

COSATU MASS PROTEST ACTION AND WHAT EMPLOYERS NEED TO KNOW

27 September 2017 marked a day deemed as the largest post-apartheid protest in South Africa. In a bid to “shut down” the country, COSATU and SACP embarked on protest action highlighting a call for President Jacob Zuma's resignation and an end to corruption and state capture.

Although the protest action itself was compliant with the terms of Section 77 of the Labour Relations Act 66 of 1995 (“LRA”), as amended, and was therefore protected i.e. legal, the burning question is how should Employers react to protest action of such magnitude and do businesses have any recourse in respect of employees who took part from a labour law perspective?

COSATU assured workers that they will face no disciplinary action for participating in the protest on 27 September 2017. Indeed COSATU was correct given that COSATU ensure compliance with the provisions of the LRA before embarking on the protest action. COSATU referred a section 77(1)(b) of the LRA application to NEDLAC however the matter remained unresolved and subsequently, a

certificate was issued on 22 August 2017 and COSATU on 04 September 2017 issued notice in terms of section 77(1)(d) of its intention to proceed with protest action.

In other words, COSATU has adequately followed legal process leading up to the protest action, but what does this mean for Employers?

It is vital for Employers to note that any employee is entitled to participate in a **protected** protest action and more importantly an employee who elects to participate in the protest action may not be disciplined for being absent from work. The reason behind this is that employees enjoy the same protection as that in the case of a protected strike. It is furthermore important to note that the principle of no-work-no-pay will apply in these circumstances and Employers will still retain the right to discipline employee in circumstances where the employees misconduct themselves whilst participating in the protected protest action.

Notwithstanding the above, an employee engaged in an essential service may not participate in the **protest action** and employees engaged in

maintenance service may only participate if permitted by the agreement regulating the particular maintenance service.

Employers should therefore always ensure that they seek proper advice or guidance when dealing with matters of this nature given that employees who elect to participate in a protected strike or protest action may not be disciplined for exercising these rights conferred onto them in term of the LRA. Employers who wish to obtain a better understanding of these rights and/or who requires assistance with matters of this nature are welcome to contact Strata-g Labour Solutions.

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