

# QUICKLAW

ANSWERS YOUR QUESTIONS

## UNFAIR LABOUR PRACTICES

### What is an Unfair Labour Practice?

- Have you been treated unfairly regarding promotion?
- Have you been unfairly demoted?
- Have you been treated unfairly during your probation period?
- Have you been treated unfairly regarding training at your place of work?
- Have you been treated unfairly regarding employee benefits?
- Have you been unfairly suspended?
- Did your employer fail to re-employ you or re-instate you even though it was agreed upon?
- Did your employer treat you unfairly in any disciplinary procedure?
- Did you make a protected disclosure and your employer treated you unfairly because of this disclosure?

*If you answered YES to any of these questions, you may be a victim of an Unfair Labour Practice.*

### What must I do if my employer has committed an Unfair Labour Practice against me?

- Find out what industry / sector you work in (eg. Mining and Education).
- Find out if there is a Bargaining Council for your industry/sector.

- To find out if you have a Bargaining Council or not, contact the Commission for Conciliation, Mediation and Arbitration (CCMA) call centre on 0861 161616.
- If there is a Bargaining Council you should contact the Council and they will help you with your dispute.
- If there is no Bargaining Council for your industry / sector, contact the CCMA for assistance.
- You have 90 CALENDAR DAYS to refer the dispute to the CCMA.
- If you find out that you were treated unfairly on a date after the alleged Unfair Labour Practice occurred, you must refer the matter to the CCMA within 90 days from the date on which you became aware of the alleged Unfair Labour Practice.
- You should keep all documents, letters and minutes regarding the Unfair Labour Practice.
- Complete the LRA 7.11 referral form (available from the CCMA).
- Sign the original form. A copy must be served on the employer and filed at the CCMA.
- The CCMA must send you a notice. The notice will tell you what your case number is and the date that you must go to your conciliation at the CCMA.

### How does the CCMA work?

#### THE CONCILIATION PROCESS:

This is an informal procedure where you and your employer will try to sort out the problem by means of negotiation with the help of a Commissioner. If the problem cannot be resolved, the Commissioner will issue a certificate saying what the nature of the problem is and that it could not be resolved through conciliation. The matter will then be referred to arbitration.

#### THE ARBITRATION PROCESS:

This process is like a trial at court. Evidence is led by both you and your employer and the Commissioner then makes a ruling on the facts. You are allowed to have an attorney represent you at arbitration.

#### LABOUR COURT:

There are a few matters that cannot be arbitrated, eg. automatically unfair dismissals, alleged unfair retrenchments and freedom of association. They have to be referred to the Labour Court directly after Conciliation and cannot be referred to Arbitration. In all other matters the Labour Court will only be approached if the parties are unhappy with the arbitration and want to refer the matter for a review of the Commissioner's ruling.

### What will happen if I prove that my employer acted unfairly?

*The CCMA or Bargaining Council could award any of the following:-*

- If you were supposed to be promoted and you were not, they could order that your employer promote you and adjust your salary.
- If you were demoted, they could order that you be promoted to the level you held before the unfair demotion, and that your salary be adjusted.
- If you are treated unfairly during your probation period, they can order that you be awarded the status of a permanent employee.
- If you are unfairly suspended and not paid during the suspension period, they could order that you be paid for that period.
- In order for the Commissioner to award compensation for an Unfair Labour Practice you must still work for the employer.

#### 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. DEMOTED - reduced to a lower position
6. PROBATION - evaluating an employee's performance before making the job permanent
7. RE-INSTATE - restore to previous position
8. RE-EMPLOY - to be employed at your previous employer in the same position or another position
9. SUSPENDED - to put a temporary stop to your job