 24 or more hours per month for an employer.

Legislated Minimums & Other Benchmarks

Maternity leave and work arrangements

- 5.12. Arrangements should be made for pregnant and breast-feeding employees to be able to attend antenatal and postnatal clinics as required during pregnancy and after birth.
- 5.3. Where appropriate, employers should also maintain a list of employment positions not involving risk, to which pregnant or breast-feeding employees could be transferred. (Basic Conditions of Employment Act: Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child).

More Benchmarks

More about maternity leave and work arrangements

- In terms of section 26(2) of the BCEA, an employer must offer suitable alternative employment to an employee during pregnancy if her work poses a danger to her health or safety or that of her child or if the employee is engaged in night work (between 18:00 and 06:00), unless it is not practical to do so. Alternative employment must be on terms that are no less favourable than the employee's ordinary terms and conditions of employment. (Basic Conditions of Employment Act: Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child).
-



7. Legal Norms and Minimums

Examples

6. "Compensation for Occupational Injuries and Diseases Act 130 of 1993 | South African Government." n.d. <https://bit.ly/3IOEGr0>

7. "Government Gazette." 2018. <https://bit.ly/3s0P48o>

8. "Government Gazette REPUBLIC of SOUTH AFRICA." 2002. <https://bit.ly/3Chez3B>

Acts

- Basic Conditions of Employment Act
- Compensation for Occupational Injury and Diseases Act⁶
- Labour Relations Act
- National Minimum Wage Act⁷
- Occupational Health and Safety Act
- Sectoral Determinations
- Unemployment Insurance Fund Act⁸

Legislated Minimums & Other Benchmarks

Collective Bargaining and other Agreements

- Bargaining Council Agreements
- Collective Bargaining Agreements
- Sectoral Determinations



You can find Acts and Codes of Good Practice at <https://www.labour.gov.za/documentcenter>

More Benchmarks

Codes of Good Practice

- Labour Relations Act (a) Collective Bargaining, Industrial Action & Picketing (b) Dismissal (c) Dismissal for Operational Reasons (d) NEDLAC Accord on Collective Bargaining and Industrial Action (e) Picketing (f) Who is an employee?
 - Basic Conditions of Employment Act (a) Arrangement of Working Time (b) Code of Good Practice for Expanded Public Works Programmes (c) Employing Children in Advertising, Artistic or Cultural Activities (d) Protection of Employees during pregnancy and after Birth of a Child
 - Employment Equity Act (a) Employment of Persons with Disabilities (b) Equal pay / Remuneration for Work of Equal Value (c) Handling of Sexual Harassment Cases in the Workplace (d)
 - HIV and AIDS and the World of Work (e) Integrating Employment Equity into Human Resource Policies (f) Key Aspects of HIV/AIDS and Employment (g) Preparing, Implementing and Monitoring Employment Equity Plans (h) Preventing and Eliminating Violence and Harassment - Draft Code.
-



8. Parental Rights

Examples

Family Responsibility Leave

- Full-time employees are entitled to 3 days of paid family responsibility leave per year, on request, when the employee's child is sick, or in the event of the death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling. (Basic Conditions of Employment Act, 2018, Section 27 as amended 17 February 2020, Gazette 43026).

Legislated Minimums & Other Benchmarks

Parental Leave

- Section 25A (1) An employee who is a parent of a child is entitled to at least 10 consecutive days of parental leave, when the employee's child is born, or the adoption is granted, or the child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order.
- (5) The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act No.63 of 2001. An employee is entitled to 66% of his or her regular earnings subject to the maximum income threshold as per the Unemployment Insurance Act. (Labour Laws Amendment Act No.10 of 2018 amending the Basic Conditions of Employment Act, 2018).

More Benchmarks

Who qualifies for Parental Leave?

- Both male and female employees may qualify for parental leave, depending on the circumstances. However, if the employee gave birth to the child, she will not qualify for parental leave. Such employees are entitled to 4 months unpaid maternity leave.
- Female employees may, however, qualify for parental leave in circumstances where such employee is one of the adoptive parents or a prospective adoptive parent as per the definitions above. For the purposes of adoption leave, the child must be younger than 2 years of age. (J du Toit, SA Labour Guide, <https://www.labourguide.co.za/recent-articles/2665-parental-leave>, accessed 11/06/21).



9. Pay

Examples

Choose an approach to wage increases

- a) Across-the-board percentage (%) increases.
- b) Staggered percentage (%) increases – higher % for low earners and lower % for high earners.
- c) Percentage increase or a money amount, whichever is greater for the worker as an amount of money.

Legislated Minimums & Other Benchmarks

Minimum guaranteed hours

- Daily wage payment. An employee or a worker, as defined in Section 1 of the National Minimum Wage Act of 2018, who works for less than 4 hours on any day, must be paid for 4 hours of work on that day. (Basic Conditions of Employment Act, Section 9A)
- Guaranteed minimum hours of work: An employer shall not employ any employee to work for less than 6 hours per day. If an employee works for less than 6 hours, then that employee shall be paid for 6 hours. (Bargaining Council for the Contract Cleaning Industry, Main agreement, 2020).

More Benchmarks

Payment in kind

- An employer shall not, as a condition of employment, require an employee to accept accommodation, meals or rations from the employer or from any person or at any place nominated by the employer. An employer shall not, as a condition of employment, require an employee to receive any in kind form of payment in lieu of salaries or as part thereof. (Bargaining Council for the Private Security Sector, 2020).
-



10. Retrenchment

Examples

Labour Relations Act, 2018, Section 189

Legislated Minimums & Other Benchmarks

Dismissals based on operational requirements.

- (1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult ...
(d) ... the employees likely be affected by the proposed dismissals or their representatives nominated for that purpose. (Labour Relations Act, Section 189, 2018).

More Benchmarks

- (2) The employer and the other consulting parties must in the consultation envisaged by subsections (1) and (3) engage in a **meaningful joint consensus-seeking process** and attempt to reach consensus on:
 - (a) appropriate measures —
 - (i) to avoid the dismissals;
 - (ii) to minimise the number of dismissals;
 - (iii) to change the timing of the dismissals; and
 - (iv) to mitigate the adverse effects of the dismissals;
 - (b) the method for selecting the employees to be dismissed; and
 - (c) the severance pay for dismissed employees.
(Labour Relations Act, Section 189, 2018)

An employee dismissed for operational requirements or whose contract of employment is terminated in terms of Section 38 of the Insolvency Act, 1936, is entitled to 1 week's severance pay for every year of service. (Basic Conditions of Employment Act, Section 41).



11. Security

Examples

Different aspects of security at work

Security in employment includes secure (continuing) employment, reliable wages, decent pay, health benefits, safety standards, retirement savings and severance packages.

Legislated Minimums & Other Benchmarks

The following list is a set of questions a negotiator can ask of a collective agreement to establish what level of security or insecurity workers experience at work:

More Benchmarks

Assessing the level of security that workers experience

- How secure is the job? (full-time, part-time, indefinite employment, contracted, limited-duration contract, temporary employment service or casual labour)
- Are workers able to work sufficient ordinary hours of work to make a decent wage?
- Is the monthly income of workers stable and predictable?
- Do workers have savings for retirement?
- Do workers have any health benefits?



12. Transport

Examples

Safe transport arrangements, hours of work that promote safe travel, subsidising transport costs for workers.

Legislated Minimums & Other Benchmarks

Transport and Night Work

An employer may only require or permit an employee to perform night work, if so agreed, and if:

(a) the employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours.

More Benchmarks

Transport and Night Work

An employer may only require or permit an employee to perform night work, if so agreed, and if:

(b) Transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.
(Basic Conditions of Employment Act, Section 17(2))



13. Technology

Examples

Section (2) Technological change

'Technological change' means the introduction by the employer of manufacturing equipment substantially different in nature or type from that previously utilised at the establishment or of substantial modifications to present manufacturing equipment.

(These clauses are drawn from the Metal & Engineering Industry Bargaining Council (MEIBC), Consolidated Main Agreement, 2020-2021)

Legislated Minimums & Other Benchmarks

Technological change - Duty to inform

(a) Notification. Where an employer intends to introduce technological change, s/he shall notify the representative party trade union(s) and/or employee representative body not less than 4 months prior to the implementation date of such change. The notice shall be given in writing and shall contain relevant information, including:

- (i) The nature of the change;
- (ii) The approximate date on which the employer proposes to effect the change;
- (iii) The employees likely to be affected by the change;
- (iv) The anticipated effect of the change on employees' working conditions and terms of employment; and
- (iv) Any other relevant information relating to the anticipated effects on employees, including the change in skills.

The employer shall update the information provided, on a continuous basis, as soon as new developments arise or if any modifications are made

More Benchmarks

Work reorganisation – Duty to consult

Where an employer intends to introduce major work reorganisation which will substantially and materially affect the work of employees, the employer shall consult, in an endeavour to reach agreement with the representative party trade union(s) and/or any employee representative body, on the implications of the work reorganisation, including:

- (i) The need to re-train employees affected by such work reorganisation; and
- (ii) Any possible impact on the health, safety and work environment of the affected employees.

Notification - The company shall notify the union(s) and/or employee representative body of any such work re-organisation not less than 42 days prior to the implementation of the work reorganisation.



14. Trade union rights

Examples

Leave for shop stewards

- Shop stewards are entitled to reasonable paid time off during working hours to attend to their responsibilities. (Labour Relations Act, section 15).
- Shop stewards are entitled to a maximum of 15 days leave per annum to attend to union business or union training. (Transnet Recognition Agreement, 2007).

Legislated Minimums & Other Benchmarks

Shop stewards' rights

- Shop stewards are entitled during working hours to caucus for at least 1 hour immediately before any meeting with management.
- Shop stewards are entitled to meet with their members outside of normal working hours on company premises, provided they notify management. (Transnet Recognition Agreement, 2007).

More Benchmarks

Leave for trade union activities

- (1) An employee who is an office-bearer of a representative trade union, or of a federation of trade unions to which the representative trade union is affiliated, is entitled to take reasonable leave during working hours for the purpose of performing the functions of that office.
- (2) The representative trade union and the employer may agree to the number of days of leave, the number of days of paid leave and the conditions attached to any leave.



15. Training and Progression

Examples

Skills development

SETAs are obliged to develop skills in the workplace in service of their constituencies. Organised labour is a key constituent of the SETAs. In order to unlock this support, trade unions must approach SETAs or the National Skills Fund with coherent skills programmes.

Legislated Minimums & Other Benchmarks

Sector skills plan

A SETA must (b) implement its sector skills plan by:
(iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and skills development providers and workers. (Skills Development Act, Section 10(1b))

More Benchmarks

Skills programmes

(1) For the purposes of this chapter, a “skills programme” means a skills programme that:

- (a) is occupationally based;
- (b) when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework as defined in Section 1 of the South African Qualifications Authority Act;
- (c) uses training providers referred to in section 17(1)(c); and
- (d) complies with any requirements that may be prescribed.

(2) Any person that has developed a skills programme may apply to:

- (a) a SETA with jurisdiction for a grant; or
- (b) the Director-General for a subsidy.

(Skills Development Act, Section 20)

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6

An Introduction to Wage Bargaining

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Wage bargaining



Introduction

The Wage Negotiator's Checklist

The difference between wages and total cost-to-company

How many wage levels are you working with?

Structuring a wage increase

Building my argument

What information do I want?

Where can I find it?

Building my Wage Demand

Understanding Percentages

Understanding Inflation

Inflation and Wages

Real wage and real increase

Calculating the percentage increase of wages

Converting a percentage increase into Rands-and-cents

The real increase after inflation

Checklist for dealing with inflation in wage increases



The idea of remuneration involves more than just the basic wage, but wages determine the general level of pay for a job.

Introduction

The hourly, weekly or monthly wage for a job is the single biggest determinant of the quality of life of a worker and their household. This chapter provides a guide for approaching wage bargaining and discusses some of the key issues that any negotiator will have to deal with.

In some workplaces, there might be allowances that influence pay. In other workplaces, overtime might have a big influence on pay. Benefits such as provident funds and medical insurance are also important, but these are different in that they can be seen as forced savings for the future. Unlike the basic wage, these benefits have no immediate effect on the lives of workers, even if it has potential to be very valuable when it does eventually come into effect.

The idea of remuneration involves more than just the basic wage, but wages determine the general level of pay for a job. Wages are easily understood by workers and highly visible to them – after all, that wage is on their payslip every month.

The Wage Negotiator's Checklist

✓ Gather information

Find benchmarks you can use when you talk to workers. What is the latest inflation rate? What are workers doing similar work at other companies earning? What settlement levels have we seen in collective bargaining recently? How has our industry or sector been performing in the last year or more?

✓ Know your members and workers

How many workers are you representing? Are they all earning a similar amount, or are different categories earning different amounts? What are non-union workers earning? Is using casual workers a cheap option for the employer?

✓ Get a mandate from workers

Organise a general meeting and speak to as many workers as you can informally. Listen to what is important to them. Try and get agreement on what workers think they can realistically win, and what they are prepared to do to support the demand.

✓ Know the workplace

What are the critical parts of the production process and where are your members situated in the production process? How crucial are they to the production process?

✓ Quantify and motivate your demand

✓ Identify the issues

What is important to workers now and, what is important to management now? What counter proposals do you expect management to bring to the table?

✓ Develop positions to take into negotiations

Develop an ideal position or starting position, a fallback or realistic position, and a bottom line.

✓ Negotiate

✓ Communicate with workers along the way

✓ Renew your mandate with workers

✓ Avoid bargaining alone



Here's what to ask

- What will the increase look like to workers in practice?
- What increase will workers see on their payslips?
- Ask the company to show you an example.
- Are there any hidden costs for workers?!

What is the difference between a wage and total cost-to-company?

A basic salary is quite straightforward.

This is the base amount that a worker is paid for their work before any other variable income like allowances and bonuses.

If you settle on an 8% increase, then the basic salary will increase by 8%. An increase in salary should have an effect on any benefits that are linked to salary. For example, an employer's contribution to a worker's provident fund will often be expressed as a percentage of salary. So, as salary goes up, so too does the percentage contribution.

Cost-to-company or cost-of-employment approaches are a little different. Wages are one part of cost-to-company. Cost-to-company also includes statutory deductions like UIF contributions, skills development levies, and other benefits and allowances that might not be linked to salary.

The most important thing is that you are clear about what any negotiated wage settlement would look like to workers.

How many wage levels are you working with?



There are different wage levels:



A negotiator wants to know what the minimum wage is, what the highest wage in the workplace is, and most importantly, where members sit on the wage ladder. Do most workers earn similar amounts, or do different groups earn different amounts?

Knowing where your members are positioned on the wage ladder will help you decide on a settlement strategy. Here are some choices.

How will the wage increase be structured?

Your options include:

- an across-the-board **percentage** increase, or
- a **staggered** increase (the higher wage gets a slightly lower percentage increase, while the lower wage gets a higher percentage increase), or
- a **Rands-and-cents** increase across-the-board (all wages are increased by the same amount of money), or
- a **mix** of these strategies (for example, workers can choose between a percentage increase (10%) or an amount of money (1000), whichever is better for them. In this example, all workers earning below 10000 would be best off choosing an increase of 1000.



Building my argument

A wage demand is more persuasive if it can be shown the demand is reasonable in some way. Here's how to put together your argument.

What kind of information do I want, and where can I find it?

The most common way to build an argument is to compare the current wage to other benchmarks that show that the wage should be higher. If the wages for similar jobs at other companies in the same sector are higher than the wages at your company, then that is one motivation for your demand.

The kind of information that a negotiator needs for wage bargaining is not always freely available. We must consider producing our own information. As a negotiator, I can get information from workers,

workers in other parts of the company and workers at other companies.

The ability to search the Internet for some of the information that we need for wage bargaining is increasingly important.



Here are some examples of sources:

- **Wage settlement trends** at www.lrs.org.za
- **Industry-specific information:**
 - The Quarterly Labour Force Survey QLFS at www.statssa.gov.za (publications). There is sometimes commentary in print and online newspapers on particular companies.
 - There are online resources such as www.statssa.gov.za for labour market statistics in different industries.
- **Inflation trends** at www.statssa.gov.za or www.lrs.org.za
- **Wage levels:** get information from workers and from the company, and visit www.lrs.org.za
- **Company information at CIPC** register of companies, at www.lrs.org.za, in online annual reports of companies listed on the stock exchange, or on request.
- **Workers' expectations** – get information from workers.

Building my Wage Demand

What will the Wage Demand be?

- ✓ What wage levels am I dealing with, and for which occupations?
- ✓ Is my focus on percentages or rands-and-cents?
- ✓ Do we want an across-the-board increase or a staggered increase?
- ✓ What is happening with inflation, and what does this mean for wage negotiations?
- ✓ How is the industry performing?
- ✓ How is the company performing?
- ✓ Are there any factors currently at play in the company or industry that might influence negotiations?

Your formula:

A percentage (%) is a number divided by 100.

In practice:

$$3500 \times 6 \div 100 = 210$$

The employer is offering an increase of 6%, which amounts to an increase of R210 per month.

Brush up on your understanding of Percentages

When you are considering a percentage increase, think about the following:

- How does that percentage **translate** into Rands-and-cents, and what does that Rands-and-cents amount **mean to workers?**
- How would **inflation affect the increase?**

An example:

Workers are earning R3500 per month as a basic wage. Employers are offering a **6% increase. Inflation is 3.5%.**

Understanding Inflation

The latest inflation number tells you what has happened to prices over the last 12 months. The source of inflation information is Statistics South Africa. They publish the consumer price index, which measures the increase in prices (of a basket of goods and services) over time. The CPI is published monthly, with a lag of 1 to 2 months.

You can find the original publication at www.stassa.gov.za. Search for the publication number (P0211). Or find a simplified version of monthly inflation at www.lrs.org.za.

1. "STATISTICAL RELEASE P0211." n.d. <https://bit.ly/3HpxZva>
2. <https://www.lrs.org.za/resources/>

Inflation and Wages

Inflation should not dominate wage negotiations, but it is an important consideration. Inflation tells you about the buying power of a worker. **If a worker gets a 5% increase and inflation is at 5%, then the buying power of the worker stays the same.** If a worker does not get an increase for a time, then the buying power of their wage will decrease because prices tend to increase over time.

What is a real wage and real increase?

An example

The **current wage is R4000** per month in January 2020. The **wage increase on the table is 6%**.

The latest **Inflation rate available is CPI 4.5%** in January 2020 (This describes the increase in prices between January 2019 and January 2020).

If inflation stays at 4.5% in the months to come, then that is the increase that is needed **just to protect** the value of the wage. Anything less than 4.5%, and workers will become poorer.

In this example, we hope that the increase in workers' wages in the previous year was greater than 4.5%, otherwise, they have less buying power than they had before.

The increase of 6% is greater than the estimated inflation rate by 1,5%. The real wage increase is 1,5%. In theory, this worker should have 1,5% more buying power than they did before.



You can also look back at past settlements and compare them to inflation to see what gains and losses workers have made in the past.

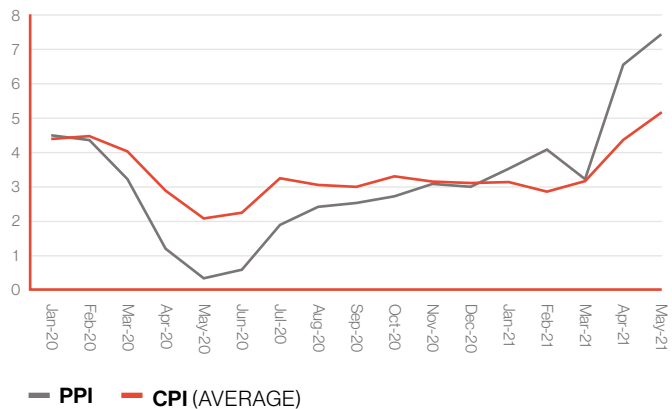
In practice, this will depend on what they spend their money on and what the inflation rates are for the items that take up most of their spending.

The inflation numbers that we have now hold clues about what inflation will be in the next period. **Look at the trend in inflation over the last 12 months** to see if it has been rising, falling, or up and down.

The Producer Price Index (PPI), also published by StatsSA, can help you predict what inflation might do going forward. If PPI has been rising for the last 3 months, then that increase might begin to show in consumer prices (CPI) within the next few months.

The graph below shows the monthly CPI and PPI between Jan 2020 and May 2021.

Consumer Price Index (CPI) and Producer Price Index (PPI): Month-on-month Annualised % change



Your formula:

1. The NEW minus the OLD
2. Divide by the OLD
3. Multiply by 100

In practice:

$$5000 - 4100 = 900$$

$$900 \div 4100 = 0.22$$

$$0.22 \times 100 = \mathbf{22\%}$$

The percentage increase from 4100 to 5000 is 22%.

Your formula:

1. The WAGE times the PERCENTAGE increase
2. Divide by 100

In practice:

$$4100 \times 4 = 16400$$

$$16400 \div 100 = \mathbf{R164}$$

A wage increase of 4% on a wage of R4100 is an increase of R164 per month.

Calculate the **percentage increase** from one wage level to another wage level

An Example

The wage now is 4100 per month and we want to shift this to 5000 per month. What is the percentage increase from 4100 to 5000?

You can use a calculator if you choose. In our example, the **new** wage is 5000, and the **old** wage is 4100.

The full calculation would be:

$$(5000 - 4100) \div 4100 \times 100 = \mathbf{22\%}$$

How to convert a percentage increase **into Rands-and-cents**

An Example

I am working with a monthly wage of 4100 and exploring a 4% wage increase. What is this percentage increase in Rands-and-cents?

In our example, the wage is 4100 and the percentage increase is 4%.

The full calculation would be:

$$4100 \times 4 \div 100 = \mathbf{R164}$$

Your formula:

The wage increase (%) **minus** the CPI inflation rate (%)

In practice:

$$4\% - 3.9\% = \mathbf{0.1\%}$$

Your formula:

The **wage** (Rands) multiplied by the **real increase** (%) and divided by 100.

In practice:

$$4000 \times 0.1 = \mathbf{4}$$

A formula for understanding the **real increase** after inflation

An Example

The wage is R4000. The percentage increase on the table is 4%. CPI inflation is 3.9%. How do I deal with this in negotiation?

Following the formula, the increase that is left after inflation is 0.1%. In other words, after the increase in the prices of the things we usually buy, this is the real increase.

What is the money value that is left of this increase after accounting for price increases?

If prices increased by 3.9% immediately following the above wage increase, it is important to calculate how much extra the worker will have after buying the things which they usually buy each month.

Following the formula, the real increase in the wage per month after inflation is R4. This means that the buying power of the wage is practically unchanged after the increase and that workers would need an additional increase to improve their buying power. If the increase left after inflation is very small or negative, then one must look at adding an improvement factor to the increase.



Checklist for dealing with inflation in wage increases:

- ✓ What is the wage increase percentage that is on the table?
- ✓ What is the latest rate of inflation?
- ✓ What is the trend in inflation over the last 6 months or more? What does it tell us about the likely inflation rate over the next 12 months?
- ✓ Are there any other reasons why inflation might increase or decrease significantly in the coming months?
- ✓ Is the wage increase greater than inflation? How much of the increase is left after inflation?
- ✓ How much do we want the buying power of the wage to increase by?

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7

Bargaining for gender equity

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Collective bargaining is an important tool for representing workers' interests and has the potential to address structural gender inequities in both the workplace and the trade union.

The struggle for equity is not only about treating men and women equally, but also involves treating the genders differently when necessary.

As an example, women are faced with a number of very specific challenges at work. Bargaining for gender equity focusses on providing for the specific needs and conditions of women workers.



- **Collective bargaining** is a process of negotiations between employers and workers aimed at reaching agreement on issues that affect them in the workplace.

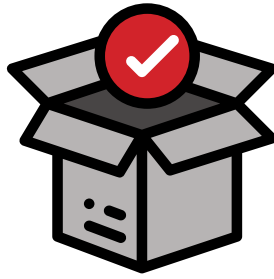


- **Bargaining for equity** refers to the specific equity demands we place on the bargaining table.



- **Equity bargaining¹** is about ensuring that collective bargaining is used as a tool to promote equity in the workplace and address the entrenched misconceptions about the role of women workers.

1. Briskin, Linda. 2006. Equity bargaining/bargaining equity. Toronto: Centre for Research on Work and Society, York University



This chapter includes

- ✓ 1. Terms we need to be familiar with
- ✓ 2. Challenges women workers face
- ✓ 3. Bargaining equity – Critical demands for the bargaining table
- ✓ 4. Equity bargaining – The process
- ✓ 5. Suggestions from the ILO

Traditionally, trade union bargaining had the blue-collar male worker in mind, with his wage demands and conditions of employment shaping the bargaining agenda. And although more and more women have entered the workplace and find themselves in work characterised by insecurity and short-term contracts, the model for collective bargaining continues to be shaped by this outdated notion of the traditional male blue-collar worker.

Blue-collar worker: Person (usually a man) performing both skilled and unskilled manual labour.

1. Key terms you need to know

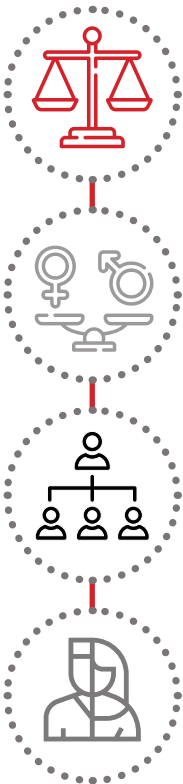
Gender roles refer to the roles and activities that society prescribes to and expects from men and women. Gender roles reflect assumptions about how men and women should behave. One such assumption is that women are considered natural caregivers and nurturers and are more suited to domestic chores such as cooking and cleaning, while men are considered to be natural leaders and providers and more suited to decision-making. These assumptions are cultural and not natural.

Equity means being fair. To achieve equity requires giving people what is needed to make things fair. This means disadvantaged groups may need to be treated differently, depending on their need.

Gender equity means fairness of treatment for men and women according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.

Structural gender inequality refers to the unequal division of power and resources between women and men, kept in place through invisible rules defining masculinity and femininity.

Gender bias means an individual subconsciously attributing attitudes and stereotypes to a person based on their gender.



2. Typical challenges women workers face

All workers face the challenge of intimidation by employers, the fear of job losses and restructuring, but women workers are further subjugated by the patriarchal nature of the world of work. These are some of the challenges that women often face:

- **Men** are assumed to be the wage earners while women are expected to carry out (unpaid) domestic chores and care for dependents. When women enter the labour market as wage earners, they often find themselves working a double shift: with the responsibility of earning a wage while still continuing with these unpaid responsibilities at home.
- **This gender bias** against women can lead to women being stereotyped as less productive and less competent due to some women having to spend their time and energy on unpaid domestic work instead of on their paid job.
- **Gender norm perceptions** exist when women are perceived as emotional and compliant and therefore not able to take up leadership positions in the workplace.
- **Gender stereotypes** can reinforce the perception that women are more suitable for care work jobs while men are more suitable for work in productive and financial sectors.



80%

Woman globally continue to earn on average 80% of what men earn globally in 2020 – just because they are women.

- The physical workplace, equipment and uniforms are usually created with the male physical body in mind, putting women at risk of injury, illness and workplace violence.

In general, women are stereotyped as being inferior to men, and this can be seen in the differences between what women and men earn. Even when women have the same type of work, the same level of experience and the same education as men, women globally continue to earn on average 80% of what men earn globally in 2020 – just because they are women.²

Patriarchy: A system of male-dominated power and privilege.

A core patriarchal belief is that the world can be divided into a) public spaces, which are the most important and the natural domain of men and b) private spaces, which are secondary and the business of women. Keeping these two separate is what entrenches the subordination of women.

For women entering the labour market, there is no separation between the private and the public. Family responsibilities and care for children and the elderly do not disappear when a woman enters the workplace. She constantly has to juggle her time and energy between home and work, private and public – and for this, she is penalised, not rewarded.

2. PayScale. 2021. "The State of the Gender Pay Gap in 2018 | PayScale." *Compensation Research*. 2021. <https://bit.ly/3J8L4tM>

3. Bargaining equity – critical demands for the bargaining table



Reconciliation of work, family and personal life

Workers struggle to gain control over their time, and for women workers, poverty is a key challenge. Juggling long hours at work with increasing responsibilities at home is an enormous burden on the health and wellbeing of women workers.

Time poverty: Because women carry out the bulk of responsibilities in the home, they have much less time for rest and leisure as compared to men.

The job of the union negotiator is twofold:

Firstly, ensure that employers take workers' care responsibilities into account. These responsibilities can have an effect on leave and hours of work, and these are key issues for the gender equity bargaining table.

Leave

- Annual leave
- Compassionate leave
- Maternity/paternity/parental leave
- Medical/sick leave

Hours of work

- Basic hours and overtime
- Part-time work
- Flexible working time
- Night work
- Expectant and nursing mothers

Secondly, ensure that leave and hours of work are seen through a gender lens. Asking simple questions like “what does this demand mean for women” and “what does it mean for men” will both strengthen arguments at the bargaining table and open opportunities for discussing the unequal division of labour in the home.



Safe and reliable transport

Our Apartheid geography and ineffective public transport system have left workers spending hours travelling to and from work. For most women workers, the day starts very early with a range of household tasks before they set off to take unsafe and inefficient transport to work. Returning home after dark, women workers then continue with all the evening household chores, usually getting to bed much later than everyone else in their family. For many months of the year, women workers leave home in the dark and return in the dark, facing harassment and even sexual assault on their daily commute.

Safe and reliable transport is a bargaining issue benefitting workers and employers. It is also a gender equity issue, as long hours spent commuting to and from work further eats into women's time and can present a real hazard to their safety.

A bargaining strategy which makes employers take responsibility for workers having access to safe and reliable transport will go a long way in supporting women workers to feel safe and secure in the workplace.



Workplace childcare to complement public services

Employers need to play a role in supporting the provision of affordable care as unpaid care work is a major challenge for working women. Creating policies that are 'family-friendly' is good for the company as well as for the well-being of both working women and men. There are a number of options that can be brought to the bargaining table:

- Company or on-site child care centres.
- Facilities in the community linked to the workplace.
- Financial support such as childcare or other personal service vouchers, funds or subsidies.
- Advice or referral services.
- Public-private partnerships to expand childcare provision.



Equal pay for work of equal value

Equal pay for work of equal value speaks directly to the issue of gender equity and the value of and remuneration for the work mostly done by women versus the work done by men. Why, for example, are male-dominated occupations (e.g. electricians) paid more than female-dominated occupations (e.g. nursing)? The work traditionally done by men is valued more and paid more because of gender bias.

A demand for a gender audit can be one way of comparing female-dominated jobs to male-dominated jobs as well as other jobs that may have historically been undervalued due to gender, race, disability or any other discriminatory grounds.

The results of such an audit can support unions with the evidence needed to negotiate issues like job classification and equality in wages and benefits.



Addressing Gender Based Violence (GBV) in the workplace

Gender Based Violence (GBV): violence directed against a person because of their gender, or violence that affects persons of a particular gender disproportionately. GBV includes physical, psychological and sexual violence.

A union leader seeking to address gender-based violence needs to be able to create a sensitive and safe environment in which to discuss it, as GBV is very difficult to talk about and generally underreported in work and society at large.

In 2019 the International Labour Organisation (ILO) adopted an important convention:

“The ILO Convention 190 on the Elimination of Violence and Harassment in the world of work recognises that the definition of the workplace in existing laws and regulations is very narrow. Violence and harassment can occur during travel to and from work, at social events related to work, or while dealing with customers and third parties outside.³

3. “Convention C190 - Violence and Harassment Convention, 2019 (No. 190)” n.d. [www.ilo.org. https://bit.ly/3HBTmd7](https://www.ilo.org/bit.ly/3HBTmd7)



Pregnant women and new mothers are less likely to be covered by collective bargaining.

of the physical workplace. The Convention further recognises that there are particularly vulnerable groups of workers, including workers in health, transport, education and domestic work, and those working at night or in isolated areas.”

This convention has opened up new areas of dialogue and negotiation between unions and employers, both as a gender equity issue and an occupational health and safety risk. Pregnant women and new mothers, migrant workers, domestic workers and workers in the informal economy face the highest risk and are less likely to be covered by collective bargaining. Our challenge is ensuring that we are able to cover these workers in our collective agreements.

Some of the issues we can consider as part of our collective bargaining strategy include:

- Occupational health and safety (OHS) committees should be involved in workplace safety planning.
- Paid leave for survivors of GBV.
- Access to women’s advocates and other designated support persons within the workplace.
- Sexual harassment policies and procedures.

Union leaders also have the responsibility of creating awareness inside the union and should address how the rising levels of violence and harassment at work, working conditions and weakened labour rights correlates with the increasing casualisation of work.

4. Equity bargaining – the process

Equity bargaining is about ensuring that collective bargaining is used as a tool to promote equity in the workplace and address the entrenched misconceptions about the role of women workers. A goal for the trade union negotiator is to extend the bargaining agenda to include the issues that reflect the intersection of the private area of family/home and the public area of work.

Roles of a union negotiator:



Extend the **bargaining agenda** to include the issues at the intersection of the private area of family/home and the public area of work



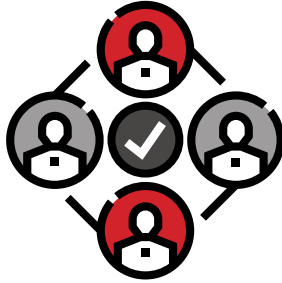
Chip away at deeply entrenched gender roles, norms and stereotypes in both the union and workplace



Ensure that employers take into account the **care responsibilities** of workers



Ensure that leave and hours of work are seen through a **gender lens**



Engaging our constituency to identify demands

People join the union as holistic beings and, in striving to understand our constituency, we ask questions and engage in discussions. These allow us to understand what people are thinking and saying, what they are feeling and what they are willing to do.



It is important to create safe spaces

for your constituency to speak openly and honestly about their fears and aspirations.

The WHO in the bargaining team

We all want “strong representation” on the bargaining team, but what does this actually mean?

A strong bargaining team not only understands the issues affecting all workers in the workplace, but is also **willing to challenge the gender stereotypes** that they and others hold.

A strong team is one that is sensitive, empathetic and **willing to address the needs and conditions** of women workers and all other marginalised groups in the workplace.



It is key to **include women in the bargaining team**, but not as silent partners. In order to have active and outspoken women in the bargaining teams, there first needs to be a process of dealing with the internalised gender stereotype of “only men can be leaders”.

Both women and men fall prey to this stereotype.

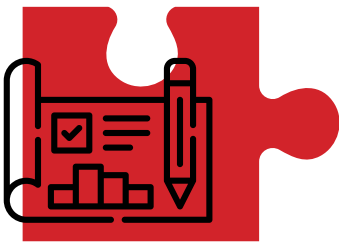
When workers only see men in leadership, they assume men are naturally better leaders. Having women in bargaining teams therefore challenges this stereotype.



Preparing for bargaining

1. Assigning roles

As elaborated on in Chapter 2, a bargaining team is elected at the beginning of the bargaining process. At this stage, we need to be conscious of not assigning roles based on gender stereotypes. If for example, we assume women are not good spokespersons or only capable of administrative roles, we might assign them the role of minute takers as a result. This can be a self-fulfilling prophecy, as the more you silence women, the more silent they become.



2. Planning and strategising

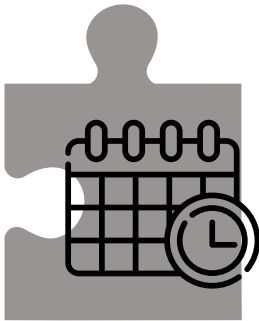
Women workers need a space and opportunity to identify and rally around the issues that affect them as women workers. In meetings and discussions, union leaders can:

- Speak to women about the issues in the workplace and union that affect them;
- Make a short list of the things that matter most to women workers;
- Identify where, when and how these issues might be different from those that affect male workers.



3. The WHERE and HOW

The choice of venue or online platform for negotiations sets a psychological tone to the negotiation process, and it is therefore important that specific needs and conditions of all members of the team are taken into account. For example, members of the team living with disabilities might need special conditions to ensure their full participation e.g. wheelchair ramps and disabled-friendly toilets. Women members of the bargaining team will need to feel and know that they can access their venue safely and that they will not be faced with security challenges.



4. The WHEN

There is an argument that timelines and deadlines are necessary to create a sense of urgency and 'push' bargainers to agreements. Timeframes need to take into account the home and care work that women workers particularly carry the responsibility for. Meetings that carry on after work and late into the evenings will often have implications for the involvement of women in the bargaining teams.

5. The ILO suggests some helpful steps in the ongoing fight for equal rights:⁴

- ✓ Promoting gender equality in employment doesn't end with the signing of a collective agreement. Follow up to ensure the awarded rights are implemented.
- ✓ Ensure that the negotiated policies, rights and benefits are communicated to all workers, including non-permanent workers.
- ✓ Collect data regularly to monitor the number of women and men that are hired, promoted and dismissed, as well as the number of workers in all job categories, salary levels and training programmes.
- ✓ Regularly monitor the implementation and effectiveness of collective bargaining policies, rights and benefits. Think forward to what can be achieved during the next round of collective bargaining.
- ✓ Deal with equality issues in education and training programmes.
- ✓ Publicise the work your union has done on behalf of women as an organising strategy. Also, publicise the union's objectives for bargaining and the strategies for achieving them.

4. Jane Pillinger, Verena Schmidt and Nora Wintour by. 2016. "Negotiating for Gender Equality." [www.ilo.org](https://www.ilo.org/global/topics/collective-bargaining-labour-relations/publications/WCMS_528947/lang--en/index.htm). September 27, 2016. https://www.ilo.org/global/topics/collective-bargaining-labour-relations/publications/WCMS_528947/lang--en/index.htm

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

8

**Workplace
rights belong
to everyone**

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Bargaining for equity

Trade unions have a responsibility to protect and advance the right to equality of all members. Collective bargaining can act as an important tool for securing equality and justice in the workplace. It is critical that trade union negotiators have the tools to ensure that workers are protected and do not experience oppression and discrimination based on their sexual orientation and gender identity.

Trade unions can protect and advance the right to equality for workers who are LGBT by:



- **Creating** an awareness and understanding of the challenges workers face



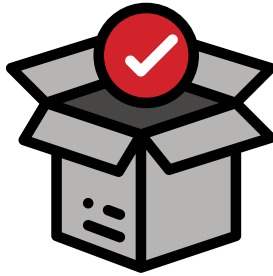
- **Addressing** instances of transphobia in the workplace



- **Having a full understanding** of the legislation setting out the minimum standards for protecting workers from homophobia and transphobia



- **Employing** collective bargaining strategies to protect workers from homophobia and transphobia

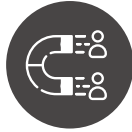


This chapter includes

- ✓ An explanation of key terms that form part of the equality vocabulary
- ✓ A description of the key challenges facing the LGBT community
- ✓ A discussion of the specific challenges transgender workers face
- ✓ An overview of the relevant legislation protecting workers from discrimination
- ✓ Suggestions of how trade unions can support and protect LGBT members
- ✓ Examples of how collective agreements can play a role in addressing sexual orientation and gender identity discrimination



1. Key terms¹ you need to know



Sexual orientation

Everyone has a sexual orientation – some are attracted to the opposite sex, some are attracted to the same sex or to both sexes. This is a natural and normal part of who we are as individuals.

The term ‘sexual orientation’ refers to physical, emotional and romantic attraction, rather than to specific sexual practices.



LGBT

LGBT is an acronym used as a collective term for all persons who are lesbian, gay bisexual and transgender.

LGBTIQA+ is an evolving acronym that stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual and new terms that could be added.

1. “Gender, Equality and Diversity Branch PRIDE at Work a Study on Discrimination at Work on the Basis of Sexual Orientation and Gender Identity in South Africa.” n.d. <https://bit.ly/3lbzPzE>

Some of the most common words associated with sexual orientation:



Homosexual: a person who is emotionally and sexually attracted to people of the same sex.



Heterosexual: a person who is emotionally and sexually attracted to people of the opposite sex.



Bisexual: a person who is emotionally and sexually attracted to both sexes.



Lesbian: a woman who is emotionally and sexually attracted to other women.



Gay: a man who is emotionally and sexually attracted to other men.

Gender identity



Your gender identity is what you choose to be in terms of your clothing, behaviour and appearance.

Gender is about the behaviours, roles and activities that society considers appropriate for men and women. It can also be described as the qualities associated with being masculine or feminine.

Gender identity is separate from both sex and sexual orientation. Your gender identity is your individual inner sense of being male or female – or both, or neither.

Your gender is what society expects you to be, e.g. you are expected to behave like a man or a woman.

Your gender identity is what you choose to be in terms of your clothing, behaviour and appearance. This might not 'match' what society expects from you in terms of your gender.



Homophobia:

The fear or hatred of those assumed to be lesbian, gay or bisexual, and of anything connected to these persons and their communities.



Transphobia:

The fear or hatred of those seen to transgress or blur social expectations of gender and of anything connected to these persons and their communities.

Homophobia and transphobia can be experienced in many ways, from negative attitudes and beliefs, to harassment, intimidation and physical or sexual violence. Homophobia and transphobia can occur at a personal, institutional or societal level. Like all forms of discrimination, homophobia and transphobia are damaging not just to individuals, but also to society as a whole.



2. Creating workplaces free from homophobia – identifying the challenges workers face

“One time I went for a hearing, and the bosses said it was ‘just a performance review’. I told them straight up that I am not a fool. I knew they were building up a case to get rid of me. Sexuality is a big deal in the workplace.”²

2. “What Will It Take to Build LGBT Inclusive Workplaces in South Africa?” | Labour Research Service.” 2019. May 9, 2019. <https://bit.ly/3q5ewJU>

Many workers are treated unfairly by employers and co-workers because of their sexual orientation. Sometimes the discrimination is obvious, sometimes it is more subtle – either type can be damaging. To free workplaces from homophobia, we first have to identify and understand the challenges which lesbian, gay, bisexual and transgender workers face.

Challenges can be categorised into three main forms of discrimination:



1. Workplace rights are denied

- Refused a job because of one’s sexual orientation or gender identity
- Passed over for promotion because of one’s sexual orientation or gender identity
- Differential treatment, either in terms of task allocation or acknowledgement of successes

- Difficulty accessing health and other benefits related to same-sex partners
- Having no recourse to raise complaints and grievances in relation to experiences of discrimination
- Getting dismissed on false charges.



2. Intimidation in the workplace

- Forced to hide one's sexual orientation or gender identity out of fear
- Forced to reveal one's sexual orientation or gender identity
- Questioned repeatedly about one's sexual orientation or gender identity.



3. Harassment and violence in the workplace

- Harassment can take the form of unwanted communication, attention or contact. Examples include name-calling, repetitive requests for dates, homophobic jokes or being ridiculed and mocked in front of colleagues;
- Verbal abuse and hate speech;
- Threats of, or actual physical violence, for instance, being beaten up or assaulted;
- Sexual violence, including rape.



3. Protecting workers from transphobia – identifying the challenges

Transgender people have a gender identity or gender expression that differs from the sex that they were assigned at birth. Some transgender people undergo a gender transition from one sex to another.

There might be workers who have undergone a gender transition. A gender transition refers to the process of changing one's physical body to align it with one's gender identity. This is a complicated, multi-step process that can take years. A transition can take different forms – some people may choose to take hormones only, while others may undergo various forms of surgery.

Transgender workers often experience the workplace as unwelcoming and threatening, and there are a number of challenges trade union negotiators need to be aware of when preparing to bargain on their behalf.

There might be limited knowledge among colleagues and employers regarding gender transitioning, and, as a result, there might not be protocols in place, for example, to facilitate a name change (for instance, ensuring names are changed on all workplace records, including payroll, etc).

Other issues that need to be raised at the bargaining table may include:



Not being able to adopt a workplace dress code matching one's gender identity.

Not being able to use facilities (such as toilets and changing rooms) matching one's gender identity.



Difficulty accessing leave for medical treatments relating to gender transitioning.

Being provided with a job reference in one's birth name rather than in one's new name.





4. Legislation setting out the minimum standards for protecting workers from homophobia and transphobia

The Labour Relations Act (1995), the Basic Conditions of Employment Act (1997) and the Employment Equity Act (1998) outline the rights and responsibilities available to all workers, including some protections relating to sexual orientation. For example, Section 187(1)(f) of the Labour Relations Act prohibits dismissal on the grounds of sexual orientation. Section 6 of the Employment Equity Act also prohibits discrimination on the basis of sexual orientation. It also stipulates that the courts can hold employers liable, under certain circumstances, for acts of discrimination by any of their employees while at work.



The Medical Schemes Act (1998) prohibits discrimination against an employee on the basis of sexual orientation. The Act also recognises same-sex dependents as legal beneficiaries.



The 1999 Code of Good Practice on Employment Equity advises workplaces to set up assessment structures to review policies, practices, procedures and work environments, and to create a workplace profile that identifies places of discrimination. The workplace is then advised to conduct and execute a plan to change any identified places of discrimination and to have this process monitored for effectiveness.



The 1998 Code of Good Practice on Handling Sexual Harassment Cases declares that all unwanted communication and/or physical contact of a sexual nature is defined as harassment. It states that employers have a responsibility to eliminate any environments that perpetuate these kinds of behaviours, to have clear policies in place regarding sexual harassment and to create systems and procedures for reporting, investigating and responding to such cases. This code is written using gender-neutral terms, with no specific mention of women or LGBT persons.



The draft **Code of Good Practice on the Elimination of Violence and Harassment in the World of Work**, (20 August 2020) states, “Anyone can be victim of such Violence and Harassment, including those who do not conform to gender norms or traditional societal expectations based on gender, for example, LGBTIQ+ persons.”

The Code of Good Practice is intended to address the prevention, elimination and management of Violence and Harassment that pervades the world of work. The Code is guided by the ILO Convention 190 and its Recommendation on eliminating and preventing Violence and Harassment in the World of Work, 2019; the Discrimination (Employment and Occupation) Convention 111 of 1958 (Convention 111) and The ILO Convention 151, relating to Occupational Health and Safety.



5. Rising above the minimum of the law – a collective bargaining strategy to protect workers from homophobia and transphobia

Preparation in the workplace

Preparation is a key to successful negotiations, and as a negotiator, you are required to gather information that will help you understand the members you represent and assist you in representing your collective interests.

It is important to establish baseline information on how the workplace aligns with the laws protecting workers from discrimination.

There are a number of questions that could be asked to establish a baseline:

- 
- Do workers who identify as lesbian, gay, bisexual or transgender have equal entitlement to all workplace benefits like pensions, family responsibility leave, parental leave, study and housing benefits?
 - Is there evidence that recruiting and hiring policies and practices do not discriminate against workers regardless of sexual orientation and gender identity?
 - Do employee assistance programmes provide services and counselling that take into account sexual orientation and gender identity?
 - Is mandatory sensitisation training in place for managers and co-workers?
 - Do workers have toilets and ablution facilities that correspond to their gender identity?
 - Is the language in the workplace gender-neutral or gender and trans inclusive?
 - Do transgender and gender non-conforming workers have the right to comply with company dress codes in a manner consistent with their gender identity or gender expression?
 - Do workers have the right to be addressed by the name and pronoun that corresponds to their gender identity?
 - Do workers have the right of confidentiality?

Preparation inside the trade union could include:

- **Opportunities to discuss** the nature and impact of sexual orientation and gender identity discrimination in the workplace;
- **Union education strategies** aimed at combating homophobia and transphobia;
- **A union anti-discrimination policy** that specifically refers to sexual orientation and gender identity;
- **An anti-harassment policy** that specifically refers to sexual orientation and gender identity.
- **An extension of union benefits** to include same-sex partners and the families of same-sex couples;
- **The use of inclusive language** in all communications – for instance, use ‘partners’ instead of ‘wives’ or ‘husbands’;
- **Sensitisation training** for union staff and members, with a higher level of training offered to shop stewards and others handling grievances;
- **Increase the visibility of workers** who openly identify for example as lesbian or gay, for instance, by including human interest stories in newsletters;
- **Support workers to openly live** out their gender identity. For example, if a lesbian takes on a leadership position, she could be supported to share her sexual orientation.



Examples of how collective agreements can play a role in addressing sexual orientation and gender identity discrimination

- **The private-sector bargaining council agreement** signed at the Motor Industry Bargaining Council in South Africa uses the BCEA as a guide and explicitly includes “life partner” in its provision for family responsibility leave.
- In South Africa, the **Government Bargaining Council agreement** signed at the Public Service Coordinating Bargaining Council lists both spouses and life partners when referring to family responsibility leave.
- **A collective agreement** signed by the National Union of Public and General Employees (NUPGE)³ in Canada includes health benefits for the employees’ same or opposite-sex spouses.

3. “Publications | National Union of Public and General Employees.” n.d. Nupge.ca. <https://bit.ly/3KISdBA>

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

9

Negotiating Retrenchment

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Save Jobs...

- **Before a Section 189 is Issued**
- **Using Organising and Campaigning**
- **By Understanding Retrenchment Law and Processes**
- **Using the Temporary Employer/ Employee Relief Scheme (TERS)**
- **Through Business Turnaround or Improvement Solutions**
- **By Increasing the Revenue of the Company**
- **By Finding Finance**
- **By Reducing Company Expenses**
- **Through Shareholder Activism**
- **Through Business Rescue**
- **A Trade Union Checklist if Retrenchments Seem Unavoidable**

A Trade Union Guide to Saving Jobs

A critical role of the trade union movement is to use its power to push business and government to take the necessary steps to stimulate the economy to create jobs and prevent retrenchments.

Even so, the trade union movement must make use of its own power and adopt other practical strategies to save jobs. This guide contains some ideas for trade unions to consider. It is a base upon which unions can build their own strategies.

This guide is intended to help trade unionists think through a plan to save jobs at companies, and it describes strategies for minimising the impact of retrenchments when they are unavoidable.

This guide was authored by the South African Clothing and Textile Workers Union (SACTWU) at a time when the economy suffered several major shocks as a result of the COVID-19 global pandemic. Many jobs have been lost, and many more are threatened. The ideas in this guide are useful for a crisis situation, but not limited to a crisis situation. It would be strategic to build these skills in your union, even when companies are doing relatively well.



1 Save Jobs before a Section 189 is issued

This section is about saving jobs by intervening before retrenchment proceedings are formally launched. Instead of simply trying to save jobs at the last minute through a retrenchment process, it is better to try to tackle problems in companies before retrenchment is announced.



Operational requirements means requirements based on the economic, technological, structural or similar needs of an employer.

Section 189 and 189a of the Labour Relations Act (LRA) allow employers to dismiss employees based on operational requirements, as defined in section 213 of the Labour Relations Act. The term "Operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.

It is the employer's responsibility to prove that a genuine operational requirement exists. This requires identifying warning signs or red flags of distress, and having a forum to meet regularly with management to identify, understand and solve problems upfront.

A first step in preventing retrenchments is to use the following red flags as an early warning system of distress. If you answer "YES" to some of these red flags, or if you notice that more of these red flags

start occurring over time, there is good reason to be concerned that job losses might happen. If so, it may be necessary to adopt some of the actions outlined later in this guide.

Step 1: Take the early warning system test for detecting companies in distress

Try to answer these questions about the company:

- ?** Have orders in the company reduced in recent months?
- ?** Are machines standing idle (not being used) for long periods of time in the company?
- ?** Has the company lost a big client or a few clients recently?
- ?** Have customers been buying more imports and/or cheaper imports instead of your products?
- ?** Have working hours been reduced (less overtime/more short-time/layoffs/rotation)?
- ?** Has your company been experiencing late or slow deliveries?
- ?** Have workers been moved around in various departments because there is not enough work?

- ❓ Has management been complaining recently that the company is losing money?
- ❓ Has the company been trying to change anything to save costs?
- ❓ Has the company stopped repairing equipment, machinery, the building, toilets, etc. in order to save money?
- ❓ Has the company been experiencing lots of resignations from management and staff?
- ❓ Has the company asked workers to take early retirement?
- ❓ Has the company put a freeze on hiring?
- ❓ Has the company stopped paying bonuses or stopped any incentives?
- ❓ Has the company been complaining about rising costs?
- ❓ Have you been worried about the future of the company or workers' jobs?
- ❓ Has the sector been experiencing hardship/distress/job losses for a few years?
- ❓ Have you experienced any short payments or lack of payments of wages?
- ❓ Is the company late with its bargaining council levies, UIF payments, or other statutory payments?

- ❓ Has the company stopped its non-essential functions e.g. not buying supplies like stationery, toilet paper, tea and coffee?
- ❓ Have you heard rumours that the company may restructure or retrench?



Even if you answer "Yes" to only a few of these red flags, the company may be in distress and it may be necessary to intervene.

Now that you have taken the first step and scanned the company for red flags, it is important to continue your research before jumping to any conclusions.

Step 2: Understanding the reasons why you are seeing red flags

Businesses can experience challenges for many reasons. It is important that we are able to identify some of the factors underlying the problems they face. In general, these problems can be caused by internal challenges within the company or external challenges due to other economic reasons, or a combination of the two.

Management often believe they know the cause of their problems, but they can be wrong. Trade unions can bring knowledge of the business from the ground up.

Which of these factors apply to the company that you are concerned about?



Internal factors causing company distress:

- ✓ Poor management
- ✓ Ineffective Board of Directors
- ✓ Uncompetitive product or services
- ✓ Inadequate financial control
- ✓ High-cost structure
- ✓ Outdated technology
- ✓ Lack of marketing or sales capabilities
- ✓ Excessive diversification – not enough focus
- ✓ Poor data management and ICT systems
- ✓ Poor decision-making regarding spending
- ✓ Inappropriate financial policies
- ✓ Overtrading
- ✓ Short-term thinking



External factors causing company distress

- ✓ Poor economy
- ✓ Changes in market demand
- ✓ Availability of finance
- ✓ Technological change
- ✓ Government policy
- ✓ Competition
- ✓ Commodity prices
- ✓ Social change
- ✓ Environmental factors
- ✓ Exchange rates
- ✓ Industry factors

Step 3: Decide on the most important interventions

It is difficult to try to solve lots of problems at once as this reduces your chances of success. It is better to focus and identify one or two of the most important problems to solve, which would help save jobs and try to solve those first. Afterwards, you can move on to other problems.



It is better to focus and identify one or two of the most important problems to solve, which would help save jobs.

Example

You reliably know that a company faces challenges around outdated technology, availability of finance, government policy and exchange rates. It is a great task to try to understand and solve all of these challenges at the same time.

- You could focus on government policy if the union can influence policy.
- Or, you could focus instead on the challenge of available finance, understand what the need for finance is and explore the company's options.
- You may be able to link financing to addressing the challenge of outdated technology, but this will depend on the situation.
- If exchange rates are key to the company's success, then you might focus on this rather. Influencing the exchange rate is not a viable strategy, so the union might rather explore possibilities for limiting the financial risk of unfavourable exchange rates.



2 Save Jobs using Organising and Campaigning

Recognise that workers collectively have huge experience and knowledge of companies and their operations.

- **Tap into the knowledge** of the union workers by creating spaces where officials and worker leaders across different companies, and even sectors, can share experiences and ideas.

- **Encourage the union** to create specialised units to support officials and workers dealing with struggling companies and retrenchments.

- **Develop alliances** with worker-friendly NGOs and academic units and do your own research.

- **Use resources to train worker** leaders and officials dealing with struggling companies and retrenchments.

- **Use the internet**, online communications platforms and, where possible, face-to-face activities.

- **Develop the skills** in the union to use online technologies.



3

Save Jobs by Understanding Retrenchment Law and Processes

If retrenchment processes have started in a company, it is still possible to save jobs using the ideas in this guide. However, it is important to understand what the law says about retrenchment procedures.



Retrenchment law

Most workers' rights in South Africa are covered by the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA). Both acts deal with dismissals, but the LRA – specifically Sections 189 and 189A – deals with retrenchments.

According to Section 213 of the LRA, employers may dismiss employees based on operational requirements. This means the retrenchment must be based on "economical, technological, structural or similar needs of the employer".

However, the law also requires that employers must first consult with workers about the proposed retrenchments, should be able to prove there is a real "need" to retrench based on operational requirements,

and should meaningfully try to identify ways to prevent or reduce the job losses.

The retrenchment negotiation process is started when the employer issues a written notice to the affected workers and their representatives (unions).



This notice must also be displayed on the company notice boards so that all workers can see it.

This notice must also be displayed on the company notice boards so that all workers can see it.

The notice must indicate that the company is contemplating retrenchment (in other words, that it is not yet confirmed), and it must invite the workers and/or unions to consult on the proposal.

By law, this notice must disclose certain important information, such as:

- **the reasons** for the proposed dismissals.

- **the alternatives** that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives. The employer usually keeps the alternatives to a minimum. In order to save jobs, unions should determine whether companies have actually implemented those alternatives well. Unions should also add other alternatives to the list, using ideas in this guide and any other ideas which are appropriate.

- **the number** of employees likely to be affected and the job categories in which they are employed.

- **the proposed method** for selecting which employees to dismiss. This is often done on the Last-In, First Out (LIFO) principle in which the company proposes to retrench the newest employees first, but there are other models too.

- **the time** when, or the period during which, the dismissals are likely to take effect.

- **the severance** pay proposed. Companies usually simply offer the minimum outlined by the law: an amount calculated on paying one week for every year of service that a worker has worked (e.g. if you have worked for 10 years, you are paid the equivalent of 10 weeks of wages). Unions can seek more than this.

- **any assistance** that the employer proposes to offer to the employees likely to be dismissed.

- **the possibility** of the future re-employment of the employees who are dismissed.

- **the number** of employees employed by the employer.

- **the number** of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months.

Meetings are then held between the employer and the employees and/or unions to discuss the company's proposals about retrenchment and determine the opportunities to save jobs.



Meaningful consultation

Section 189 of the LRA is clear that the employer and employees, and/or unions must conduct a meaningful and joint consensus-seeking process.

At a minimum, this process should attempt to:

1) Identify and implement steps that can be taken to avoid the loss of all the jobs. This is the first priority of consultation.

2) If not all jobs can be saved, it is important to identify:

- **measures to minimise** the number of job losses.
- **methods to change** the timing/date of the job losses.
- **steps to prevent** or reduce the bad effects of the loss of jobs on workers.

It is only once job losses are considered unavoidable that discussions should begin for:

- **choosing methods** for selection of employees to be dismissed;
- **seeking agreement** on the severance pay for dismissed employees; and
- **seeking any other ways** in which the hardship of workers can be minimised.



The employer is required to consider and respond in writing to proposals and matters raised by the employees.

The consultations and negotiations are supposed to be meaningful. This means the employer is required to consider and respond in writing to proposals and matters raised by the employees. It is useful for employees to raise as many alternatives as possible.

It is best for the employer to be transparent and open about any of the challenges they are facing. A lack of transparency – such as not sharing important information like company financials – prevents workers and unions from confirming the nature of the problems at the company, creates distrust, undermines meaningful consultation and can be a reason for unions to dispute the outcomes of retrenchments.



How long is a retrenchment process?

Section 189A of the LRA indicates that, for **large retrenchments (above 50 employees)**, the services of the CCMA can be requested to facilitate consultation between employers and employees. It also indicated that such a process **should take a minimum of 60 days** and should include at least four consultation meetings.

This guide can help you to identify meaningful processes and options for alternatives. Do not, however, expect employers to simply agree to more time - you may have to use pressure for this outcome.

The consultation process can be longer (or shorter) if agreed upon by employers and employees or unions. It is also possible to meet much more regularly with the company in parallel to meetings with the CCMA. On average, across all retrenchments which use mediation by the CCMA, it seems this can often **help to save around 40% of jobs**.

The LRA does not define a minimum time period for consultation for smaller retrenchments (under 50 employees). **The law does require, however, that the discussions must be meaningful.** In practice, companies often try to finish their consultations in two or three weeks. But in order to comply with the law, the consultation process must be long enough to allow employers and employees time to properly and fully discuss alternatives to the proposed retrenchment.

If you think it is still possible to find alternatives and you believe that consultation has not been meaningful, it is possible to consult for longer.



The outcomes of a retrenchment process

Retrenchment outcomes can be challenged if they are procedurally or substantively unfair.

The consultation process is supposed to be meaningful, BUT it is not required by law that employers and employees reach agreement. For this reason the LRA provides workers with tools – such as industrial action and legal processes (the CCMA or Labour Court) – to challenge retrenchment processes and outcomes.

Retrenchment outcomes can be challenged if they are procedurally or substantively unfair. In other words, if the correct processes have not been followed, or the reasons for retrenching are not strong, then there is a chance to contest the retrenchments legally.



4 Save Jobs using the Temporary Employer/Employee Relief Scheme (TERS)

Create space for other interventions

The TERS can and should be combined with other tools so that companies emerge stronger at the end of their period of assistance.

The TERS can be used to create time and space to help solve the problems in a business over a 6 to 12 month period. It is particularly useful if a business has not received orders and its finances are poor. The TERS can and should be combined with other tools so that companies emerge stronger at the end of their period of assistance.

The TERS we refer to is not the same as the COVID-19 TERS, which has been used for business support during lockdown. In fact, the original TERS has been running for about 10 years and was called the Training Layoff Scheme (TLS) until renamed in 2019.

Benefits of the Temporary Employer/ Employee Relief Scheme

- TERS can be used for **short-time, layoffs**, proposed retrenchments and/or periods of financial distress.
-



TERS provides temporary cost relief to the company for paying wages - it covers a significant part of payment of workers, who are paid by the UIF for a period of between 1 to 12 months.

- TERS **provides temporary cost relief** to the company for paying wages – it covers a significant part of payment of workers, who are paid by the UIF for a period of between 1 to 12 months. You can try to negotiate for the company to pay for the remaining 25% of workers' pay.
-
- TERS can be **used in conjunction with** productivity or turnaround interventions and/or in conjunction with training and re-skilling paid for by the SETAs.
-
- TERS is **coordinated by the CCMA**, and applications must be made to the CCMA. The UIF and SETAs are also involved as co-funders of wages and skills training.

Criteria for TERS applications



1) Business distress must be evident:

a drop in revenue against a threshold used by the CCMA must be reflected in the audited financial statements or latest management accounts, AND labour costs must prove to be a high percentage of operational costs.



2) Employee distress must be evident –

a likelihood of retrenchment, short-time or any other layoff must exist.



3) Operational distress must be evident –

the prospects of future business are weak, the company is at risk, and workers are at risk of losing their jobs.



4) A turnaround strategy must be evident –

a plan for changing the fortunes of the company. The company must show that it has applied its mind and developed a plan for saving the company.

Unions can play a role to ensure applications are processed quickly.

TERS should be used as a first option when businesses face challenges, as it provides temporary relief while other interventions can be made to solve the challenges of the business.



5 Save Jobs through Business Turnaround or Improvement Solutions

Companies are not always able to solve their own problems and may need external assistance to identify or find solutions.

An outside 'expert' will not always suggest solutions that will save the most jobs. Unions and workers need to pay careful attention to ensure that external expert plans are job-saving or jobs-supporting, and not job-shedding plans.



Public sector job-saving initiatives

Productivity SA is a government agency offering a specialised intervention for companies in distress called Business Turnaround Solutions.

This is a free service to help to diagnose company problems and create plans to solve them. Productivity SA provides consultants to struggling businesses. These consultants can advise on productivity interventions, profitability interventions, company performance interventions, marketing interventions, industrial relations management interventions and job security.

Interventions involve setting strategy, building quality management teams, acquiring new business and sales,

establishing sound capital structures, implementing processes and nurturing resources. All interventions should have job-saving as their core interest and objective.



Private sector job-saving initiatives

A new service emerged from the COVID-19 crisis, called COVID-19 Business Rescue Assistance (COBRA). It is a service to South African businesses in distress to co-ordinate bank, government and stakeholder support through a structured support process based on the principles of business rescue, but without actually having to put companies into business rescue.

The assistance is achieved by the intervention of a COBRA mediator, and draws on the assistance of over 70 different organisations which have partnered with COBRA to support business turnaround and job retention. These organisations have a very wide range of specialisations – including finance, management, strategy, communications, marketing, ICT, analytics, property and HR – and the cost of these services can be negotiable depending on the level of distress in businesses.



Bargaining councils

If there is a bargaining council in the sector, the union should explore what assistance the council can provide.

The nature of the economic crisis may be an opportunity for collective bargaining forums such as bargaining councils

to move away from narrow enforcement approaches and develop work programmes and institutions to support struggling companies and workers, possibly using themes identified in this Guide.



Training of shop stewards and officials

It is useful to train shop stewards and union officials in the warning signs of business distress. Shop stewards and officials often know a great deal about the company, and this training will help them use that knowledge in the fight to save jobs.

As with public sector initiatives, unions must insist that all private sector job-saving interventions have job-saving at the heart of everything that is done.

Productivity SA, PTI, and the South African Restructuring and Insolvency Practitioners Association NPC (SARIPA) all offer relevant training. SARIPA has a membership of over 650 qualified Insolvency Practitioners, Business Restructuring Professionals, Chartered Accountants, Lawyers, Bankers, Academics, Tax Consultants and others involved in liquidation, insolvency and business rescue services. They are prepared to help train union shop stewards and officials in basic issues relating to business distress and in using business rescue and liquidation tools as ways in which to save jobs.

Training that helps shop stewards and officials to recognise company distress could strengthen the ability of unions to identify problems and use some of the available tools to deal with job losses.

6 Save Jobs by Increasing the Revenue of the Company

A business cannot survive for long without enough customer orders (also known as demand). There are many ways to try to find orders for companies. Some of these approaches rely on the company doing more work to get orders, or improving their marketing or customer service. But it can be useful for unions to assist too. It gives us more power to try to find a successful outcome.

You can use the checklists that follow as a guide to evaluate whether or not the company has explored their options properly.



Approach existing customers

Has the company approached existing customers to determine whether they are able to place more orders with the company? Existing customers generally understand the company and may have goodwill towards it. They may therefore be willing to assist if it is done on the basis of saving jobs.

If existing customers do not have immediate orders to place, they may be willing to consider bringing forward later orders into the short term.

Existing customers may believe they cannot place more orders for a variety of reasons. Their reasons and obstacles should be explored if the union can offer to help try to overcome those obstacles.



Approach ex-customers

Ex-customers also know the company and may be willing to consider helping in order to save jobs.

Remember, ex-customers may have terminated their supply relationships with the company for a range of challenging reasons – like losing their own orders or due to finding other suppliers which they prefer. These may be raised as concerns, and the union may have to consider whether these are concerns which can be addressed or confronted. It is best to approach large ex-customers who could potentially offer the best outcome.



Find new business

Finding new business opportunities for a struggling company can take some time. It is best to try to do this as early as possible.



Checklist:

Has the company explored these ideas for finding new customers or business?

- ✓ **If the company knows which new customers it wants** but is just not sure how to network with those customers or get their business, is it possible to solve this?

- ✓ **Does the company use e-commerce** (such as online sales from its website or using online platforms)? If so, can it be improved further? If it is not currently used, can e-commerce be implemented?

- ✓ **Is the company able to subscribe to market intelligence** databases to help find new potential customers?

- ✓ **Can Proudly SA help** to network the distressed business to potential customers (if products are locally made)?

- ✓ Can the **local procurement commitments** within the Government's Economic Recovery Plan be used to help find orders?

- ✓ **Are there union-organised companies** locally, provincially or nationally which can become customers of the distressed company?

-
- ✓ Can **employer organisations** introduce their members to the distressed company to explore becoming customers?

 - ✓ Can other **employer associations** in other industries or Chambers of Commerce help network the distressed company to potential customers?

 - ✓ **Can the SETAs be used** to link the distressed company to its list of subs-paying companies to explore becoming customers?

 - ✓ Can some of the **largest customers in the industry** be approached to help the distressed company?

 - ✓ Are there other known companies, organisations, movements, unions, communities and faith-based organisations in the area, city, province or country that are **potential customers** for the distressed business?

 - ✓ Can you identify any current **government tender opportunities** for the company?

 - ✓ Can the company **sell excess stock** by running specialised sales and using its networks and the networks of the union to seek customers?

 - ✓ Can the company **consider export opportunities**? If so, could the following options be explored?

- (a) Export councils or the export promotion desk, Export Marketing and Investment Assistance (EMIA) of the Department of Trade, Industry and Competition (DTIC).
- (b) The Department of Trade, Industry and Competition's Trade and Export options.
- (c) Government could link the business with embassies and consulates as well as foreign economic representatives to help network the company to potential export customers.
- (d) The SA Chamber of Commerce and Industry or other associations could explore assistance to get the company into export markets.
- (e) Brand SA could explore overseas marketing opportunities for the company.
- (f) Explore export opportunities available due to the company's product, labour and sustainability standards.

Is the company losing customers due to the challenge of illegal competition? This includes companies that sell products that are illegally imported, counterfeits or have incorrect standards. If this is the case, can this be addressed by customs action by SARS, tariff action by ITAC, or enforcement of correct standards by SA standards bodies?



7 Save Jobs by Finding Finance

A business cannot survive without generating money. To be sustainable, it should earn at least the same, but preferably more, money than it spends.

Sometimes businesses struggle to earn enough money to run their operations and pay their costs. Sometimes, although they have enough money to run the business, they need more money to invest in the business and grow it so that it stays competitive compared to other businesses.

Distressed funding

Distressed funding offers financing to businesses who are in financial trouble.

Consider these avenues for distressed funding:



There are a number of public and private financing options available to a struggling business:

Industrial Development Corporation (IDC) can provide distressed funding, grants (free money) and loans.

The UIF II Fund (in the IDC). Go to www.idc.co.za/uif-ii

Go through Commercial Banks using National Treasury's loan guarantee scheme.

www.treasury.gov.za/comm_media/press/2020/COVID-19%20loan%20guarantee%20scheme%20FAQs%2026%20July.pdf

State funding and business support opportunities

- Department of Trade, Industry & Competition
- Department of Small Business Development
- Jobs Fund
- Small Enterprise Finance Agency
- Small Enterprise Development Agency
- National Empowerment Fund
- National Youth Development Agency
- Eastern Cape Economic Development Corporation
- Free State Development Corporation
- Gauteng Enterprise Propeller
- Gauteng Investment Centre
- KZN Growth Fund
- Ithala Development finance Corporation
- Trade & Investment KZN
- Limpopo Economic Development Agency
- Mpumalanga Economic Growth Agency
- North West Development Corporation
- WESGRO

Private sector financial backing

Has the company approached financial associations to find financing opportunities?

Banking Association of SA

Association of Savings and Investment SA (ASISA)

SA Venture Capital Association (SAVCA)

SA SME Finance Association (SASFA)

8 Save Jobs by Reducing Company Expenses



1. Improve processes and reduce waste

Companies often carry unnecessary operational costs because of poor decisions by management in the running of the company. Major improvements can often be made in reducing costs through collaborative processes and by simply improving the ways in which operations are run.

Unions can play a role to identify and solve such issues. For instance, companies can run collaborative productivity interventions designed with the help of workers and unions. These should not reduce wages, should respect workers and advance decent work, and should use workers' knowledge and expertise to find ways to make production processes more efficient, but also better for workers.

There are other experts who can be considered to help in these kinds of projects, but our interest as unions and workers should always be that the methods of these experts support workers and working conditions. We cannot accept processes and outcomes that squeeze workers.

Of course, workers may want to seek productivity incentives over and above the base-wage, which can help to increase workers' wages further.



2. Labour costs

Companies that are listed on the JSE are required to report on pay to executive and non-executive directors in their annual reports

Companies like to complain about the wage costs of their employees being too high. Their proposals often include: cutting workers' wages; implementing short-time, extended layoffs or unpaid leave; increasing or decreasing shifts and length of shifts; and/or changing overtime or weekend-work arrangements.

It can, however, be useful for a business in distress if the **executives and senior management take a cut in their salaries and benefits**. Companies that are listed on the JSE are required to report on pay to executive and non-executive directors in their annual reports, and these reports can be requested if they are not already in the public domain.

It might also be possible to save money on salaries and labour costs by **reducing the number of managers and executives.**

There are other ways for a company to reduce the cost of the wage bill during a period of distress without actually impacting workers' wages. This can be done by **applying for the TERS for 6 to 12 months.** If workers' wages are not to be impacted, the company would simply need to pay the balance of the outstanding wages.

Another option to save on labour costs can include **placing a freeze on hiring new employees.**

If a company is saving on labour costs and has put workers on extended short-time or a layoff for more than six weeks (due to not having any work), it can also be possible for the **workers to receive UIF support** without being retrenched. This is done by using the reduced work provision of the UIF.



3. Combating corruption

Corruption adds to the cost of running businesses. Unions can play a meaningful role in monitoring and combating corruption – whatever the source.

9 Save Jobs through Shareholder Activism



Appeal to shareholders to assist

If the affected business is owned by one or more major shareholder/s, it may be possible to use shareholder activism as a tool to save jobs. For instance, you could write to the shareholder/s and urge them to support their subsidiary in the interests of preserving jobs.

You could write to the shareholder/s and urge them to support their subsidiary in the interests of preserving jobs.

If the company or its shareholders are members of a business association, it may be a signatory to the Jobs Summit agreement of 2018 in which Organised Business committed to “do everything in their power to avoid retrenchments”.

This included using the TERS, using turnaround expertise, engaging with Productivity SA and others to implement interventions, implementing executive salary sacrifices, transferring affected employees to other jobs in the employer’s business or group, training or re-skilling employees to deploy elsewhere in the company or group and exploring mutual assistance amongst companies.

10 Save Jobs through Business Rescue and Liquidation

Business rescue and liquidation are not words which workers and unions enjoy using. This is because, in our experience, the end result is usually that workers lose jobs, severance pay, and unpaid money still owed to them by the company, and do not get new jobs afterwards. It is the experience of unions and workers that both liquidation and business rescue have been heavily abused by employers (to avoid paying creditors like workers) and consultants (simply seeking to make money without apparent concern for workers and their jobs).

It is not legal for a business that is insolvent to continue to operate. It endangers the financial wellbeing of its workers, customers, suppliers and support organisations (like banks).

Companies in this position can either enter business rescue or liquidation.

Although we may not like liquidation and business rescue, however, the reality is that they exist and will increasingly be used in the current economic crisis. We must therefore use our power to contest and shape them to have better outcomes for workers.

It is still possible, even if hard, to try to save jobs through both business rescue and liquidation.

Business rescue and liquidation occur when a company is in severe distress and does not have enough money to meet its financial obligations to its creditors (the companies and people, including

workers, to which it owes money) as they become due immediately or will reasonably not be able to do so within the next six months.

The company simply does not have the money internally and is unable to find the money elsewhere (such as from shareholders or financiers like banks). In this situation, a company is considered to be “insolvent” (without enough money or access to money to meet its current and short-term financial obligations).



Business rescue

A company is placed into business rescue through an application to the court. These applications can be brought forward by the company or by its creditors (including workers and their unions).

It is possible for liquidation to be changed into business rescue instead. The Business Rescue process is enabled and outlined in the Companies Act.

If the court approves the business rescue application, an external professional (a Business Rescue Practitioner or BRP) is legally placed in charge of the business and takes over all decision-making powers with a mandate to attempt to turn the business around.

In order to be successfully placed into business rescue:

1. There must be a “reasonable prospect”

of success in finding a solution to saving the business, and there must be the chance of a better outcome from business rescue than from liquidation.

As an example, if a liquidation would end up in the sale of the assets of the business by an auction and generate roughly 10% of the value of those assets, a business rescue needs to offer the creditors a better alternative. It needs to offer more than 10% and hopefully the outcome of saving the business and the jobs it provides.

2. There must be enough money to run the business rescue process.

This is called post-commencement finance. Business rescue is expensive. Even though the Companies Act sets maximum fees that can be charged by a BRP, these fees are still enormous by the standards of workers (ranging from a minimum of R1 250 per hour to a maximum of R25 000 per day). Post-commencement finance is usually funded by one or more of the creditors of the business. They will only fund it if they think there is a chance of success and if the business rescue process will produce a better outcome than liquidation for them.

Objective of business rescue:

to restore the company to a healthier position so that it is solvent again.

The objective of liquidation is to sell the assets of the company and use the money to pay the creditors in terms of an order of preference.

If a company is in business rescue, the employees and their representatives (unions) must be consulted on the turnaround plan.

During the business rescue, the law protects the business from paying its outstanding debts while the BRP tries to find solutions to the problems of the company. This may include asking creditors to accept less money, and/or finding new business and customers, and/or renegotiating contracts, and/or re-organising the operations or structures of the company, and/or looking for new owners or finance, and/or possibly retrenching workers.

Business rescue is the last lifeline which is given to companies to try to turn them around and avoid being closed down and liquidated.

A successful business rescue can take two forms.

1. The company is saved and jobs are saved (either all or only some of the jobs).

2. The company itself is not saved, but the jobs of the workers are saved (either all or only some of the jobs) by transferring the workers into a new legal entity or company.

If a business rescue is unsuccessful, the company is moved into liquidation.

There are many concerns with the business rescue process from a union perspective, including the fact that it does not necessarily save the jobs of workers, and that the fees of the BRP illustrate so strongly the massive problems regarding economic inequality.

This guide describes several strategies that would help promote better outcomes of a business rescue process.

Still, business rescue remains a fact of law at the moment, and while it does not always work, it can produce positive outcomes for workers.

In cases where companies enter business rescue, unions may wish to play a strong role. The union can try to identify business rescue practitioners who appear to be keen to save jobs and not simply make money. The union can insist that the outcome of business rescue saves jobs and do what they can to make this happen.



Liquidation

Liquidation simply means that an insolvent company is closed down and has its assets (the things it owns) sold in order to generate money to pay creditors and settle its debts.

A company is placed into liquidation through an application to the court. This application can be brought forward by the company (through a resolution of its Director/s), by its creditors or by its shareholders.

Once an application for liquidation has been made to the court, the company is placed in provisional liquidation. At this stage, no creditors may bring legal action against the company and any legal action that already exists will be suspended.

The court appoints a liquidator that values the assets, engages with creditors, tries to collect any outstanding money owed to the company, sells the assets of the company, pays creditors and winds down the business.

**Liquidation
is regulated
by the
Companies
Act and the
Insolvency
Act.**

During a liquidation, workers are usually able to appoint a co-liquidator. This is because liquidators are appointed by value (the creditor which is owed the largest amount of money), and by volume (the creditor which represents the largest number of claims). The largest volume of creditors is often taken up by employees, if there are many of them in the company.

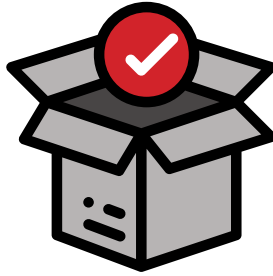
Unions who appoint liquidators should insist that everything possible is done to improve the outcome for workers in at least three ways.

The liquidator should try to get as much money as possible from the liquidation so that the workers can get as much money as possible of what is owed to them.

The liquidator should try to secure a potential buyer of all the assets, or several potential buyers of the assets, who are willing to employ the workers of the liquidated company at equal or better wages and conditions of work than they enjoyed in their previous company.

Unions should regularly assess whether the liquidator has interest from buyers in the assets of the company, and if necessary, unions should play a role to help find more potential buyers.

Unions should begin to identify liquidators who are more successful at these outcomes and try to use their services more often.



Save Jobs.

A Trade Union Checklist if Retrenchments Seem Unavoidable



Speak to the company

- ❓ **Will the company place the workers on the TERS**, or is the company willing to continue to keep the contracts of employment with the workers, but place them on UIF support using the reduced working time provision?

- ❓ **Can workers be re-deployed** within the company and/or, if necessary, reskilled for new positions?

- ❓ **Can the company reduce immediate retrenchments** through gradual natural turnover of employees over time as they retire (natural attrition), or offer early retirement to volunteering employees?

-
- ❓ **Can the company provide a fund to reskill the workers** to help them seek new work, even if it cannot retain them?

 - ❓ **Can the company actively assist the workers** to find secure alternative employment using their networks and connections?

 - ❓ **Can the company help the workers to start a new company** and provide enterprise development support to it?

 - ❓ **Can the company pay higher severance packages** to reduce the impact of retrenchment on the workers?

 - ❓ **Can agreements be made** to revisit decisions pending changes in the business?



Speak to shareholders

- ❓ **Can workers be redeployed** into other companies in the group?

- ❓ **Can the shareholders provide finance** to reskill workers to help them find new work?

- ❓ **Can the shareholders actively assist workers** to find secure alternative employment using their networks and connections (even if not in the group)?

- ❓ **Can shareholders provide shares to retrenched workers,** over-and-above their severance pay, so that they have the opportunity for alternative income in the future?



Speak to other companies

- ?** Do the employer association or business chamber know companies that could absorb the employees?

- ?** Could competitors of the affected company absorb the employees?

- ?** Could large customers or service providers to the affected company absorb the employees?

- ?** Do the workers or union know other companies which are growing or more stable, which could absorb the employees?

- ?** Do any large service providers of the union have opportunities to absorb the employees?



Skills training

- ✓** Explore whether the Labour Activation Programme (LAP) of the UIF has opportunities to absorb the workers into programmes for retraining to earn a stipend.

- ✓** Explore whether the [SETAs](#) have opportunities for the affected employees (such as stipend-paying learnerships), whether in the same industry or other industries.

- ✓** Challenge retrenchments. Is there an opportunity to refer the matter to the [CCMA](#) or even the [Labour Court](#)?

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

10

Trade Unions Negotiating in Value Chains

LRS Labour
Research
Service



This chapter is an introduction to **value chains as a tool for trade unions** to renew their bargaining and organising strategies.

If a trade union is able to start answering the questions that this approach raises, it will have access to a growing map of work and workers, starting with one workplace and leading to other related workplaces and the workers located there. If the union is able to start answering these questions, then the union is creating new links

“Today, transnational corporations dominate the global economy, controlling some 80 per cent of world trade through their own operations and those of their business partners, organised in global value chains.”¹

between workers. Value chain mapping is a way to make the full production process and workers spread across the different parts of the production process visible again.

The answers to these questions will assist greatly in thinking about how and where to direct

the organising and bargaining strategies of the trade union. Knowing where and how a company is situated in value chains can help a trade union understand how to best negotiate for better pay or conditions of work and how best to direct its organising efforts to build power in value chains.

1. Fichter, Michael. 2015. "INTERNATIONAL POLICY ANALYSIS." <https://library.fes.de/pdf-files/iez/11560.pdf>

Value chain mapping is a way to make the full production process and workers spread across the different parts of the production process visible again.

The focus on value chains in this chapter is not calling for building new value chain unions. Rather, it is about recognising and using the opportunities that are on offer when looking at the enlarged context of a value chain.

These opportunities include greater policy insights, broader solidarity, and increased leverage for organising and collective bargaining.²

Trade unions can act at a local, sectoral and global level in their efforts to tackle inequality in value chains. This chapter focuses on trade union efforts to build an understanding at the local level among shop stewards and organisers as a building block for efforts at other levels.

A definition of value chains

A value chain is made up of all the companies in the various stages of the production process for producing a final product, including the company at the end of the value chain that sells the product.

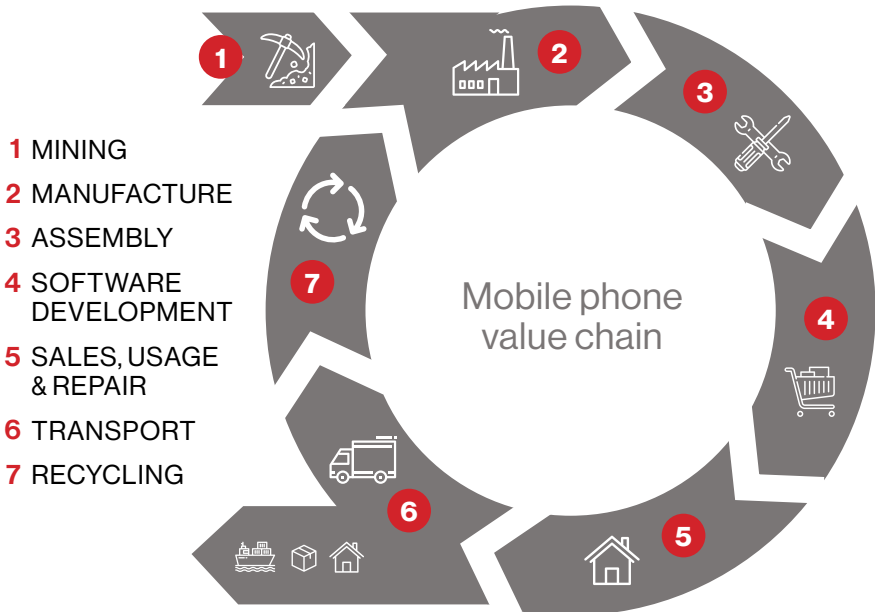
A global value chain is made up of the full range of activities (design, production, marketing, distribution, support to the final consumer, etc.), which are divided up amongst multiple firms and workers across geographic spaces to bring a product from its conception to its end use and beyond.³

2. Fichter, Michael. 2015. "INTERNATIONAL POLICY ANALYSIS." <https://bit.ly/32Q0N0U>

3. Adnan Seric and Yee Siong Tong. 2019. "What Are Global Value Chains and Why Do They Matter?" | *Industrial Analytics Platform*. "Industrial Analytics Platform." August 3, 2019. <https://bit.ly/3vNnWeo>

Example: Mobile phone value chain ⁴

Here is an example of a value chain for a mobile phone.



The value chain includes all the companies and workers, formal and informal, involved in the production (making), the consumption (using) and the recycling (re-use) of the mobile phone. It includes:

- **The mining and extraction of metals** and minerals that are inputs to the manufacturing of mobile phone components.

4. Rizos V, Bryhn J, Alessi M, Campmas A., 2019., *Identifying the impact of the circular economy on the Fast-Moving Consumer Goods Industry: opportunities and challenges for businesses, workers and consumers - mobile phones as an example*, European Economic and Social Committee (EESC). CEPS. <https://bit.ly/3GuAGLQ>

- **The manufacturing** of components for mobile phones.
- **The assembly** of the mobile phones.
- **The development** of software for use on mobile phones.
- **The sales**, usage and repair of mobile phones.
- **The collection** and recycling of broken and used mobile phones.

Power is what distinguishes a value chain from an ordinary supply chain. The question to answer is this: Who runs the value chain?

These companies perform their role in the value chain on a long-term basis, regularly interacting with the companies that supply them and the companies that they supply to in the next stage of the process.

Power relations between the different roleplayers in the value chain are generally not equal. This power might be wielded moderately by strong companies to coordinate the value chain, but it can be exercised rigorously to exert control over companies in the chain and push prices down.⁵

Power is what distinguishes a value chain from an ordinary supply chain. The question to answer is this: Who runs the value chain?

5. Godfrey S & Jacobs M, 2018, unpublished



Trade unions in value chains

The work of a trade union is to make connections between workers. It starts with making the connection between two workers side-by-side in the same workplace, then the union makes the connection between those workers and workers in other operations of the same company.

Ultimately, the trade union movement wishes to make the connection between workers in different economies around the world.

From there, the union makes the connection between workers in different companies in the same sector, followed by connections between workers in different sectors of the economy. Ultimately, the trade union movement wishes to make the connection between workers in different economies around the world.

The way that production processes are organised today works against the goals of trade unions. Production is characterised by the spread of activities around the world and the externalisation (outsourcing) of many functions by lead companies.

The production process is fragmented, and so is labour. A single workplace now holds many different forms of employment, including full-time permanent, part-time permanent, contract workers and workers supplied by temporary employment services.

Value chain mapping is a way to make the full production process visible and a way to make workers spread across the different parts of the production process visible again.

6. Theron Jane, 2007, *Informalization from above, informalization from below: What are the options for organization? African Studies Quarterly*, 11, Issues 2 & 3. <https://bit.ly/3jlatjk>

The workplace has become a community of service providers or intermediaries, each of which employs its own workforce, but which is nevertheless subordinate to a core business.⁶

Value chain analysis offers the trade union movement a tool for making the picture whole again. Value chain mapping is a way to make the full production process visible and a way to make workers spread across the different parts of the production process visible again.

Value chains operate at local, national, regional and global levels. It is unrealistic to expect shop stewards and event organisers to map vast global or even regional value chains. Value chain mapping can get very complex very quickly and it is important to maintain a clear focus to avoid being drowned in the complexity.



The 4 steps in value chain mapping

The starting point for beginning to integrate basic value chain thinking into trade unions is the local level. It is useful to maintain a focus on the labour or worker component of value chains, since this is the main currency of trade union representatives wherever they may be situated in a value chain.

There are four main elements of value chain mapping:



1) Input-output structure

What materials and labour go into the processes of production? What is produced at the various stages, and who are the producers?



2) Geography

Where are the companies, operations and workers in the value chain?



3) Institutional framework

How do laws and regulations affect companies and workers in the value chain?



4) Governance (power)

What power do the different companies in the value chain have? What power do workers have where they are situated in the production process?

A practical guide for trade union representatives to get started with value chain mapping

Questions about the products and services of the company

- ?** **Where** do the products or services of the workplace go, and who are the (major) customers?

- ?** **How** do they get to the customers (major logistic/ transportation contractors)?

- ?** **Where** do the materials, parts and components used in the workplace come from? Who are the major suppliers of materials? Who delivers products and services to your workplace?

- ?** **Can** these links be followed further upstream (backwards to the suppliers of the suppliers) and downstream (forward to the customers of the customers)?

Questions about the suppliers and customers of the company

- ?** **What do you know about the major suppliers** of the company and the main customers of the company? Think about things like ownership, turnover, profit, number of employees, and types of jobs.
-
- ?** **Can you judge the role** and importance of those companies in the value chain?
-
- ?** **Who** are the main competitors?
-
- ?** **Is the supplier or customer a small or large unit** in a larger corporation?
-
- ?** **What** are the working conditions in those other companies?
-
- ?** **What is the composition of the workforce?**
What is the mix of skilled and unskilled workers, men and women, young and old, permanent and temporary workers?
-

Questions about workers

- ① **Are there workers in the main workplace** that are not represented by the union? Why are they not represented, and can this be changed?

- ② **Which union(s) represent workers** at the workplaces of suppliers or customers?

- ③ **Who should be organising workers?**

- ④ **Is there a collective agreement?**

- ⑤ **What possibilities are there** for building solidarity with other groupings of workers? Are there trade unions, worker groups or worker representatives that you can make contact with?

If the union is able to start answering these questions, then it has access to a growing map of work and workers, starting with one workplace and leading to other related workplaces and the workers located there. If the union is able to start answering these questions, then the union is creating new links among workers.

The answers to these questions will assist greatly in thinking about how and where to direct the organising and bargaining strategies of the union.

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

11

Negotiating the Future of Work

LRS Labour
Research
Service



In this chapter

- Trade Unions negotiate the future of work
- Some definitions
- The future of jobs
- Responding to informalisation
- The changing workplace
- Predictions
- Global pandemics
- Bargaining strategies for the future
- Campaigns to influence policy formulation
- Real-world examples of trade unions grappling with non-standard employment

Trade Unions negotiate the future of work

Trade unions and trade union negotiators are not powerless when it comes to influencing the future of work and shaping the reality of work.

Technological change and the reorganising of production are often incremental, happening little by little over a period of time. There can also be sudden leaps in the application of technology to production and the organisation of work. There are many different factors that decide the speed and scale at which an industry, sector or enterprise will adopt new technologies.

Technological change and informalisation are closely linked under the fourth industrial revolution.

Digital technology, in a variety of forms, is one of the central drivers of change in modern economies.

Even so, in a survey of large and emerging multinational employers, the most significant driver of change was identified as “Changing work environments and flexible working arrangements”.¹

1. “The Future of Jobs.” n.d. *The Future of Jobs, Employment, Skills and Workforce Strategy for the Fourth Industrial Revolution, 2016*, World Economic Forum, Global Challenge Insight Report <https://bit.ly/3udXBHQ>

This refers, in part, to new technologies enabling workplace innovations such as remote working, co-working spaces and teleconferencing. The OECD says that organisations are likely to have an ever-smaller pool of core full-time employees for fixed functions, backed up by colleagues in other countries and external consultants and contractors for specific projects.

This leads us into the second central feature of the future of work – the erosion of the standard employment relationship and the shift to a more flexible, externalised and contractualised relationship.

Companies moved to externalise the so-called non-core functions of an enterprise decades ago. In a single workplace, you can now find many different forms of employment, including full-time permanent, permanent part-time, contract workers and workers supplied by temporary employment services.²

*2. Theron
Jane, 2007,
Informalization
from above,
informalization
from below: What
are the options
for organization?
African Studies
Quarterly, 11, Issues
2 & 3. <https://bit.ly/3p14aA1>*

“The OECD says that organisations are likely to have an ever-smaller pool of core full-time employees for fixed functions, backed up by colleagues in other countries and external consultants and contractors for specific projects.”

These are the broader challenges that a trade union negotiator faces.



Collective bargaining and workers' voices

can help address the challenges posed by a changing world of work. As demographic and technological changes unfold, collective bargaining can be used to mediate adjustments in wages, working time, work organisation and tasks to respond to new needs in a flexible and pragmatic manner.



Collective bargaining can help to shape new rights,

adapt existing rights, regulate the use of new technologies, provide active support to workers transitioning to new jobs and anticipate skills needs.³



Collective bargaining can be used to protect workers

from the worst impacts of technological change and informalisation.

3. OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, <https://bit.ly/3gnX7Xf>

Some definitions



The Future of Work

This term is often used as a **blanket term to talk about all the technological and social changes affecting the world of work**. The OECD defines⁴ it as “globalisation, digitalisation and other mega-trends” that “bring radical shifts to how we live and work”.

Within this framework, we can ask questions about what skills are needed for jobs, the quality of these jobs, the social assistance available should we be unable to work and what role we play in shaping these outcomes.



Fourth Industrial Revolution (4IR)

A technological or industrial revolution refers to a time period where technologies are replaced with new technologies, often in a short period of time. This causes sudden changes in society. These trends are called ‘disruptive’ because they disrupt and change the status quo. We are currently in the fourth industrial revolution.

The first industrial revolution centred on steam power and mechanisation. The second industrial

4. “Future of Work.”
n.d. [www.oecd.org. https://bit.ly/3mIJT1m](https://bit.ly/3mIJT1m)

revolution was based on electricity and assembly line production techniques. The third industrial revolution involved the use of electronics and information technology to automate production.

The fourth industrial revolution can be described as the advent of “cyber-physical systems” involving new capabilities for people and machines. While these capabilities rely on the technologies and infrastructure of the Third Industrial Revolution, the Fourth Industrial Revolution represents entirely new ways in which technology becomes embedded within societies and even in our human bodies.⁵



Industry 4.0⁶

Four major components:

a) Cyber-physical systems:

A computer system in which a mechanism is controlled or monitored by computer-based algorithms (a set of rules for a set of operations).

b) Internet of things (IoT):

The network of physical objects, or “things,” that are embedded with sensors, software and other technologies for the purpose of connecting and exchanging data with other devices and systems over the Internet.

5. “What Is the Fourth Industrial Revolution?” n.d. World Economic Forum. <https://bit.ly/3Hokqw2>

6. Wikipedia Contributors. 2018. “Cyber-Physical System.” Wikipedia. Wikimedia Foundation. December 8, 2018. <https://bit.ly/3HhChoq>

c) On-demand availability of computer system resources

d) Cognitive computing:

In general, the term cognitive computing has been used to refer to new hardware and software that mimics the functioning of the human brain and helps to improve human decision-making.



7. De Stefano, Valerio. 2015. "The Rise of the 'Just-In-Time Workforce': On-Demand Work, Crowd Work and Labour Protection in the 'Gig-Economy.'" *SSRN Electronic Journal* 71. <https://bit.ly/3GkVEf4>

The Gig Economy

A gig economy is a labour market system in which temporary positions are common and organisations contract with "independent" workers for short-term engagements. The gig economy is usually understood to include chiefly two forms of work: "crowd work" and "work on-demand via apps".⁷

Examples include Uber, Airbnb and Fiverr. Domestic workers often work on a gig basis, whether placed through a digital platform or word of mouth.



The future has begun

“We are being afflicted by a new disease of which some readers may not have heard the name, but of which they will hear a great deal in the years to come – namely, technological unemployment.”

– John Maynard Keynes, 1930

This quote is almost a hundred years old and reminds us that the fourth industrial revolution (4IR) is not entirely new. There is a history of major upheavals in the organisation of production and of work. The fourth industrial revolution builds on the third – the shift from mechanical and analogue electronic technology to digital electronics and technology, which began in the latter half of the 20th century.⁸

4IR is not an event. It is a process that started years ago and one that will continue to develop in the years to come. As a negotiator, this means that you can learn from both the past and the present wave of technological change.

8. Wikipedia Contributors. 2019. “Digital Revolution.” Wikipedia. Wikimedia Foundation. May 1, 2019. <https://bit.ly/3HgulUt>

“We tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run.” – Roy Amara⁹

9. “Definition of Amara’s Law.” n.d. PCMAG. Accessed October 15, 2021. <https://bit.ly/3BqWXXy>

In other words, the danger is that our efforts as a trade union movement are given towards trying to deal with the short-term effects of technological change, and that we do not grapple with the longer-term risks.

A trade union negotiator needs short-term strategies and long-term strategies to deal with 4IR.

The future of jobs

There is a deepening trend for organisations to have an ever-smaller pool of core full-time employees for fixed functions, backed up by workers in other countries and external consultants and contractors for specific projects.¹⁰

While the cost associated with certain technologies is currently high, it is set to decrease and increasingly create workplaces that are less reliant on workers in direct employment. It is not always the case that technology replaces jobs, but rather that technology reorganises work and therefore, jobs.

10. "The Future of Jobs Employment, Skills and Workforce Strategy for the Fourth Industrial Revolution Global Challenge Insight Report." 2016. <https://bit.ly/3HoiBzo>

The gig-economy, associated with companies like Uber and Airbnb, creates situations where jobs are secured through online platforms and employees have often not met their employer.¹¹

Jobs that have elements that are predictable and repetitive are likely to have these task elements of the job automated. Jobs at risk include cashiers, clerks, mining and maintenance workers. Not only are blue-collar jobs at risk of automation, but also white-collar jobs in bookkeeping, accounting and auditing along with legal and compliance services.

11. Smith, Aaron. 2016. "Gig Work, Online Selling and Home Sharing." Pew Research Center: Internet, Science & Tech. Pew Research Center: Internet, Science & Tech. November 17, 2016. <https://pewrsr.ch/3EIMHBv>

12. Frey, Carl Benedikt, and Michael A. Osborne. 2013. "The Future of Employment: How Susceptible Are Jobs to Computerisation?" *Technological Forecasting and Social Change* 114 (1): 254–80. <https://bit.ly/3pXcJaz>

13. "The Future of Women at Work Transitions in the Age of Automation." 2019. <https://mck.co/3Gj2lyb>



Estimates

There are many studies that estimate the extent of job losses due to technological changes, ranging from 9% to 47% of the workforce globally. One estimate is that 47% of jobs in America are at risk of automation by the mid-2030s.¹² Another source estimates that between 40 and 160 million women worldwide will need to change occupations by 2030 (from low-skilled to higher-skilled).

These estimates are based on an occupation rather than job-task approach. Some argue that we should not only consider jobs as a whole, but also as a set of tasks. In many instances, certain tasks within an occupation will be automated rather than the whole occupation.

From this perspective, estimates of job automation are overestimated. By looking at potential job losses in this way, it is argued that only 9% of jobs will be lost. However, while the jobs themselves may not entirely vanish, the jobs will be “redefined”. If a job radically changes, a worker may well require a new skill set.



Employers will increasingly try to structure the attendant employment contracts to accommodate the transition to a more flexible workforce.

Informalisation

Non-standard employment, including temporary employment, part-time and on-call work has become a feature of labour markets across the world. The informalisation of work is a key characteristic of the 4IR. Employers will increasingly try to structure production, jobs and the attendant employment contracts to accommodate the transition to a more flexible workforce.

Responding to informalisation

Building a bargaining agenda

- **Restrictions and administrative requirements** for subcontracting, labour broking and other temporary employment service arrangements. The main agreement of the Metal and Engineering Industry Bargaining Council (MEIBC) is one such example.

- **Guaranteed** minimum working hours of paid work.

- **Job guarantees** for the length of the collective agreement.

- **The equalisation of benefits** across different types of employment in and around the company. There should be a wage premium (a higher rate of pay) for insecure jobs (jobs that can end at any time) and part-time work.

- **Some benefits should be extended** in principle. For example, if an employer is committed to a healthy workforce, then the health benefits which the company offers should be extended to all workers: part-time and full-time; in-house and outsourced. The benefit should not be pro-rata. Health is not divisible.

There should be a wage premium (a higher rate of pay) for insecure jobs (jobs that can end at any time) and part-time work.

The future of work is characterised by a more flexible and indirect employment relationship, which has serious implications for the social protection of workers.

- **Represent non-permanent workers**, outsourced workers and dependent contractors. Dependent contractors are workers employed for profit, usually by way of a commercial transaction. These contractors are dependent on another entity that directly benefits from the work performed by them and exercises explicit or implicit control over their activities.¹⁴

-
- **Education and training** (including re-skilling to meet new skills demands).

-
- **Forms of control:** At the same time as jobs become more flexible and more contractualised, the forms of control used by employers will intensify.

For example, Uber argues that their drivers are independent contractors, but the Uber app for drivers exerts very strong control over their work and has built-in incentives and disincentives that limit the amount of choice that drivers have. A negotiator that is dealing with this kind of technology will need to learn about that technology, how it works and what problems it creates for workers.

While it is difficult to predict job losses, it is evident that the future of work is characterised by a more flexible and indirect employment relationship, which has serious implications for the social protection of workers.

14. 20th International Conference of Labour Statisticians, 10-19 October 2018, Geneva - Resolution concerning statistics on work relationships

The changing workplace



Past



Present



Future

Pen and paper
More filing –
paper pushers



Digital
Backing up
in the cloud



Centralised
connectivity
All systems are
connected

1 workspace



2 workspaces:
Home and work



3+ Spectrums
of workspaces

8 hour workday



More hours



24/7

Permanent
employment



Contract, part-time,
seasonal



Freelancers

Long-term
employment



Focus on projects



Task-focused

Internal
information
wave



Subcontracting
wave



Total-information
wave

Reads printed
newspaper



Reads online
newspaper



Finds news
on social media

Employee



Own-account worker



Gig economy

Set location
for work



Flexible work
location



Can work every-
where, using laptop,
phone, iPad, etc.

The changing workplace



Past



Present



Future

Physical boardroom	→	Meetings via Skype	→	Zoom, virtual reality meetings and other platforms
Human acting like robots	→	Humans working with robots	→	Robots replacing humans
Process-centric tasks	→	Strategic tasks	→	Creative tasks
Hierarchy	→	Flatter Structures	→	Algorithms
Static workforce	→	Dynamic workforce	→	Evolving workforce
Companies act like factories. Production is the key focus.	→	Companies act like laboratories.	→	A key focus on innovation and experimentation.
Hard skills	→	Soft skills	→	Creative skills
Manager	→	Coach	→	Mentor
Intuition-driven decisions	→	Data-driven decisions	→	AI and machine learning decision-making
Retiring at 60	→	Retiring at 65	→	Retiring when you die

How relevant are some of the **predictions** regarding technological innovations in the developing world?

Differences between countries may reflect general differences in workplace organisation, differences in previous investments into automation technologies and differences in the education of workers across countries.¹⁵

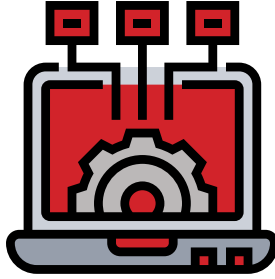
15. Arntz, Melanie, Terry Gregory, and Ulrich Zierahn. 2017. "Revisiting the Risk of Automation." ResearchGate. Elsevier. July 3, 2017. <https://bit.ly/3mkZXQK>

Automation is expensive, reliant on infrastructure and slow – it has to overcome economic, societal and legal hurdles.

The debates arguing that jobs are at risk of being replaced or computerised is to a large extent based on studies conducted in Europe and Northern America.¹⁶ This is because the future of work is a context-dependent phenomenon.

16. Arntz, Melanie, Terry Gregory, and Ulrich Zierahn. 2017. "Revisiting the Risk of Automation." ResearchGate. Elsevier. July 3, 2017. <https://bit.ly/316Roku>

Services such as automated stores and online shopping are associated with middle to high-level



“The future is already here – it’s just not very evenly distributed.”

– William Gibson ¹⁷

income groups. When we are considering Africa, it is well-known that affordability and literacy levels differ from that of the global North.

If the predictions on jobs losses become a reality, it’s important that social safety nets are upgraded in order to reflect this. This process can easily become politicised, but it is worth saying that each of the past technological revolutions also brought changes in social protection.

17. William Gibson
- Wikiquote.” n.d.
En.wikiquote.
org. <https://bit.ly/35lmcu9>

Global pandemics and the future of work

You could say that COVID-19 brought about a kind of industrial revolution – a disruptive technology, which also forced a reorganisation of work.

There is reason to believe that this kind of threat will be a feature of our future and a consequence of the hyper-exploitation of natural resources and a hyper-connected global economy.

What lessons can we then draw from the COVID-19 pandemic about organising and representing the interests of workers?

Covid-19 showed us the limitations of traditional face-to-face methods and the challenges that surface with no alternative communication channels.

- Lockdowns and restriction of movement and contact **showed the limitations of traditional face-to-face methods** and the challenges that surface when there are no coherent alternative channels of communication available.
- The **centrality of information communications technology** in the modern economy was painfully

evident during the hard lockdowns of economy and society in response to the pandemic. Telecommunications were designated to be an essential service right from the beginning. The inability of any group to fully utilise telecommunications technology during lockdown put everyone at a significant disadvantage.

- The pandemic **resulted in immediate changes** but also interacted, in complex ways, with established processes and trends, notably the future of work and informalisation. **New issues are emerging** from new experiences of work.
-

UNI Global Union has resources on topics like remote work, the right to disconnect and on management by algorithm.

- For work that can be done and workers who can work remotely, this practice became widespread. This has led to the **emergence of new experiences of work and new issues that must be negotiated and solved**. UNI Global Union has resources on topics like remote work, the right to disconnect, and on management by algorithm.
-

- There has been a need at times for almost continuous bargaining as enterprises have had to navigate a rapidly changing situation. **The danger of getting isolated as a negotiator has never been greater**. That is the reason that ways of staying in contact with workers and members are especially important.

Bargaining strategies for the future



1. Developing our own knowledge base on the future of work

Find out what technology is being used in the company. Demand that the company disclose what technologies they are currently using and what technologies they are considering deploying. Try to add a clause to the main agreement that commits the company to consulting with the union prior to implementing new technologies.

There is no substitute for developing our own knowledge.

Begin to learn about the key technologies and trends in your industry and sector. There is no substitute for developing our own knowledge. This is the foundation for developing strategies to cope with new technology and for reorganising work in our industries and sectors. Workers and their representatives know a great deal already – sometimes the challenge is simply surfacing that knowledge, recording it and beginning to structure it.



2. Negotiating for precarious workers

Organising workers in non-standard employment can be difficult. It might be easier for the union to try to represent the interests of non-standard workers in collective bargaining first. The union will have a better chance of organising these workers if it can show that it is already trying to represent them.

As a trade union movement, we simply must push for the equalisation of pay and benefits for part-timers, contract workers, fixed-term workers, flexi-timers and workers of temporary employment services used by the company. If we do not, then we are helping to establish a pool of cheap workers that the company will be incentivised to use.

You can monitor compliance by the company using Chapter 9 of the Labour Relations Act – the Regulation of Non-Standard Employment and General Provisions.

You can monitor compliance by the company using Chapter 9 of the Labour Relations Act – the Regulation of Non-Standard Employment and General Provisions. The sections of interest are (198) Temporary Employment Services, (198B) Fixed-term contract workers, (198C) Part-time workers, and (200A) Presumption of who is an employee.

Section 198(5) of the LRA states that two bargaining councils may bind parties to the agreement that fall within their combined scope. This might be a way of raising the standards for workers in precarious jobs by linking them to the standards set out in the main agreement of a bargaining council.



3. Looking and listening for new issues in the workplace

A negotiator must be able to recognise new issues that are of importance to workers. Examples of this include the negative consequences of remote work and health and safety issues in the workplace in the context of a pandemic.



4. Technology for trade unions

The union/workers' organisation can utilise technology in order to grow the organisation itself, as a platform for protest, to form e-unions, virtual unions and to improve strategies. This is already evident in the way that some unions are using WhatsApp and Social Media to spread their messages. There are many possibilities. In what simple ways can you use technology to be a better negotiator?

Trade unions can bring modern data technology to bear on their own operations, to mine strategy from their membership data and to magnify their possibilities for communication with worker members.



5. Communicating with members

Communication is fundamental to negotiations. A negotiator needs to be in contact with workers before, during and after negotiations. Do you have ways of communicating with workers that do not rely only on face-to-face contact?

Some trade union affiliates of BWI in Africa developed communication strategies during the early phases of the COVID-19 global pandemic. The union set up and allowed WhatsApp groups to be formed at different levels in the union by the trade union representatives at those respective levels.

They began by establishing groups involving trade union leadership and officials covering the key companies, sectors and areas. Worker leaders could then initiate groups at the workplace and local level. Worker leaders and officials would better know who to invite, and the group could potentially grow as workers invite their fellow workers to join.

Resources like smartphones, mobile data and training may be required to assist trade union representatives to achieve effective communication strategies. It would be money well spent, and would provide the union with a robust and relatively cheap communication channel – even under the extreme conditions of a hard lockdown.



Four recommendations for preparing for the future of work (ILO):

1. **Lifelong learning for all.**
2. **Supporting people through transitions.**
3. **A transformative agenda for gender equality.**
4. **Strengthening social protection for all.**



6. A simple framework for future strategies

Traditionally, trade unions would have focussed on issues such as wage increases, benefits and working conditions in collective bargaining, although they are no stranger to pushing a national agenda for change.

Automation in the workplace will require an increased focus on issues relating to “education, training, and legal support in an increasingly complex environment”. If the fourth industrial revolution is to result in a positive effect on employment, the skills and re-skilling of the workforce will have to be a core focus of the trade union movement.

Trade union campaigns for national debates could ensure the required skills transition or relevant protection and compensation measures.

Campaigns to influence policy formulation

- **A universal labour guarantee** that protects workers' fundamental rights, an adequate living wage, limits on hours of work and safe and healthy workplaces.

- **Guaranteed social protection** from birth to old age that supports people's needs over the life cycle.

- **A universal entitlement** to lifelong learning which enables people to skill, reskill and upskill.

- **Managing technological** change to boost decent work, including an international governance system for digital labour platforms.

- **Greater investments** in the care, green and rural economies.

- **A transformative and measurable agenda** for gender equality.

- **Reshaping business incentives** to encourage long-term investment

Real-world examples of trade unions grappling with non-standard employment

- In June 2019, UNITE HERE (a trade union in the United States) managed for the first time to include **protection from technological change in its contracts**, covering workers at the Las Vegas properties of MGM Resorts and Caesars Entertainment. Workers will be trained to do jobs created or modified by new technology, allowing them to share in the productivity gains. The contracts also provide for the company to try to find jobs for displaced workers.
-
- The union viewed a provision to get **180 days' warning of technological deployments** as very important: "At the end of the day, they can move forward, but this gives us time to understand the effects."

-
- The German trade union, IG Metall, provides **a virtual space**, Fair Crowd Work, where freelance workers (and specifically workers in digital platforms) are able to share views and organise themselves.
-
- The U.K. Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) **represents both employees and freelance workers** in the sector and has signed an agreement with an employers' organisation, the Producers' Alliance for Cinema and Television (PACT), which regulates labour relations in the U.K. film-making industry.
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- The Freelancers Union (United States) has recently signed an agreement with Uber. The union is in charge of advising the company on how to **create portable benefits for its drivers**.

The Negotiator's Guide

Strategies to inspire, organise & represent workers.

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