

# LABOUR LAW

## *Rules!*

THIRD EDITION  
2017

MARIÉ MCGREGOR

ADRIETTE DEKKER

MPFARISENI BUDELI-NEMAKONDE

WILHELMINA GERMISHUYS-BURCHEL

ERNEST MANAMELA

TUKISHI MANAMELA

CLARENCE TSHOOSE

### **ERRATA**

The individual chapter tables of contents all contain errors in that the page numbers referred to for sub-headings within the chapters are incorrect, usually only by one/two pages. While the errors are neither substantive, in that the contents of the book are in no way affected; nor material, in that the correct page referred to is just a page or so away, the following corrected contents may prove useful to some users.

We apologise for any inconvenience caused.

Please note that the user's primary navigation tools, namely the Table of Contents at the start of the book (pages xi-xii) and the General Index at the end of the book (pages 317-325) *are* correct.

2018



*Siber Ink*

# 1

## General overview of labour law

1. Historical development of labour law . . . . .	3
2. Fairness introduced into labour law . . . . .	4
3. Labour legislation in South Africa . . . . .	6
4. The economic landscape in South Africa . . . . .	8
4.1 Unemployment in South Africa . . . . .	8
4.2 Non-standard employment. . . . .	9
4.3 The National Development Plan . . . . .	9
4.4 National minimum wage. . . . .	10
4.5 Economic labour legislation . . . . .	11
5. The role of NEDLAC in labour law . . . . .	11
6. Scope of labour laws. . . . .	12
6.1 Codes issued in terms of the LRA . . . . .	13
6.2 Codes issued in terms of the EEA . . . . .	13
6.3 Codes issued in terms of the BCEA . . . . .	14
7. Finding your way through the book . . . . .	14

# 2

## Exclusive protection for employees in terms of legislation

1. Who is an employee? . . . . .	20
2. Guidelines to distinguish between employees and independent contractors. . . . .	21
3. When does the employment relationship start? . . . . .	25
4. Non-standard employees . . . . .	26
4.1 Temporary employment service ('TES') . . . . .	26
4.1.1 Who is a temporary employee? . . . . .	26
4.2 Fixed-term employees . . . . .	30
4.2.1 Who is a fixed-term employee? . . . . .	30
4.2.2 When will it be allowed? . . . . .	30
4.2.3 What will happen if there is non-compliance with the LRA? . . . . .	32
4.3 Part-time employees . . . . .	32
5. Categories of employees excluded from the LRA . . . . .	33
6. Protection and regulation of illegal and foreign workers. . . . .	34
6.1 Illegal workers . . . . .	34
6.2 Foreign workers. . . . .	36
6.3 Employment Services Act ('ESA') and foreign workers. . . . .	37
6.3.1 Purpose of the Act. . . . .	37
6.3.2 Regulation of employment of foreigners . . . . .	37
6.3.3 Protection of foreign employees. . . . .	38
7. Definition of 'employer' (including labour brokers) . . . . .	38
8. The position of a temporary employment service ('TES')/labour broker . . . . .	39
8.1 Issues regarding a TES/labour broker. . . . .	39
8.2 Registration of labour brokers . . . . .	39
8.3 Liability of the labour broker and client . . . . .	39
8.4 Specific duties and prohibitions . . . . .	40
8.5 Private and public employment agencies . . . . .	40
9. Employment Tax Incentive Act ('ETIA'). . . . .	41
Self-assessment questions and feedback. . . . .	41
Recommended reading . . . . .	42

# 3

## The impact of the common law on the contract of employment

1. Introduction . . . . .	43
2. Duties of the employer and the employee . . . . .	44
2.1 Duties of the employer . . . . .	44
2.1.1 To remunerate the employee . . . . .	44
2.1.2 To provide the employee with work. . . . .	45
2.1.3 To provide safe working conditions. . . . .	45
2.1.4 To deal fairly with the employee . . . . .	45
2.2 Duties of employees . . . . .	46
2.2.1 To render services to the employer . . . . .	46
2.2.2 To work competently and diligently . . . . .	46
2.2.3 To obey lawful and reasonable instructions . . . . .	46
2.2.4 To serve the employer's interests and act in good faith . . . . .	46
3. Doctrine of vicarious liability. . . . .	47
4. Impact of the contract of employment on the employment relationship . . . . .	48
4.1 Introduction . . . . .	48
4.2 General contract principles . . . . .	49
4.3 Remedies for breach of contract . . . . .	51
4.4 Restraint of trade . . . . .	51
4.5 Changes to contractual terms and conditions of employment .	53
5. Customs, traditions and practices in the workplace . . . . .	54
Self-assessment questions and feedback. . . . .	54
Recommended reading . . . . .	56

# 4

## Basic Conditions of Employment Act (BCEA)

1. Introduction . . . . .	57
2. Scope of application . . . . .	58
3. Minimum conditions of employment . . . . .	59
3.1 Working time . . . . .	59
3.2 Leave . . . . .	60
3.3 Other matters . . . . .	62
3.3.1 Wages . . . . .	62
3.3.2 Notice periods . . . . .	63
3.3.3 Severance pay . . . . .	64
3.3.4 Certificate of service . . . . .	64
3.3.5 Payments of contributions to benefit funds . . . . .	65
3.4 Prohibition of work by children . . . . .	65
3.5 Prohibition of forced labour . . . . .	66
3.6 Prohibition of exploitative practices by employers to secure work by employees . . . . .	67
4. Enforcement of the BCEA . . . . .	67
4.1 Courts . . . . .	67
4.2 Inspectors . . . . .	68
5. Variation of basic conditions . . . . .	69
5.1 Variation by way of a collective agreement . . . . .	69
5.2 Variation by way of a ministerial determination . . . . .	69
5.3 Variation by way of a sectoral determination . . . . .	70
Self-assessment questions and feedback . . . . .	71
Recommended reading . . . . .	72

# 5

## Employment Equity Act (EEA)

1. Introduction . . . . .	74
2. Basic terminology . . . . .	76
2.1 Formal and substantive equality . . . . .	76
2.2 Differentiation and discrimination, and direct and indirect discrimination . . . . .	76
2.2.1 Differentiation . . . . .	76
2.2.2 Discrimination . . . . .	76
2.3 Specified, unspecified/unlisted and arbitrary grounds of discrimination . . . . .	77
3. Application of the EEA . . . . .	79
4. First purpose of the EEA: prohibition against unfair discrimination . . . . .	81
4.1 Establishing unfair discrimination . . . . .	81
4.1.1 Onus . . . . .	81
(a) Introduction . . . . .	81
(b) Listed grounds . . . . .	82
(c) Arbitrary and unlisted grounds . . . . .	82
4.1.2 Justification grounds for discrimination . . . . .	83
(a) Affirmative action . . . . .	83
(b) Inherent requirements of the job . . . . .	83
4.1.3 Other specific forms of discrimination prohibited . . . . .	84
(a) Harassment as unfair discrimination . . . . .	84
(b) Liability of employers for employees' discriminatory conduct . . . . .	85
4.1.4 Testing employees and applicants for employment . . . . .	87
(a) Medical testing . . . . .	87
(b) Psychological testing . . . . .	88
(c) HIV testing . . . . .	88
4.1.5 Equal pay for equal work or work of equal value . . . . .	89
4.1.6 Resolution of unfair discrimination disputes . . . . .	93
5. Second purpose of the EEA: affirmative action . . . . .	93
5.1 Outline of affirmative action . . . . .	93
5.2 The contents of affirmative action measures . . . . .	95
5.2.1 Designated employers . . . . .	96
5.2.2 Beneficiaries of affirmative action . . . . .	97

(a) Citizenship . . . . .	97
(b) Is personal disadvantage required? . . . . .	98
(c) Degrees of disadvantage. . . . .	98
(d) What does 'suitably qualified' mean? . . . . .	99
5.2.3 Monitoring and enforcement of affirmative action . . .	99
Self-assessment questions and feedback. . . . .	101
Recommended reading . . . . .	102

# 6

## Protection against unfair labour practices under the Labour Relations Act (LRA)

1. Introduction . . . . .	105
2. Differences between constitutional and LRA protection . . . . .	105
3. Definition of an unfair labour practice . . . . .	106
4. Extent and scope of protection against unfair labour practices in the LRA . . . . .	107
5. Detailed discussion of the elements of the definition of unfair labour practices . . . . .	107
5.1 The unfair conduct of the employer relating to promotion . . . . .	107
5.2 The unfair conduct of the employer relating to demotion . . . . .	108
5.3 The unfair conduct of the employer relating to probation . . . . .	109
5.4 The unfair conduct of the employer relating to training . . . . .	111
5.5 The unfair conduct of the employer relating to provision of benefits . . . . .	111
5.6 The unfair conduct of the employer relating to suspension or any other disciplinary action short of dismissal . . . . .	113
5.6.1 Precautionary suspension . . . . .	113
(a) Purpose of the suspension . . . . .	113
(b) Payment during suspension . . . . .	113
(c) Fairness of a suspension . . . . .	114
5.6.2 Punitive suspension . . . . .	114
5.6.3 Any other disciplinary action short of dismissal . . . . .	115
5.7 The unfair conduct of the employer relating to a refusal to reinstate or re-employ an employee in terms of any agreement . . . . .	115
5.8 The unfair conduct of the employer relating to an employee suffering an occupational detriment on account of a protected disclosure ('whistle-blowing') . . . . .	115
5.8.1 Requirements for protection . . . . .	115
5.8.2 Meaning of 'occupational detriment' and 'protected disclosure' . . . . .	116
5.8.3 Examples from case law . . . . .	117



6. Resolution of unfair labour practice disputes. . . . .	118
6.1 Dispute-resolution route . . . . .	118
6.2 Time limits and institutions . . . . .	119
6.3 Possible relief . . . . .	119
Self-assessment questions and feedback. . . . .	119
Recommended reading . . . . .	121

# 7

## Social security legislation

1. Introduction . . . . .	123
2. Definitions . . . . .	124
2.1 Social assistance . . . . .	124
2.2 Social insurance . . . . .	126
3. Shortcomings in the present social security system . . . . .	127
4. Elements of public workplace-related social security insurance . . . . .	128
5. State-regulated social insurance at step 1: the prevention of workplace accidents and illnesses. . . . .	128
5.1 The Occupational Health and Safety Act ('OHSA') . . . . .	129
5.1.1 Scope of application . . . . .	129
5.1.2 Duties . . . . .	129
5.1.3 Enforcement . . . . .	131
5.2 The Mine Health and Safety Act ('MHSA'). . . . .	132
5.2.1 Scope of application . . . . .	132
5.2.2 Duties . . . . .	132
(a) Duties of employers at mines not being worked . . . . .	132
(b) Duties of manufacturers and suppliers of products and services at mines . . . . .	133
(c) Duties of employees . . . . .	133
(d) Duties of employers at mines being worked . . . . .	134
(e) Enforcement . . . . .	135
6. State-regulated social insurance aimed at step 2: the compensation in respect of workplace accidents and illnesses. . . . .	136
6.1 The Compensation for Occupational Injuries and Diseases Act ('COIDA') . . . . .	136
6.1.1 Scope of application . . . . .	136
6.1.2 Entitlement to benefits in terms of the Act . . . . .	137
(a) Why the need for 'no-fault' compensation? . . . . .	137
(b) Does fault really play no role when claiming from the Compensation Fund? . . . . .	138
(c) What about occupational diseases? . . . . .	138
(d) Who contributes to the Compensation Fund? . . . . .	139
6.1.3 Benefits payable . . . . .	139
6.1.4 Enforcement . . . . .	139

6.2	The Occupational Diseases in Mines and Works Act ('ODIMWA')	140
6.3	The Unemployment Insurance Act ('UIA'). . . . .	140
7.	State-regulated social insurance aimed at step 3: reintegration of the injured employee into the workplace. . . . .	143
7.1	The Skills Development Act ('SDA') and the Skills Development Levies Act ('SDLA') . . . . .	143
7.1.1	Functioning of the Acts . . . . .	143
7.1.2	Scope of application . . . . .	144
7.1.3	Role players in the Acts . . . . .	144
7.1.4	Enforcement . . . . .	146
7.2	Employment Tax Incentive Act ('ETIA') . . . . .	146
7.3	Employment Services Act ('ESA'). . . . .	147
	Self-assessment questions and feedback. . . . .	148
	Recommended reading . . . . .	149

# 8

## Transfer of a business as a going concern

1. Introduction . . . . .	150
2. Sections 197 and 197A and their scope of application . . . . .	151
2.1 Business . . . . .	152
2.2 Transfer . . . . .	154
2.3 Going concern . . . . .	155
3. Automatic consequences of section 197 in the absence of an agreement to the contrary . . . . .	156
3.1 Transfer of employment contracts . . . . .	156
3.2 Transfer of all rights and obligations. . . . .	157
3.3 Transfer of the former employer's actions . . . . .	157
3.4 Continuity of employment. . . . .	157
3.5 Other consequences . . . . .	158
4. Changing of the automatic consequences of section 197 . . . . .	158
5. Apportionment of liability between the old and new employer . . . . .	159
6. Transfer of contracts of employment in circumstances of insolvency . . . . .	160
7. Section 197B disclosure of information concerning insolvency . . . . .	161
Self-assessment questions and feedback. . . . .	161
Recommended reading . . . . .	164

# 9

## Termination of the contract of employment: Definition of dismissal and automatically unfair dismissal

1. Ways of terminating the employment contract . . . . .	169
1.1 Resignation by the employee. . . . .	169
1.2 Termination on completion of an agreed period or task . . .	171
1.3 Termination by mutual agreement. . . . .	171
1.4 Termination on grounds of impossibility of performance . .	171
1.5 Termination as a result of insolvency of the employer . . . .	171
1.6 Termination as a result of retirement . . . . .	172
2. Termination of the contract of employment through dismissal . .	173
2.1 Definition of dismissal . . . . .	173
2.2 Termination of a contract by the employer, with or without notice . . . . .	174
2.3 Refusal or failure by the employer to renew a fixed-term contract or to appoint an employee indefinitely where she/he reasonably expected it to happen . . . . .	175
2.4 Refusal to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment. . . . .	176
2.5 Selective re-employment . . . . .	177
2.6 Constructive dismissal . . . . .	178
2.7 An employee being provided with less favourable terms after the transfer of a business . . . . .	180
3. Fairness of a dismissal. . . . .	180
3.1 Fairness of dismissal . . . . .	183
4. Automatically unfair dismissal . . . . .	184
4.1 The employer acts contrary to section 5 (an employee's right to freedom of association) . . . . .	185
4.2 Participation in or supporting a protected strike or protest action . . . . .	185
4.3 Refusal to do the work of employees who are on a protected strike . . . . .	186
4.4 Refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer	186

4.5 Exercising rights against the employer. . . . .	187
4.6 Pregnancy, intended pregnancy or any reason related to pregnancy. . . . .	187
4.7 Unfair discrimination . . . . .	188
4.8 Transfer of a business. . . . .	190
4.9 Protected disclosures . . . . .	190
4.10 Dispute resolution for an automatically unfair dismissal . . .	191
Self-assessment questions and feedback. . . . .	192
Recommended reading . . . . .	193

# 10

## Fair and unfair dismissals, and dispute resolution

1.	Dismissal for misconduct . . . . .	195
1.1	Substantive fairness. . . . .	195
1.2	Substantive fairness for different types of misconduct . . . .	197
1.2.1	Unauthorised absence from work, abscondment, desertion and time-related offences. . . . .	197
	(a) Principle . . . . .	197
	(b) Application . . . . .	198
1.2.2	Attitudes of hostility, abusive language, racism and insubordination . . . . .	199
	(a) Principle . . . . .	199
	(b) Application . . . . .	199
1.2.3	Theft (including petty theft and stock losses), team misconduct, dishonesty, and breach of the trust relationship . . . . .	200
	(a) Principle . . . . .	200
	(b) Application . . . . .	200
1.2.4	Other forms of misconduct . . . . .	201
1.3	Procedural fairness . . . . .	202
1.4	Dispute resolution for a dismissal based on misconduct . . .	203
2.	Dismissal for incapacity. . . . .	204
2.1	General . . . . .	204
2.2	Poor work performance during probation . . . . .	205
2.3	Poor work performance after probation . . . . .	206
2.4	Ill health or injury . . . . .	207
2.5	Dispute resolution for a dismissal based on incapacity . . . .	209
3.	Dismissal based on operational reasons . . . . .	211
3.1	The definition of operational requirements . . . . .	211
3.2	Number of employees affected and operational reasons . . . .	211
3.3	Substantive fairness. . . . .	213
3.3.1	Economical, structural or technological needs . . . . .	213
3.3.2	Similar needs . . . . .	214
	(a) Breakdown of the trust relationship . . . . .	214
	(b) Incompatibility . . . . .	215

(c) Changes to employee's terms and conditions that are necessary. . . . .	215
3.4 Procedural fairness in terms of section 189 . . . . .	215
3.5 Procedural fairness and large-scale dismissals by big employers. . . . .	218
3.6 Dispute resolution for unfair large-scale retrenchments. . . . .	219
3.7 Dispute resolution for unfair small-scale retrenchments . . . . .	220
4. Other aspects of dispute resolution for labour matters. . . . .	220
4.1 Conciliation . . . . .	222
4.2 Arbitration . . . . .	222
4.3 Reviews and appeals . . . . .	223
4.4 Remedies . . . . .	224
4.5 Pre-dismissal inquiry. . . . .	224
4.6 Jurisdiction of the courts in labour disputes. . . . .	225
Self-assessment questions and feedback. . . . .	226
Recommended reading . . . . .	227



# 11

## Freedom of association, trade unions' and employers' rights

1. Historical background to freedom of association and trade unionism in South Africa . . . . .	232
1.1 Colonialisation . . . . .	232
1.2 Late 1800s to early 1900s. . . . .	232
1.3 The 1920s. . . . .	233
1.4 The 1940s to 1960s. . . . .	233
1.5 The 1970s . . . . .	234
1.6 Democracy . . . . .	235
2. Freedom of association . . . . .	236
2.1 Protection under the Constitution. . . . .	236
2.2 Protection in terms of International and Regional law . . . . .	237
2.3 Protection in terms of the African Charter on Human and Peoples' Rights (hereafter 'ACHPR') . . . . .	237
2.4 Protection in terms of ILO Conventions. . . . .	237
2.5 Protection in terms of the Labour Relations Act. . . . .	238
2.5.1 Purpose of enactment of the LRA. . . . .	238
2.5.2 Specific protection of the right to freedom of association . . . . .	238
2.5.3 Limited protection of the right to freedom of association . . . . .	239
(a) Employers' right to freedom of association . . . . .	240
(b) Disputes about freedom of association . . . . .	240
3. Trade union security arrangements. . . . .	240
3.1 Permissibility . . . . .	240
3.2 Agency-shop agreement . . . . .	241
3.3 Closed-shop agreement. . . . .	242
4. Organisational rights . . . . .	244
4.1 Purpose of organisational rights . . . . .	244
4.2 Types of organisational rights . . . . .	244
4.3 Level of representation . . . . .	246
4.4 Different levels of representation by unions for different rights . . . . .	246
4.5 Acquisition of organisational rights . . . . .	247

4.5.1	Through collective agreement. . . . .	247
4.5.2	Through membership of a bargaining council . . . . .	248
4.5.3	Through strike action . . . . .	248
4.5.4	Through the section 21 procedure . . . . .	248
4.6	Dispute resolution for organisational rights . . . . .	250
5.	Relationship between unions and their members . . . . .	252
6.	Registration of unions. . . . .	252
	Self-assessment questions and feedback. . . . .	253
	Recommended reading . . . . .	254

# 12

## Collective bargaining

1. Introduction . . . . .	255
2. Is there a duty to bargain? . . . . .	256
3. Bargaining agents . . . . .	256
4. Levels of bargaining . . . . .	257
5. Statutory bargaining structures . . . . .	258
5.1 Bargaining council . . . . .	258
5.1.1 The constitution of a bargaining council . . . . .	258
5.1.2 Registration of a bargaining council . . . . .	258
5.1.3 Powers and functions of a bargaining council . . . . .	259
5.1.4 Disputes that the LRA requires a bargaining council to resolve . . . . .	259
5.2 Statutory council . . . . .	260
6. Collective agreements . . . . .	260
6.1 Bargaining council collective agreements . . . . .	262
6.2 Disputes about collective agreements . . . . .	263
Self-assessment questions and feedback. . . . .	263
Recommended reading . . . . .	264

# 13

## Workplace forums

1. Introduction . . . . .	265
2. Establishment of a forum . . . . .	266
3. Meetings of a forum . . . . .	267
4. Functions of a forum . . . . .	267
5. Consultation. . . . .	267
5.1 What is consultation? . . . . .	267
5.2 Matters for consultation . . . . .	268
6. Joint decision-making. . . . .	268
6.1 What is joint decision-making? . . . . .	268
6.2 Matters for joint decision-making . . . . .	269
7. Disclosure of information. . . . .	269
8. Organisational rights of workplace forums . . . . .	269
9. Dispute resolution . . . . .	270
Self-assessment questions and feedback. . . . .	270
Recommended reading . . . . .	271

# 14

## Strikes and lock-outs

1. Introduction . . . . .	273
2. Legislative protection of the right to strike and lock-out. . . . .	274
3. Protected industrial action . . . . .	275
4. Requirement 1: The action should comply with the definition of a strike and a lock-out . . . . .	276
4.1 What does this requirement entail? . . . . .	276
4.2 What is the definition of a strike? . . . . .	276
4.2.1 Refusal to work . . . . .	277
4.2.2 Concerted action by people employed by the same or different employers . . . . .	277
4.2.3 To remedy a grievance or resolve an issue in dispute in respect of a matter of mutual interest between employer and employees . . . . .	278
4.3 What is the definition of a lock-out?. . . . .	278
4.3.1 Exclusion of the employees by the employer . . . . .	279
4.3.2 For the purpose of compelling employees to accept a demand in respect of any matter of mutual interest between the employer and employees . . . . .	279
5. Requirement 2: Procedural requirements for the protection of strikes and lock-outs in terms of section 64 of the LRA . . . . .	280
5.1 What does this requirement entail? . . . . .	280
5.2 What is an 'issue in dispute'? . . . . .	280
5.3 What is a certificate of outcome?. . . . .	280
5.4 What is prescribed notice? . . . . .	280
6. Requirement 3: Prohibitions or limitations on strikes and lock-outs in terms of section 65 . . . . .	281
6.1 What does this requirement entail? . . . . .	281
6.2 Where a collective agreement prohibits a strike or lock-out. . . . .	282
6.3 Where an agreement prescribes arbitration . . . . .	282
6.4 Where parties have a right to refer a dispute to arbitration or the Labour Court . . . . .	283
6.5 Where an award, or a collective agreement or determination regulates the issue in dispute. . . . .	283
6.6 Where employees are engaged in essential and maintenance services . . . . .	283

6.6.1	Essential services. . . . .	284
6.6.2	Maintenance services . . . . .	285
7.	Secondary strikes . . . . .	286
8.	Legal consequences of protected strikes and lock-outs. . . . .	288
8.1	Dismissal only for misconduct and operational requirements . . . . .	288
8.2	Delict or breach of contract (civil liability) . . . . .	289
8.3	Protection against discrimination . . . . .	289
8.4	Protection against claims for compensation by employers . . . . .	290
8.5	Remuneration and replacement labour . . . . .	290
8.5.1	No remuneration . . . . .	290
8.5.2	Replacement labour . . . . .	290
9.	Consequences of unprotected strikes and lock-outs . . . . .	290
9.1	Consequence 1: Interdict. . . . .	290
9.2	Consequence 2: Compensation . . . . .	291
9.3	Consequence 3: Dismissal of strikers . . . . .	291
9.3.1	Substantive fairness . . . . .	291
(a)	The seriousness of the failure to comply with the LRA . . . . .	291
(b)	Attempts to comply with the provisions of the LRA . . . . .	292
(c)	Unjustified conduct by the employer . . . . .	292
9.3.2	Procedural fairness . . . . .	292
(a)	Contact with the union. . . . .	292
(b)	Issuing an ultimatum . . . . .	292
(c)	Compliance with ultimatum . . . . .	293
(d)	No ultimatum . . . . .	293
	Self-assessment questions and feedback. . . . .	293
	Recommended reading . . . . .	294

# 15

## Pickets and protest action

1. Introduction . . . . .	295
2. Requirements for protected pickets . . . . .	296
2.1 Introduction . . . . .	296
2.2 Definition of a picket . . . . .	296
2.3 Procedural requirements for protection of a picket . . . . .	297
2.4 Where can a picket take place? . . . . .	298
2.5 Picketing rules and conduct during a picket. . . . .	299
2.6 Legal consequences of protected and unprotected pickets . . . . .	300
2.6.1 Delict or breach of contract . . . . .	300
2.6.2 Disciplinary action . . . . .	300
3. Requirements for protected protest action . . . . .	300
3.1 Definition of protest action . . . . .	300
3.2 Procedural requirements for the protection of protest action . . . . .	301
3.2.1 Action called by registered trade union or federation of trade unions. . . . .	302
3.2.2 Notice of protest action to NEDLAC . . . . .	302
3.2.3 NEDLAC or any appropriate forum must consider the matter giving rise to protest action . . . . .	302
3.2.4 Notice to NEDLAC of intention to proceed with action . . . . .	302
3.3 Legal consequences of protected and unprotected protest action . . . . .	302
Self-assessment questions and feedback. . . . .	303
Recommended reading . . . . .	304