



LERASA

LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

CHRISTMAS EDITION

NEWSLETTER

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Festive Season Message from the President of LERASA Mr Frikkie De Bruin



Dear LERASA Members,

As the holiday season draws near, I would like to use this time to consider the journey we have taken together this year. The LERASA community has grown, collaborated, and persevered this 2024, and I really appreciate your unrelenting dedication to our common goal. This time of the year is a time to connect, celebrate, and express gratitude. Let's take a minute to celebrate our collective successes and the significant milestones we've attained in furthering our profession and our members' interests. Your commitment to LERASA strengthens the legacy which is founded upon.

I urge you to treasure these times of happiness and leisure when you get together with loved ones. As we get ready for an exciting year full of opportunity and advancement, may this festive season offer you serenity, joy, and renewed vitality. We appreciate the vital role you have constantly played into the organisation. Looking ahead to 2025 and beyond, let us work together to continue building LERASA into a vibrant platform for progress, through our shared vision to enhance employment relations and meaningful debate and dialogue.

May this festive season bring you and your loved ones peace, joy, and well-deserved rest. Let us embrace the new year with renewed purpose and commitment to our shared mission.

Wishing you a safe and prosperous festive season!

Employment Equity Act & The Harassment Code; Empowering Women in the Workplace Webinar

The Labour and Employment Relations Association of South Africa organised a webinar on the 19 th of August 2024 in recognition of women's month and alignment with the international Labour Organisation's vision of promoting social justice. The key purpose of the webinar was to discuss the Employment Equity Act and the harassment code focusing on empowering women in the workplace. The session commenced with the president of LERASA Mr Frikkie De Bruin, extending a warm welcome and expressing his appreciation to all attending members. He further provided an introductory overview of the purpose of the session and highlighted Lerasa's mission and vision.

The webinar was facilitated by Advocated Raiz Itzkin, a well-known labour expert with over a decade of experience. Advocate Itzkin has phenomenal track record in the labour relations profession representing corporate, public-sector employees and trade unions. He has also served as a judge in the labour court and authored publications in the field. In his discourse, Advocate Itzkin addressed key legal aspects of workplace harassment, beginning with the broader statutory context, highlighting Section 23 of the Constitution which guarantees the right to fair treatment in the workplace, Section 10 which protects human dignity, and the Section 9(1) that ensures the right to equality and non- discrimination. He detailed how these legal aspects fit into the overall workplace, specifically under the Employment Equity Act.

The presentation covered both the old and the new code, with the focus on the new harassment code which offers a broader over of it in terms of the Employment Equity Act. In his presentation, he explained that the Act aims to eliminate unfair discrimination and promote equal opportunities in the workplace. It specifically identifies harassment as a form of unfair discrimination, based on factors such as race, gender, and sex. The new code expands on this by addressing various forms of harassment, including sexual harassment and bullying, and provides guidelines for employers to address these issues.

The presentation also covered how harassment is addressed under the new code, it states that it evaluates both the victim and the harasser perspective. The webinar was both informative and engaging, as it equipped participants with knowledge and a deeper understanding of the Employment Equity Act and the harassment code.



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LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

Invitation
to the LERASA
Webinar

19 AUGUST 2024
11h00 - 12h00

Meeting ID:
324 393 608 590
Passcode: beCMaY

If you would like more information
and to complete the registration
process, please contact Mr.
Oomang Parag via email at
oomangp@pscbsc.org.za

THEME:
Understanding the
Employment Equity Act
(EEA) & The Harassment
Code: Empowering
Women in the Workplace



10th ILERA Africa Congress Presentations

The Right to Strike and Essential Workers in Eswatini.

One of the prominent quest speakers, Mr Simphiwe Shabangu from Swaziland presented a topic on The Right to strike and Essential Workers in Eswatini. In his presentation, he explained that the right to strike is a fundamental human right recognized in international, regional, and domestic law, but its application differs for essential services due to their critical importance. He noted that in Eswatini, this right is influenced by various international instruments, such as the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights, which support freedom of association and the right to strike, if they follow national laws.

Shabangu highlighted that regionally, the African Charter on Human and Peoples' Rights and the SADC Charter of Fundamental Social Rights also protect these rights, allowing workers to engage in collective action. These documents provide a framework that acknowledges the importance of trade unions and the right to strike in defending workers' interests.

Furthermore, he explained that in Eswatini, the Constitution guarantees the right to form trade unions and engage in collective bargaining. However, the Industrial Relations Act limits strike in essential services, defining these as sectors critical for public safety, like health and water services. This definition has been upheld by the Industrial Court, which has confirmed the ban on strikes in these areas. In comparison, Shabangu pointed out that South Africa's legal framework also protects the right to strike but includes additional rules that allow workers in essential services to resolve disputes through compulsory arbitration. This creates a more structured way to handle conflicts without resorting to strikes.

Overall, Simphiwe Shabangu emphasized that both Eswatini and South Africa show a commitment to balancing workers' rights with the need to maintain essential services. Their legal frameworks align with international and regional standards, reflecting an understanding of the critical nature of these services while still recognizing the importance of workers' rights to gather and negotiate collectively.

Cultural Dance Group at ILERA Africa 10th Regional Congress



Challenges Regarding the Maintenance of Discipline and Effective Dispute Resolution within the Public-School Sector: A Case study of the Grey College Matter

The ILERA Africa 10 th Regional Congress also covered a presentation by Bernard Bushe and Stefan van Eck on the Topic Challenges regarding the maintenance of discipline and effective dispute resolution within the public-school sector: A case study of the Grey college Matter.

The Grey College case, presented by Bernard Bushe, highlights important challenges in the governance of public schools in South Africa. It centers on the conflict between principal Mr. Scheepers and the School Governing Body (SGB). Several key pieces of legislation, including the South African Schools Act and the Employment of Educators Act, outline the roles of different authorities such as the Minister, the Head of Department (HOD), and the SGB.

The dispute began when the SGB attempted to remove certain duties from Scheepers, claiming they had the authority to do so under the Schools Act. However, the High Court ruled in favor of Scheepers, stating that only the HOD has the power to discipline a principal. This decision was later upheld by the Supreme Court of Appeal, which emphasized that the SGB acted unlawfully.

After this ruling, the SGB sought to have the Council for Educators investigate Scheepers based on a confidential report. The High Court found that the Council had not conducted a proper investigation, leading to the dismissal of the SGB's claims. The Constitutional Court later confirmed this ruling, stating that the Council must carry out its own investigations into allegations against educators.

This case reveals the difficulties caused by multiple authorities having overlapping powers, which can create confusion and hinder effective governance. Recommendations include improving communication and coordination among governing bodies, strengthening labor dispute resolution processes, reviewing the regulatory framework of the Council for Educators, and clarifying the roles of different authorities.

Overall, the Grey College case demonstrates the need for a clearer framework and better communication to ensure fair treatment of educators within the public school system.



LERASA Delegates attending ILERA Africa 10th Regional Congress

A Basic Income Grant for South Africa From an Informal Economy Perspective: Lessons From Selected SADC Countries.

Kamalesh Newaj was one of the individuals who responded to the call for papers at the ILERA Congress. His topic focused on, A Basic Income Grant for South Africa from an Informal Economy Perspective: Lessons from Selected SADC Countries. This keeps the original title intact while improving the flow of the sentence. The paper presented by Kamalesh Newaj explored the idea of a Basic Income Grant (BIG) in South Africa to include informal workers in the social security system. This proposal connects to the constitutional right to social security and looks at lessons from Namibia and Mauritius.

South Africa has a high number of informal workers but does not provide them with support, despite having a social security system that includes some benefits. Current laws, like the Unemployment Insurance Act, do not help informal workers, leaving many without assistance. Discussions about a BIG have been happening for over twenty years, but little progress has been made. The COVID-19 pandemic led to temporary financial help through the COVID-19 Social Relief of Distress Grant, which showed the need for support for marginalized groups. While this grant helped reduce poverty, creating a universal BIG raises question about whether it would be affordable and sustainable, especially given the large gap between rich and poor in South Africa.

The paper also mentions international guidelines from the ILO, which supports basic income security for those who cannot earn enough money. However, it warns that poorly designed universal grants could make inequality worse. In Namibia, a short-term BIG project had positive effects on reducing poverty and encouraging economic activity, but it did not last long. Mauritius, on the other hand, has a strong social security system that helps various groups, including informal workers, leading to lower inequality.

In conclusion, the authors argue that South Africa needs to include informal workers in its social security system to meet constitutional rights and global goals. They suggest focusing on a means-tested income support system instead of a universal BIG. They also recommend increasing the current COVID-19 grant amount and reevaluating the criteria used to determine who qualifies for assistance.



LERASA Delegates attending ILERA Africa 10th Regional Congress

Case Law: NUMSA obo Members v. BMW (South Africa) (Pty) Ltd

This case involves an application brought by the National Union of Metalworkers of South Africa (NUMSA) on behalf of its members against BMW (South Africa) (Pty) Ltd. The case was heard in the Labour Court, and its main focus was the union's attempt to secure relief in the context of ongoing disciplinary proceedings and potential claims of unfair dismissal.

The Labour Court recently dismissed an urgent application brought by the National Union of Metalworkers of South Africa (NUMSA) on behalf of its members against BMW (South Africa) (Pty) Ltd. The application sought to halt ongoing disciplinary proceedings and obtain a final ruling on procedural fairness. However, the court found that NUMSA's arguments failed to meet the strict legal requirements for such intervention. NUMSA argued that the case warranted urgent consideration due to the potential impact of the disciplinary proceedings on its members. The Labour Court agreed to hear the matter on an urgent basis, acknowledging that NUMSA had demonstrated sufficient grounds for urgency. However, the court emphasised that its jurisdiction to intervene in incomplete disciplinary processes is limited to exceptional circumstances. After reviewing the facts of the case, the court determined that NUMSA had failed to demonstrate any exceptional circumstances that would justify intervention before the disciplinary process was completed. NUMSA also requested the court to make a final determination on whether BMW's disciplinary process was procedurally fair. The Labour Court rejected this request, stating that such determinations fall under the jurisdiction of the Commission for Conciliation, Mediation, and Arbitration (CCMA) or a bargaining council. These forums are better equipped to address procedural fairness issues by evaluating evidence during arbitration.

The court further observed that, at a prima facie level, there were no apparent procedural irregularities in BMW's process, but the final assessment should be made in the appropriate forum. The union contended that the ongoing disciplinary process could lead to procedurally unfair dismissals, but the court reiterated that such claims must follow the dispute resolution mechanisms outlined in the Labour Relations Act (LRA).

The LRA provides a structured pathway for addressing unfair dismissal disputes through the CCMA or bargaining councils, which negates the need for premature intervention by the Labour Court. The court emphasized that NUMSA's members had access to these alternative remedies and that their concerns about procedural fairness would be better addressed through those channels. NUMSA also sought an interdict to stop the disciplinary proceedings. However, the Labour Court found that the union had not established a clear right to the relief sought or demonstrated irreparable harm. The court also noted that NUMSA's members had adequate alternative remedies available under the LRA, further undermining the basis for the application. As a result, the application for an interdict was dismissed.

Finally, the court considered NUMSA's conduct in bringing the application and concluded that a costs order was justified. The court determined that the union's premature approach, bypassing the prescribed dispute resolution mechanisms, warranted an adverse costs award. This case reinforces the Labour Court's stance that intervention in incomplete disciplinary processes should only occur in exceptional circumstances. NUMSA's failure to meet the required legal standards and the availability of alternative remedies under the LRA ultimately led to the dismissal of the application. The decision serves as a reminder of the importance of following established dispute resolution processes and reserving court intervention for extraordinary situations.





LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

VISION

To become a vibrant Organisation enhancing Employment Relations through debate and dialogue.

MISSION

- To facilitate an ongoing forum for constructive relationship building.
- To deal with themes of relevance to the South African Employment Relations community.
- To enhance the understanding, knowledge and practices of Employment Relations at National, Regional and branch levels in South Africa.

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