

QUICKLAW

ANSWERS YOUR QUESTIONS

STRIKES

Will I be paid while I am on strike?

During a strike the rule of "no work-no pay" applies. This means that you will not be paid if you do not work.

Can my employer dismiss me for taking part in a strike?

- If you participate in a protected strike you will not be dismissed.
- You can however be dismissed if found guilty of misconduct while participating in a protected strike, for example assaulting a co-worker or damaging property.

What is a Protected Strike?

- A strike is protected if your Trade Union has complied with all of the relevant legal procedures.
- Speak to your Trade Union representative about this and make sure that your trade union has done everything necessary in terms of the law.

What questions should I ask my Trade Union?

- Did your Trade Union report the dispute (a dispute about wages, terms and conditions of employment, organisational rights or retrenchments) to the correct Bargaining Council or the CCMA?
- Did the Bargaining Council or CCMA issue a

certificate that indicates that the matter is unresolved?

- Was written notice given to your employer at least 48 hours before the start of the strike?

If you answered YES to these questions then the strike is a protected strike.

Are all employees allowed to strike?

No, you may not take part in a strike if:

- You are bound by a collective agreement or arbitration award that says you can't strike.
- You work in an essential service. This is a service that, if interrupted, endangers life, personal safety or the health of the population. Examples include the police and parliamentary service.
- You work in a maintenance service. This is a service that, if interrupted, has the effect of physical destruction to any working area, plant or machinery.

What must I do if I am a policeman and I am not allowed to strike?

- The dispute can be referred in writing to a Bargaining Council or the CCMA.
- They will attempt to resolve the dispute through conciliation.
- If the dispute remains unresolved, you may request that the matter be resolved through arbitration.

Can my employer replace me while I am on a protected strike?

No, an employee cannot be replaced, but:

- An employer can employ replacement (scab) labour to keep production going.
- They can employ casuals, independent

contractors, or employees supplied by a temporary employment service.

If I take part in an unprotected strike what can my employer do?

- If you participate in an unprotected strike, an employer may have good grounds to dismiss you, however, there are still certain procedures that an employer must follow to ensure that the dismissal is fair.
- Participation in an unprotected strike is a form of misconduct that could end in dismissal.
- An employer may claim damages from the employees or the Trade Union involved for damages caused by the strike.
- Your employer could lock-out employees.

What is a lock-out?

A lock-out occurs when an employer refuses to allow employees to work.

My employer has threatened to lock-out employees because we refuse to accept the proposed annual increase - what should I do?

Your employer will have to follow the same procedure as a Trade Union should follow in order to comply with a protected strike, i.e:

1. Refer the dispute to the Bargaining Council or CCMA,
2. Obtain a certificate if the dispute remains unresolved and
3. Give at least 48 hours notice to the employees/union of the lock-out.

KEY

1. EMPLOYEE - a person who works for another in return for wages
2. EMPLOYER - a person or firm that employs people
3. EMPLOYMENT - having a job
4. DISMISSED - to be fired from a job
5. RETRENCHMENT - when an employer reduces staff