

# SA LABOUR CONSULTING

*Quick access to professional advice & assistance  
in the labour relations environment.*



**SALABOUR**  
Consulting

Informed managers can act confidently in complex workplace situations.

### MISSION:

Provide quick access to professional advice & assistance in dealing with labour relations

### Team – Associates:

IR Practitioners / Organising Officials: GDPEO, HASEA, FRA  
Labour Attorneys: Barnard Inc Attorneys; De Beer Makoele Attorneys



# ABOUT US

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**Sa Labour Consulting** - Labour Relations Consultancy firm, based in Pretoria

Dedicated WhatsApp / Contact:  
**061 30 60 800**

Email correspondence / Enquiries  
**[info@sa-labour.co.za](mailto:info@sa-labour.co.za)**

All Industries

Business owners need to employ sound legal advice & assistance with **labour law** and matters relating to **industrial relations**.

# SERVICES

At **SA Labour Consulting** our main focus is to assist **small and medium businesses**, across **all industries**, to increase productivity, reduce workplace conflict, eliminate risks and ultimately achieve business goals.



Our professional **IR consultation services** include advice and assistance with:

- ✓ Employment Contracts
- ✓ Company Policies, Procedures & Disciplinary Code
- ✓ Dealing with probationary employees
- ✓ Poor Work Performance Management & Counselling
- ✓ Grievance Procedures
- ✓ Dealing with Misconduct
- ✓ Disciplinary Warning Forms & Notices
- ✓ Dealing with Incapacity situations
- ✓ Chairing of Disciplinary Hearings
- ✓ Dealing with Trade Unions
- ✓ Retrenchments / Lay-Offs / Short Time
- ✓ Dealing with Strikes / Lock-outs / Picketing
- ✓ Bargaining Council Agreements
- ✓ Minimum Wages
- ✓ Representation at CCMA & Bargaining Councils
- ✓ Display of required information (Wall Charts: BCEA, EEA, OHSA)



# The Code of Good Practice for Managing Exposure to Sars-CoV-2 in the Workplace

Issued by NEDLAC – 24 June 2022

## PURPOSE:

- ➔ Provide a legal framework
- ➔ Guidance  
Assessments, Plan  
Implementation, Absenteeism,  
Accommodate

WHO?

ALL WORKPLACES

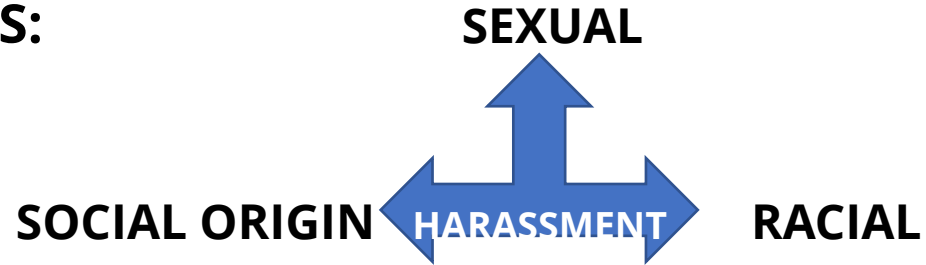
DISMISSAL FOR REFUSING TO VAXINATE – BE CAREFUL





Seeks to eliminate **ALL FORMS** of  
**HARASSMENT**

**TYPES:**



**Def: UNWANTED CONDUCT, DIGNITY, HOSTILE, DISCRIMINATE**

**Terms:** Bullying, Intimidation, Vertical/Horizontal, Online

**Examples:** Slandering / Spreading rumors

Humiliating / Insulting behavior

Withholding / Supplying incorrect info

Sabotage of work performance

Demotion / Disc action without justification

**EMPLOYERS must be AWARE of the Code & Implement AWARENESS TRAINING initiatives to inform Employees of the various types of harassment.**

# The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace.

\* Effective 18 March 2022.

(Not only sexual harassment).



# BCEA – Earnings Threshold:

**Determination published 7 Feb 2022**

Determination of an income bracket – value – set to protect vulnerable employees.

## IMPACT?

**BCEA: Exclusions of certain section in the Act:**

Sections 9, 10, 11, 12, 14, 15, 16, and 17(2) and 18(3)

Ordinary hours of work, overtime, compressed working weeks, averaging of hours of work, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work, and pay for work on public holidays.

**EEA: Unfair discrimination disputes**

Usually CCMA – Arbitration;

Over threshold – LC for adjudication.

**LRA: Deeming Provisions, TES / FTC**

**Amount vs Validity - Until a new threshold is published, sometimes many years.**

1 Jul 2014 – R205 433.30	7 Years	
1 Mar 2021 – R211 596.30	1 Year	3% increase
1 Mar 2022 – R224 080.48	?	6% increase

**NB: Employment contract take precedence, despite Earnings Threshold.**



# NATIONAL MINIMUM WAGE

## APPLICABLE to All workers in RSA

1 Jan 2019	<b>R20-00</b>	Farmworkers	R18
		Domestic workers	R15
		Expanded Public Works	R11
1 Mar 2022	<b>R23.19</b>	Farmworkers	R23.19
		Domestic workers	R23.19
		Expanded Public Works	R12.75



## Rate Increase:

R20.00	2019	
R20.76	2020	3,8%
R21,69	2021	4,5%
R23,19	1 Mar 2022	7%

## Commission included to determine compliance with NMW?

### Case Law:

*Atlas Finance (Pty) Ltd v CCMA & Others*

**May 2022 – LC – JR57/21**

**CCMA:** Ruled contravention – ordered **R1m + backpay**

**LC:** Worker not need to earn NMW for **each hour**, must earn NMW **on average** over period

**Award set aside**

# Sec 73 CLAIMS FOR NON-PAYMENT (BCEA)

Introduced - 2019

**Previously:** DOL – Inspector – Compliance Order – Order of Court

**Now:** CCMA – Award – Order of Court

Earnings Threshold- exceed – dispute go to LC / High Court / Small Claims Court)

**Requirements?**

- ➡ Must be an employee
- ➡ Relate to BCEA / NMW

## Case Law:

**TERS / UIF payment disputes**  
*Abanqobi Workers Union on behalf of Mnguni & Others and J & D Construction* (2020)

**Claim:** Company failed/refused to pay money over

**CCMA Ruling:** Lack jurisdiction, not within 73A



**CCMA**

COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION







## CONTROVERSIAL SUBSTANCE

### "DECRIMINALIZE" vs "LEGALIZE"

Court Ruled adults may, for their personal consumption, use, possess and cultivate cannabis in private

#### Cannabis for Private Purposes Bill, 2020

**New Bill** currently being deliberated

#### WHAT DOES IT MEAN FOR THE WORKPLACE?

Remain prohibited substance, like alcohol or drugs

Consider OHSA and workplace environment

# DECRIMINALIZATION OF MARIJUANA

## CASE LAW

*Bernadette Enever v Barloworld Equipment*, JS 633/20 & JS926/20 - Delivered 1 June 2022, as delivered on

### Workplace – Zero Tolerance Policy

**Claim:** Admin position / desk job – 13 years service  
Use for anxiety & Medical reasons  
Unfair Discrimination & Automatically Unfair dismissal

**LC** Reasons not persuasive  
Employee made clear she will not stop  
Actions amounts to pure misconduct =  
  
Dismissal fair

# PARENTAL LEAVE

Introduced 1 January 2020

## **S27 BCEA “Family Responsibility Leave”**

- Birth of child – 3 days per annum

## **Replaced by Parental Leave**

**How Much:** 10 consecutive days

**When:** Birth of child  
Legal adoption of child under 2 years  
Child placed in care of prospective adoptive parent

**Payment:** Regulated by UIF

**Also:** Adoptive Parental Leave & Surrogacy Leave  
10 weeks



## # INSUBORDINATION

*Kaefer Energy Projects v CCMA & Others LAC – 26 October 2021*

### Employee's refusal to obey instructions to testify in CCMA

**Case brief:** Employee witnessed a workplace incident which resulted in a dismissal of a colleague  
Refused to testify in CCMA as key witness  
Employee Charged & also Dismissed

### WHAT DID THE COURTS FIND

**CCMA:** She did not commit Misconduct or try to protect a colleague. Employer should have subpoenaed her

**LC:** Agreed with the CCMA Award

**LAC:** CCMA missed the point altogether. Was reasonable instruction to testify. No valid reasons for refusal

DISMISSAL FAIR



## # TERMINATION BASED ON AGE

*Solidarity obo Strydom & Others v State Information Technology Agency - LC – 9 May 2022*

**Case brief:** Pension Fund retirement age is 60  
Employees continued to work after turning 60, some for many years  
2017 – 5 employees were issued termination notices

**Dispute:** Automatically Unfair Dismissal – discrimination (age)

### WHAT DID THE COURT FIND

**S187(2)(b) LRA:** A dismissal based on age is fair if the normal or agreed retirement age has been reached

Where employee works beyond retirement age, working on “borrowed time”

**Employer entitled to place employee on retirement at any point.**

Reference *Bank v Finkelsteyn (Snyman AJ) 2016*,





# THANK YOU

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[info@sa-labour.co.za](mailto:info@sa-labour.co.za) | [www.sa-labour.co.za](http://www.sa-labour.co.za)

061 30 60 800



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