EMPLOYMENT LAW

Strikes And Lock-Outs

To strike is the refusal to work, the slowing down of work or the obstruction of work by employees ("strikers") and takes place to resolve a dispute between the employees and their employer.

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For all your strikes and lock-out related questions and answers, simply follow our guide below:

1. What is a strike?
2. What is a lock-out?
3. When can employees strike and an employer lock-out?
4. What are the consequences of a protected strike?
5. When does a strike end?
6. How can LegalWise assist you?

1. What is a strike?

- To strike is the refusal to work, the slowing down of work or the obstruction of work by employees ("strikers").
- A strike takes place to resolve a dispute between the employees and their employer. The dispute must be about something in the employer's control, for example, wages, improved working conditions and other disputes of mutual interest.
- While employees have the right to strike, an employer has an option to lock-out. However, these rights can sometimes be limited, for example, if the employees are bound by a collective agreement or are involved with essential services.

2. What is a lock-out?

- A lock-out is the refusal of the employer to grant the employees access to the workplace. This means that the employees are not able to render their services and as a result will not

be paid.

- A lock-out takes place in response to a strike or to force the employees to accept a demand of the employer. The demand must relate to disputes of mutual interest. The demand of the employer can be, for example, to force the employees to accept changes to their terms and conditions of employment.

3. When can employees strike and an employer lock-out?

- When the employees and employer fail to resolve a dispute in the workplace, they have to follow a lawful procedure before they can strike or lock-out.
- A strike or lock-out is considered protected (lawful) if the correct procedure was followed:

Failure to resolve a dispute in the workplace

Step 1: Conciliation - the dispute must be referred to the Council for Conciliation, Mediation and Arbitration ("CCMA") or Bargaining Council for resolution

Step 2: Certificate of outcome - if the dispute remains unresolved

or a 30 day period has expired since it has been referred to the CCMA, a certificate of outcome must be obtained

Step 3: Notice of Commencement – at least 48 hours prior to the strike or lock-out a written notice of the commencement must be given

4. What are the consequences of a protected strike?

- Employees may not be dismissed for participating in a protected strike.
- Employees may be dismissed for causing damage to the property of their employer, or another person at the workplace, during the strike.
- Employees may be retrenched for operational reasons as a result of the strike.
- Employees may be arrested and prosecuted for committing a criminal offence during a strike.

- The principle of “no work – no pay” applies. The employer does not have to pay the employees during a strike. However, the employer has to make payments in kind which include food, accommodation and other benefits such as pension, medical aid and so on.
- Employers may appoint replacement labour in response to a strike.

5. When does a strike end?

A strike ends when the dispute between the employees and their employer is resolved or the demand of the employer is met.

6. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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