



SEX WORKER
LEGAL DEFENCE
CENTRE

SEX WORKER LABOUR LAW GUIDE: A GUIDE TO YOUR RIGHTS



sweat
Sex Workers Education & Advocacy Taskforce



Sex worker Rights are Human Rights!
Your rights matter to us!

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1 INTRODUCTION

1.1 Sex work and the Law

- Sex workers labour law rights are limited because it is a crime to sell sex under the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007.
- This means that any agreement reached between the sex worker and brothel owner or manager (including pimps operating on the street) is not allowed under the law.
- The agreement is considered to be unlawful.
- The parties cannot generally hold each other responsible for failing to do what they agreed to do under the agreement.

DEFINITIONS

Labour: work or employment.

Labour law: workplace law OR the laws that say what your rights and responsibilities are in terms of your employment with your employer.

Crime: When you do something which is against the law. If a court finds you guilty you must pay a fine or spend time in jail.

Unlawful: When you do something that the law does not allow.

Right: Something that you are entitled to and that must be respected by others.

Responsibility: When you have a duty to do something.

Limited: When you have part of something. For example, when your rights are restricted.

Guilty: Responsible for doing something that is against the rules or law.

1.2 Effect of the criminalisation of sex work

Sex workers:

- are exploited by their employer's i.e. brothel owners and managers under criminalisation.
- are not likely to seek assistance from the courts and other institutions such as the CCMA for exploitation.
- don't speak out because they know that the work that they do is a crime.
- fear experiencing stigma, discrimination, abuse and getting into trouble with the law if they do speak out.

DEFINITIONS

CCMA: The Commission for Conciliation, Mediation and Arbitration. It is the government organisation that resolves labour law issues between employees and employers.

Violated: When somebody does not respect your rights.

Resolved: When the labour issue is fixed OR when a solution to the labour issue is reached.

Employee: A person who works for somebody OR when you are employed by somebody and you are paid a wage or salary for the work that you do.

Employer: A person for whom other people work OR who employs other people and pays them a wage or salary for the work that they do.

Stigma: When somebody is of the opinion that you should be ashamed because of your work as a sex worker OR when somebody thinks less of you than other people because you work as a sex worker.

Discrimination: When somebody looks down on you and treats you differently to other people in a bad way because you are a sex worker.

Abuse: When somebody treats you badly or is cruel towards you.

1.3 Why you should read this guide

- This guide will give you basic information about your labour law rights under South African law.
- It will also give you a basic understanding of what you can do if your labour law rights are violated.
- You can advise other sex workers on what their rights are and what they can do if their labour law rights are violated.
- You will know who to call for assistance and advice when you need it.

DEFINITIONS

Empower: Make you stronger and able to do something and make you confident in doing something.

2 LABOUR LAW RIGHTS

2.1 What are labour law rights?

- Labour law rights are also called “workers’ rights” or “employee rights”.
- The Labour Relations Act of 1995, the Basic Conditions of Employment Act of 1997, and the Employment Equity Act of 1998 give employees their labour law rights.
- They are rights that you have because you are employed.
- These rights only apply in your employment.
- These rights can only be enforced against your employer.
- Some examples of labour law rights include:
 - fair working conditions in terms of–
 - ✓ leave
 - ✓ working hours
 - ✓ breaks
 - ✓ salaries or wages
 - safe and healthy working conditions
 - equality in the workplace
 - the right to form, join and participate in the activities of a trade union
 - fair labour practices –
 - ✓ fair treatment in terms –
 - promotion
 - demotion
 - probation
 - suspension
 - training
 - any other employee benefit
 - ✓ fair disciplinary action
 - ✓ fair treatment when providing protected/confidential information about corruption

Note: These are the rights that employees have generally unless the law limits these rights for certain employees. Sex workers do not have all of these labour rights because sex work is criminalised.

DEFINITIONS

Enforce: hold somebody responsible for doing/not doing something

Trade union: An association of workers working in a particular trade or profession. It is formed to protect the rights of workers.

Fair: Equal or just.

Promotion: A higher or better paid position/job in the company.

Demotion: A lower or lower paid position/job in the company.

Probation: The period of employment to see whether you should be given the job permanently.

Suspension: When your employer tells you to not come to work while allegations against you are being investigated.

2.2 What labour law rights do sex workers have?

CASE STUDY

Kylie's Case

Kylie* was employed as a sex worker at Brigitte's massage parlour in Bellville, Cape Town. Brigitte's ended her employment (dismissed her) in April 2006. Brigitte's reasons for dismissing Kylie was that she failed to attend to enough bookings, failed to manage her time, only provided services to specific clients, refused to perform oral sex and spent time in her room with her boyfriend, who did not pay for services.

In August 2006, Kylie approached the CCMA for assistance with the dismissal. The CCMA turned Kylie away saying that they could not hear her case. The CCMA's reasons were that her employment contract was invalid and could not be enforced because sex work is illegal.

Kylie then referred the case to the Labour Court. She was turned away again for the same reasons given by the CCMA.

The case was eventually referred to the Labour Appeal Court. The Court ruled that the CCMA and Labour Court were incorrect and should have heard her case. The Labour Appeal Court's reasons for its decision was that "everyone" has the constitutional **right to fair labour practices** – even if the employment contract is illegal. The Court also held that Kylie was an "employee" in terms of the **Labour Relations Act (LRA)** and thus had **some of rights under the Act**. Furthermore, the Court ruled that sex workers can **form and join a trade union** but cannot participate in the activities of such a trade union. Brothels and sex workers can also not enter into collective agreements.

DEFINITIONS

Invalid: Does not comply with the law. Has no legal force.

Collective agreement: An agreement concluded between employers and trade unions. The agreement includes the duties of employers and employees and the terms and conditions of the employee's employment with the employer.

Appeal: Ask a higher court to decide whether the decision of a lower court is correct.

Note: The Labour Appeal Court has been criticised for its judgment in Kylie's case because the judgment is confusing. It is not clear on what rights it gives and does not give sex workers. If you feel that your employer has done something wrong to you but the law is unclear on whether your rights have been violated, see a lawyer for legal advice. The lawyer could take the case to the CCMA or Labour Court to get information on what your rights are. Such a case can improve other sex workers rights.

2.2.1 Employees v's sex workers who work for themselves

Are all sex workers work as employees?

No, some sex workers are employees while others work for themselves.

When are you an employee and when do you work for yourself as an independent contractor?

Employee	Independent Contractor
Works for the employer	Provides a service to clients
Works under the control of the employer	Client is concerned with the end product to be produced not how the service is provided
Employer provides tools and equipment for the employee to do the job	Uses her/his own tools and equipment to provide the service
Earns a salary or a wage	Is paid fees for services
Has employment benefits such as pension/provident fund and medical aid contributions	No benefits. Must pay her/his own pension/provident fund and medical aid from fees earned for service provision
Protected by South African labour law	Not protected by South African labour law

In summary, sex workers have the following labour law rights:

2.2.2 Fair labour practices

In Kylie's case, the Labour Appeal Court confirms that the right to fair labour practices under the Constitution also applies to sex workers.

Section 23(1) of the Constitution says that: "Everyone has the right to fair labour practices."

What does a fair labour practice mean under the Constitution?

There is no clear definition of the meaning of a fair labour practice under Section 23(1) but we do know the following:

- The Constitution is the highest law in South Africa. All other laws must be in line with the Constitution. If it is not, that law is invalid.
- The Constitution gives all people living in South Africa human rights. It says that we all have the right to human dignity. This right is a very important right which must be protected and respected.
- The Kylie case aims to make sex workers less vulnerable to abuse by employers even though sex work is a crime.
- The Kylie case says that Section 23(1) must be followed and respected by employers. It also says that sex workers cannot be exploited and abused by employers.
- This means that an unfair labour practice could be any act or failure to act by the employer that violates sex workers rights to human dignity.
- *This definition means that unfair dismissal, poor working conditions, unhealthy and unsafe working conditions, unfair discrimination, when the brothel manager fines you for reporting to work late, when your employer deducts money from your salary without your consent etc. ALL = unfair labour practices.*
- The Kylie case does however also say that the LRA assists with the meaning of Section 23(1). It says that the LRA says how Section 23(1) must be used day to day/in practice.
- The LRA defines unfair labour practices as -
 - unfair treatment by the employer in terms of –
 - ✓ promotions
 - ✓ demotions
 - ✓ probation
 - ✓ suspension
 - ✓ training opportunities
 - ✓ any benefits (such as opportunities)
 - failure by the employer re-employ you when the employer is committed to do so under an agreement between the you and her/him
 - unfair treatment by the employer because you gave them secret information about corruption (information which is protected by law). For example, you are harassed, demoted or dismissed because you spoke out.
- The definition of an unfair labour practice in the LRA shows that the definition of a fair labour practice in Section 23(1) is broader. As stated above, if in doubt, find a lawyer to help you approach the courts to define your rights.

DEFINITIONS

Human Dignity: being worthy of respect OR sense of self-worth/ self-respect and goes to the core of who you are as a human being

Commissioner: The CCMA Official who will hear your case and make a decision about your case.

Procedure: A way/order of doing something or a series of actions or activities that must be followed.

Collective Bargaining: Trade union negotiations about wages/salaries, employee benefits and other employment conditions.

2.2.3 The right to basic conditions of employment

What are basic conditions of employment?

Basic conditions of employment are the minimum standards for employment conditions. These are provided by the Basic Conditions of Employment Act 75 of 1997 (BCEA). One of the aims of the BCEA is to control fair labour practices in South Africa. In other words, it sets out the rules for fair working conditions.

What rights do sex workers have to basic conditions of employment?

The Kylie case does not specifically say what conditions of employment sex workers are entitled to. It can however be argued that working conditions less favourable than what the BCEA gives employees = unfair labour practices as per Section 23(1) of the Constitution AND are exploitative.

What basic conditions of employment does the law prescribe?

Working Hours and Payment for Work

- *Working Hours:* 45 hours per week.
- *Overtime:* 10 hours overtime per week.
- *Meal breaks:* 1 hour meal break after 5 hours worked. A 30 minute meal break can be agreed to in writing. An employee who works for less than 6 hours a day is not entitled to a meal break.
- *Daily and weekly rest:* At least 12 continuous hours rest daily between ending and starting work AND 36 continuous hours rest every week (weekends or days off in the week). These hours can be reduced if for example, the employee lives on the premises of the workplace, the employee is given a 3 hour meal break etc.
- *Pay for work on Sundays:* An employee should be paid extra for working on Sundays unless working on a Sunday is a normal working day - agreed to in the employee's employment contract.
- *Pay for work on public holidays:* Paid extra for working on a public holiday if the employee usually does not work on public holidays.
- *Night shift:* If the employee works between 6pm and 6am the next day, s/he must be paid an allowance OR given time off work AND transport home must be provided by the employer.

Leave and pay for leave days

- *Annual leave:* 21 days fully paid leave for each 12 months worked OR 1 day's paid leave for every 17 days worked if agreed OR 1 hour's paid leave for every 17 hours worked if agreed.
- *Sick leave:* 1 day's paid sick leave for every 26 days worked in the first 6 months of employment. If the employee is employed for more than 6 months, s/he can take the number of days s/he would normally work in a 6 week period on full pay in a 3-year period.
- *Maternity leave:* 4 month's maternity leave. The employee can take this kind of leave from 4 months before the birth. She may not work for up to 6 weeks after the birth – unless her doctor or midwife says she can go back to work sooner after the birth. Only women can take maternity leave. Men are not given maternity leave but they are given 3 days family responsibility leave which can be used as paternity leave.
- *Family responsibility leave:* 3 day's paid leave if she is employed for more than 4 months and works at least 4 days a week. S/He can only take this kind of leave if -
 - Her/His child is born or sick (a man can take this leave when his child is born); OR
 - Her/His spouse, life partner, parent, grandparent, child, grandchild or sister or brother has died.

2.2.4 The right to a fair dismissal

As stated above, Section 23(1) of the Constitution can be said to give sex workers the right to fair dismissals. The Kylie judgment does not directly state that unfair dismissals of sex workers are prohibited under the LRA. The judgment does however say that Judges must use their discretion with remedies for unfair dismissal under the LRA. This is very likely to mean that sex workers have the right to fair dismissals.

DEFINITIONS

Discretion: A choice or freedom to decide depending on the case

Remedies: A solution, a way to fix or correct a wrong.

What makes a dismissal unfair?

If we look at the LRA for assistance with understanding sex workers rights to fair dismissals, the LRA says the following –

You have the right to only be dismissed for a fair reason and after a fair procedure has been followed. In other words, you can only be dismissed for doing something wrong or for not doing your job. A process must be followed to ensure that you did actually do something wrong before you are dismissed.

The LRA says that you have been unfairly dismissed by your employer if –

- your employer ended your contract of employment and did not notify you that they would do so
- your employer did not re-new your contract of employment, you expected it to be re-newed and had good reason for expecting it would be re-newed. For example, you have worked for the employer for 5 years and there has never been any issue with you doing your job
- your employer wants to re-new your contract but only wants to do so on different terms and conditions. For example, the employer wants to pay you less for the same job or wants you to pay them something for using their rooms to provide services to clients
- your employer did not re-new your contract of employment after you went on maternity leave OR because you were pregnant
- your employer ends your and other employees employment for the same reasons and later offers other employees re-employment – but not you
- your employer ends your employment because it unfairly discriminates against you because of your gender, sex, race, disability, culture, religion etc.
- your employer ends your employment because it needs to transfer the business to a new employer. It does so because it does not have money to carry on with the business
- your employer ends your employment because you reported fraud by an employer representative or employee (this information is meant to be protected by law)
- your employer ends your employment because you threatened to take them to the CCMA or Labour Court because they violated your employment rights
- you ended your employment with the employer because the employer treated you so badly that you could not bear to work for them any longer i.e. continued employment was intolerable. In labour law this kind of dismissal is called constructive dismissal
- you ended your employment with the employer because you were transferred from your original employer to a new employer but the new employer gave you less benefits or worse employment conditions than your original employer i.e. the new employer wants to pay you less than the original employer or wants to give you less annual leave

Note that a CCMA Commissioner or a Labour Court Judge will not want to order that you be reinstated (given your job back) if you have been unfairly dismissed, because they cannot make an order to allow people to continue to participate in a business or trade that is illegal. The Commissioner or Judge will rather order that you be compensated for your constitutional rights being violated when you were unfairly dismissed. This depends on the facts of your case.

What makes a dismissal fair?

Sometimes, dismissals are fair. For example, a dismissal may be fair if –

- you are dismissed because of your age and you are close to retirement age
- if you do not meet a standard or requirement needed for you to do the job. For example, you have a disability which makes you unable to provide services to clients
- if the employer cannot continue your employment because it does not have money to continue the business i.e. cannot afford to pay you
- you are dismissed because you did something that you were not allowed to do **and** the employer followed a process to ensure that you were wrong before dismissing you – *See the section of disciplinary procedures below*

DEFINITIONS

Reinstatement: When your employer gives back the position/job that was taken away from you.

Compensated: Paid a certain amount of money for harm suffered.

Judge: The officer of the court who hears and makes a decision in the case.

Maternity Leave: time off work when you are about to give birth or just after you give birth.

2.2.5 The right to form and join a trade union

What rights do sex workers have in terms of trade unions?

In Kylie's case, the Labour Appeal Court gave sex workers the right to form and join a trade union. This right is however limited as it says that:

Sex workers do not have the right to participate in the activities or programmes of a trade union including collective bargaining.

How can sex workers organise and protect themselves without the right to participate in the activities of a trade union?

- Join the Sisonke National Movement in South Africa.

Sex workers have already taken the necessary steps to collectively organise themselves by forming the Sisonke National Movement in South Africa. Sisonke's main goals is to stand up for sex workers rights and to support sex workers. Sisonke will thus offer support and advice when your rights are being violated at work – see the contact details for Sisonke at the end of this guide.

- Start a sex workers social club in your community - this will help build relationships with other sex workers so that you can support each other if your employers' violate your rights at work.
- Visit or contact the Sex Workers Education and Advocacy Taskforce Legal Defence Centre (SWEAT LDC) for free legal advice on your labour issue – *See SWEAT's contact details at the end of this guide.*
- Attend Sisonke and SWEAT's events and workshops. This will help you to gain knowledge of your labour law rights and know what to do when your rights are violated.
- Inform other sex workers of their labour law rights.
- Support other sex workers when they approach the CCMA or Labour Court for assistance.
- Support and participate in Sisonke and SWEAT's protests calling for sex workers to be given full labour law rights like all other workers.

2.2.6 The Right against unfair discrimination

What is unfair discrimination in the workplace?

Unfair discrimination in the workplace takes place when you are not treated equally to other employees are not given equal opportunities or benefits to other employees. The treatment that you receive is different in a bad way i.e. you are treated badly while other employees are treated better than you.

The unequal treatment must be because of a characteristic/your membership of a particular group. For example, because you are a women, pregnant, a lesbian, gay, transgender, HIV Positive, black, a refugee or immigrant etc.

What rights do sex workers have against unfair discrimination?

In Kylie's case, the Labour Appeal Court did not specifically say that sex workers have the right against unfair discrimination. The Court did however say (as mentioned above) that *sex workers have the right to have their dignity respected and cannot be treated badly. Unfair discrimination involves ill treatment and sex workers are thus likely to have the right against unfair discrimination in the workplace.*

Even though Kylie's case does not mention the Employment Equity Act (EEA), it's important to know what the EEA says about unfair discrimination in the workplace:

Section 6 of the EEA says that:

. . . 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 . . .

What is sexual harassment in the workplace?

Note: In this section, the words employee, victim and complainant are used interchangeably depending on the sentence in which it is used.

The EEA says that sexual harassment in the workplace is:

Unwanted conduct of a sexual nature that violates the rights of an employee and constitutes a barrier to equity in the workplace . . .

The test for sexual harassment in the workplace involves considering:

- whether the conduct was unwelcome/unwanted;
- the type of sexual harassment and how bad the sexual harassment was;
- how badly the harassment affected the victim; and
- whether the harasser harassed the victim because of her/his sex, gender or sexual orientation.

In other words, an employee is sexually harassed when:

- another employee or manager flirts, comes onto, makes sexual advances or gives her/him sexual attention;
- s/he does not want the other employee or manager to do so;
- s/he is negatively affected by the harassment; and
- the cause of the sexual harassment is the harasser not seeing the victim as equal because of unfair discrimination against the victim

Note that NOT all sexual attention is sexual harassment. Sexual attention becomes sexual harassment if:

- *the victim has made it clear that the sexual conduct upsets/insults her/him (the sexual conduct must be UNWANTED); AND*
- *the victim has experienced more than 1 incident - even though 1 incident can be proven to be sexual harassment;*

OR

- the harasser should have known that the sexual conduct is not acceptable.

Some examples of sexual harassment include:

- touching, groping, rubbing, rape;
- sexual jokes, sexual offers, flirtation;
- sexual gestures, showing sexual objects and her/his genitals to the employee;
- where an employer offers an employee a higher position or salary increase in exchange for sex; or
- where an employer denies an employee a training opportunity or higher position because s/he refuses to have sex with her/him.

What rights do sex workers have against sexual harassment in the workplace?

The EEA says that sexual harassment in the workplace is unfair discrimination. It is not allowed on one or more grounds listed in Section 6 of the EEA i.e. sex and/or gender and/or sexual orientation. This means that the information on unfair discrimination above applies to this section on sexual harassment too.

What rights do employees have when they have been sexually harassed in the workplace?

Some of the important rights that complainants of sexual harassment have, include:

- the right to report the sexual harassment to the employer.
- employers must discuss the incident/s with the alleged harasser and the complainant.
- employers must take steps to stop the harassment.
- employers must offer the complainant advice, assistance and counselling.
- employers must advise the complainant of the formal and informal procedures and that s/he can choose which procedure to follow.

Note: The informal procedure involves a discussion with the harasser to stop the harassment. The formal procedure involves an investigation and hearing.

- the right to have their complaint treated confidentially.
- employers must consider granting additional sick leave where the sexual harassment was serious and the complainant does not have sick leave left/available to her/him.
- not be punished for reporting sexual harassment by being victimised, dismissed, demoted etc.

DEFINITIONS

Equity: fairness or justice

Barrier: obstacle or something that stops you from doing or getting something

Harasser: the person/manager/employee who harasses another employee

Victim: the person/employee who is harassed

Confidentially: privately, not to have information about the complaint shared with other employees

Complainant: the person/employee alleging that s/he was sexually harassed

Victimised: targeted for mistreatment

What does the law say about HIV Testing in the workplace?

Unfair discrimination on the ground of an employee's HIV status is prohibited under the EEA. The EEA aims to reduce the risk of discrimination against an employee by not allowing HIV testing.

The EEA says that an employer cannot make it compulsory for an employee to be tested for HIV to find out what her/his HIV status is

UNLESS

the Labour Court says that there is a good reason for why the employee must be tested. For example, the Labour Court could say that an employee cannot be HIV positive in certain types of jobs where there is a high risk of infecting other people.

What are sex workers rights against HIV testing in the workplace?

As stated above, In Kylie's case, the Labour Appeal Court said that *sex workers have the right to have their dignity respected and cannot be treated badly. Unfair discrimination involves ill treatment and sex workers are thus likely to have the right against unfair discrimination in the workplace.* It follows that sex workers, like other employees, are also likely have the right against compulsory HIV testing in the workplace.

DEFINITIONS

Compulsory: force or compel

HIV: Human Immunodeficiency Virus. This is the virus that causes AIDS.

2.2.6 The right to occupational health and safety

What are employees' rights to occupational health and safety in the workplace?

The Occupational Health and Safety Act (OHSA) says that employers must ensure that their employees' health and safety is protected in the workplace.

The OHSA aims to prevent injuries and illnesses caused at the workplace. The OHSA says that -

Employers must:

- provide information, training and supervision to its employees; and
- appoint a health and safety representative.

Note: Health and safety representatives are trained on health and safety issues. They are responsible for keeping an eye out for health and safety problems in the workplace and to investigate and report such issues to the employer.

Employees must:

- take care and responsibility of their own health and safety in the workplace too;
- protect themselves from injury by using safety equipment with care;
- use safety equipment as they are meant to be used – as per its instructions;
- report any unhealthy or unsafe situation to the health and safety representative

Note that inspectors of the Department of Labour can inspect whether employers are meeting health and safety standards. If employers fail to do so, inspectors can issue compliance orders. These orders force employers to do or not do something to meet health and safety standards.

What are sex workers rights to occupational health and safety?

The Kylie case does not say anything about occupational health and safety in the workplace. We do however know that the *court gives sex workers the right to fair labour practices. It can be argued that unhealthy and unsafe working conditions provided by the employer = unfair labour practices.*

It can thus be said that sex workers should be safe when working. This means that the places/rooms where sex workers work must not pose a risk of injury to sex workers. With illnesses, sex workers should for example have access to condoms, lubrication and information about the prevention of HIV and AIDS and other sexually transmitted infections (STI's).

DEFINITIONS

STI's: an infection that a person picks up/gets from another person when you have sex with them. Some examples of STI's include genital herpes, chlamydia, syphilis, gonorrhoea etc.

Supervision: management or provide direction on what needs to be done.

AIDS: Acquired Immune Deficiency Syndrome

3 DISCIPLINARY PROCEDURES

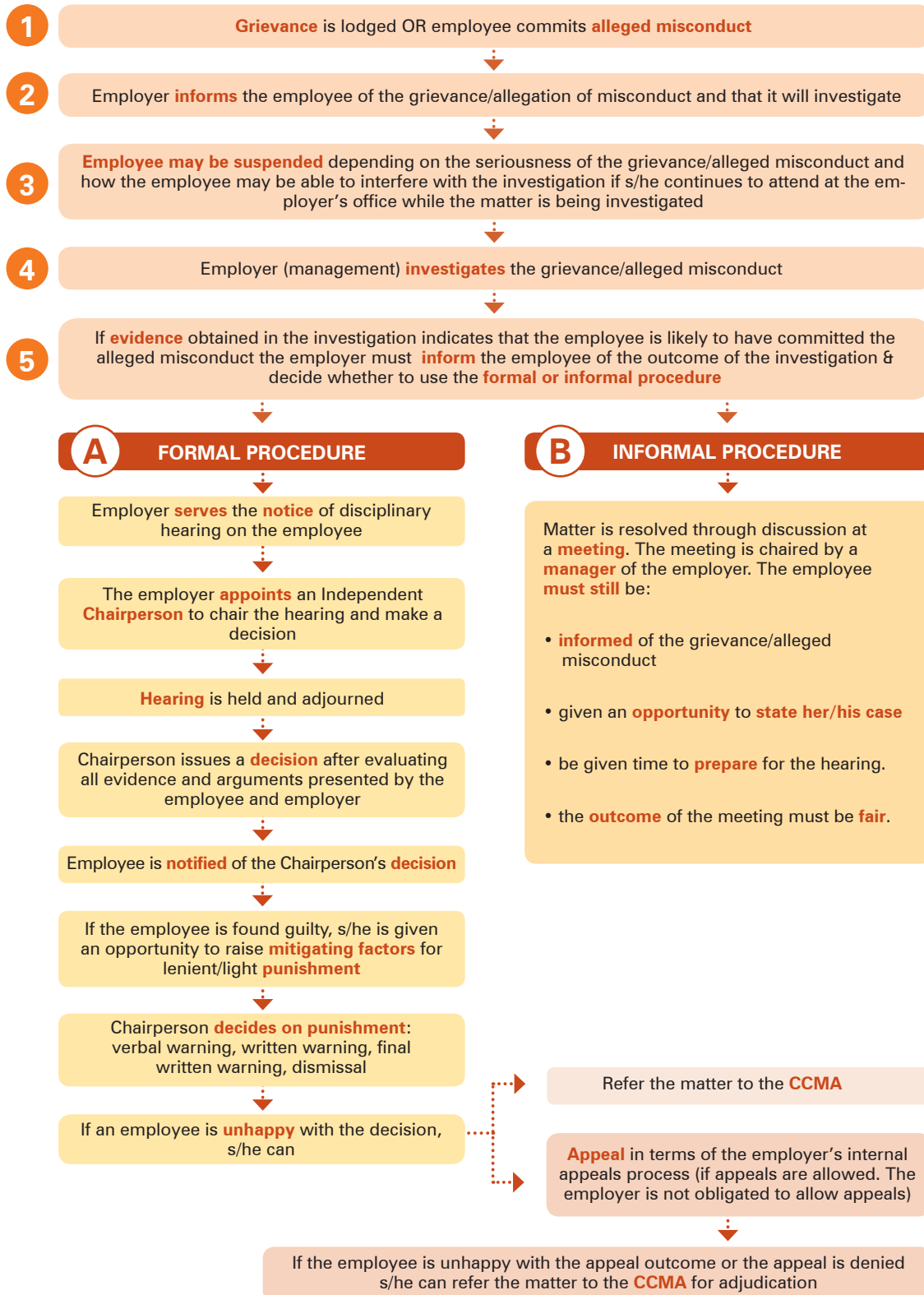
What is a disciplinary procedure?

It is the internal procedure followed by the employer to:

- assess whether the employee has done something that is not allowed in the workplace (misconduct); and
- to correct misconduct by the employee or to terminate the employee’s employment.

What the different steps in the disciplinary procedure for misconduct that the employer must follow?

The flowchart below sets out the various steps in the disciplinary procedure that the employer must follow when an employee has allegedly committed misconduct:



DEFINITIONS

Allegations: claiming that somebody did something without proof.

Chairperson: the person who is appointed by the employer to oversee/hear and make a decision in a disciplinary hearing. The Chairperson must be independent or objective i.e. the Chairperson cannot be bias.

Outcome: decision/finding of the Chairperson.

Mitigation: stating facts or arguing for a lighter or lenient punishment.

Punishment: held responsible for your actions.

Grievance: a complaint or making a statement about being unhappy about something.

Misconduct: unacceptable or bad behaviour.

What are an employee's rights in the disciplinary Hearing?

- At the very least, an employee has the right to a hearing before being disciplined.
- The employee must be given sufficient time to prepare for the disciplinary hearing.
- The hearing should be conducted in a language that the employee understands OR an interpreter must be made available.
- The employee has the right to be represented by a staff representative during the hearing – attorneys are not allowed in disciplinary hearings unless the issue is complicated and the employee cannot be expected to represent her/himself.
- The disciplinary hearing must be held as soon as possible after the incident/s took place – the hearing must not be delayed without good reason.
- The employee must be given an opportunity to tell her/his side or version of the incident (to state her/his case).
- The employee must be given the opportunity to produce evidence to support/prove her/his side or version of the incident/s (Witnesses can be called and documents can be produced as evidence to the Chairperson of the disciplinary hearing).
- The employee must be given the opportunity to defend/challenge the allegations raised against her/him.
- The employee has the right to a fair decision/outcome. The Chairperson of the disciplinary hearing must be fair and objective in hearing the matter and in making her or his decision. The Chairperson must not have been involved in investigating the grievance/alleged misconduct. She or he must also not represent the employer in the disciplinary hearing.
- If the employee is unhappy with the Chairperson's decision, the employee can appeal to the Chairperson to review her or his decision. If the employer's procedure does not make provision for an appeal, the employee can approach the CCMA for assistance.

DEFINITIONS

Witness: A person who saw or was present when an incident took place.

Defend: Argue and prove that what is said is true.

Objective: Neutral and independent. The Chairperson must not be bias/take the employee or employer's side unfairly.

If the employee is found guilty in a disciplinary hearing, what punishment can s/he be given?

- Verbal warnings should be given for minor issues.
- Written warnings should be given if the employee has committed misconduct on two or more occasions.
- Final written warnings should be given if the employee continuously commits misconduct or if the misconduct is serious.
- Dismissal should be used as a last resort. Dismissal can be used without using more lenient punishments in the most serious of cases only i.e. if the employee steals money at work, assaults or rapes a manager or co-worker etc.

If the employee is given a warning as punishment, how long will the warning be valid for?

It is recommended that -

- verbal warning - valid for 3 months
- a written warning - valid for 6 months
- a final written warning - valid for 12 months

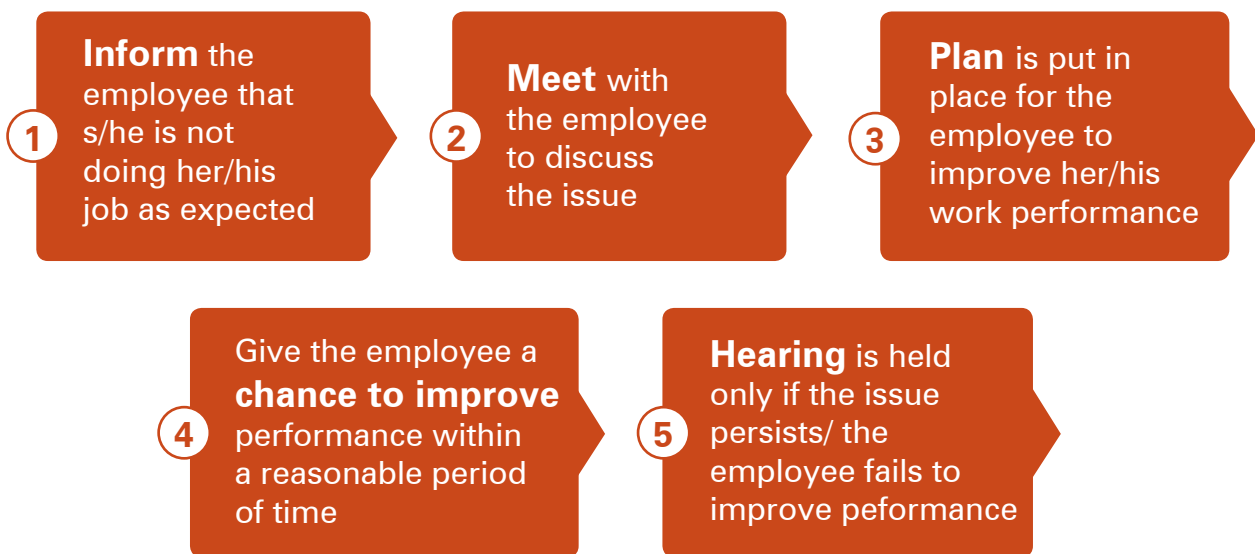
What procedure must be followed in cases of poor work performance?

Note that:

- *poor work performance is different to incapacity where the employee cannot perform her/his job due to ill health or injury. Incapacity must be dealt with differently to poor work performance.*
- *poor work performance does not = misconduct. The employee has not met an acceptable/expected standard of work, s/he has not done something that s/he should not do.*

When an employee has performed her/his job poorly i.e. not done her/his job properly, the employee must do the following:

The employer must:



Note that the plan to improve work performance can include the following efforts:

- training
- guidance
- feedback
- counselling
- fixing any problems that exist from the employer’s side to make it better for the employee to perform well.

Note that an employee can only be dismissed if the employer met all of the requirements above but the employer still failed to improve.

DEFINITIONS

Disciplinary Hearing: A process in which both parties are given an opportunity to tell their side of the story i.e. how and why the issue came about.

Incapacity: Inability or incapable of doing your job because of a mental or physical illness.

Work performance: Doing your job OR how well or poor you do your job.

Reasonable: Fair, logical, reasonable or sensible.

Illness: Sickness or disease.

Injury: When a person is hurt physically.

Accuse: When you say that your employer did something to you that she or he should not do to you as your employer OR that labour law does not allow.

Dismissal for incapacity because of ill health or injury

What is dismissal for incapacity because of ill health or injury?

Dismissal for incapacity because of ill health or injury takes place when an employee is dismissed by the employer because the employee:

- is affected by ill health or injury to such an extent that s/he is incapable of doing her/his work
- the employee's inability to do her/his work is permanent.

Note that an employer is not obligated to continue employing an employee who is permanently incapacitated i.e. is permanently unable to do her/his job.

*Dismissal for incapacity due to ill health or injury means that the employee is **medically boarded**.*

What process must an employer follow before dismissing an employee for incapacity because of ill health or injury?

An employer must do the following prior to dismissing an employee for such dismissal to be fair/allowed by the law:

- investigate the extent of the employee's illness or injury and have an incapacity inquiry to obtain the details of the employee's illness or injury.
- consult with the employee about changing her/his working conditions and duties when the employee's health does not improve.
- attempt to change the employee's working conditions and duties to accommodate for the employee's changed circumstances.
- attempt to give the employee an alternative job.
- consider all alternatives to dismissing the employee taking into account, inter alia:
 - the nature of the job
 - length of absence from work
 - seriousness of illness or injury
 - etc.

Dismissal for operational requirements

What is dismissal due to operational requirements?

Dismissal due to operational requirements is when:

- the employer terminates the employer's employment because the employer -
 - can no longer afford to pay the employee a salary or wage;
 - the structure of the employer (the business) has changed and there is no longer a place for the employee in the structure OR employees in other positions will do the employee's job; and
 - new technology has been developed for doing the same job that the employee does i.e. the new technology or machine replaces the employee.

Note that the dismissal for operational requirements has nothing to do with the employee's conduct or work performance. An employee who performs her/his job well or who has never committed misconduct could be dismissed because of operational requirements. This kind of dismissal is not a disciplinary matter.

What are the responsibilities of the employer when an employee is dismissed for operational requirements?

Reasons for the dismissal

The reasons for the dismissal must be genuine and fair:

- The employer must dismiss the employee as a last resort i.e. there must not be another option because of the employer's operational requirements.
- The employer must have a good reason for dismissing the employee.

Procedure for dismissal

The following procedure must be followed by the employer when dismissing the employee:

- The employer must send a notice to the employee, trade union or workplace forum inviting her/him/them to a meeting to discuss:
 - reasons for the dismissal;
 - other options to avoid dismissal;
 - proposed severance pay;
 - when the dismissal will take place;
 - etc.
- The employer must consult with the employee, trade union or workplace forum before deciding to dismiss her/him.
- The employer and employee must try to reach an agreement on the terms of the dismissal. Matters to be discussed in the consultation include:
 - what to do to avoid dismissal;
 - changing the timing of the dismissal;
 - severance pay;
 - etc.
- During the consultation, the employee, trade union or workplace forum must be given a chance to make representations. The employer must respond to these representations and explain why it does not agree. Reasons for not agreeing must also be given.

Is the employee entitled to severance pay when dismissed?

The employer must pay the employee severance pay calculated at one week's pay for every year worked by the employee as well as any leave pay.

The employee is not entitled to severance pay if s/he refuses to accept an offer of employment in another position.

DEFINITIONS

Severance pay: money paid to an employee by the employer when her or his employment is ended early i.e. before the contract is meant to terminate.

Representations: argument, response or explaining what you want and why.

4 WHERE TO OBTAIN ASSISTANCE WITH LABOUR RIGHTS VIOLATIONS

Who can assist an employee with a labour law issue?

4.1 The Commission for Conciliation, Mediation and Arbitration (CCMA)

What is the role of the CCMA?

- You can refer a dispute to the CCMA for a Commissioner to help you settle the matter OR to make a decision on whether the employer violated your labour law rights.
- Some examples of the types of disputes that you can refer to the CCMA are:
 - If you have been unfairly dismissed.
 - If you have experienced an unfair labour practice.
 - If you experienced unfair discrimination.
- You can also phone the CCMA for advice on a labour issue – you can do this before you go ahead with referring a dispute.

How do I refer a dispute to the CCMA?

- You can visit the CCMA office nearest to where you live or work. See the full list of CCMA offices and their addresses and contact details at the end of this guide.
- The CCMA will ask you to complete a form called the LRA Form 7.11. The form will ask you questions about you, the employer and the dispute so that the CCMA can understand your dispute. See the CCMA referral form at the end of this guide.
- You do not need an attorney to represent you in the CCMA proceedings initially. Only if the dispute cannot be resolved during conciliation, should you find an attorney to represent you.

Can you refer a dispute to the CCMA if I you are an independent contractor?

No, unless you can prove to the CCMA that you are actually an employee. You can do this by showing that while you are meant to be an independent contractor, the employer treats you like an employee by exercises control over how you provide the service and it provides you with tools and equipment etc.

If you are an independent contractor, any unfair discrimination case must be instituted out of the Equality Court at the Magistrates Court nearest to where you live or work. You will need to secure the services of an attorney to institute the proceedings on your behalf.

If you are an independent contractor, you cannot approach the Department of Labour for assistance in recovering fees/ money owing to you for services rendered by a client or through an agency. You or your attorney will need to approach the Magistrates Court nearest to you for recourse. If the amount owing to you is under R15 000, you can approach the Small Claims Court (within the Magistrates Court) on your own. The clerk of the Small Claims Court will help you fill out the necessary forms.

If the amount owing is more that R15 000, you will need to secure the services of an attorney to sue the client or agency out of the Magistrates Court on your behalf.

DEFINITIONS

Dispute: a disagreement or argument between you as the employee and your employer.

Refer a dispute: When you open a case at the CCMA OR when you lodge a complaint with the CCMA about your employer.

Conciliation: Informal process or discussion to try to resolve or settle the labour issue. A CCMA Commissioner only advises the employee and employer, she or he cannot make a decision that must be accepted by the employer and employee.

Proceedings: The process that will be followed in the CCMA when your case is heard by the Commissioner.

4.2 The Labour Courts

What is the role of the Labour Courts?

The Labour Courts hear and decide disputes between employees and employers. It hears matters on appeal from the CCMA. For example, if you are unhappy with the decision of the CCMA, you can ask your lawyer to appeal the decision to the Labour Court.

4.3 The Department of Labour

What is the Role of the Department of Labour?

The Department of Labour plays the following role in labour law:

- It creates basic working conditions for employees
- It creates minimum wages
- Compensates employees for occupational injuries (injuries sustained at work)
- Provides unemployment insurance to those employees who are entitled to it i.e. those who have been retrenched and who have contributed to the fund along with their employees
- Creates and maintains standards for employment equity (equality in the workplace) and fair labour relations.
- Receives and addresses complaints. In dealing with a complaint, the Department of Labour will:
 - Appoint an inspector to investigate the complaint
 - Contact the employer
 - Issue the employer with a compliance order which is an order which forces the employer to pay the outstanding monies.

It is important to note that the Department of Labour receives complaints about the non-payment of salaries, overtime, leave pay etc. Sex workers often report that clients refuse to pay them for their services. Sex workers should approach the Department of Labour for assistance with non-payment. You must refer a complaint of non-payment to the Department of Labour within 12 months of the non-payment. Such a complaint may not have been submitted with the Department so it could development the law on sex workers labour rights. While this route should be followed to improve the law, you should try to avoid the situation of not being paid anyway. You can do so by:

- Taking a deposit from clients you know and can trust before providing a service and taking the balance after the service is provided.
- Ask new or problematic clients to pay you in full before providing the service
- Hand the money over to your partner, colleague/fellow sex worker or somebody you can trust before providing the service.

SERVICES/REFERRALS

Sex Worker Support Services

Sisonke National Movement in South Africa

Helpline – 0800 60 60 60

SMS “please call me” to 071 357 7632

Sex Workers Education and Advocacy Taskforce (SWEAT)

Helpline – 0800 60 60 60

Legal Defence Centre Helpline – 076 311 2543

Western Cape (Head office)

19 Anson Street

Observatory

Cape Town

Tel: 021 448 7875

Gauteng

9th Floor

OPH House

112 Main Street

Johannesburg

Tel: 011 331 0077

Eastern Cape

1st floor, Office No 3

Frere Square

58 Frere Road

Vincent

East London

Tel: 074 124 0547

CCMA

For labour law advice and case queries call CCMA from anywhere in South Africa

Call Centre - 0861 16 16 16

CCMA Offices

Limpopo

CCMA House

104 Hans van Rensburg Street

Polokwane

Tel: 015 297-5010

Email: PTB@ccma.org.za

Mpumalanga

CCMA House

Diedericks Street

Witbank

Tel: 013 656-2800

Email: WTB@ccma.org.za

Northern Cape

CCMA House

5-13 Compound Street,

Kimberley

Tel: 053 831-6780

Email: KMB@ccma.org.za

North West - Klerksdorp

CCMA House

47 Siddle Street

Klerksdorp

Tel: 018 464-0700

Email: KDP@ccma.org.za

North West - Rustenburg

Shop SG7 11B

43-45 Boom Street

Rustenburg

Tel: 014 591 6400

Email: kdp@ccma.org.za

Western Cape

CCMA House

78 Darling Street

Cape Town

Tel: 021 469-0111

Email: CTN@ccma.org.za

Department of Labour Offices

Eastern Cape

3 Hill Street
East London
Tel: 043 701 3000
E-mail: ec.customercare@labour.gov.za

Gauteng

77 de Korte Street
Braamfontein
Johannesburg
Tel: 011 853 0300
E-mail: GautengPO@labour.gov.za
Gp.customercare@labour.gov.za

Limpopo

42A Schoeman Street
Polokwane
Tel: 015 290 1744
E-mail: lp.customercare@labour.gov.za

North West

2nd Floor
Provident House
University Drive
Mmbatho
Tel: 018 387 8100
E-mail: nwcustomercare@labour.gov.za

Western Cape

4th to 6th Floors
West Bank Building
Cnr Riebeeck and Long Streets
Cape Town
Tel: 021 441 8135
E-mail: wc.customercare@labour.gov.za

Free State

Laboria House
43 Maitland Street
Bloemfontein
Tel: 051 505 6200
E-mail: fs.customercare@labour.gov.za

KwaZulu-Natal

267 Anton Lembede (Smith Street)
Royal Building
11th Floor
Durban
Tel: 031 366 2000
Email: Kzn.customercare@labour.gov.za

Mpumalanga

Labour Building
Cnr Hofmeyer Street and Beatty Avenue
Witbank
Tel: 013 655 8700
E-mail: mp.customercare@labour.gov.za

Northern Cape

Cnr Compound and Priel Road
Kimberley
Tel: 053 838 1500
E-mail: nc.customercare@labour.gov.za

ANNEXURES

Annexure A: Sample Contract of Employment

CONTRACT OF EMPLOYMENT

Entered into between:

.....
(herein after referred to as "the employer")

Address of employer:

.....
.....
.....
.....

and

.....
(herein after referred to as "the employee")

1. Commencement

This contract will begin on and continue until terminated as set out in clause 4.

2. Place of work

.....

3. Job description

Job Title
(e.g.. Domestic worker, child minder, gardener, etc)

Duties
.....
.....
.....

4. Termination of employment (See Guidelines 2 and 3)

Either party can terminate this agreement with four weeks written notice. In the case where an employee is illiterate notice may be given by that employee verbally.

5. Wage (See Guidelines 4 and 5)

5.1 The employees wage shall be paid in cash on the last working day of every week/month and shall be: R.....

5.2 The employee shall be entitled to the following allowances/payment in kind:

5.2.1 A weekly/monthly transport allowance of R.....

5.2.2 Meals per week/month to the value of R.....

5.2.3 Accommodation per week/month to the value of R.....

5.3 The total value of the above remuneration shall be R.....

*(The total of clauses 5.1 to 5.2.3)
(Modify or delete clauses 5.2.1 to 5.2.3 as needed)*

5.4 The employer shall review the employee's salary/wage once a year.

6. Hours of work *(See Guideline 6)*

- 6.1 Normal working hours will be from a.m. to p.m. on Mondays to Fridays and froma.m. top.m. on Saturdays.
- 6.2 Overtime will only be worked if agreed upon between the parties from time to time.
- 6.3 The employee will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 5.3.

7. Meal Intervals *(See Guideline 7)*

The employee agrees to a lunch break of one hour/30 minutes (delete the one that is that not applicable). Lunchtime will be taken from to daily.

8. Sunday work *(See Guideline 8)*

Any work on Sundays will be by agreement between the parties from time to time.

If the employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. Public Holidays *(See Guideline 9)*

The employee will be entitled to all official public holidays on full pay.

If an employee does not work on a public holiday, he/she shall receive normal payment for that day.

If the employee works on a public holiday he/she shall be paid double.

10. Annual Leave *(See Guideline 10)*

10.1 The employee is entitled to..... days paid leave after every 12 months of continuous service. Such leave is to be taken at times convenient to the employer and the employer may require the employee to take his/her leave at such times as coincide with that of the employer.

11. Sick leave *(See Guideline 11)*

11.1 During every sick leave cycle of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

11.2 During the first six months of employment the employee will entitled to one day's paid sick leave for every 26 days worked.

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. Maternity leave *(See Guideline 12)*

(Tick the applicable clauses in the space provided).

12.1 The employee will be entitled to days maternity leave without pay; or

12.2 The employee will be entitled to days maternity leave on pay

13. Family responsibility leave *(See Guideline 13)*

The employee will be entitled to three days family responsibility leave during each leave cycle.

14. Deductions from remuneration *(See Guideline 14)*

The employer may not deduct any monies from the employee's wage unless the employee has agreed to this in writing on each occasion.

15. Accommodation (Tick the applicable boxes).

15.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package

15.2 The accommodation may only be occupied by the worker, unless prior arrangement with the employer.

15.3 Prior permission should be obtained for visitors who wish to stay the night. However where members of the employees direct family are visiting, such permission will not be necessary.

16. Clothing (Delete this clause if not applicable)

..... sets of uniforms will be supplied to the employee by the employer and will remain the property of the employer.

17. Other conditions of employment or benefits

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

18. General

Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

THUS DONE AND SIGNED AT ON THIS DAY OF 199...

.....

EMPLOYER EMPLOYEE

Witnesses:

.....
.....

GUIDELINES

Notice period and termination of employment

In terms of the Basic Conditions of Employment Act, any party to an employment contract must give to the other written notice of termination as follows:

- One week, if employed for four weeks or less
- Four weeks if employed for more than four weeks.

Procedure for termination of employment

Whilst the contract of employment makes provision for termination of employment, it must be understood that the services of an employee may not be terminated unless a valid and fair reason exists and fair procedure is followed. If an employee is dismissed without a valid reason or without a fair procedure, the employee may approach the CCMA for assistance.

Pro-rata leave and severance pay might be payable.

In the event of a domestic worker being unable to return to work due to disability, the employer must investigate the nature of the disability and ascertain whether or not it is permanent or temporary. The employer must try to accommodate the employee as far as possible for example, amending or adapting their duties to suit the disability. However, in the event of it not being possible for the employer to adapt the domestic workers duties and/or to find alternatives, then such employer may terminate the services of the domestic worker.

The Labour Relations Act, 66 of 1995 sets out the procedures to be followed at the termination of services in the Code of Good Practice, in Schedule 8.

Wage/Remuneration/Payment

There is no prescribed minimum rate of remuneration. Additional payments (such as for overtime or work on Sundays or Public Holidays) are calculated from the total remuneration as indicated in clause 5.3 of the contract. The total remuneration is the total of the money received by the employee and the payment in kind (i.e. the value of food and accommodation etc.). Payment in kind may not be less than R100.

Transport allowances, bonuses, increases

These are not regulated by Basic Conditions of Employment Act and are therefore open to negotiation between the parties.

Hours of work

Normal hours (excluding overtime)

A domestic worker may not be made to:

- work more than 45 hours a week;
- work more than nine hours per day for a five day work week;
- work more than eight hours a day for a six day work week; and

Overtime

A domestic worker may not work more than three hours of overtime per day or 10 hours per week and must be paid at least 1.5 times the wage or may agree to receive paid time off. .

Daily and weekly rest periods

A daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday, unless otherwise agreed, must be allowed.

The daily rest period may by agreement be reduced to 10 hours for an employee who live on the premises whose meal interval lasts for at least three hours.

The weekly rest period may by agreement be extended to 60 consecutive hours every two weeks or be reduced to eight hours in any week if the rest period in the following week is extended equivalently.

Meal intervals

A domestic worker is entitled to a one-hour break for a meal after not more than five hours work. Such interval may be reduced to 30 minutes, by agreement between the parties. If required or permitted to work during this period, remuneration must be paid.

Sunday work

Work on Sundays is voluntary and a domestic worker can therefore not be forced to work on a Sunday.

If the employee works on a Sunday he/she shall be paid double the daily wage.

If the employee ordinarily works on a Sunday he/she shall be paid one and one-half time the wage for every hour worked.

Public Holidays

The days mentioned in the Public Holidays Act must be granted but the parties can agree to further public holidays. Work on a public holiday is entirely voluntary and a domestic worker may not be forced to work on such public holiday.

The official public holidays are:

- New Years Day (1 January)
- Human Rights Day (21 March)
- Good Friday (varies)
- Family Day (varies)
- Freedom Day (27 April)
- Workers Day (1 May)
- Youth day (16 June)
- National Woman's Day (9 August)
- Heritage Day (24 September)
- Day of Reconciliation (16 December)
- Christmas Day (25 December)
- Day of Goodwill (26 December)

Any other day declared an official public holiday from time to time should also be granted.

These days can be exchanged for any other day by agreement.

If the employee works on a public holiday he/she shall be paid double the normal days wage.

Annual Leave

Annual leave may not be less than 21 consecutive days for full-time workers or by agreement, one day for every 17 days worked or one hour for every 17 hours worked.

The leave must be granted not later than six months after completion of the period of 12 consecutive months of employment. The leave may not be granted concurrent with any period of sick leave, nor with a period of notice of termination of the contract of employment.

Sick leave

During every sick leave cycle of 36 months an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

The employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

Maternity leave

The employee is entitled to at least four consecutive months' maternity leave. The employer is not obliged to pay the domestic worker for the period for which she is off work due to her pregnancy. However the parties may agree that the domestic worker will receive part of or her entire salary/wage for the time that she is off due to pregnancy.

Family responsibility leave

Employees employed for longer than four months and for at least four days a week are entitled to take three days' paid family responsibility leave during each leave cycle when the employee's child is born, or when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

Deduction from the remuneration

The Basic Conditions of Employment Act prohibits an employer from deducting any monies from the workers wages without his/her written permission.

Other issues

There are certain other issues which are not regulated by the Basic Conditions of Employment Act such as probationary periods, right of entry to the employers premises, afternoons off, weekends off and pension schemes, medical aid schemes, training/school fees, funeral benefits and savings account, however the aforementioned may be negotiated between the parties and included in the contract of employment.

Prohibition of Employment

The Basic Conditions of Employment Act prohibits employment of any person under the age of 15 and it is therefore important for an employer to verify the age of the domestic worker by requesting a copy of the identity document or birth certificate.

Other conditions of employment

There is no provision, which prevents any other conditions of employment being included in a contract of employment but any provision which sets conditions which are less favourable than those set by the Act, would be invalid.

Please note: these guidelines are not meant to be a complete summary of the Basic Conditions of Employment Act and/or legal advice. Should there be any doubt as to rights and/or obligations in terms of the Act or terms of any clause of the suggested Contract of Employment, such queries can be directed to the local office of the Department of Labour, who will gladly assist.

Annexure B: Sample Contract of Service (for Independent Contractors)

Simple independent contractor agreement

The parties to this agreement are:

[insert name of organisation]
(hereinafter referred to as **[insert name]**)

and

[insert name of contractor]
(hereinafter referred to as **"the Contractor"**)

1. Appointment of contractor

- 1.1 **[insert name of the organisation]** appoints **[insert name]** as an independent contractor to perform the work described in Annexure "A" ("the assignment") and in accordance with the terms set out therein.
- 1.2 The Contractor is not engaged as an employee or agent and has no authority to enter into contracts on behalf of **[insert name of the organisation]** without prior written consent.

2. Duration of the contract

- 2.1 The Contractor is appointed for a period of **[specify extent of the period]** commencing on **[specify date]**, to render services as specified in Annexure A. The parties may at any time agree to extend the duration of the contract for additional periods.
- 2.2 Either party may, upon giving 30 days written notice, terminate this agreement.
- 2.3 Should the Contractor, being an individual, be prevented by illness, death or circumstances beyond **[his/her]** control from performing in any material sense the obligations under this Agreement, this Agreement shall terminate without **[insert name of the organisation]** having any claim on the Contractor.

3. Contracting fee

- 3.1 **[insert name of the organisation]** shall be liable for payment to the Contractor at the **[hourly/weekly/monthly]** rate of **[specify amount payable]** in respect of the time spent rendering services as set out in this Agreement.
- 3.2 Payment is to be made within 30 days of completion and submission of the relevant time sheets and/or invoice as signed-off by **[insert name of relevant person]**. However, payment shall not be later than the last day of each month after deductions of any amounts that may be required by Law.
- 3.3 The parties agree that, subject to the provisions of Clause 5, the aforesaid shall be the full obligation of **[insert name of the organisation]** to the Contractor.

4. Continuance of service

- 4.1 The Contractor shall render the services over the contract period over such hours and on such days as compliance with the undertaking reasonably requires.
- 4.2 The Contractor reserves the right to choose working times required to fulfil her obligations in terms of this Agreement.
- 4.3 **[insert name of the organisation]** agrees that the Contractor does not undertake to work exclusively for **[insert name of the organisation]** and that the Contractor may be required to absent **[himself/herself]** from **[insert name of the organisation]** from time to time to comply with other contractual obligations.
- 4.4 The Contractor agrees to ensure that **[insert name of the organisation]** is not unduly compromised by any times that **[he/she]** is not available.

5. Duties of **[insert name of the organisation]**

[insert name of the organisation] will:

- 5.1 provide all relevant information under its control and such other assistance as is appropriate in order to allow the Contractor to complete the assignment satisfactorily and in good time;
- 5.2 give instructions on further requirements, if any, in connection with the proper performance of the assignment;
- 5.3 pay the Contractor's fees as agreed, provided the work done satisfies the terms of this agreement;
- 5.4 provide suitable office space and access to IT infrastructure for the performance of duties, if necessary;
- 5.5 provide access to its premises and facilities to perform the requisite services, if necessary.

6. Duties of the contractor

The Contractor:

- 6.1 warrants that **[he/she]** has the necessary skills and capacity to carry out the assignment;
- 6.2 will perform the assignment diligently and with proper skill, exercising due care and in good time;
- 6.3 will not subcontract or assign the obligations under this contract to any third party without the prior consent of **[insert name of the organisation]**.

7. Copyright

Unless otherwise agreed in writing, **[insert name of the organisation]** will hold copyright and other intellectual property rights in respect of all documents, materials, systems and products prepared by the Contractor for **[insert name of the organisation]** in fulfilment of the assignment.

8. General

- 8.1 No amendment of this Agreement or any consensual cancellation is binding on either party unless confirmed in writing and signed by both parties.
- 8.2 Any relaxation or indulgence which either party may show will not in any way prejudice or be deemed to be a waiver of either parties' rights under this Agreement.
- 8.3 This Agreement constitutes the whole Agreement between the parties and no warranties or representations, whether expressed or implied, have been given or made by the Contractor to **[insert name of the organisation]**.

Entered into and signed at **[insert place]** on **[insert date]**.

For: [insert name of the organisation]

Duly authorised

As witnesses:

1. _____

2. _____

Entered into and signed at **[insert place]** on **[insert date]**.

[insert name of the contractor]

As witnesses:

1. _____

2. _____

Annexure "A"

The contractor will provide the following services for **[insert number]** hours per week from **[insert period of the contract]**.

1.

2.

3.

4.

5.



6.

7.

8.

9.

Annexure C: CCMA Referral Form

<p>LRA Form 7.11 Labour Relations Act 1995 Sections 133, 135, 191(1) and 191(5A)</p>	<p align="center">PART A REFERRING A DISPUTE TO THE CCMA FOR CONCILIATION (INCLUDING CON-ARB)</p>	
<p align="center">READ THIS FIRST</p>  <p align="center">WHAT IS THE PURPOSE OF THIS FORM?</p> <p>This form enables a person or organisation to refer a dispute to the CCMA for conciliation and con-arb.</p> <p align="center">WHO FILLS IN THIS FORM?</p> <p>Employer, employee, union or employers' organisation.</p> <p align="center">WHERE DOES THIS FORM GO?</p> <p>The Registrar, Provincial Office of the CCMA in the province where the dispute arose. See details on this page</p> <p align="center">WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?</p> <p>When you refer the dispute to the CCMA, it will appoint a commissioner who must attempt to resolve the dispute within 30 days.</p> <p align="center">OTHER INSTITUTIONS</p> <p>Please note that if you are covered by a bargaining council, a statutory council or an accredited agency you may have to take the dispute to that council or agency.</p> <p>You may also need to deal with the dispute in terms of a private procedure if one applies.</p> <p>If in doubt contact the CCMA for assistance.</p> <p align="center">FURTHER INSTRUCTIONS</p> <p>A copy of this form must be served on the other party.</p> <p>Proof that a copy of this form has been served on the other party must be supplied by attaching:</p> <ul style="list-style-type: none"> ▪ A copy of a registered slip from the Post Office; ▪ A copy of a signed receipt if hand delivered; ▪ A signed statement confirming service by the person delivering the form; ▪ A copy of a fax confirmation slip; or ▪ Any other satisfactory proof of service. 	<p align="center">PROVINCIAL OFFICES OF THE CCMA</p> <p>CCMA EASTERN CAPE – East London 6 Oxford Street EAST LONDON Private Bag X9068, EAST LONDON, 5200 Tel: (043) 743-0826 Fax: (043) 743-0810 Email: PE@ccma.org.za</p> <p>CCMA EASTERN CAPE – Port Elizabeth CCMA House, 107 Govan Mbeki Avenue PORT ELIZABETH Private Bag X22500, PORT ELIZABETH, 6000 Tel: (041) 505-4300 Fax: (041) 586-4585 Email: PE@ccma.org.za</p> <p>CCMA FREE STATE CCMA House, Cnr Elizabeth & Westburger Streets BLOEMFONTEIN Private Bag X20705, BLOEMFONTEIN, 9300 Tel: (051) 505-4400 Fax: (051) 448-4468/9 Email: BLM@ccma.org.za</p> <p>CCMA GAUTENG – Johannesburg Regional Office 127 Fox Street JOHANNESBURG Private Bag X94, MARSHALLTOWN, 2107 Tel: (011) 220-5000 Fax: (011) 220-5101 / 02/03/04/05 / 0861 392 262 Email: Johannesburg@ccma.org.za</p> <p>CCMA GAUTENG – Tshwane (Pretoria) Metro Park Building, 351 Schoeman Street PRETORIA Private Bag X176, PRETORIA, 0001 Tel: (012) 392-9700 Fax: (012) 392-9701/2 Email: Pretoria@ccma.org.za</p> <p>CCMA KWAZULU-NATAL – Durban Embassy Building, 199 Smith Street DURBAN Private Bag X54363, DURBAN, 4000 Tel: (031) 362-2300 Fax: (031) 368-7387 / 7407 Email: KZN@ccma.org.za</p> <p>CCMA KWAZULU-NATAL – Pietermaritzburg Gallwey House, Gallwey Lane PIETERMARITZBURG PO Box 72, PIETERMARITZBURG, 3200 Tel: (033) 345-9249 / 9271 Fax: (033) 345-9790 Email: KZN@ccma.org.za</p> <p>CCMA KWAZULU-NATAL – Richards Bay First Floor, Promenade Building, Cnr Tassel Berry & Lira Link Streets RICHARDS BAY Private Bag X1026, RICHARDS BAY, 3900 Tel: (035) 789-0357 Fax: (035) 789-7148 Email: KZN@ccma.org.za</p> <p>CCMA LIMPOPO CCMA House, 104 Hans van Rensburg Street POLOKWANE Private Bag X9512, POLOKWANE, 0700 Tel: (015) 297-5010 Fax: (015) 297-1649 Email: PTB@ccma.org.za</p> <p>CCMA MPUMALANGA CCMA House, Diedericks Street WITBANK Private Bag X7290, WITBANK, 1035 Tel: (013) 656-2800 Fax: (013) 656-2885/6 Email: WTB@ccma.org.za</p> <p>CCMA NORTHERN CAPE CCMA House, 5-13 Compound Street KIMBERLEY Private Bag X6100, KIMBERLEY, 8300 Tel: (053) 831-6780 Fax: (053) 831-5948 Email: KMB@ccma.org.za</p> <p>CCMA NORTH WEST - Klerksdorp CCMA House, 47 Siddle Street KLERKSDORP Private Bag X5004, KLERKSDORP, 2570 Tel: (018) 464-0700 Fax: (018) 462-4126 Email: KDP@ccma.org.za</p> <p>CCMA NORTH WEST - Rustenburg Shop SG7 11B, 43-45 Boom Street RUSTENBURG Private Bag X82104, RUSTENBURG, 0300 Tel: To be confirmed Fax: (014) 538-1267 Email: To be confirmed</p> <p>CCMA WESTERN CAPE CCMA House, 78 Darling Street CAPE TOWN Private Bag X9167, CAPE TOWN, 8000 Tel: (021) 469-0111 Fax: (021) 465-7193/7 Email: CTN@ccma.org.za</p>	

READ THIS FIRST



Tick the correct box

The name of the employee or an employer that is referring the dispute must be filled in (a).

If there is more than one employee to the dispute and the referring party is not a trade union, then each employee must supply their personal details and signature on a separate page, which must be attached to this form.

These alternate contact details should be of a union official or representative, a relative or a friend.

The name of the trade union or employers organisation that is referring the dispute or assisting a member to refer a dispute must be filled in (b).

OTHER PARTIES

If more than one party is referring the dispute or if the dispute is referred against more than one party, write down the additional names and particulars on a separate page and attach to this form.

Tick the correct box

1. DETAILS OF PARTY REFERRING THE DISPUTE

As the referring party, are you:

- An employee A trade union
 An employer An employer's organization

(a) Name of the party if the referring party is an employee or employer

Name:.....

ID Number:.....

Postal Address:.....

.....Postal Code:.....

Tel:.....Cell:.....

Fax:.....Email:

Alternate contact details of employee:

Name:.....

Postal Address:.....

.....Postal Code:.....

Tel:.....Cell:.....

Fax:.....Email:

(b) Name of the referring party if the referring party is an employer's organisation or trade union, or if the employer's organisation is assisting a member to the dispute

Name:.....

Postal Address:.....

.....Postal Code:.....

Tel:.....Cell:.....

Fax:.....Email:

2. DETAILS OF THE OTHER PARTY (PARTY WITH WHOM YOU ARE IN DISPUTE)

The other party is:

- An employee A trade union
 An employer An employer's organisation

Name:.....

Postal Address:.....

.....Postal Code:.....

Tel:.....Cell:.....

Fax:.....Email:

Please turn over

3. NATURE OF THE DISPUTE

What is the dispute about (tick only one box)?

- | | | |
|---|--|---|
| <input type="checkbox"/> Unfair dismissal | <input type="checkbox"/> Unfair Labour Practice
<i>(Give details)</i> | <input type="checkbox"/> Refusal to Bargain |
| <input type="checkbox"/> Organisational Rights | <input type="checkbox"/> Mutual Interest | <input type="checkbox"/> S80 BCEA |
| <input type="checkbox"/> Unilateral change to terms
and conditions of employment | <input type="checkbox"/> Severance pay
S41 BCEA | <input type="checkbox"/> Unfair Discrimination
S10 of the Employment
Equity Act <i>(Give details)</i> |
| <input type="checkbox"/> Interpretation/ Application of
Collective Agreement | <input type="checkbox"/> Disclosure of Information | <input type="checkbox"/> S19 Skills Development
Act |
| <input type="checkbox"/> Freedom of Association | <input type="checkbox"/> Unfair Labour Practice
(probation) | |
| <input type="checkbox"/> Other <i>(please describe)</i> | | |

Summarise the facts of the dispute you are referring:

.....

.....

.....

.....

4. DATE DISPUTE AROSE

The dispute arose on:
 (give the date, day, month and year)

The dispute arose where:
 (give the city/town in which the dispute)

If the dispute concerns a dismissal the date inserted here must be the same as that set out in Item 2 of Part B.

5. DETAILS OF DISPUTE PROCEDURES FOLLOWED

Have you followed all internal grievance / disciplinary procedures before coming to the CCMA? YES NO

Describe the procedures followed:.....

.....

.....

.....

6. RESULT OF CONCILIATION

What outcome do you require?.....

.....

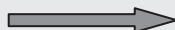
.....

.....

Please turn over →

Tick the correct box

If the dispute concerns dismissals, also complete Part B (See Page 5)



This section must be completed!

If necessary write the details on a separate page and attach to this form

UNFAIR LABOUR PRACTICE

If the dispute(s) concerns an unfair labour practice the dispute must be referred (ie. received by the CCMA) within 90 days of the act or omission which gave rise to the unfair labour practice. If more than 90 days has elapsed you are required to apply for condonation.

Tick the correct box

Parties may, at their own cost, bring interpreters for languages other than the official South African languages. Please indicate this under 'other'.

Special features might be the urgency of the matter, the large number of people involved, important legal or labour issues etc.

Only fill this in if this is a dispute about unilateral change to terms and conditions of employment.

The con-arb process involves arbitration being held immediately after the conciliation if the dispute remains unresolved.

Only fill this in if you object to the arbitration commencing immediately after conciliation. An objection cannot be made in disputes relating to probation.

7. SECTOR

Indicate the sector or service in which the dispute arose.

- | | | |
|--|--|--|
| <input type="checkbox"/> Retail sector | <input type="checkbox"/> Private Security | <input type="checkbox"/> Public Service |
| <input type="checkbox"/> Mining | <input type="checkbox"/> Paper & Printing | <input type="checkbox"/> Health |
| <input type="checkbox"/> Motor | <input type="checkbox"/> Services | <input type="checkbox"/> Chemical |
| <input type="checkbox"/> Distribution | <input type="checkbox"/> Food & Beverage | <input type="checkbox"/> Agriculture |
| <input type="checkbox"/> Wholesale | <input type="checkbox"/> Building & Construction | <input type="checkbox"/> Contract Cleaning |
| <input type="checkbox"/> Domestic | <input type="checkbox"/> Other (<i>please describe</i>)..... | |

8. INTERPRETATION SERVICES

Do you require an interpreter at the conciliation / con-arb? YES NO

If yes, please indicate for what language:

- | | | | |
|------------------------------------|-------------------------------------|--|-----------------------------------|
| <input type="checkbox"/> Afrikaans | <input type="checkbox"/> isiNdebele | <input type="checkbox"/> isiZulu | <input type="checkbox"/> isiXhosa |
| <input type="checkbox"/> Sepedi | <input type="checkbox"/> Sesotho | <input type="checkbox"/> Setswana | <input type="checkbox"/> siSwati |
| <input type="checkbox"/> Tshivenda | <input type="checkbox"/> Xitsonga | <input type="checkbox"/> Other (<i>please indicate</i>)..... | |

9. SPECIAL FEATURES / ADDITIONAL INFORMATION

Briefly outline any special features / additional information the CCMA needs to note:

.....

10. Dispute about unilateral change to terms and conditions of employment (s64 (4))

I/we require that the employer party not implement unilaterally the proposed changes that led to this dispute for 30 days, or that it restore the terms and conditions of employment that applied before the change.

Signed: (*Employee party referring the dispute*)

11. OBJECTION TO CON-ARB PROCESS

I/we object to the arbitration commencing immediately after the conciliation in terms of Section 191(5A)(c).

Signed:

If the employer objects to the arbitration commencing immediately after the conciliation the employer must submit a written notice in terms of CCMA Rule 17(2) at least 7 days prior to the scheduled date of the conciliation. The employer must attend the conciliation regardless of whether it makes this objection.

12. CONFIRMATION OF ABOVE DETAILS

Signature of party referring the dispute:

Signed at.....on this
 (place) (date)

REFERENCES

Statutes

Basic Conditions of Employment Act 75 of 1997

Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (of the Employment Equity Act 55 of 1998)

Constitution Act 108 of 1996

Employment Equity Act 55 of 1998

Labour Relations Act 66 of 1995

Occupational Health and Safety Act 181 of 1993

Protected Disclosures Act 26 of 2000

Case Law

Kylie v Commission for Conciliation, Mediation and Arbitration and Others (CA10/08) [2010] ZALAC 8; 2010 (4) SA 383 (LAC); 2010 (10) BCLR 1029 (LAC)

Websites

http://www.ilo.org/aids/legislation/WCMS_329494/lang--en/index.htm

<http://www.nswp.org/timeline/event/kylie-v-ccma-labour-rights-case>

<http://www.retrenchmentassist.co.za/index.php/ra-newsletters/100-employers-failure-to-pay-your-salary>

<http://www.labourguide.co.za/general/404-inspections-by-the-department-of-labour>

http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158919/lang--en/index.htm

<http://www.labourguide.co.za/discipline-dismissal/731-workplace-discipline/642-the-disciplinary-procedure-for-misconduct>

<http://www.labourguide.co.za/discipline-dismissal/659-the-minimum-requirements-for-a-fair-disciplinary-hearing>

<http://www.labourguide.co.za/general/600-code-of-good-practice-on-sexual-harassment113>

<https://mywage.co.za/main/decent-work/health-and-safety-at-work>

<http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-health-and-safety-representatives>

<http://www.labourguide.co.za/poor-performances/233-counseling-procedure-incapacity-poor-performance>

<http://www.labourguide.co.za/discipline-dismissal/341-fairness-of-dismissal-for-incapacity-ill-health>

<http://www.labourguide.co.za/discipline-dismissal/342-fairness-of-dismissal-for-operational-requirements>

<http://www.labourguide.co.za/most-recent/1569-retrenchments-back-to-basics>

http://www.worklaw.co.za/SearchDirectory/Codes_Of_Good_Practice/dismissalbasedonoperationalrequeiments.asp

<https://www.labourguide.co.za/most-recent/2042-encapsulating-incapacity>

http://www.labourprotect.co.za/unfair_labour_practices.htm



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