



'WE DEMAND'



Much of the South African public has become immune to the sight of employees on strike, dancing and chanting (often in readily-printed t-shirts), with a 'spokesperson' on the scene beginning any interview with 'We Demand'.

While many of the strike actions are in industries where the general public is not directly affected, there are instances – such as the latest Post Office strike – that cause enormous distress to sections of the populace that are most vulnerable.

The taxi strike in January and the bus strike in April forced workers to try other forms of transport to get to work, often without success, thus affecting their employers. Often, employees trying to get to work arrive late or not at all and face disciplinary action as a result.

The unions hold organisations to ransom by threatening to remain on strike until their 'Demands' are met. For example, Eskom has had to go from a 'no increases, no housing allowance' stance to one of pacifying the unions with continuously rising offers.

In April, SAFTU and NUMSA threatened to make South Africa 'ungovernable' unless the R20 per hour minimum wage approved by the Cabinet in November 2017 was re-negotiated. The National Minimum Wage Bill was passed by the National Assembly in May of this year.

A particularly worrying aspect of many of the South African strike actions is the violence that accompanies them. Setting fire to vehicles, preventing those who want to work from doing so, and looting are the norm rather than the exception.

Just how legal are these strikes?

The legalities around striking

Section 213 of the Labour Relations Act (LRA) defines a strike as "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory."

To understand the legal position when dealing with a strike action, one must first understand the difference between a protected strike and an unprotected strike.



JUST HOW LEGAL ARE THESE STRIKES?

A Protected Strike is one where the striking labour force has adhered to the rules and regulations of the LRA. These involve approaching the CCMA or Bargaining Council for a certificate of non-resolution and giving the employer a minimum of 48 hours' notice before striking, while informing their employer why they are taking strike action. Employees may also embark on a protected strike if 30 days has passed from the time that they lodged a dispute with the CCMA or Bargaining Council even if a certificate of non-resolution has not been issued. The employer may not, therefore, take any disciplinary action, unless there are serious acts of misconduct such as property damage, assault, intimidation, etc. Temporary staff may be employed to perform the duties of striking workers.

An Unprotected Strike on the other hand does not adhere to the rules and regulations of the LRA. Employers are empowered to give workers a series of ultimatums in an attempt to get the employees to return to work. The ultimatums must contain the employer's expectations and advise employees that disciplinary action (including dismissal) may be taken should the workers decide to ignore the ultimatum.

Parliament is considering amendments to the Labour Relations Act (LRA). For an interesting opinion piece on the validity of this action, read ['New amendments to labour legislation are likely to increase unprotected strikes'](#) by **Carin Runciman**, published in Business Day in February.

And as always, liaise with GEO for up-to-date advice on how to deal legally with any strike action.

Regards
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In This Issue

'We Demand' The war cry of South African strikers

GEO members are advised to subscribe to the CIRIS internet labour law advice site. It provides valuable information on all matters related to Labour Law. Contact Andre Rabe on 0824910708 or email him on andrer@geo.org.za



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Summary

What are the legalities around striking.

What is a protected strike?

What is an unprotected strike?



Section 213 of the Labour Relations Act (LRA) defines a strike as "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory."

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