

SCHEDULE 8 OF THE LABOUR RELATIONS ACT (LRA): CODE OF GOOD PRACTICE ON DISMISSAL

Key Guidelines for Dismissals

Fair Reason for Dismissal:

Must be based on misconduct, incapacity, or operational requirements. Automatically unfair dismissals (e.g., discrimination, protected strikes) are prohibited.

Progressive Discipline:

Employers should use warnings, counselling, and training before dismissal unless the misconduct is severe enough to justify termination.

Probation & Performance Management:

Employers must give reasonable time for improvement and provide counselling and retraining before dismissing for poor performance. Incompetency is also recognised as a form of incapacity.

Operational Requirements (Retrenchments):

Dismissals must result from valid economic or structural needs and follow a fair consultation process with objective selection criteria.

Industrial Action & Unprotected Strikes:

Unprotected strikes are misconduct but don't always justify dismissal. Employers must issue ultimatums and allow time for compliance.

Annexure A – Retrenchment Notice:

Standard template for severance pay, affected employees, and re-employment options.



Pending 2025 Draft Code Amendments

Consistency in Disciplinary Actions:

Minor inconsistencies don't automatically make a dismissal unfair.

Flexibility in Disciplinary Processes:

Small businesses may use simplified procedures, like verbal warnings, instead of formal hearings.

Expanded Fair Sanction Considerations:

Employers must assess the harm caused, rule importance, and employee acknowledgement before deciding on penalties.

Fairness in Misconduct Dismissals:

The process should allow employees to respond and seek assistance without being overly formal.

Recognition of Other Forms of Incapacity:

Factors like imprisonment require alternative considerations before dismissal.

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