

# 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 training 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 acknowledgment 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 improvement require alternative considerations before dismissal.

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**Annelies Wilder-Smith**



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