AUTOMATICALLY UNFAIR DISMISSALS

An automatically unfair reason for dismissal, as the name implies, means that if the employee establishes the reason as the primary reason for a dismissal, the enquiry moves to the remedy to which the employee is entitled. The labour law provides that the employer in this instance does not get the opportunity to prove that the dismissal was either substantively or procedurally fair.

Definition

Dismissals for one of the following reasons will be regarded as "automatically unfair" because:

- the employee takes part in the activities or a union or workplace forum;
- the employee take part in a protected strike or protest action;
- if an employee is dismissed by reason of a transfer or for a reason related to a transfer in terms of section 197 or 197A;
- the employee made a protected disclosure in terms of the Protected Disclosures Act, 28 of 2000, is also automatically unfair. This provides protection to "whistleblowers" who report suspected or alleged criminal or other irregular conduct. The employee making the disclosure must bona fide have believed the information disclosed to be true.
- the employee refuses to accept and employer's offer on a matter of mutual interest between the employer and the employee, such as a wage increase;
- an employee refuses to do the work of someone who is on a protected strike or lockout, unless the work is necessary to prevent danger to life, personal safety and health;
  - of an employee's pregnancy or any reason related to her pregnancy;
  - the employee takes (or intends to take) action against an employer;
  - it relates to a transfer of the employer's business;
  - the employee made a disclosure in terms of the Protected Disclosures Act;
  - it is based on arbitrary grounds such as the employee's race, age, religion, sex, sexual orientation or family responsibility.

Exceptions

Dismissal based on arbitrary grounds will not be considered "automatically unfair" when:

- an employer retires someone who has reached the normal or agreed retirement age;
- dismissal is based on an inherent requirement of the job; (for example where a teacher at a biblical college changes to another faith.)

Compensation

Compensation for an automatically unfair dismissal carries a premium; an employee is entitled to a maximum of twenty-four months remuneration.

DISPUTES

Disputes over an "automatically unfair dismissal" must be referred immediately to the CCMA/ Bargaining Council.