

What an employer should do in case of national protest action

From time to time there are calls from civil society or trade unions for citizens to participate in protest action. This could result in employees staying away from work. Given the possibility of widespread disruption, the question is how employers should respond to such situations.

Assuming employers adopt a neutral stance, they are faced with several possible scenarios:

1. Employees who apply for leave in order to participate in the protest action.
2. Employees who insist that they will stay away in support of the protest action, because they believe they have the right to do so (without applying for leave).
3. Employees who apply for leave in fear of disruption to transport or possible violence.
4. Employees who merely fail to arrive for work on the day without having applied for leave.

Some employers can ill afford widespread absenteeism from an operational perspective. Others may be less affected.

Protest action that is protected

A national stay-away from work is not necessarily “protected protest action” in terms of the Labour Relations Act. Section 77 of the Act makes provision for “Protest action to promote or defend socio-economic interests of workers”. For protest action to be protected it is necessary for a registered trade union or federation of trade unions to initiate the process by referring it to The National Economic Development and Labour Council (NEDLAC) for consideration. If the matter remained unresolved, it is also necessary to give 14 days’ notice of the commencement of the protest action.

If the above requirements have been met, workers are free to participate in the protest action and no disciplinary action may be taken against those who stay away from work.

Unprotected protest action

If the requirements of the Act have not been met, workers who participate in a stay away will not enjoy the protection afforded by the Act. This would not necessarily result in action being taken against participating employees. Looking at above mentioned scenarios, we advise as follows regarding absenteeism as a result of “unprotected” protest action:

1. If employees apply for occasional leave because they wish to participate in protest action, it is up to each employer to decide whether such leave should be granted or not. Employers that support the protest action may even decide to give employees paid time off. Others may decide to grant unpaid leave.

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2. Employees who deliberately stay away from work merely because they feel entitled to do so (without applying for leave), would be guilty of misconduct and may face disciplinary action.
3. Employers should give favourable consideration to applications for occasional leave if there are employees who have good reason to believe that their transport to work may be disrupted, or where they have well founded fears of violence related to the anticipated protest action.
4. There may be employees who merely fail to arrive for work on the day. There could be various reasons for their being absent. It would be advisable for employers to make contingency plans, and to inform employees in advance to immediately communicate with their respective supervisors if they are unable to come to work. What action an employer takes would depend on the reasons for the absence.

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.