

# ESSENTIAL SERVICES – APPLICATION, INVESTIGATION AND DISPUTE MANAGEMENT



## ESSENTIAL SERVICES

An essential service is a service that, **if interrupted, would endanger the life, personal safety or health of the whole or any part of the population.**

The Parliamentary Service and the South African Police Services are designated as essential services in terms of the Labour Relations Act 66 of 1995 (the LRA). The Essential Services Committee (ESC) working under the auspices of the CCMA designates other services as essential services.

The right to strike of employees rendering essential services is limited. In order for these employees to embark on a strike, they need to have a minimum service agreement (MSA) or minimum service determination (MSD).

## ESSENTIAL SERVICES COMMITTEE

The ESC is involved in—

- investigating services to determine whether they are essential services;
- determining whether the whole or part of a business is a maintenance service;
- facilitating the conclusion of minimum service agreement and ratifying collective agreements which provide for the rendering of a minimum service in a service designated as an essential service;
- determining disputes as to whether employers or employees are engaged in an essential service, and whether they should conclude a minimum service agreement; and
- determining minimums to be maintained in the event of a strike in essential services.
- Promote effective dispute resolution in essential services

## MAINTENANCE SERVICES

A service is a maintenance service if the interruption of that service will destroy any working area, factory or machinery. The whole or part of a business may be declared a maintenance service.

## MAINTENANCE SERVICE APPLICATIONS

An employer may apply to the ESC to determine whether the whole or part of a business is a maintenance service.

The employer must complete and deliver Form LRA 4.3 to the ESC (located at the CCMA Head Office) and to all interested parties.

## INVESTIGATIONS

The ESC may conduct any investigation on its own initiative or at the reasonable request of any interested party as to whether or not the whole or part of any service is an essential service.

The ESC gives notice in the Government Gazette of its intention to investigate certain services to determine whether they are essential services. Any interested party may make written or oral representations to the ESC.

A Bargaining Council may request the ESC to conduct an investigation. The ESC must then proceed with the investigation in the same way as indicated above.

The Bargaining Council must complete Form LRA 4.7 and send it to the ESC.

## MINIMUM SERVICES

It is evident from Section 72 of the LRA that a minimum service is to provide for a reduced number of employees who could provide an ongoing minimum service within a designated service. This means a 'reduced' number of employees who will be required to continue working, ensuring minimum service during a strike, to ensure the service which is normally provided, does not cease entirely.

## MINIMUM SERVICE AGREEMENTS

Section 72 of the LRA provides for minimum service agreements (MSA). These agreements provide for parties to conclude collective agreements, which provide for minimum services to be maintained during a strike in an Essential Service.

## RATIFICATION OF COLLECTIVE AGREEMENTS PROVIDING FOR MINIMUM SERVICES

Collective agreements, which provide for the rendering of a minimum service in a service which has been designated as an essential service, must be ratified by the ESC in order to be binding. The minimum service agreement includes the number and categories of employees who may strike, replacement labour, the MSA, etc. Form LRA 4.8 must be completed and delivered to the ESC to all the other parties to the agreement.

## DISPUTES

The ESC may determine the following types of disputes in essential services. These are disputes about—

- minimum services and whether a service is an essential service;
- whether an employee or employer is engaged in a service designated as an essential service; and
- whether or not the employer and the trade union engaged in essential services should conclude a minimum service agreement.

Form LRA 4.2 must be completed and delivered to the CCMA Head Office and to the other parties in the dispute.

## RELEVANT LEGISLATION

- Labour Relations Act, 66 of 1995, as amended, ss70—74
- Refer to the Flow Diagram 8 in the Labour Relations Act for the procedure on disputes regarding essential services.