

BE SHARP AT WORK

Your guide to dismissal, put together by your lawyers



The Legal&Tax team is dedicated to protecting our members from unfair working environments.



UNDERSTAND THE LAW

Know your rights.

In this guide, you'll find everything you need to know when facing the dismissal process, prepared by the Legal&Tax team of lawyers.

Remember – with Legal&Tax, you're never alone.

There are **three grounds** that could lead to your fair and legal dismissal:

1

CONDUCT

You behave in a way that is inappropriate for your company. If this happens, you need to be brought to a **disciplinary hearing**.

2

CAPACITY

You are not able to do your job properly. If this happens, you need to be brought to a **performance hearing**.

3

CHANGING OPERATIONAL REQUIREMENTS

The company no longer needs the work you were hired to do. If this happens, you need to be consulted.

To find out more, or to get a lawyer on your side, call **0860 587 587** or email info@legalandtax.co.za

I THOUGHT I WAS DOING A GREAT JOB

"I thought everything was going well until one day my manager said they had found someone else who could do my job better. Shocked, I contacted my Legal&Tax lawyer, who helped me get paid out 3 months' compensation for my unfair dismissal."

Thabo Dube, 28 | IT Technician | Benoni*



*Details have been changed to protect the identity of our members.

WHEN IS DISMISSAL UNFAIR?

If there is no good reason for it (based on the reasons mentioned), or if your company did not follow the correct dismissal procedures. Under these circumstances, you can challenge the dismissal. If you are part of a union, the union will help. If not, you can take the matter to the **CCMA** or an appropriate **bargaining council**. **This should be done within 30 days of the dismissal.**

BE PREPARED

Gather the following documents that may be needed for the CCMA:



Employment agreement/contracts



Notice to attend disciplinary hearings



Minutes of the disciplinary hearing



Minutes of the appeal hearing

Why would I go to the CCMA?

If your dismissal is found to be unfair, there are three possible outcomes:

1

REINSTATEMENT

You get your original job and position back.

2

RE-EMPLOYMENT

You get the same job back, but start afresh.

3

COMPENSATION

You get paid out, to make up for your unfair dismissal.

I THOUGHT MY POSITION WAS SECURE

"I thought my position would be waiting for me after maternity leave. So I was shocked to find out via email that I would no longer be needed at the firm I had worked at for the last five years. Panicked, I immediately contacted Legal&Tax.

My Legal&Tax lawyer sent a letter to my boss telling him that this constituted unfair dismissal and that, should I not be reinstated, he would contact the CCMA.

Thankfully, Legal&Tax was able to get me my job back."

Sindi Mabuso, 33 | Receptionist | eThekweni*



GLOSSARY OF TERMS:

DISCIPLINARY HEARING

A meeting at which the behaviour of a member of an organisation, business or profession is examined in order to decide on the outcome.

PERFORMANCE HEARING

A procedure to help and advise/counsel employees who are not performing in a way that is expected of them. The aim of a performance hearing is to promote efficient performance.

CCMA

The Commission for Conciliation, Mediation and Arbitration (CCMA) is an independent body of law which is mainly state-funded. The CCMA's main function is to resolve disputes between employees and employers.

BARGAINING COUNCIL

Certain industries have trade unions and employers' organizations, which have bargaining councils in order to solve labour disputes.

WHAT IS CONSIDERED UNFAIR DISMISSAL?

Dismissal is unfair if an employee:

- Supported an illegal/unprotected strike or protest;
- Refused to do the work of a striking or locked out co-worker;
- Is forced to accept a demand;
- Took action against an employer by exercising a right;
- Is pregnant.

It is also considered unfair dismissal if:

- An employer discriminated against a worker because of: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.
- An employer cannot prove
 - A worker's misconduct or inability;
 - That the employer's operational needs are valid;
 - That the dismissal procedure was fair.

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