



OTTO KRAUSE INCORPORATED

LABOUR DISPUTES: CLIENT INFORMATION SHEET

An explanation of how workplace disputes are resolved in South Africa, and the particulars we require in order to advise and to act for you — whether you are the employer or the employee

Client name	
File / matter reference	
Attorney dealing	
Date completed and returned	

HOW TO USE THIS DOCUMENT

The first part of this document explains, in general terms, how labour disputes are dealt with in South Africa. It is written for the person who has not been through the process before, and it is intended to give you your bearings. It is general information and not advice upon your own matter, which will depend upon its own facts.

The second part is a form in which we ask you for the particulars of your dispute. It may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Where you are unsure of an answer, leave the block blank. We shall go through the form once we receive it and contact you about anything which still needs to be resolved. You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

Please deal with the questions concerning dates first, and return the form to us as soon as you are able. The time limits in labour matters are short and they are strictly applied.

It is not necessary to attach any supporting documentation at this stage. A list of the documents we shall eventually require appears at the end of this document.

PROPRIETARY NOTICE AND COPYRIGHT

This document, and the form, structure and wording of it, are the property of Otto Krause Incorporated and are protected by copyright in terms of the Copyright Act 98 of 1978. It is made available to the addressee solely for the purpose of furnishing instructions to this firm in the matter to which it relates. It may not be copied, reproduced, adapted, republished, distributed or made available to any third party, whether in whole or in part and whether in its present form or in any amended form, without the prior written consent of Otto Krause Incorporated. The completed document and its contents are confidential and are protected by legal professional privilege.



BEFORE YOU BEGIN

A dispute at work is an unsettling thing, whichever side of it you find yourself on. For the employee it may concern a livelihood and a reputation. For the employer it may concern the running of a business, the morale of a workforce and an exposure which can be substantial. We understand both positions, because this firm acts for employers and for employees alike.

That is worth saying plainly. We do not regard ourselves as a firm which is on one side of the workplace. We advise employers on how to structure their contracts, apply their disciplinary codes, conduct hearings properly and defend claims brought against them, and we advise employees who have been dismissed, disciplined, retrenched, harassed or short-paid. The law we apply is the same in either case, and so is the standard of the work. What we cannot do is act for both parties to the same dispute. If we already act for one of them, we shall tell you so at once and refer you elsewhere.

The single most important thing you can do at the outset is to act quickly. Labour disputes are governed by time limits which are considerably shorter than those in ordinary civil litigation, and they are applied strictly. A good case which is referred late may be lost for that reason alone. If you take nothing else from this document, take the table of time limits which appears below, and let us have your instructions before those periods expire.

The second most important thing is to keep your documents. Contracts, payslips, policies, warnings, the notice of a disciplinary hearing, the minutes and the outcome, e-mails, messages and diary notes are the material from which these cases are won and lost. Do not delete anything, and do not sign anything which you have not read and understood.



A FAIR REASON AND A FAIR PROCESS

South African labour law asks two separate questions about almost every decision an employer takes against an employee. The first is whether there was a good enough reason for it. The second is whether the employee was dealt with fairly in arriving at it. These are known as substantive fairness and procedural fairness, and a decision may fail on either. An employer with an excellent reason to dismiss may still lose the case if the employee was not given a proper hearing, and an impeccable procedure will not save a dismissal for which there was no adequate reason.

The Labour Relations Act recognises three grounds upon which an employee may fairly be dismissed. The first is misconduct — the employee has done something wrong. The second is incapacity, which covers both poor work performance and ill health or injury. The third is the operational requirements of the employer, which is what is commonly called retrenchment. Each has its own requirements, and the process appropriate to one is not appropriate to another.

Certain dismissals are automatically unfair, whatever the employer's reasons may be. These include a dismissal because of pregnancy, because of trade union membership or activity, because the employee took part in a protected strike, because the employee made a protected disclosure, or on any of the grounds of discrimination. The compensation which may be awarded for an automatically unfair dismissal is considerably higher than for an ordinarily unfair one.

Not every workplace grievance is a dismissal. The Act also deals with what it calls unfair labour practices, which include unfairness relating to promotion, demotion, probation, training, the provision of benefits, unfair suspension and the failure to reinstate an employee in terms of an agreement. Separately, the Employment Equity Act deals with unfair discrimination and with harassment, and the Basic Conditions of Employment Act deals with wages, hours, leave, notice and severance.



THE TIME LIMITS WHICH MATTER MOST

These are the periods within which a dispute must be referred or a step taken. They are given here as a general guide only, and the period applicable to your own matter should be confirmed with us. Where a period has already passed, all is not necessarily lost — an application for condonation may be brought, in which the delay must be explained and good cause shown — but condonation is never a formality and it is far better not to need it.

The step to be taken	The period
Referral of an unfair dismissal dispute to the CCMA or the bargaining council	Within 30 days of the date of dismissal



The step to be taken	The period
Referral of an unfair labour practice dispute	Within 90 days of the act or omission, or of the date on which the employee became aware of it
Referral of an unfair discrimination or harassment dispute under the Employment Equity Act	Within 6 months of the act or omission
Referral of the dispute to arbitration after a certificate of outcome has been issued	Within 90 days of the date of the certificate
Application to the Labour Court to review an arbitration award	Within 6 weeks of the date on which the award was served
Notice of a con-arb hearing, where conciliation and arbitration are held on the same day	At least 14 days' notice must be given
Convening of the conciliation meeting by the CCMA or council	Within 30 days of the referral

Do not rely upon this table for your own matter without speaking to us. The period which applies depends upon the nature of the dispute and upon the facts, and the position may have changed since this sheet was last revised.



WHERE THE DISPUTE WILL BE DECIDED

Labour disputes are not, as a rule, brought in the ordinary civil courts. They are dealt with by a set of specialised institutions, and which of them applies depends upon the nature of the dispute.

Forum	What it deals with
The CCMA	The Commission for Conciliation, Mediation and Arbitration. Most disputes start here. It first attempts to settle the matter by conciliation, and if that fails it arbitrates dismissals for misconduct and incapacity, unfair labour practices and certain other disputes. Its proceedings are informal and no costs order is ordinarily made.
A bargaining council	Where the employer falls within a registered bargaining council for its sector, the dispute goes to that council rather than to the CCMA. The council performs the same functions.
The Labour Court	Deals with automatically unfair dismissals, dismissals for operational requirements in certain cases, unfair discrimination claims, disputes about strikes and lock-outs, interdicts, and applications to review arbitration awards. Its proceedings are formal and costs may be awarded.
The Labour Appeal Court	Hears appeals from the Labour Court. It is the final court in most labour matters.
The Department of Employment and Labour	Its inspectors enforce the Basic Conditions of Employment Act and may issue compliance orders in respect of unpaid wages, leave pay and similar entitlements.



THE PRINCIPAL STEPS IN A LABOUR DISPUTE

Not every dispute passes through all of these stages. The great majority are settled at or before conciliation, and comparatively few reach the Labour Court. The outline below is intended simply to show you the shape of the process.



Consultation and instructions. We take your instructions, read the documents and advise you on the merits, on what the dispute is likely to cost and on what a realistic outcome looks like. This is the stage at which a matter is most easily resolved.



Establishing the time limits. We identify the period within which the dispute must be referred and, where a period has already expired, we advise you on an application for condonation.



The process in the workplace. Depending on the matter this may be a disciplinary hearing, an incapacity enquiry, a grievance, a retrenchment consultation under section 189, or an internal appeal. Much can be won or lost here, and it is the stage at which representation is most often overlooked.



Referral of the dispute. The dispute is referred to the CCMA or to the bargaining council on the prescribed form, and the referral is served on the other party. The referral must identify the dispute correctly, because that determines the route it follows.



Conciliation. A commissioner meets with the parties and attempts to settle the matter. The discussions are without prejudice and confidential. Most matters end here, and a settlement reached at conciliation can be made an award and enforced.



The certificate of outcome. If the matter is not settled, the commissioner issues a certificate recording that fact. The certificate is what entitles the referring party to take the dispute further, and it starts a fresh period running.



Arbitration. Where the dispute is one the CCMA or council may arbitrate, evidence is led before a commissioner and an award is issued. The award is final and binding and may be enforced as though it were an order of the Labour Court.



The Labour Court. Where the dispute is one reserved to the Labour Court, a statement of claim is delivered, pleadings are exchanged, the matter is set down and it is heard on trial.



Review or appeal. An arbitration award may be taken on review to the Labour Court on limited grounds. A judgment of the Labour Court may be taken on appeal to the Labour Appeal Court, with leave.



Enforcement. An award or order which is not complied with must be enforced. An arbitration award may be certified and executed upon, and in certain cases non-compliance amounts to contempt.



A WORD TO EACH SIDE

If you are the employer

Most of the cases which employers lose are lost on procedure rather than on the merits. The reason for the decision was usually sound; what was missing was a written contract, a disciplinary code which had been brought to the attention of the workforce, a properly framed charge, adequate notice of the hearing, an impartial chairperson, a record of what was said, or consistency with the way other employees had been treated in the past. Attend to those things before you need them.

Do not treat a resignation offered under pressure as the end of the matter, do not dismiss on the strength of a suspicion which has not been investigated, and do not allow a retrenchment to become a dismissal for another reason wearing a retrenchment coat. If in doubt, obtain advice before the decision is taken rather than after the referral has arrived.

If you are the employee

Act quickly, keep your documents and take careful note of dates. Ask for the charges, the policies relied upon and the minutes of any hearing in writing, and keep a copy of everything you sign. You are entitled to be represented at a disciplinary hearing by a fellow employee or by a trade union representative, and you should not go into a hearing unprepared because you assumed it was a formality.

Be careful about signing a settlement, a mutual separation agreement or an acknowledgement of debt on the day it is put in front of you. Once signed, such a document is generally binding and it will usually record that you abandon any claim arising from your employment. You are entitled to ask for time to take advice, and you should.



**PART A: YOUR PARTICULARS AND YOUR CAPACITY**

In what capacity do you consult us? Mark the applicable block:

Capacity	Mark with an X
I am the employee	
I am the employer, or I represent the employer	
I am a director, member or trustee of the employer	
I am acting on behalf of a group of employees	
Other (please describe below)	

Full names and surname	
Identity number (or passport number and nationality)	
Position or job title	
Residential or business address	
Cellphone number	
Alternative telephone number	
E-mail address	
Preferred language (English / Afrikaans / other)	
If you are acting for a company, close corporation, trust or other entity, give its full name and registration number	
Have you consulted any other attorney, union official or labour consultant about this matter? If so, give the name and the extent of their involvement	

**PART B: THE EMPLOYER**

Full registered name of the employer	
Trading name, if different	
Registration number	
Physical address of the workplace	
Registered address, if different	
Nature of the business	
Approximate number of employees	
Is the employer a member of, or does it fall within the scope of, any bargaining council or employers' organisation? If so, which one?	



Is there a recognised trade union in the workplace? If so, give its name and the name of the shop steward or official involved	
Does the employer have a written disciplinary code, grievance procedure and employment policies?	
Who at the employer has authority to take decisions in this matter, and who is the appropriate contact person?	

**PART C: THE EMPLOYEE**

Where the matter concerns more than one employee, complete the table below in respect of each of them.

Full names and surname	
Identity number (or passport number, and particulars of any work permit or asylum documentation)	
Residential address	
Contact number and e-mail address	
Position held and department	
Date on which employment commenced	
Date on which employment ended, if applicable	
Length of service (years and months)	
Is the employee a member of a trade union? If so, which one?	

Where more than one employee is affected:

Full names	Identity number	Position	Date employment began and ended

**PART D: THE TERMS OF EMPLOYMENT**

Is there a written contract of employment? If not, how were the terms agreed?	
Is the employment permanent, fixed-term, part-time, casual or through a labour broker or temporary employment service? Give particulars	



If fixed-term, what was the term, and has it been renewed? How many times?	
Basic remuneration (state the amount and whether weekly, fortnightly or monthly)	
Allowances, commission, bonuses and other benefits	
Total cost to company, including the employer's contributions to any fund	
Ordinary hours of work, and any shift or overtime arrangement	
Notice period provided for in the contract	
Is there a restraint of trade, a confidentiality clause or a deduction clause in the contract? Give particulars	
Is the employee's remuneration above or below the earnings threshold determined by the Minister under the Basic Conditions of Employment Act? (If you do not know, leave this blank — the threshold in force is [[current earnings threshold]] and we shall check it)	
Was the employee on probation at the relevant time? If so, for what period, and had it been extended?	



PART E: THE NATURE OF THE DISPUTE

Mark every block which applies:

Nature of the dispute	Mark with an X
Dismissal for misconduct	
Dismissal for poor work performance	
Dismissal for ill health or injury (incapacity)	
Dismissal for operational requirements (retrenchment)	
Dismissal upon the expiry or non-renewal of a fixed-term contract	
Dismissal during or at the end of probation	
Constructive dismissal (the employee resigned because the position had become intolerable)	
Automatically unfair dismissal (pregnancy, union activity, protected strike, protected disclosure or discrimination)	
Unfair labour practice (promotion, demotion, probation, training, benefits, suspension or the failure to reinstate)	
Unfair discrimination or harassment	
Unpaid wages, overtime, leave pay, notice pay or severance pay	
Dispute concerning a restraint of trade or confidential information	
Dispute concerning a strike, lock-out or picketing	
Dispute arising from the transfer of a business as a going concern	
Disciplinary hearing which has not yet taken place, and at which representation is required	
Advice required before a decision is taken	
Other (describe below)	

Set out, in your own words and in the order in which they happened, the events giving rise to the dispute. Please give dates wherever you can. Attach a separate page if you need more space.

PART F: DISMISSAL AND THE DISCIPLINARY PROCESS



Complete this Part where the matter concerns a dismissal, a suspension or a disciplinary process, whether or not it has already taken place.

Date on which the alleged misconduct or incapacity is said to have occurred	
Date on which the employee was first confronted or suspended	
Was the employee suspended, and was the suspension on full pay?	
What charges were put to the employee? Set them out as they were worded	
Date of the notice of the disciplinary hearing, and how many days' notice was given	
Date on which the hearing was held	
Who chaired the hearing, and what is that person's relationship to the parties?	
Who presented the employer's case?	
Was the employee represented, and by whom? If representation was refused, on what basis?	
Was the employee given the opportunity to state a case, to call witnesses and to question the employer's witnesses?	
Was a record or minute of the hearing kept?	
What was the outcome, and on what date was it conveyed?	
Was an interpreter required, and was one provided?	
Were there any previous warnings on the employee's record? Give the dates, the offences and the validity periods	
Have other employees committed similar offences, and how were they dealt with? (Consistency of treatment is frequently decisive)	
Was there a right of internal appeal, was it exercised, and what was the result?	
Date of dismissal, and the date on which the employee was told of it	
Was notice given, or was payment made in lieu of notice?	



PART G: RETRENCHMENT AND OPERATIONAL REQUIREMENTS



Complete this Part only where the matter concerns a retrenchment or a proposed retrenchment.

What are the operational reasons said to require the retrenchment (economic, technological, structural or similar)?	
Date of the written notice inviting consultation in terms of section 189	
With whom was the consultation conducted (a union, a workplace forum, the affected employees themselves or their representatives)?	
How many employees are or were affected, and how many does the employer engage in total? (This determines whether the extended procedure under section 189A applies)	
What alternatives to retrenchment were proposed and considered?	
What selection criteria were applied, and were they agreed or imposed?	
How many consultation meetings were held, and on what dates?	
What severance pay was offered or paid, and on what basis was it calculated?	
Was a facilitator appointed through the CCMA?	
Have any of the retrenched positions since been filled, or has any similar position been advertised?	

**PART H: UNFAIR LABOUR PRACTICE, DISCRIMINATION AND HARASSMENT**

Complete this Part where the matter concerns something other than a dismissal.

What is the act or omission complained of, and on what date did it occur?	
On what date did the employee first become aware of it?	
If the complaint concerns promotion or appointment, who was appointed instead, and what were that person's qualifications and experience?	
If it concerns a demotion or a change in duties or remuneration, what changed and was the employee's consent obtained?	
If it concerns benefits, which benefit is in issue and on what basis is it said to be owing?	
If it concerns discrimination, on what ground is the discrimination alleged (race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, birth, HIV status, family responsibility or any other arbitrary ground)?	
If it concerns harassment, describe the conduct, when and where it occurred, and whether there were any witnesses	
Was the matter reported internally? To whom, on what date, and what was done about it?	
Is the employee comparing his or her treatment with that of another employee? If so, give that person's particulars and explain the comparison	

**PART I: WAGES, LEAVE, NOTICE AND SEVERANCE**

Complete this Part where money is claimed to be owing, whether under the contract or under the Basic Conditions of Employment Act.

Amount claimed	Amount (R)	Period to which it relates
Outstanding salary or wages		
Overtime		



Amount claimed	Amount (R)	Period to which it relates
Work on a Sunday or a public holiday		
Night work allowance		
Accrued annual leave pay		
Notice pay		
Severance pay		
Commission or bonus		
Unlawful deductions made from remuneration		
Other (specify)		

Total amount claimed	
How was the amount calculated?	
Have payslips been provided throughout the employment?	
Was the employee registered for unemployment insurance, and has a UI-19 been issued?	
Was any certificate of service issued?	

**PART J: STEPS ALREADY TAKEN AND THE APPLICABLE TIME LIMITS**

Please complete this Part with particular care. The dates recorded here determine whether the dispute can still be referred and what has to be done first.

Date of dismissal, or of the act or omission complained of	
Has the dispute already been referred to the CCMA or to a bargaining council? If so, on what date?	
Case number, and the name of the CCMA office or council	
Has a conciliation meeting been held? If so, on what date, and what was the outcome?	
Has a certificate of outcome been issued? If so, on what date?	
Has the dispute been referred to arbitration or to the Labour Court? Give the date and the case number	
Is any hearing, conciliation or arbitration already set down? Give the date, time and venue	



Has an arbitration award or judgment already been issued? Give the date and the outcome	
Has any settlement been offered, discussed or signed? Give particulars	
Has any document been signed by the employee since the dispute arose — a resignation, a mutual separation agreement, a receipt in full and final settlement, an acknowledgement of debt or a waiver?	
If any period appears to have expired, explain what caused the delay and what the employee or employer was doing during that time. (This is the material from which an application for condonation is prepared)	

PART K: EVIDENCE AND WITNESSES

What documents do you have in your possession which bear upon the dispute?	
Are there any documents in the possession of the other party which you say are relevant?	
Are there any recordings, messages, e-mails or photographs?	
Is there any video or access-control footage, and how long is it retained before being overwritten?	

Name of witness	Contact details	What this witness can testify to

PART L: THE OUTCOME YOU SEEK

Mark those which apply, and add anything further below:

Outcome	Mark with an X
Reinstatement in the same position, with retrospective effect	



Outcome	Mark with an X
Re-employment, without retrospective effect	
Compensation	
Payment of the amounts owing	
Withdrawal or setting aside of a warning or a demotion	
A negotiated settlement and a clean break	
A certificate of service and a reference	
Successful defence of the claim brought against me	
Advice only, at this stage	

If compensation or a settlement is sought, what figure do you have in mind, and how is it arrived at?	
Is the relationship between the parties capable of being restored, or has it broken down entirely?	
Has the employee obtained other employment since the dismissal? If so, from what date and at what remuneration? (This affects compensation)	
Is there any commercial or reputational consideration which affects how you would like the matter handled?	
Is there any urgency, and if so what causes it?	

**PART M: ANY OTHER INFORMATION**

Please set out anything else you consider relevant, including anything which the other party may raise against you. It is far better that we hear it from you now than for the first time at the arbitration. If there is something you would prefer to raise with us by telephone rather than in writing, say so here and we shall call you.





PART N: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this document is true and correct to the best of my knowledge and belief. I understand that it will be used to prepare the referrals, pleadings and statements filed in these proceedings, and that any affidavit or statement deposed to by me will be made under oath. I undertake to inform my attorneys forthwith should any of the information change or should I become aware that any of it is incorrect or incomplete.

Full names	
Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)	
Place	
Date	

ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

It is not necessary to provide these documents together with this form. They may be forwarded once it has been returned. Please do not delete or destroy anything, even if you think it unhelpful.

Document	Available? (Yes / No / Will obtain)
Written contract of employment and any addendum	
Letter of appointment and job description	
The employer's disciplinary code, grievance procedure and policies	
Payslips for the last six months	
The notice of the disciplinary hearing and the charges	
The minutes or recording of the disciplinary hearing	
The outcome of the hearing and the letter of dismissal	
Previous warnings and performance reviews	
The notice inviting consultation under section 189, and the minutes of the consultations	
Correspondence between the parties, including e-mails and messages	
The CCMA or bargaining council referral form and any certificate of outcome	
Any notice of set-down, arbitration award or court order	
Any settlement agreement, mutual separation agreement or waiver signed	
UI-19 and certificate of service	
Medical reports, where incapacity or ill health is in issue	
Any recording, photograph or footage relied upon	