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# Newsletter

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## STRIKE, A LAST RESORT

An In South Africa, it is quite prevalent at this time of the year (mid-year) for the work-force, especially in industries such as mining and petroleum, to embark on strike action.

The concept of collective bargaining is accepted, and recognized, in South African law. It is essentially defined as, a voluntary process by means of which

employees in an organised relationship negotiate with their employers or employers in an organised relationship, with regard to employment conditions or disputes arising therefrom with the object of reaching an agreement on these matters.

The right to bargain collectively normally entails employees, usually through trade

unions, negotiating with their employers in respect to conditions of employment. This is a right to negotiate (*ius negotiandi*) and not a right to enforce consensus (*ius contrahendi*) as consensus does not always result from negotiations between parties.

This type of relationship in governed by the Labour Relations Act 66 of 1995 (LRA),

in respect of which the LRA incorporates mechanisms stipulating processed and procedures to be followed in the process of collective bargaining, and consequences arising from failed negotiations. The LRA does not apply to the National Defence Force, the National Intelligence Agency and the South African Secret Service as these are essential services.

The right to strike is considered as a fundamental labour right of employees, and is fully recognised in South African law subject to compliance with the prescribed requirements. The right to strike should not be viewed in isolation but within the context of the employees' right to associate, organise and then to exercise their right to bargain collectively.

A strike is defined 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 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. Every reference to work in this definition includes overtime work whether it is voluntary or compulsory.

There are three elements which must be present before any strike action would qualify as a strike in terms of the LRA:

1. A number of specific strike actions or omissions, that is, i) a partial or complete refusal to work, ii) retardation

of work, iii) obstruction or work and the like;



2. Collective conduct by a number of employees (or past employees) of one or more employers'
3. A specific purpose such as remedying a grievance or resolving a dispute.

In terms in Section 64 of the LRA, every employee has a right to strike and every employer has a right to recourse of lock out.

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