NAVIGATING SA LABOUR LAW CHANGE WITH CONFIDENCE



For HR practitioners and Managers

WHY LABOUR LAW DEVELOPMENTS MATTER



Decisions taken in HR offices today may be tested months or years later in Arbitration, the Labour Court (LC) or the Labour Appeal Court (LAC).

The question is not only what the law says, but whether we can justify what we did.

OPENING QUESTION

Does every employee facing possible dismissal have a right to a formal disciplinary hearing?

TODAY'S ROADMAP

01

Schedule 8

Misconduct, Incapacity, Consistency and Poor work performance

02

Parental leave

Van Wyk Constitutional Court judgment

03

Fixed-term contracts

Reasonable expectation of renewal

04

Ill-health incapacity

Reasonable accommodation

01

SCHEDULE 8: CODE OF GOOD PRACTICE DISMISSAL (2025)



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THE NEW CODE AT A GLANCE

4 Sept

2025

Replaces the previous Schedule 8 Code. All employers must still follow applicable collective agreements and binding disciplinary procedures.

Consolidates three dismissal types
Misconduct, incapacity and operational requirements in one code.

Guidance, not repeal
It assesses fairness; the statutory right not to be unfairly dismissed is unchanged.

Dialogue over ritual
Renewed emphasis on meaningful dialogue and flexible procedure. Formal hearings are not newly abolished.

Size matters, rules still apply
Small enterprises (undefined) are recognised; medium and larger employers still need written rules.

PROCEDURAL FAIRNESS IN PRACTICE



1 Inform

Give the allegations in enough detail to understand and answer them.



2 Allow response

Time to prepare, a chance to answer allegations and sanction, and a fellow employee or union rep to assist.



3 Consider

Weigh the employee's representations genuinely before deciding.



4 Stay flexible

Enquiries need not resemble court hearings, but institutional procedures may add requirements.

A written admission does not automatically remove procedural or sanction considerations.

SCENARIO: THE ADMISSION

SCENARIO

A university administrator admits repeatedly disobeying a reasonable instruction. HR wishes to dismiss immediately, without a hearing.

Is the admission enough?

No automatic shortcut.

ASSESS BEFORE DECIDING

- ✓ **Binding procedure**
- ✓ **Seriousness**
- ✓ **Mitigation**
- ✓ **Previous discipline**
- ✓ **Employee representations**
- ✓ **Appropriate sanction**

A PROVEN BREACH IS NOT A FAIR SANCTION

WEIGH IN THE SANCTION

- Requirements of the job
- Seriousness and impact
- Whether corrective discipline is viable
- Acknowledgment and willingness to comply
- Personal circumstances, service and record

Generally corrective, but sufficiently serious first offences may justify dismissal.

SAME LABEL, DIFFERENT GRAVITY



Repeated late reporting despite warnings



Deliberate manipulation of payroll banking details

Both are misconduct. Gravity, trust, risk and scope for correction differ.

CONSISTENCY AND TRUST



Consistency

Comparable cases should be treated fairly, not necessarily identically.

Material distinctions can justify different sanctions: disciplinary record, degree of participation, mitigation, job responsibilities.

Relevant, but not automatically decisive.



Trust

Explain how the proven misconduct affects continued employment.

Do not merely assert that trust has been broken.

A sensitive payroll position may carry particular financial-control risks.

PROBATION: SUITABILITY, NOT ONLY TARGETS

A more flexible standard than for established employees, but fairness is still required.



Communicate early
Standards and specific concerns.



Guide and evaluate
Fair opportunity to improve or respond.



Record real difficulties
Not vague "cultural fit" assertions.



Check the paperwork
Appointment terms, policy and collective agreements before non-confirmation or extension.

SCENARIO

A new HR manager meets technical targets but has serious documented interpersonal difficulties.

What evidence shows job-related unsuitability? What guidance was given? Was the employee heard?
Personality mismatch alone is insufficient.

INCOMPATIBILITY AS INCAPACITY

Now expressly recognised in the Code. It is not a shortcut where the real allegation is harassment, bullying or insubordination.



Concrete, sustained difficulties
Affecting the working relationship or operations.



Investigate causes
Including whether management or others contribute.



Consult and explore options
Mediation, counselling, adjustments.



Separate inability from unpopularity
Or grievance-raising and protected conduct.

SCENARIO

A lecturer's conflicts repeatedly derail meetings. Can the college dismiss because "nobody likes them"?

Not without a genuine, serious, properly investigated problem and fair consideration of alternatives.

DISMISSAL CODE TAKE-HOME

A fair process does not automatically produce a fair dismissal. All three pillars are necessary.



Fair reason

The proven conduct or incapacity is real and job-related.



Defensible sanction

Proportionate, consistent and considers mitigation.



Appropriate process

Meaningful opportunity to respond; binding procedures followed.

02

PARENTAL LEAVE: THE VAN WYK JUDGMENT



Constitutional Court, 3 October 2025

FROM UNEQUAL LEAVE TO A SHARED FRAMEWORK

PREVIOUS BCEA POSITION

4 months
maternity leave for a birth mother

10 days
parental leave for the other parent

Different
entitlements for adoption and commissioning parents



CONSTITUTIONAL COURT

Unequal framework held unconstitutional.

36 months for Parliament to remedy the defects

An interim reading-in applies in the meantime.

THE INTERIM FRAMEWORK

Both parents employed

4 months + 10 days

combined and shared, not per parent

One parent employed

Full period

that parent takes the full combined period

Allocation

By agreement

no agreement: the default allocation applies

Birth-related protection stays: no work in the six weeks after childbirth without medical certification.

HR AND PAYROLL IMPLEMENTATION

- Revise maternity, parental, adoption and commissioning-parent policies and forms
- Record allocation arrangements where both parents are employed, proportionate to privacy
- Review paid leave benefits separately from statutory leave
- Assess paid maternity schemes for contractual and equality implications before changing them
- Align leave codes, payroll, UIF guidance and temporary staffing

THREE SEPARATE QUESTIONS

Statutory leave

Employer-paid benefits

UIF benefit rules

The Court did not establish a complete corresponding UIF benefit system.

AUDIENCE QUESTIONS ON PARENTAL LEAVE

A university pays birth mothers four months' maternity leave. Must every father now receive four months' paid leave?

Not automatically. Statutory entitlement and employer-funded benefits differ, though unequal benefits can raise discrimination issues needing careful legal assessment.

May an institution refuse statutory leave because the department is understaffed?

No. Staffing pressure does not itself extinguish a statutory leave right. Plan operational cover.

Take-home: Replace gender-based assumptions with a documented, lawful shared-leave process, and evaluate pay and UIF separately.

03

FIXED-TERM CONTRACTS AND REASONABLE EXPECTATION OF RENEWAL



LRA section 186(1)(b)

WHEN EXPIRY CAN BE A DISMISSAL

SECTION 186(1)(b)

A dismissal can occur where the employee reasonably expected renewal on the same or similar terms, or indefinite employment, and the employer did not renew, or offered less favourable terms.

A subjective hope is not enough. Examine the objective circumstances.

WHAT THE OBJECTIVE CIRCUMSTANCES INCLUDE

1. Prior renewals and length of service
2. Management statements, correspondence and contract amendments
3. Continuing operational need, and whether funding or a defined project truly justified the fixed term
4. Contract wording, including non-renewal disclaimers, read with actual conduct
5. Collective agreements and statutory obligations

HIGHER EDUCATION CASE STUDIES

Naidoo v Tshwane University of Technology

Labour Appeal Court, August 2026

A senior employee challenged non-renewal of a five-year contract. The dispute turned on contract wording and renewal-related provisions and conduct. The LAC found a reasonable expectation and restored the unfair-dismissal arbitration outcome.

Dzagana v Education Labour Relations Council

Labour Court, August 2026

A College lecturer relied on successive contracts, communications and circumstances pointing to ongoing employment. The Court found an unfair dismissal arising from non-renewal.

SCENARIO AND PRACTICAL CONTROLS

SCENARIO

A lecturer has five successive one-year contracts and is repeatedly told permanent appointment is being considered. The college issues a notice of expiry.

Assess objectively whether the employer created a reasonable expectation.

PRACTICAL CONTROLS

- Document the fixed-term rationale
- Review renewals centrally
- Train managers: no promises of appointment without authority
- Review section 198B: coverage and exclusions matter
- Assess non-renewal risk before sending an expiry notice

Take-home: Contract expiry dates matter, but the institution's conduct throughout the relationship may matter just as much.

04

ILL-HEALTH INCAPACITY AND REASONABLE ACCOMMODATION



An assessment of ability to work, not a disciplinary finding

LEGAL APPROACH AND CPUT CASE

NOT A DISCIPLINARY FINDING. CONSIDER:

- ✓ **Temporary or permanent incapacity**
- ✓ **Current functional limitations and prognosis**
- ✓ **Reasonable adjustments**
- ✓ **Suitable alternative positions**
- ✓ **Meaningful consultation with the employee**

Disability-related accommodation duties under the Employment Equity Act may also apply.



Solidarity v CPUT (2026)

The Labour Court scrutinised the medical and accommodation investigations and alternatives such as medical boarding. It found substantive unfairness and awarded substantial compensation.

FIVE QUESTIONS BEFORE DISMISSING

1. Is the evidence current, and does it address what the employee can and cannot do, not merely list diagnoses?
2. Have the employee and relevant medical professionals been consulted?
3. Can duties, schedules, tools or working arrangements reasonably be adapted?
4. Are suitable vacancies, redeployment, medical boarding or disability-benefit options genuinely available?
5. Can we explain, with evidence, why alternatives were not feasible?

SCENARIO: CAN DISMISSAL BE AVOIDED?

SCENARIO

A lecturer can no longer stand for extended practical sessions, but can teach some theory and supervise students remotely. Is dismissal the only option?

Must we create a completely new post?

Not necessarily. Accommodation is context-specific and does not require every imaginable measure regardless of hardship. It does require a genuine, documented enquiry.

Take-home: The question is not whether the employee can still do the original job unchanged, but whether continued employment is reasonably feasible after proper investigation.

FIVE INSTITUTIONAL CHECKS

- Review disciplinary policies against the 2025 Code and binding agreements
- Update parental leave policies and payroll and leave workflows following Van Wyk
- Audit fixed-term renewals and communications that could create expectations
- Require documented accommodation investigations before ill-health incapacity dismissals
- Train line managers: what they say, promise and document can create legal risk

A DEFENSIBLE HR DECISION COMBINES THE CORRECT LEGAL PRINCIPLE, RELIABLE EVIDENCE, FAIR ENGAGEMENT AND A CLEAR WRITTEN EXPLANATION.



Legal principle



Reliable evidence

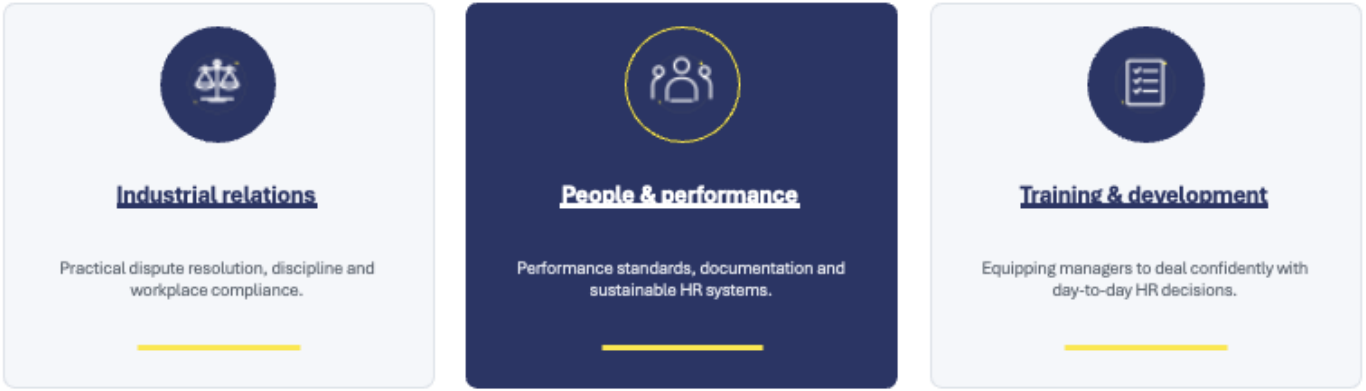


Fair engagement



Written explanation

PUTTING LABOUR LAW INTO PRACTICE



Practical support from grok HR business solutions and GDPEO