

(19 December 2018 – to date)

LABOUR RELATIONS ACT 66 of 1995

*(Gazette No. 16861, Notice No. 1877, dated 13 December 1995 – Commencement date: 11 November 1996
– unless otherwise indicated)*

GUIDELINES ISSUED IN TERMS OF SECTION 95(9)

*Government Notice R1397 in Government Gazette 42121 dated 19 December 2018. Commencement date:
19 December 2018.*

I, MILDRED NELISIWE OLIPHANT, Minister of Labour, hereby under section 95(9) of the Labour Relations Amendment Act, 2018 (Act No. 8 of 2018) and after consulting NEDLAC, issue the guidelines in the Schedule hereto.

(Signed)

M N OLIPHANT, MP
MINISTER OF LABOUR
12/12/2018

GUIDELINES ON BALLOTING FOR STRIKES OR LOCKOUTS ISSUED IN TERMS OF SECTION 95(9) OF THE LRA

1. These guidelines are published in terms of section 95(9) of the Labour Relations Act (Act 6 of 1995) ("LRA").
2. In terms of section 95(5)(q) of the LRA, the constitution of every trade union or employers' organisation must provide that trade union or employers' organisation, before calling a strike or lock-out, must conduct a ballot of members in respect of whom it intends to call the strike or lock-out.
3. Section 95(5)(p) provides that a member of a trade union or employers' organisation may not be disciplined or have their membership terminated for a failure or refusal to participate in a strike or lock-out if no ballot was held or, if a ballot was held, a majority of members did not vote in favour of a strike or lockout.
4. Section 95(9) provides that a ballot includes any system of voting by the members of a trade union or employers' organisation that is recorded and is in secret.
5. A trade union that has obtained organisational rights in terms of section 12 of the LRA is entitled to conduct a ballot of its members at the employers' premises, subject to such conditions as time and place that are reasonable and necessary to safe guard life or property or to prevent undue disruption of work

Prepared by:

in terms of section 19 of the LRA. Trade unions that are parties to bargaining councils in respect of all workplaces within the registered scope of the Council have this right, regardless of their level of representativeness within a particular workplace.

6. A trade union that does not have the right of access to a workplace in terms of section 12 of the LRA or a collective agreement may nevertheless request an employer to permit a ballot on its premises.
7. Unless stipulated in a collective agreement, there is no requirement for a trade union to obtain the consent of the employer to hold a ballot.
8. A ballot must be conducted in accordance with the provisions of this Act and the constitution of the trade union or employers' organisation.
9. The following are indicative of the procedures that should be followed when conducting a secret ballot:

Notice

- 9.1. Reasonable notice must be given to members of the holding of a ballot. Notice may be given to employees by direct communication, including emails or SMSes, or by the display of notices at the workplace and at trade union offices. While there is no fixed standard, a period of three days would generally be considered to be reasonable notice.
- 9.2. The notice must specify the time and the place of the ballot.

Ballot papers

- 9.3. The question that is the subject of the ballot must be clearly phrased, and must be consistent with the terms of the dispute referral.
- 9.4. Ballot papers must be prepared in accordance with any applicable union or employer organisation's Constitutional provisions.
- 9.5. Ballots must not contain any information that would make it possible to identify voters.

Voter's roll

- 9.6. A ballot must be conducted in terms of a voters' roll of those members who are in good standing in terms of the union's constitution that the union proposes to call on strike. The voters' roll may be derived from the union's membership records or from the employer's records. The voters' roll identifies which members are entitled to vote and must be marked to ensure that members vote once only.

- 9.7. In the case of an electronic ballot conducted by email or SMS, the voters' roll must reflect the email address or mobile phone number of the members concerned and must be scrutinized and conducted by the CCMA or any independent organisations. The CCMA or any independent organisation must keep the records of balloting for three months and thereafter submit to the trade union for record keeping.
- 9.8. In the case of a postal ballot, the voters' roll must reflect the postal addresses of the members and the CCMA or any independent organisation must keep the postal ballots for three months and thereafter submit to the trade union for record keeping
- 9.9. A trade union may elect to ballot members outside of the bargaining unit in respect of which it proposes to call a strike or to ballot non-members within the bargaining unit. However, those ballots must be conducted and recorded separately from the ballot of members in respect of whom the trade union proposes to call on strike.

Scrutineers and observers

- 9.10. A union may employ independent scrutineers to conduct or observe the ballot. However, there is no obligation to do so, unless provided for in a collective agreement or the trade union's constitution. In all the ballots there will be a scrutineer.
- 9.11. There is no requirement on a trade union to permit employer observers at a ballot, unless s provided for in a recognition or other collective agreement.

Balloting and counting

- 9.12. The union must provide ballot boxes for a secret ballot. Members listed on the voters' roll must receive a ballot paper and be able to mark it and place it in an unmarked ballot box without their vote being observed by any other person.
- 9.13. Ballots may be counted at the voting place, at a union office or at another place determined by the Independent Scrutineer. Where the ballot boxes are transported to another place, they must be sealed.

Records of ballot

- 9.14. Records of voting must be retained for a period of three years. These records include the voters' rolls, ballots in sealed ballot boxes or other containers and any documents used to calculate the outcome of the ballot.
- 9.15. In the case of electronic ballots, appropriate records must be retained.

Transitional provisions

10. Section 19 (1) of the Labour Relations Amendment Act, 2018 requires the Registrar of Labour Relations, within 180 days of the Act coming into effect, to –
 - 10.1. consult with the national office bearers of trade unions and employers' organisations which have constitutions that do not provide for the conducting of a secret ballot before calling a strike or lockout;
 - 10.2. issue a directive to those trade unions and employers' organisations as to the period within which their constitutions must be amended to ensure compliance with the requirement for conducting a secret ballot.
11. In terms of section 19(2) of the Labour Relations Amendment Act, 2018, until such time as a trade union or employers' organisation complies with the directive to change its constitution, it must conduct a secret ballot of its members before calling a strike or lockout, as the case may be.
12. A model clause to achieve compliance with the requirement to hold a secret ballot before engaging in a strike or lockout is attached as Annexure A.

ANNEXURE ONE

DRAFT CLAUSE FOR TRADE UNION/EMPLOYERS' ORGANISATION CONSTITUTIONS ABOUT SECRET BALLOTS IN RESPECT OF STRIKES OR LOCKOUTS

Ballots about a strike/lockout

1. Despite any other provision in this Constitution -
 - 1.1 a strike/lockout may only be called in terms of this Constitution after a secret ballot has been conducted of those members in respect of whom the strike/lockout is called;
 - 1.2 a member shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike/lockout if –
 - 1.2.1 a secret ballot was not held about the strike/lockout;
 - 1.2.2 a secret ballot was held, but a majority of the members who voted did not vote in favour of the strike/lockout.
2. The documentary or electronic record of a ballot about a strike/lockout must be retained for three years from the date of the ballot.