

Chapter 6

Workplace forums

Workplace forums encourage employee participation in the workplace with the goal of promoting the interests of employees and the efficiency of businesses.



Provision for workplace forums is a major innovation in the Act. These forums are committees of employees elected by employees in a workplace. They meet employers on a regular basis for consultation on workplace issues.

The forums do not replace collective bargaining, but deal with matters which are better suited to resolution through consultation rather than through collective bargaining. These include non-wage issues, such as the restructuring of production and the introduction of new technologies.

Functions of a workplace forum

The general functions of workplace forums are:

- to promote the interests of all employees in the workplace -not only of trade union members;
- to enhance efficiency in the workplace;
- to be consulted by the employer on certain matters; and
- to participate in joint decision-making on other matters.

Matters for consultation

Unless the matters for consultation are regulated by a collective agreement with a representative trade union, a workplace forum is entitled to be consulted by the employer on the following:

- restructuring the workplace;
- changes in the organisation of work;
- partial or total plant closures;
- mergers and transfers of ownership;
- dismissal of employees for operational reasons;
- exemptions from any collective agreement or law;
- job grading;

- criteria for merit increases and bonuses;
- education and training;
- product development plans; and
- export promotion.

The forum may present alternative proposals which the employer must consider. If the employer rejects these proposals, the employer must give reasons for the rejection. The employer can then proceed and implement the changes which he or she proposes. While the employer and workplace forum must try to reach consensus on the above matters, the consultation process is not a negotiation process, and the employer may unilaterally make decisions after genuine consultation with the forum. However, if employees are unhappy with the changes, they may strike after following the procedures for a protected strike.

The consultation discussed above differs from joint decision-making in three ways: the issues, the degree of consensus required for the implementation of decisions, and strike action.

Matters for joint decision-making

In joint decision-making the employer must consult and reach consensus with the workplace forum before implementing changes. The following are joint decision-making issues:

- disciplinary codes and procedures;
- workplace rules not relating to employees' conduct;
- affirmative action measures; and
- rules regulating social benefit schemes (such as provident funds or housing) where these are controlled by the employer:

An employer can refer a dispute over joint decision-making to the CCMA for conciliation. If it remains unresolved the employer may request that the dispute be resolved through arbitration. Employees cannot strike over a matter which is regulated by joint decision-making.

Workplace forums and their relationship with collective bargaining

Although the Act allocates certain matters for consultation and joint decision-making between employers and workplace forums, this does not mean that there is a rigid demarcation between this process and collective bargaining. The Act makes provision for an interaction between workplace forums and collective bargaining.

It does this in two main ways:

- firstly, a bargaining council may decide that certain matters are best referred to workplace forums to deal with rather than left to collective bargaining and may refer these issues to such forums; and
- secondly, the Act makes provision for a representative trade union and an employer to conclude a collective agreement giving the forum the right to be consulted or to participate in joint decision-making on other matters. The agreement can also remove any issue from the joint-decision-making list in the Act.

Establishing a workplace forum

- A forum may be established in any workplace where there are more than 100 employees.
- Only a representative trade union may initiate a workplace forum by applying to the CCMA. A representative union means a registered trade union or unions acting jointly which have as members the majority of employees in the workplace.
- The CCMA will appoint a commissioner to assist the parties to reach agreement on establishing the forum.
- If the parties cannot reach agreement on setting up a forum, then the CCMA must itself establish the forum following the Act's provisions. The Act sets out certain requirements that the constitution of a workplace forum must meet. Most of these relate to the manner in which a forum should be elected.
- The commissioner must then facilitate the holding of the first election of members to the forum.

Establishing a trade union based workplace forum

If a representative trade union is recognised by an employer in a collective agreement as the bargaining agent for all employees, that trade union may apply to the CCMA for the establishment of a trade union-based workplace forum. This allows the union simply to appoint the members of the forum without holding an election.

Electing a workplace forum

Who can stand for election?

All employees can stand for election except senior managerial employees who have the authority to:

- represent the employer in dealings with the forum; or
- determine policy and take decisions on behalf of the employer which may conflict with the role of workplace forum representatives.

Who can nominate candidates for election as workplace forum representatives?

- Any registered trade union in the workplace.
- Employees by a petition, if the petition is signed by at least 20% of employees in a workplace or 100 employees, whichever is the smaller.

How are elections conducted?

- Voting takes place during working hours at the employers' premises by secret ballot. All employees who may stand for election may vote.
- Every employee has the same number of votes as there are members of the forum, and can cast these votes in favour of any candidate.

How do workplace forums operate?

Forums operate by holding three kinds of meetings:

- Firstly, the forum must hold regular meetings of its representatives.
- Secondly, the forum must meet regularly with the employer. At these meetings the employer must:
 - ▲ present a report on the company's performance and its financial situation; and
 - ▲ consult the forum on matters arising from the report.
- Thirdly, the forum must also meet other employees in the workplace to report on its activities and on the consultation and joint decision-making between it and the employer. These meetings must take place during working hours without any loss of pay for the employees. Once a year at one of these meetings the employer must report on the company's financial and employment situation and future plans and prospects.

Rights of workplace forums and their members

The Act specifies certain rights for workplace forums that the constitutions of forums must contain.

- The employer must allow each member of a forum reasonable time off with pay during working hours:
 - ▲ to perform the functions of a forum; and
 - ▲ to receive training regarding the performance of such functions.
- The employer must also provide facilities so that the forum can perform its functions.
- Workplace forums may invite experts to attend their meetings, and the expert is entitled to any information to which the forum is entitled.

- Office bearers and officials of the representative trade union may attend workplace forum meetings.

Can workplace forums be dissolved?

An employer may not dissolve a workplace forum unless the parties have a private agreement allowing for this. If there is no private agreement, a forum can be dissolved only if a representative trade union requests a ballot to dissolve a forum and the majority of those who vote, vote in favour of doing so.

A trade union-based workplace forum may be dissolved by collective agreement or if the trade union is no longer representative of a majority of employees.

Workplace forums and other laws

Any other law can specify issues for consultation and joint decision-making by a workplace forum.

Further information

Relevant sections in the Act

Sections 78 - 94: Workplace forums

Schedule 2: Guidelines for constitution of workplace forum

Forms to fill in

LRA Form 5.1 Application for establishment of a workplace forum

LRA Form 5.2 Application for establishment of a trade union-based workplace forum

