

2025

Code of Good Practice on Dismissal



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What is the code?

- The Code Of Good Practice: Dismissals (Code) - Effective 4 September 2025 – repeals Schedule 8 of the Labour Relations Act, 66 of 1995 (Code of Good Practice: Dismissal) and the Code of Good Practice on Dismissal Based on Operational Requirements and introduces updated standards for workplace dismissals.
- The Code provides clearer guidance for employers, employees, unions, employer organisations and decision-makers to ensure dismissals for misconduct, incapacity, or operational requirements are fair.
- Strikes a balance between protecting employees from unfair treatment and operational concerns.

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"Dismissal" Defined

Dismissal includes:

- Termination of employment, with or without notice.
- Non-renewal or non-retention of a fixed-term contract where the employee reasonably expected renewal.
- Refusing to allow an employee to return after maternity leave.
- Re-employing only some employees after a mass dismissal, which may be unfair if not based on fair criteria.
- Constructive dismissal, where the employer's conduct makes continued employment intolerable for the employee.
- Changing terms to less favourable after a business transfer, which can amount to dismissal if the employee is disadvantaged.

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Core procedural standards

- Notify the employee of the alleged misconduct or reason for dismissal, preferably in writing and in a language they understand.
- Allow reasonable time for the employee to prepare and respond to the allegations.
- Permit the employee to be assisted by a co-worker or union representative during the process.
- Give the employee an opportunity to make representations before any decision is made.
- Communicate the outcome clearly and maintain records of the process and decision.

Procedures may be informal and adapted to the seriousness of the issue and the size of the business. Employers may deviate from standard procedures if justified by context.



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Misconduct

- Employers must show the existence of a *rule/standard* was reasonable, known to the employee, consistently applied, and the breach was serious enough to warrant dismissal in order for the dismissal to be considered fair.
- Dismissal is appropriate only when the employment relationship has become intolerable and progressive discipline (warnings, suspensions) would not prevent future misconduct.
- For unprotected strikes, the employer must: (i) issue clear ultimatums; (ii) explain the consequence of non-adherence to the ultimatum; and give the employees a reasonable chance to comply.
- Before dismissing employees for participation in unprotected strikes employers must also consider factors such as:

- The seriousness of the contravention;
- the strike's illegality;
- attempts by employees to comply with the law; and
- whether the strike was provoked by the employer's unlawful/unreasonable conduct.

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Probation

- Probation is a period to assess a new employee's suitability for the job and must not be used to deny permanent employment unfairly. The probation period should be set in advance and be reasonable for the role.
- Employers must provide reasonable guidance, such as training, instruction, or counselling, to help the employee meet required standards.
- Before confirming, extending, or dismissing after probation, the employer must allow the employee to make representations. Dismissal during or upon expiration of the probation period requires less rigorous processes and reasoning than after probation, but a fair process must still be followed.



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Incapacity & incompatibility

- For incapacity (poor performance, ill-health, or injury), employers must assess the cause, severity, and impact on the job, and consider alternatives such as changing duties or finding other suitable work before considering dismissal. If incapacity is due to a work-related illness or injury, employers have a greater duty to accommodate the employee.
- Incompatibility, such as inability to work harmoniously with others, is now treated as a form of incapacity. Dismissal is only justified if the breakdown in the working relationship is irretrievable and a fair procedure is followed.

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Special focus on small business

While the Code does not formally define a small business, it recognises that smaller employers may not have the resources for formal written procedures. The Code allows for simpler, oral, or streamlined processes, provided that the process remains fair. The emphasis is on substantive fairness rather than strict adherence to formalities.

Conversely, for large enterprises, the Code prescribes more formal and structured disciplinary and dismissal procedures. Larger employers are generally required to have written rules and policies, and to follow more detailed processes when handling dismissals, to ensure consistency, transparency, and accountability across the organisation. This helps protect both the employer and employees in the event of disputes.

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Aspect	Schedule 8 (Old Code)	2025 Code of Good Practice
Structure	Focused on general principles and procedures for dismissal	Expanded structure, consolidates operational requirements and provides more detailed guidance
Small Business	Limited flexibility for small businesses	Explicit recognition of small business constraints; allows less formal procedures
Probation	Required detailed, prescriptive guidance, evaluation, and a set process for extension or dismissal; stricter standards for fairness after probation	Allows a more flexible, context-driven approach to guidance and evaluation during probation, with process and support tailored to the employer's size and resources; lower threshold for fair dismissal during probation, but still requires a fair process
Operational Requirements	Addressed in a separate code	Integrated into main code, with standard section 189(3) notice template
Procedural Standards	Emphasized formal procedures	Allows informal, context-driven procedures; justified deviations permitted
Incompatibility	Not explicitly covered	Now included under incapacity, with guidance on fair process
Use of Probation	Unfair use deemed an unfair labour practice	Unfair use may constitute unfair dismissal

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Take-aways for employers

- Ensure workplace rules are clear, reasonable, and consistently applied, and maintain detailed records of disciplinary actions and dismissals.
- Adapt disciplinary and dismissal procedures to suit the size and resources of your business, but always meet the minimum standards of fairness.
- During probation, provide guidance and support, and before dismissing for incapacity or retrenchment, consider all reasonable alternatives.
- Use the standard section 189 notice template provided in the Code for retrenchments to ensure compliance.
- Be aware that collective agreements take precedence over the Code where they differ, so always check for applicable agreements.