



Best Practice Model: Grievance Mechanism

South African Labour Dispute Resolution Statutes

The Constitution of the Republic of South Africa

Everyone has the right to fair labour practices.
The Constitution of the Republic of South Africa,
Act 108 of 1996, Section 23(1).

Everyone
has the right
to fair labour
practices

The Labour Relations Act, No 66 of 1995

as amended by
Labour Relations Amendment Act, No 42 of 1996
Proclamation, No 66 of 1996
Labour Relations Amendment Act, No 127 of 1998
Labour Relations Amendment Act, No 12 of 2002.

The Labour Relations Act (LRA), section 185 upholds the right not to be unfairly dismissed or to be subjected to unfair labour practices:

Every employee has the right not to be
(a) unfairly dismissed; and
(b) subjected to unfair labour practice.

The **Labour Relations Act** (LRA) has set up ways (mechanisms) for addressing disputes and grievances not resolved in the workplace.

Through the **Code of Good Practice – Dismissal** (CoGP–D) the LRA emphasises that agreements reached jointly between employers and employees in the workplace have priority. This Code does not take the place of such collective agreements (CoGP–D, 1(2)).

In the Code the basis for relationships between employers and employees is that they treat each other with mutual respect. Both ‘employment justice’ and ‘efficient operation of business’ are considered very important. Therefore, while employers may demand that employees perform and conduct themselves well, employees must be protected from ‘arbitrary action’. (CoGP–D 1(3)).

Aim of the Grievance Mechanism

Where groups of people work together conflict could arise for a number of reasons, including interpersonal issues, how workplace policies and procedures are applied, and unhappiness about the conduct and behaviour of others – managers, supervisors, employees – in the workplace.

To keep the working environment healthy, it is always better to try and settle any conflicts, or resolve any disputes as informally as possible. Employers should also provide employees with a formal trustworthy mechanism for raising their grievances.

The grievance mechanism should try to resolve grievances as close to their source as possible. This should be done through meaningful consultation, discussion and joint problem solving.



The aim of the grievance mechanism is to provide employees with a way of raising any workplace grievances that they may have. The grievance mechanism sets out a formal procedure for employees who want to have their grievances heard and settled in a friendly way.

The mechanism has been designed for use by individual employees. But if there is a particular issue that affects a group of employees, they can use the mechanism to raise a 'group grievance'.

The grievance mechanism is different from the mechanism for an appeal against disciplinary action taken against employees according to a disciplinary process. Therefore the grievance mechanism cannot be used instead of the mechanism designed especially for appeals.

Key Principles underlying the Grievance Mechanism

All the parties should recognise the mechanism as being legitimate, and employees should feel that they are able to raise their grievances without fear of victimisation or come-back.

THE MECHANISM SHOULD BE LEGITIMATE AND TRUSTED

To make sure that the mechanism is legitimate the following should be done:

- If there is already an existing grievance mechanism on the farm, then this recommended mechanism should be looked at so that the existing one may be changed to turn it into a 'best practice' model;
- Before a new mechanism is introduced, there should be consultations on the draft mechanism between management and employees (and shop stewards where there are unions on the farm);
- Once it is implemented, all managers, supervisors and employees need to be fully briefed on the grievance mechanism;
- After the awareness sessions, training should be given to managers, supervisors and employees on the grievance mechanism.
- When someone has raised a grievance using the grievance mechanism, it is important to stick to the agreed time-frames so that the legitimacy of the process can be further ensured.

THE MECHANISM SHOULD BE PUBLICISED AND BE ACCESSIBLE

Everyone should know that the mechanism exists and how to use it. This should be done through:

- When new employees start working on the farm there should be a session where someone explains to them how the mechanism works;
- There should be meetings with employees to explain the mechanism to them – what a grievance is; how to raise it; where to get the necessary forms; where to hand them in; who to give the forms to; where to go for information on how to use the mechanism;
- Copies of the mechanism should be put on all notice boards that are seen regularly by employees, and copies should also be put up in workshops and change rooms and other areas where employees gather; where employees have access to email, copies of the mechanism should be sent to them by email;
- All current employees should be given a 'hard copy' of the mechanism when it is introduced.

<p>THE MECHANISM SHOULD BE TRANSPARENT</p>	<p><i>Everyone should be able to see that the mechanism is working.</i></p> <p>But at the same time, if the person making the complaint asks for it, they should be treated with confidentiality.</p>
<p>THE MECHANISM SHOULD BE BASED ON ENGAGEMENT AND DIALOGUE</p>	<p><i>The mechanism should focus on trying to get people to talk to each other so that they agree on the nature of the problem, and agree on solutions that are acceptable to all the parties concerned.</i></p> <p>All managers, supervisors and employees should be trained. Two examples of such training is the Managing Conflict in the Workplace course conducted by the Commission for Conciliation, Mediation and Arbitration (CCMA), and the Mediation Training Course conducted by the Africa Centre for Dispute Settlement (ACDS).</p>
<p>THE MECHANISM SHOULD BE PREDICTABLE IN TERMS OF PROCESS</p>	<p><i>People should know what the steps are in the process; there should be clear time-frames and there must be a way of checking to see if the agreements have been kept.</i></p> <p>The mechanism must make sure that grievances are settled as close to where they started as possible, and that they are settled quickly and fairly.</p> <p>A member of senior management should take overall responsibility for the mechanism.</p>
<p>THE MECHANISM SHOULD BE FAIR AND EMPOWERING</p>	<p><i>The mechanism should take into account any differences in power and knowledge between the parties so that there is meaningful communication and a shared responsibility to achieve the agreed outcomes.</i></p> <p>Where needed, people should be able to get advice from neutral human rights experts.</p> <p>The Africa Centre for Dispute Settlement (ACDS) is very experienced in designing and implementing dispute systems, as well as how to manage them. They have a large pool of trained, experienced and accredited mediators and trainers to help with mediation and resolution of disputes on farms and in communities.</p>
<p>THE MECHANISM SHOULD BE A SOURCE OF CONTINUOUS LEARNING</p>	<p><i>There should be ways to measure the effectiveness of the mechanism so that what we learn about 'best practices' can be used to revise the mechanism. The ACDS would be able to offer assistance with this.</i></p> <p>The Africa Centre for Dispute Settlement (ACDS's) contact details are at the back of the booklet.</p>





How to implement the Grievance Mechanism: *Employers/Managers*

1. *What is a grievance?*

In this mechanism, a grievance is defined as any concern, unhappiness or discontent that an employee might have as a result of a workplace issue, or a workplace relationship.

2. *Who can lodge a grievance?*

The grievance mechanism applies to all employees on the farm, regardless of their role or seniority. Therefore any employee can lodge a grievance using the mechanism.

3. *How is a grievance lodged?*

There are two ways in which employees may raise their grievances. In the grievance mechanism at the end of this booklet you will see there is either an informal or a formal process.

It is for everyone's benefit in the workplace that employees are given the opportunity to raise grievances. By doing this they should:

- be able to have a fair meeting to speak to their immediate supervisor or manager about any grievance they want to raise;
- have the right to appeal to a more senior manager against a decision made by their supervisor or manager; and
- when raising a grievance, have the right to be accompanied by a fellow employee of their own choice, or have a union representative present if it is a recognised union of which the employee is a member.

It is better if employees use the grievance form at the end of this booklet to raise grievances. But they may notify their supervisor (**stage one** of the process), or the next higher level of management (**stage two** of the process) of their grievance in another suitable way. This means that a fellow employee, or an employee representative may raise the problem on their behalf.

4. *What does a grievance form look like and where should they be kept?*

A copy of a 'best practice' grievance form is attached at the end of this document. Grievance forms should be available to all employees at the farm office. Copies of the form should also be left in places where employees can get hold of them easily and privately. Examples of such places would be the change rooms, the workshops and other places where employees spend a lot of time.

5. *Who do you give the grievance form to?*

The grievance is lodged with the employee's immediate supervisor/manager. If the grievance is against the supervisor/manager the employee may raise the grievance with the supervisor's manager. The employee must hand the grievance to the particular supervisor or manager.

A grievance is any concern, unhappiness or discontent that an employee might have in the workplace



If it is the employee's supervisor/manager that they are raising the grievance against:

- If the grievance is against an employee's immediate manager/supervisor, she/he may ask that another manager listens to his/her grievance;
- Such permission should not be unreasonably refused by the supervisors/managers concerned;
- If the grievance is of such a nature that people feel that it would be better for a neutral, independent person to hear the grievance, the person making the complaint can ask the Africa Centre for Dispute Settlement (ACDS) to make someone available (the Centre's contact details are attached).

6. What must I do if a grievance is lodged?

Once a supervisor/manager has received a grievance from an employee, she/he should investigate the matter within the time-frames set in the mechanism and call any necessary meetings related to the grievance.

STAGE ONE*

Where the employee raises the grievance by telling their immediate supervisor/manager about it

The immediate supervisor/manager must:

- Give the employee a chance to freely express their problem in private;
- Listen to the employee's grievance and try to identify the issues raised;
- Give the employee a decision about the grievance as quickly as possible.

The parties should meet and try to resolve the grievance within two (2) working days of the employee mentioning the grievance



STAGE TWO*

Where the grievance is raised formally (on a Grievance Form or in another suitable way) with the next level of management

When the senior manager receives the grievance form, she/he must schedule a formal grievance meeting as soon as is reasonably possible

- The employee, and any other relevant parties, should be given written notice of the grievance meeting, preferably using the **Notice of Formal Grievance Meeting** form;
- The employee who lodged the grievance should be told that they have a right to get help from a fellow employee, or if they are a union member, from a trade union representative of a recognised union.

How the grievance meeting is held will depend on the type of grievance raised by the employee. It may range from a discussion between the parties to a formal enquiry. In a formal enquiry the parties involved are given a chance to tell their version of the story and/or call relevant witnesses.

**If there aren't two levels of management on the farm, Stages One and Two should be handled together.*

They can be done informally or formally as decided by the parties, and depending on the circumstances and the type of dispute.

The grievance meeting should be recorded and a copy of the record should be given to the employee.

*The senior manager must give the employee who lodged the grievance with their written decision. This should be written down in the space provided in the **Grievance Form**.*

If the employee is still not satisfied with the senior manager's decision they may (depending on what kind of grievance it is) refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA).

No one may victimise or harass employees who lodge grievances using the grievance mechanism.

If an employee believes they are being victimised or harassed, they may raise this with the senior manager overseeing the grievance mechanism. This manager should investigate the employee's claim at once. Employees who victimise or harass other employees must be disciplined. If the victimisation or harassment is of a gross nature, they should be dismissed.

The parties should meet and try to resolve the grievance within three (3) working days of the employee raising the formal grievance



7. What disputes may be referred to the CCMA and what are the CCMA's contact details?

The following disputes may be referred to the CCMA:

- **Unfair dismissal** disputes in terms of section 186 (1) of the Labour Relations Act, 66 of 1995, and its subsequent amendments;
- **Unfair labour practice** disputes.

According to section 186 (2) of the Labour Relations Act, 66 of 1995 and its later amendments 'unfair labour practice disputes' involve:

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;*
- (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;*
- (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and*
- (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act (Act 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.*

The CCMA's contact details are listed at the back of the booklet.



How to use the Grievance Mechanism: *Employees*

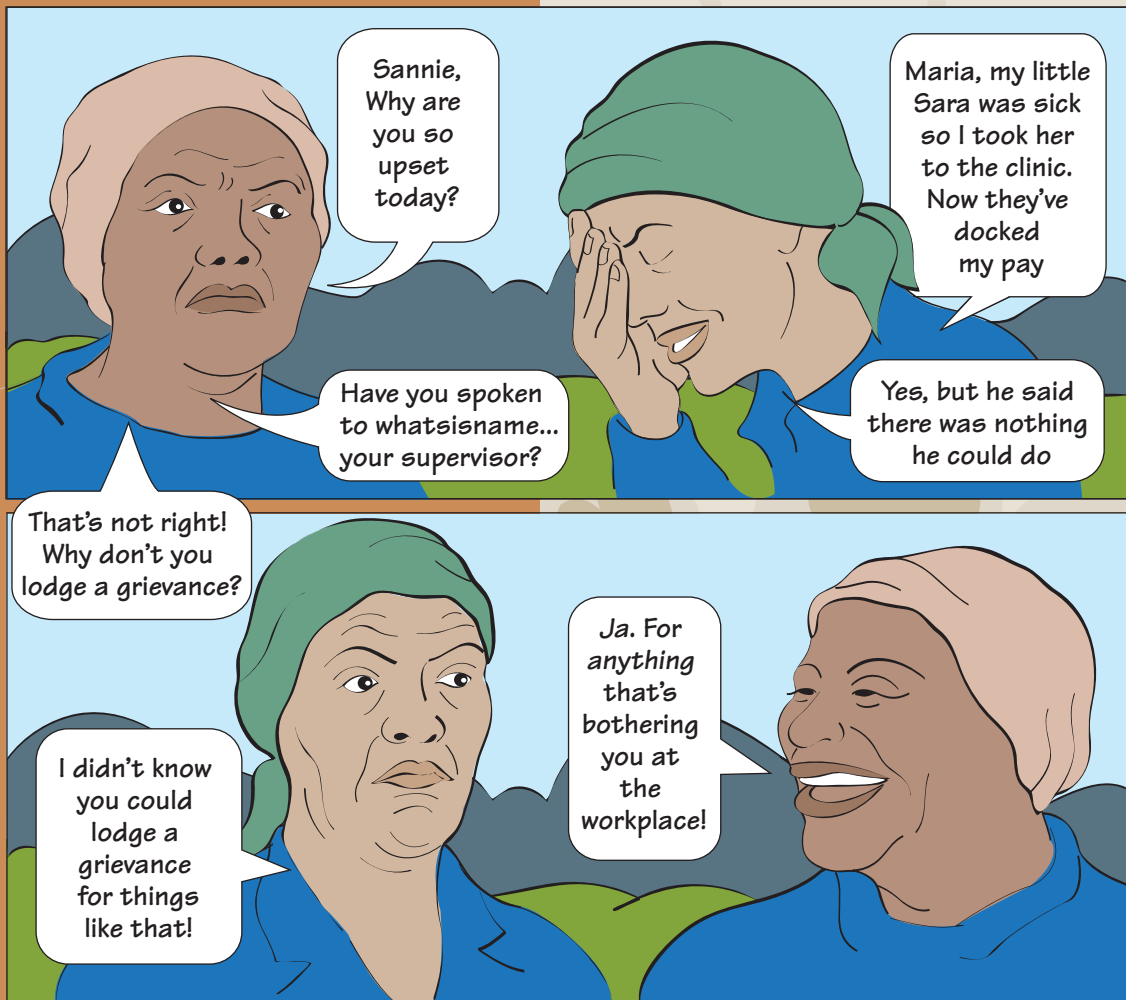
1. What is a grievance?

In this mechanism, a grievance is defined as any concern, unhappiness or discontent that an employee might have as a result of a workplace issue, or a workplace relationship.

A grievance is any concern, unhappiness or discontent that an employee might have in the workplace



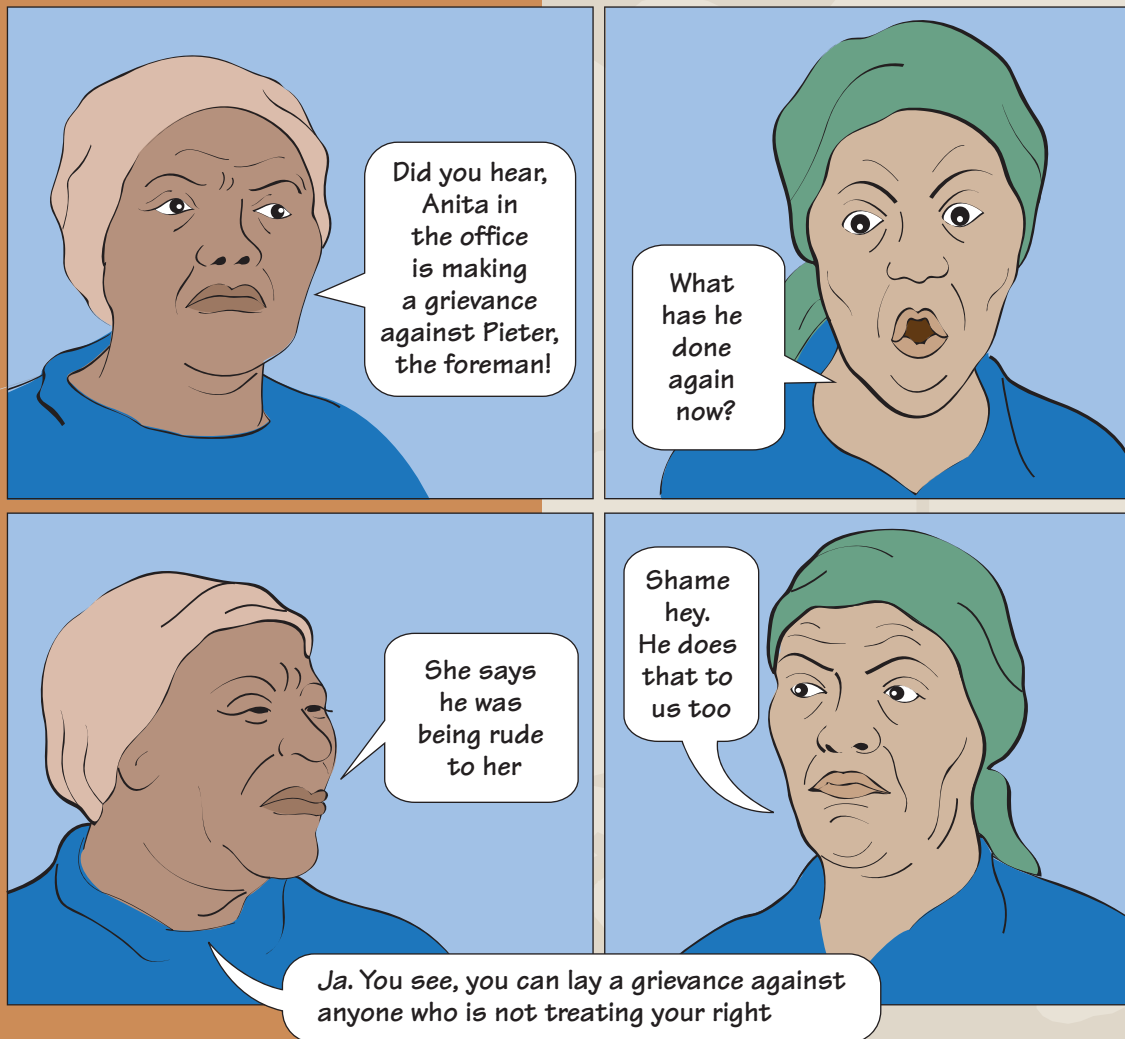
EXAMPLE



2. Who can lodge a grievance?

The grievance mechanism applies to all employees on the farm, regardless of their role or seniority. Therefore any employee can lodge a grievance using the mechanism.

EXAMPLE



3. How do I lodge a grievance?

There are two ways in which employees may raise a grievance. In the grievance mechanism at the end of this booklet you will see there is either an informal or a formal process.

An employee may raise a grievance informally by talking to their immediate supervisor/ manager.

STAGE ONE*

Where the grievance is raised informally with the immediate supervisor/manager

The immediate supervisor/manager must:

- Give the employee a chance to freely and privately tell him/her about the problem;
- Listen to the employee's grievance and try to identify the issues raised;
- Give the employee a decision about the grievance as quickly as possible.

The parties should meet and try to resolve the grievance within two (2) working days after the grievance was raised by the employee



STAGE TWO*

If the employee is not satisfied with the immediate supervisor's/manager's decision

The employee may lodge a formal grievance with the next level of management. (See Grievance Form at the end of this booklet.)

It is recommended that employees use the grievance form attached to this document to raise grievances. But if employees want to use another way to inform their immediate supervisor about their grievance (**stage one** of the process) they may do so. They may also raise a grievance in another suitable way for **stage two** of the process if they want to go to the next higher level of management.

This way may include getting a fellow employee, or an employee representative raising the matter on their behalf.

He/she must schedule a formal grievance meeting as soon as is reasonably possible.

Once the senior manager has received the formal grievance from an employee

The employee and any other relevant parties must be informed in writing of the grievance meeting, on the form **Notice of Formal Grievance Meeting**. The employee who lodged the grievance will be informed of their right to be helped by a fellow employee, or by a representative of a recognised trade union if they are a member. The date, time and how the meeting will happen should be explained clearly and in an understandable way to the employee who lodged the grievance.

How the grievance meeting is held will depend on the kind of grievance raised by the employee. It may range from a discussion between the parties to a formal enquiry. In a formal enquiry the parties involved are given a chance to tell their version of the story and/or call relevant witnesses).

**If there aren't two levels of management on the farm, Stages One and Two should be handled together.*

They can be done informally or formally as decided by the parties, and depending on the circumstances and the type of dispute.

The grievance meeting should be recorded and a copy of the record should be given to the employee.

The senior manager must give the employee who lodged the grievance with his/her written decision. This should be written down in the space provided in the **Grievance Form**.

If the employee is still not satisfied with the senior manager's decision they may (depending on what kind of grievance it is) refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA).

It is in the interest of all parties in the workplace that employees be given the opportunity to raise grievances, and that in so doing:

- they be given a fair consultation meeting by their immediate supervisor or manager concerning any grievance they may wish to raise;
- have the right to appeal to a more senior manager against a decision made by their supervisor or manager; and
- when raising a grievance they have the right to be accompanied by a fellow employee of their own choice or a union representative from a recognised trade union of which they are a member.

The parties should meet and try to resolve the grievance within three (3) working days of the formal grievance being raised by the employee.



4. What does a grievance form look like and where can I get one from?

A copy of a 'best practice' grievance form is attached at the end of this document. Grievance forms should be available to all employees at the farm office. Copies of the form should also be left in places where employees can get hold of them easily and privately. Examples of such places would be the change rooms, the workshops and other places where employees spend a lot of time.

5. Who do I give the grievance form to, or where do I hand it in?

The grievance is lodged with the employee's immediate supervisor/manager. If the grievance is against the supervisor/manager the employee may raise the grievance with the supervisor's manager. The employee must hand the grievance to the particular supervisor or manager.

6. What if it's my supervisor/manager that I am raising the grievance against?

If the grievance is against an employee's immediate manager/supervisor, she/he may ask that another manager listens to his/her grievance. Such permission should not be unreasonably refused by the supervisors/managers concerned.

If the grievance is of such a nature that people feel that it would be better for a neutral, independent person to hear the grievance, the person making the complaint can ask the Africa Centre for Dispute Settlement (ACDS) to make such a person available (the Centre's contact details are attached).

7. What if I am victimised or harassed for raising a grievance?

No one may victimise or harass employees who lodge grievances using the grievance mechanism. If an employee believes they are being victimised or harassed, they may raise this with the senior manager overseeing the grievance mechanism. This manager should investigate the employee's claim at once. Employees who victimise or harass other employees must be disciplined and could be dismissed.

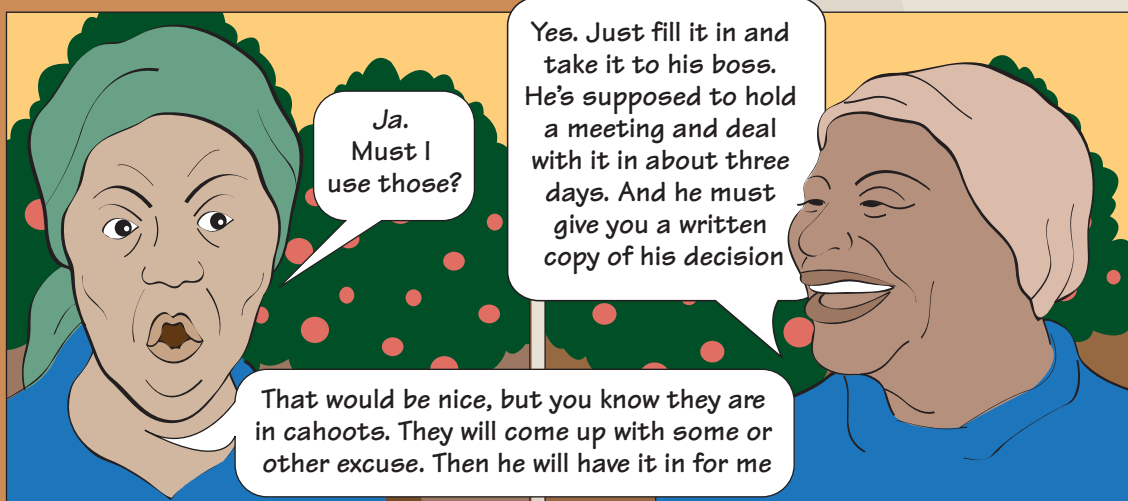
EXAMPLE



continued on next page →

EXAMPLE

→ continued from previous page

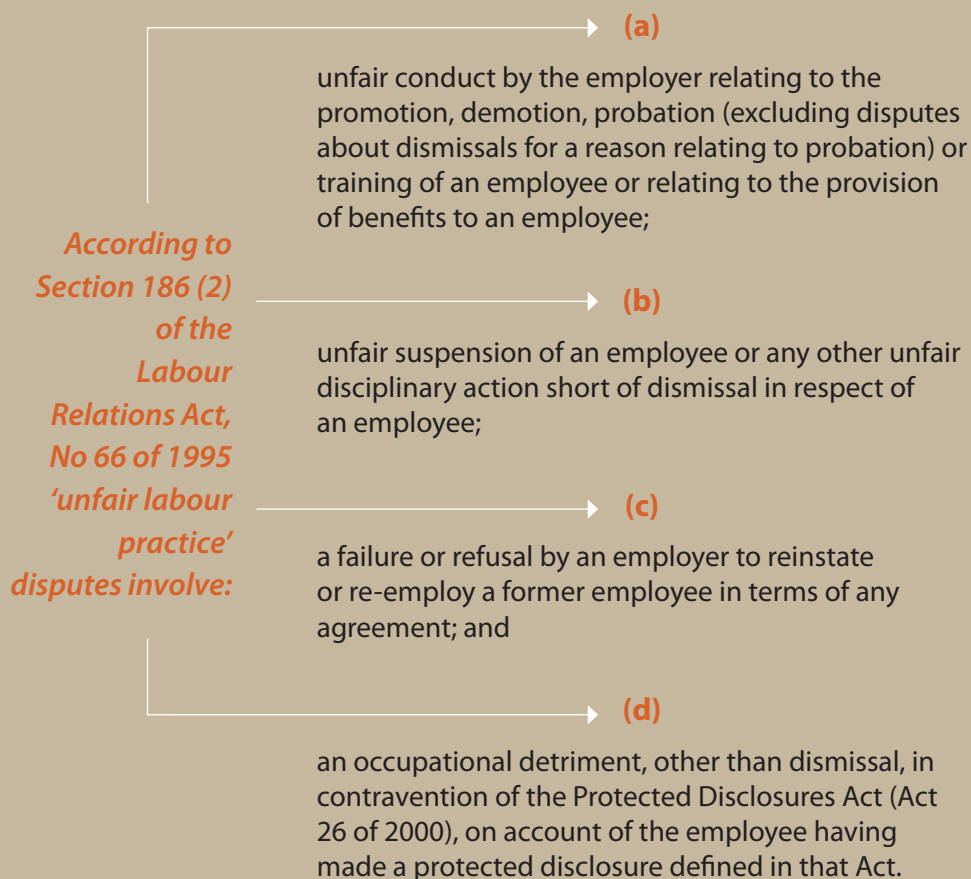


8. What if I want my dispute to go to the CCMA?

Certain types of disputes may be taken to the CCMA. The CCMA's contact details are listed at the back of the booklet.

The following disputes may be referred to the CCMA:

- **Unfair dismissal** disputes in terms of section 186 (1) of the Labour Relations Act, No 66 of 1995, and its subsequent amendments;
- **Unfair labour practice** disputes.





Grievance Mechanism: *Grievance Procedure*

An employee who wishes to lodge a grievance should use the procedure below.

If a group of employees experience a problem that affects the whole group, they can also use the procedure below to lodge a 'group grievance'.

If there are not two levels of farm management, stages one and two should be handled together. This may be done informally or formally depending on what the parties decide, and depending on the type of dispute.

All grievance meetings, informal and formal should be recorded and a copy of the record should be given to the employee.

Stage 1: Informal Process

Discuss the grievance with immediate supervisor

Firstly the employee must talk to their immediate supervisor/ manager about the grievance.

The immediate supervisor/ manager must:

- Give the employee a chance to tell him/her freely and privately about their problem;
- Listen to the employee's grievance and try to identify the issues raised;
- Give the employee a decision about the grievance as quickly as possible.
- The manager/supervisor must write down what happened in the meeting, as well as what decisions have been taken. A copy of this record should be given to the employee.

The parties should meet and try to resolve the grievance within two (2) working days after the grievance was raised by the employee



Stage 2: Formal Process

Formal Grievance Meeting

If the employee is not be satisfied with the immediate supervisor's/manager's decision, the employee may lodge a formal grievance with the next level of management (see **Grievance Form**).

Once the senior manager has received the grievance form or has been informed about the grievance in another suitable way, she/he must arrange a formal grievance meeting as soon as is reasonably possible. The employee, and any other relevant parties should be given written notice of the grievance meeting, preferably using the form **Notice of Formal Grievance Meeting**. The senior manager must tell the employee who lodged the grievance that they have a right to get help from a fellow employee, or representative of a recognised trade union of which they are a member.

The kind of grievance meeting will depend on the type of grievance raised by the employee. It may involve anything from a discussion between the parties to a formal enquiry. In a formal enquiry the people involved will be given a chance to tell their version of the story, and may call suitable witnesses.

The senior manager must give the employee who lodged the grievance a written decision. This should be written down in the correct space in the **Grievance Form**.

If the employee is still not satisfied with the decision made by the senior manager they may (depending on the type of grievance) refer the matter to the Commission for Conciliation Mediation and Arbitration (CCMA).

The following disputes may be referred to the CCMA:

- **Unfair dismissal** disputes in terms of section 186 (1) of the Labour Relations Act, No 66 of 1995, and its subsequent amendments;
- **Unfair labour practice** disputes.

According to section 186 (2) of the Labour Relations Act, No 66 of 1995 'unfair labour practice' disputes involve:

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;*
- (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;*
- (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and*
- (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.*

The CCMA's contact details are listed at the back of the booklet.

The parties should meet and try to resolve the grievance within three (3) working days of the formal grievance being raised by the employee





Proposed Mediation Option: *Dealing with Farm Disputes or Grievances*

To make sure that disputes and conflicts on the farm are solved fairly and are not one-sided, we recommend that mediation could be used at stages one and two of the grievance mechanism.

For mediation to be effective the following training should be conducted:

All managers, supervisors, Human Resources (HR) representatives (if they are available) as well as employee representatives should be trained in basic problem-solving skills. Some of these should be basic mediation problem-solving skills and how to represent someone in mediation. The idea is that it will help to prevent disputes if people can use these skills to resolve grievances at the first stage of the mechanism;

Train managers who conduct grievance processes at the second stage of the grievance mechanism in basic mediation skills;

It is also possible to train a selected group of employees to act as mediators in disputes at the second level.

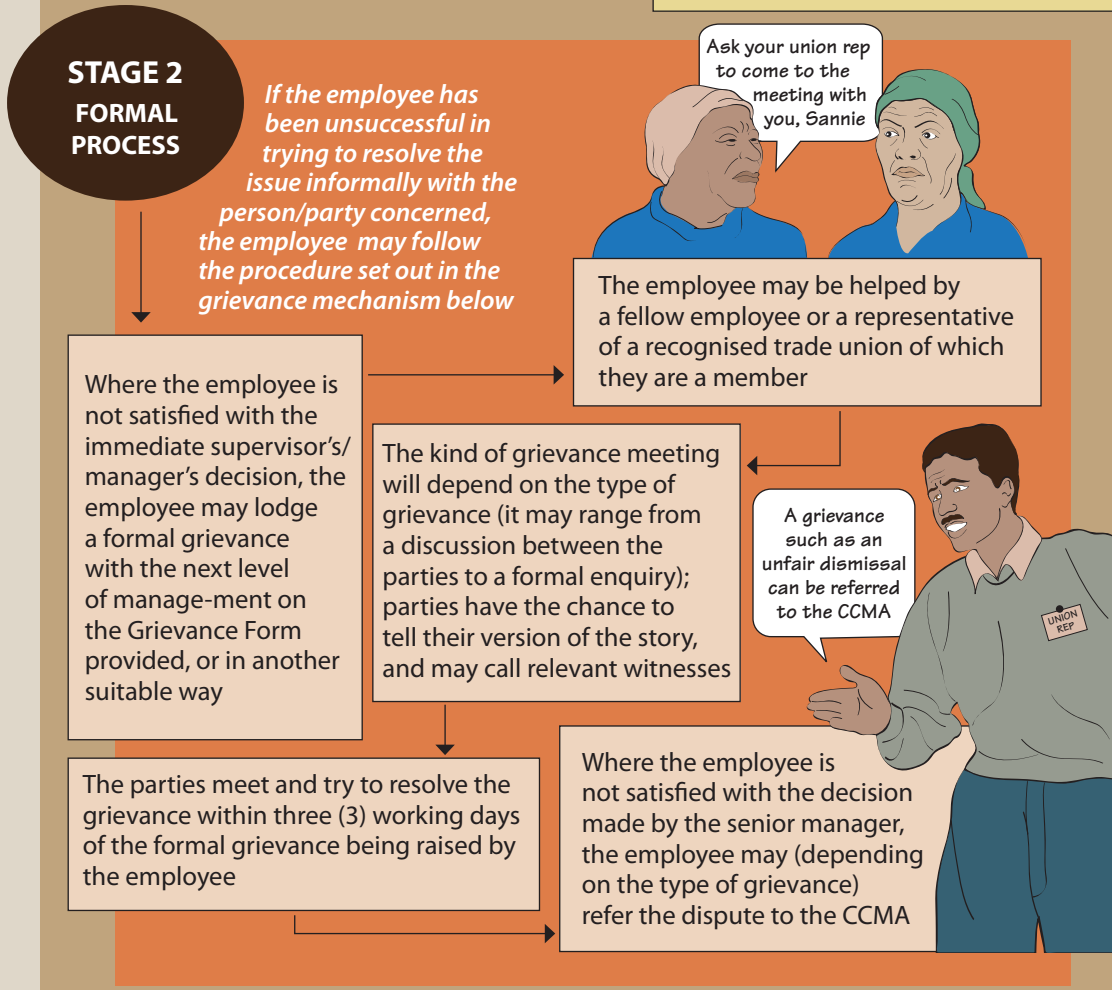
Role of the Africa Centre for Dispute Settlement (ACDS)

The ACDS is very experienced in designing and implementing dispute systems, as well as how to manage them. They have a large pool of trained, experienced and accredited mediators and trainers to help with mediation and resolution of disputes on farms and in communities.

The ACDS's contact details are listed at the back of the booklet.

Grievance Mechanism: *Flowchart*

EMPLOYEE HAS A WORKPLACE CONCERN/GRIEVANCE AS A RESULT OF A WORKPLACE ISSUE, OR A WORKPLACE RELATIONSHIP



GRIEVANCE FORM

EMPLOYEE NAME SURNAME

FORMAL GRIEVANCE

LODGED WITH (Senior manager's name)

TYPE OF GRIEVANCE

.....
.....
.....
.....
.....
.....

EMPLOYEE'S SIGNATURE DATE

TO BE COMPLETED BY THE EMPLOYEE'S SENIOR MANAGER

DATE THE GRIEVANCE MEETING WAS HELD

RESULT OF THE GRIEVANCE MEETING

.....
.....
.....
.....
.....

SENIOR MANAGER'S SIGNATURE DATE

Note: The Senior Manager should give the employee a copy of the his/her decision, and a copy should go into the employee's file.

TIME-FRAMES

The aim of the grievance mechanism is to make sure that grievances are resolved as quickly, effectively and as close as possible to the people involved when it first happened.

In spite of the time limits and stages set out in the grievance mechanism, allowance should be made for the parties to agree on an extension of time. Sometimes time is needed to investigate a grievance, and it may take longer than the time-frames in the mechanism allow. If this happens, the person who is managing the grievance should explain this to the party lodging the grievance and ask them if it may take longer. The party lodging the grievance should not be unreasonable in agreeing to this extension.

Only working days should be taken into account when calculating time periods.

NOTICE OF FORMAL GRIEVANCE MEETING

EMPLOYEE NAME

SURNAME

A FORMAL GRIEVANCE MEETING TO TRY
AND RESOLVE YOUR GRIEVANCE RAISED ON

WILL TAKE PLACE ON

TIME VENUE

TYPE OF GRIEVANCE

.....

.....

.....

.....

.....

.....

Remember, a fellow employee of your choice, or a representative of a recognised trade union (where there is a recognition agreement in place) and of which you are a member, may come to the meeting to help you.

SENIOR MANAGER'S SIGNATURE

DATE