



# **Farm Business Management**

## **Handout 10**

### **What is an Automatically Unfair Dismissal**

**Section 187 of the Labour Relations Act 66 of 1995 (LRA): Automatically unfair dismissals**

LRA Section	Explanation
<b>Section 187 (1): If an employer in dismissing an employee acts contrary to section 5.</b>	This means that if an employer dismisses an employee because of his/her membership or affiliation to a trade union or involvement in union activities, it may amount to an automatically unfair dismissal.
<b>Section 187 (1) (a): Dismissal of an employee because the employee participated in or supported, or indicated an intention to participate in or support a strike or protest action that complies with the provisions of Chapter IV.</b>	This would arise if the employee is dismissed for involvement in a procedural or protected strike. Dismissal is an infringement of the right enjoyed by employees to strike (in compliance with prescribed procedures) in order to further their collective interests.
<b>Section 187 (1) (b): Dismissal of an employee because an employee refused, or indicated an intention to refuse, to do any work normally done by an employee who at the time was taking part in a strike that complies with the provisions of Chapter IV or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health.</b>	This section protects employees from dismissal if they are not on strike, but refuse to assist the employer in carrying out the work of those employees who are lawfully on strike as this would weaken the right to strike for those participating in the strike.
<b>Section 187 (1) (c): A refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer.</b>	If employees do not want to accept, for example, a wage increase offered by the employer during a strike, the employer can use pressure such as a lockout, but may not dismiss the employees as such action would amount to an automatically unfair dismissal.
<b>Section 187 (1) (d): Dismissal of the employee because the employee took action or indicated an intention to take action against the employer by exercising any right conferred by the Act or participated in any proceedings in terms of the Act.</b>	If, for example, an employee referred an unfair labour practice dispute to a bargaining council or CCMA or indicated that s/he intended to refer the dispute, a dismissal for that reason would be automatically unfair.
<b>Section 187 (1) (e): Dismissal of an employee because of the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy.</b>	This could include dismissing an employee because she has fallen pregnant and will be entitled to take maternity leave, or because of illness during the pregnancy or the inability to carry out certain tasks due to the pregnancy.
<b>Section 187(1) (f): The employer unfairly discriminated against an employee, directly to indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political</b>	An employee may not be dismissed because of his/her race, gender, sex, political or religious beliefs, disability, age etc. unless it is an absolute requirement of the job. For example, it may not be automatically unfair to terminate the services of an airline pilot who loses his/her sight, although the



<p><b>opinion, culture, language, marital status or family responsibility, or on an arbitrary ground.</b></p>	<p>employer would need to first undertake a comprehensive incapacity inquiry which may include considering reasonable accommodation of the employee in alternative positions. Dismissal based on age may not be automatically unfair if the employer can show that the employee has reached the agreed or normal retirement age in that job.</p>
<p><b>Section 187 (1) (g): Dismissal of an employee as a result of a transfer, or a reason related to a transfer, contemplated in section 197 or 197A.</b></p>	<p>The employer dismisses the employee as a result of a transfer or for a reason related to the transfer of the business as a going concern (section 197) or in circumstances of insolvency (section 197A) for reasons not associated with conduct, capacity or operational requirements.</p>
<p><b>Section 187 (1) (h): Dismissal of an employee as a result of a contravention of the Protected Disclosures Act, 26 of 2000 by the employer, on account of an employee having made a protected disclosure defined in that Act.</b></p>	<p>A protected disclosure relates to an employee 'blowing the whistle' on his/her employer. In other words, disclosing to an appropriate authority or person the untoward conduct of the employer or fellow employees.</p>

See information sheet: What happens when an employee retires

