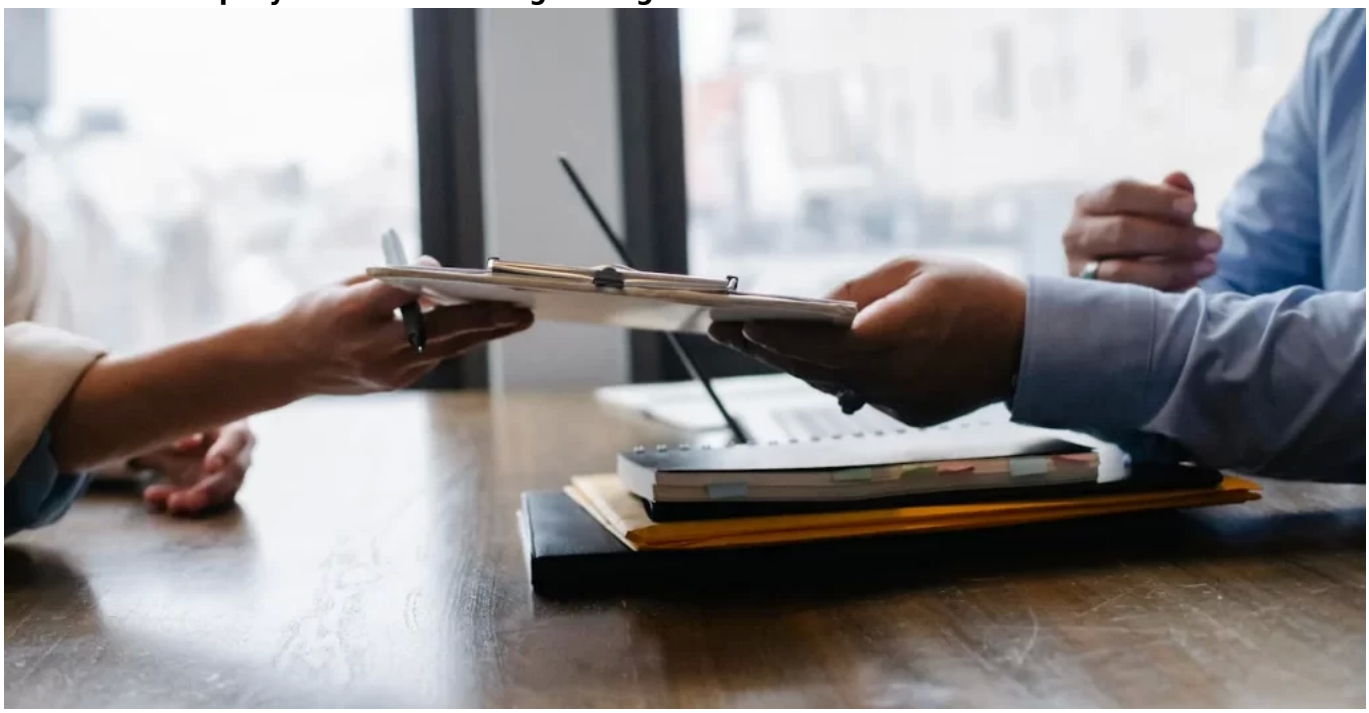
Don’t fire employees for refusing to sign contracts



Section 187 of the LRA effectively prohibits the dismissal of employees for exercising their basic rights. Amongst others these basic rights include the right to be of a certain race, age or gender, to be pregnant, to join a trade union, to participate in legitimate union activities, to blow the whistle on the employer or to refuse to accept a demand from the employer relating to an issue of mutual interest. For example, it is automatically unfair to fire employees who refuse a change in terms and conditions of employment such as a change in pay.

Firing employees for exercising such rights is automatically unfair. This means that, if it is established that the employer’s reason for firing the employees was due to the employee exercising one of these basic rights the employer will not get a chance to justify its actions because they are, by definition, not justifiable.

Due to the sacred nature of these basic rights the courts take a very dim view of the perpetration by employers of such automatically unfair dismissals, and are likely to come to the aid of the victims in such cases.

In Malepe and Others v Mega Volt Loden Electrical (Pty) Ltd (Lex Info 4 February LAC case number 2025JA42/23) Mega Volt took over the business that had employed the 12 applicant employees, but the 12 employees refused to sign new employment contracts. Later, the 12 employees and all of their colleagues left work early one day and were all charged via a disciplinary process. The 12 employees were fired but all their colleagues only received warnings.

The 12 employees referred a dispute to the bargaining council, and later to the CCMA. Ultimately, the CCMA found that it had no jurisdiction because the essence of the employees’ claim was that they had been fired due to their refusal to sign the new contracts, and that this amounted to a claim for automatically unfair dismissal that had to be dealt with by the Labour Court.

As a result of the shifting of the case from the bargaining council to the CCMA and then to the Labour Court, and due to other reasons the matter reached the Court a year after the dismissal had occurred. The employees therefore applied to the Labour Court for condonation of lateness.

The Labour Court did not consider the aspect of prospects of success but refused condonation on the grounds that the 12 applicants had failed to justify portions of the delay in referring their matter to court.

The Labour appeal Court decided that, while the employees had not handled the referral process as well as they should have, their right to have their dispute heard outweighed any prejudice that the employer might suffer due to the delayed process. The Court decided that it would be in the interests of justice to allow the matter to proceed and granted the employees' application for condonation.

In my view this has put the employer at a major disadvantage because it is likely to be established that there was no rational reason for firing the 12 employees and not their colleagues who had committed the same offence, and that the true reason for the dismissal was their refusal to sign the contracts.

Even before the commencement of the costly court case on the dismissals (still to be heard) the employer will already have spent a great deal of time, effort and money fighting the condonation matter. These major costs would not have arisen if the employer's decision makers had been trained to understand the laws protecting employees from unfair dismissals.