

1 Introduction

(1) This code of good practice is intended to provide practical guidance on picketing in support of any protected strike or in opposition to any lock-out. It is intended to be a guide to those who may be contemplating, organising or taking part in a picket and for those who as employers or employees or members of the general public that may be affected by it.

(2) Section 17 of the Constitution recognises the right to assemble, to demonstrate, to picket and to present petitions. This constitutional right can only be exercised peacefully and unarmed. Section 69 of the Labour Relations Act, No. 66 of 1995, seeks to give effect to this right in respect of a picket in support of a protected strike or a lock-out.

(3) This code does not impose any legal obligations and the failure to observe it does not by itself render anyone liable in any proceedings. But section 69(5)(d) of this Act provides that the Commission must take account of this code of good practice when it establishes picketing rules.

(4) Any person interpreting or applying this Act in respect of any picket must take this code of good practice into account. This is the effect of section 203 of this Act. This applies to the Commission, Labour Court, the Labour Appeal Court, and the South African Police Services.

(5) This code does not apply to all pickets and demonstrations in which employees and trade unions may engage. It applies only to pickets held in terms of section 69 of this Act. That section has four elements:

(a) The picket must be authorised by a registered trade union;

(b) Only members and supporters of the trade union may participate in the picket;

(c) The purpose of the picket must be to peacefully demonstrate in support of any protected strike or in opposition to any lock-out;

(d) The picket may only be held in a public place outside the premises of the employer or, with the permission of the employer, inside its premises. The permission of the employer is subject to overrule by the CCMA, if such permission is unreasonably denied.

(6) If the picket complies with these four elements then the ordinary laws regulating the right of assembly do not apply. These laws include the common law, municipal by-laws and the Regulation of Gatherings Act, 205 of 1993.

(7) A picket with purposes other than to demonstrate in support of a protected strike or a lock-out is not protected by this Act. The lawfulness of that picket or demonstration will depend on compliance with the ordinary laws.

2. Authorisation

(1) A picket contemplated in section 69 of this Act must be authorised by a registered trade union. The authorisation must be made in accordance with the trade union's constitution. That means that there must either be a resolution authorising the picket or a resolution permitting a trade union official to authorise a picket in terms of section 69(1). The actual authorisation should be formal and in writing. A copy of the resolution and, if necessary, the formal authorisation ought to be served on the employer before the commencement of the picket.

(2) The authorisation applies only to its members and its supporters.

3. Purpose of the picket

(1) The purpose of the picket is to peacefully encourage non-striking employees and members of the public to oppose a lock-out or to support strikers involved in a protected strike. The nature of that support can vary. It may be to encourage employees not to work during the strike or lock-out. It may be to dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer.

(2) The strike must be a protected strike. In normal cases, employees picket at their own place of work in support of their strike against their own employer. Cases do arise, however, where employees picket at their own place of work in support of a strike between another employer and its employees. This is what is contemplated in section 66 as a "secondary strike". In this case, in order to be protected, the picket must further satisfy the requirements of a lawful secondary strike in terms of section 66 of this Act. This is because the definition of "secondary strike" in section 66 includes "conduct in contemplation or furtherance of a strike". A picket is "conduct in contemplation or furtherance of a strike."

(3) The requirements for a protected secondary strike are-

(a) the strike that is to be supported by the secondary strike must itself be a protected strike;

(b) the employer of the employees taking part in the secondary strike must have received written notice of the proposed picket at least 7 days prior to its commencement; and

(c) the nature and extent of the secondary strike must be reasonable in relation to the possible direct or indirect affect that the secondary strike may have on the business of the primary employer.

(4) If a picket is in support of an unprotected strike, the picket is not protected by section 69 of this Act.

(5) Pickets may be held in opposition to a lock-out. Section 69(1) does not distinguish between protected and unprotected lockouts. This means that a picket may be authorised and held in opposition to a protected or an unprotected lock-out.

4. Picketing rules

(1) The registered trade union and employer should seek to agree to picketing rules before the commencement of the strike or picket.

(2) A collective agreement may contain picketing rules. When they negotiate an agreement the following factors should be considered-

(a) the nature of the authorisation and its service upon the employer;

(b) the notice of the commencement of the picket including the place, time and the extent of the picket;

(c) the nature of the conduct in the picket;

(d) the number of picketers and their location;

(e) the modes of communication between marshals and employers and any other relevant parties;

(f) access to the employers premises for purposes other than picketing e.g. access to toilets, the use of telephones, etc;

(g) the conduct of the pickets on the employer's premises; and

(h) this code of good practice.

(3) The factors listed in subparagraph (2) apply to the determination of picketing rules by a commissioner.

5. Pickets on the employer's premises

(1) A picket may take place on the employer's premises with the permission of the employer. The permission may not be unreasonably withheld. In order to determine whether the decision of the employer to withhold the permission is reasonable, the factors which should be taken into account include-

(a) the nature of the workplace e.g. a shop, a factory, a mine etc;

(b) the particular situation of the workplace e.g. distance from place to which public has access, living accommodation situated on employer premises, etc;

(c) the number of employees taking part in the picket inside the employer's premises;

(d) the areas designated for the picket;

(e) time and duration of the picket;

(f) the proposed movement of persons participating in the picket;

(g) the proposals by the trade union to exercise control over the picket;

(h) the conduct of the picketers.

6. Conduct in the picket

(1) The registered trade union must appoint a convenor to oversee the picket. The convenor must be a member or an official of the trade union. That person should have, at all times, a copy of section 69 of this Act, a copy of these guidelines, any collective agreement or rules regulating pickets and a copy of the resolution and formal authorisation of the picket by the registered trade union. These documents are important for the purposes of persuading the persons participating in the picket to comply with the law. These documents may also be important to establish the lawfulness and the protected nature of the picket to the employer, the public and in particular to the police.

(2) The convenor must notify the employer, the responsible person appointed in terms of section 2(4)(a) of the Regulation of Gatherings Act, 1993 and the police of the intended picket. The notice should contain:

(a) notification that the picket is in compliance with section 69 of this Act;

(b) the name, address and telephone number of the trade union and the convenor;

(c) details of the picket, including the details of the employer being picketed, the date of the commencement of the picket, the location of the picket, etc.

(3) The employer must, on receipt of the notification, provide the convenor with the name, address and telephone number of the person appointed by the employer to represent it in any dealings arising from the picket.

(4) The registered trade union should appoint picket marshals to monitor the picket, they should have the telephone numbers of the convenor, the trade union office and any persons appointed to oversee the picket, in the absence of the convenor. The marshals should wear arm bands to identify themselves as marshals. The trade union should instruct the marshals on the law, any agreed picketing rules or where no agreed rules exist any picketing rules that have been stipulated by the CCMA, this Code of Conduct and the steps to be taken to ensure that the picket is conducted peacefully.

(5) Although the picket may be held in any place to which the public has access, the picket may not interfere with the constitutional rights of other persons.

(6) The picketers must conduct themselves in a peaceful, unarmed and lawful manner. They may-

(a) carry placards;

(b) chant slogans; and

(c) sing and dance.

(7) Picketers may not -

(a) physically prevent members of the public, including customers, other employees and service providers, from gaining access to or leaving the employers premises;

(b) commit any action which may be unlawful, including but not limited to any action which is, or may be perceived to be violent.

7. Role of the police

(1) It is not the function of the police to take any view of the merits in particular of the dispute giving rise to a strike or a lock-out. They have a general duty to uphold the law and may take reasonable measures to keep the peace whether on the picket line or elsewhere.

(2) The police have no responsibility for enforcing the Labour Relations Act. An employer cannot require the police to help in identifying pickets against whom it wishes to seek an order from the Labour Court. Nor is it the job of the police to enforce the terms of an order of the Labour Court. Enforcement of an order on the application of an employer is a matter for the courts and its officers, although the police may assist officers of the court when there is a breach of the peace.

(3) The police have the responsibility to enforce the criminal law. They may arrest picketers for participation in violent conduct or attending a picket armed with dangerous weapons. They may take steps to protect the public if they are of the view that the picket is not peaceful and is likely to lead to violence.

8. General rights, obligations and immunity

(1) A person who takes part in a picket protected in terms of this Act does not commit a delict or a breach of contract. This means that the employer may not sue a person or a union for damages caused by a picket.

(2) The employer may not take disciplinary action against an employee for participating in a lawful picket. Where the employee's conduct during a picket constitutes misconduct the employer may take disciplinary action in accordance with the provisions of this Act.