

Trade unions and strikes: What employers should know

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When trade unions lay claim to organisational rights in the workplace, employers are often uncertain about their own rights and those of the trade union, as well as how these rights are regulated.

Every employee has the right to belong to a trade union, just as every employer has the right to belong to an employers' organisation. Both bodies are regulated by the *Labour Relations Act, 1995 (Act 66 of 1995)*, or the *LRA*.

There is, however, a growing tendency among certain political parties in South Africa to try and appropriate trade union rights for themselves. In the process they intimidate employers into consulting and reaching agreements on terms and conditions of employment.

The rights of trade unions

The *LRA* grants trade unions certain organisational rights, subject to certain requirements. This includes access to the workplace, the deduction of union registration fees, trade union representation in the workplace, leave for trade union activities, and disclosure of information.

No authorisation or permission is given to political parties to exercise rights similar to those of trade unions. Employers must guard against entering into discussions with political parties regarding rights in the workplace.

If a trade union wants to claim organisational rights in the workplace, the trade union must first be registered with the Department of Employment and Labour. The trade union's constitution must also be in line with the employer's business sector. Furthermore, the trade

union must have sufficient representation ($\pm 20\%$) or majority representation ($50\% + 1$) in the workplace in order to be able to claim certain organisational rights.

Legislation further requires trade unions to follow a procedure, which entails that the trade union must notify the employer in writing of the rights the trade union wishes to exercise in the workplace. If the trade union meets the requirements, the employer must then meet with the trade union within 30 days to conclude a recognition agreement, which stipulates the terms and conditions agreed upon.

Strikes

In terms of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)* every employee has the right to strike. The *LRA* defines a strike as the partial or complete concerted refusal to work, or the retardation or obstruction of work by employees for the purpose of remedying a grievance or resolving a dispute in respect of a matter of mutual interest.

Labour legislation distinguishes between protected and unprotected strikes. For a strike to be considered 'protected', the *LRA* stipulates certain provisions and procedures that must be complied with. Dissatisfied employees must first make use of the employer's internal grievance procedure to try and resolve the dispute. If the outcome is not satisfactory, the employee can refer the

matter to the Commission for Conciliation, Mediation and Arbitration (CCMA). A CCMA commissioner will then try to resolve the dispute through conciliation.

If the dispute cannot be resolved or the matter is not mediated within 30 days after referral, the commissioner will issue a certificate stating that the employees have the right to strike. However, the employees are still obliged to notify the employer in writing of their intention to strike, and the employer must receive the notice at least 48 hours before the intended strike.

It is acceptable practice for employees to be remunerated for the services they provide. Therefore, the principle of 'no work, no pay' will apply, and employers do not have to compensate employees who take part in the strike.

Unprotected strikes

If a strike does not comply with the required terms and procedures of the *LRA*, the strike will be considered 'unprotected'. Employers can take disciplinary action against employees who participate in an unprotected strike, but employers remain subject to labour legislation and, as such, must follow correct and fair procedures.

It is essential that employers act proactively to strengthen the employer-employee relationship. Clear rules and guidelines in the workplace limit misunderstandings and conflict, and promote productivity and a positive work environment. 🌱

The LWO Employers Organisation assists employers to comply with labour law, and to use it to their advantage to protect their business. As a registered employers' organisation with the Department of Employment and Labour, the LWO has the right to represent members at the CCMA. Contact the LWO on 086 110 1828 or send an email to info@lwo.co.za.

