

Learning Unit 19: Home Employer's Labour Dispute



learning outcomes

Learning Outcomes

Upon completion of this learning unit, it is expected that you will be able to:

- Understand and provide definitions for terminology.
- List who we insure for home employer's labour dispute.
- Describe what we insure under home employer's labour dispute.
- Identify what we do not insure (exclusions) under home employer's labour dispute.
- Identify the underwriting rules relevant to the insurance of home employer's labour dispute.



Introduction

Hiring a domestic worker carries with it all the responsibilities of any employer. When you agree to have a person working in your home, a contract comes into being between you and the worker. This may be a formal letter setting out wages and benefits, working hours, duties, holidays and sick leave. Usually, however, it is an oral agreement, which at best clearly defines wages and conditions. Domestic workers spend a great deal of time in the home and, of necessity, have a close relationship with their employers. If the relationship between them is poor, life may become unpleasant for both parties.

Until recently, domestic workers in South Africa did not have the benefits and protection of statutory law. Legislation governing the wages and working conditions of people in industry and commerce did not apply to domestic workers, whose only rights were those that applied under common law. However, the position has changed substantially since the provision of the Basic Conditions of Employment Act No 75 of 1997 (amended in 2002) became applicable to domestic employees. There are also various trade unions and associations to assist such employees. At present, though, part-time domestic workers who work on a casual basis and do not 'live in', do not fall within the ambit of the Act.

However, the Basic Conditions of Employment Act imposes certain conditions and terms which govern the leave (sick and otherwise) that the employee is entitled to, maximum hours that may be worked, and the notice that must be given if the contract is terminated.

In terms of the Act, no live-in domestic employee may be required to work more than 46 hours (excluding meal intervals) per week, plus a maximum of 10 hours of overtime a week. Up to 14 hours' overtime is allowed if the person cares for children, the sick, aged, frail or disabled. No domestic employee may be permitted to work more than 14 hours a day.

A live-in domestic employee is entitled to annual leave of at least 14 consecutive days (excluding public holidays falling within the period) and sick leave of 36 days in three years. Should a domestic employee work on a public holiday (assuming a full day is worked), the employee is entitled to be paid double wages for that day, or one and one-third of the normal wages plus a day's paid leave, within seven days of the public holiday.



For example, a female domestic worker might look after a small child while the mother is at work, but if her duties do not extend to the evenings, it is unfair to demand that she babysits while the parents go to the theatre. In such a case, she might be offered a reward - money or additional time off - in return for looking after the child while the employers are out.

However, the employer has no right to insist on the employee baby-sitting or doing some other form of overtime work.

Such examples of the Act, if implemented appropriately, do much to stabilise the relationship between domestic staff and their employers. However, there are always those almost indefinable aspects of a relationship that can cause problems.

This learning unit considers those issues over and above what the law says in respect of domestic employees.

19.1 Definitions

Word or phrase used	Definition and description
you, (your, yourself)	The phrase you refers to the policyholder and their spouse.
we (us, our)	This is Mutual & Federal Insurance Company Ltd. Registration No: 1970/006619/06.
aggravated damages	<p>These are the special and highly exceptional damages awarded on a defendant by a court, when his/her conduct amounts to indirect conduct subjecting the plaintiff to humiliating and malicious circumstances. Additional damages are also awarded in situations where a plaintiff is subjected to distress, embarrassment or humiliation.</p> <p>Aggravated damages are basically compensatory in nature and they are awarded for the aggravated damage that is caused to a plaintiff. Aggravated damages are determined on the basis of the intangible injury inflicted on a plaintiff. Intangible injury includes the pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of a defendant.</p> <p>When compared to punitive damages (see explanation below), aggravated damages require proof of injury.</p> <p>Aggravated damages can be attained as additional compensation if the injured established that a breach of contract caused mental distress.</p>

Word or phrase used	Definition and description
defamation	<p>The act of making untrue statements about another which damages his/her reputation.</p> <p>If the derogatory statement is printed or broadcast over the media it is libel and, if only oral, it is slander. Damages for slander may be limited to actual (special) damages unless there is malice.</p> <p>Some statements such as an accusation of having committed a crime, having a feared disease, or being unable to perform one's occupation can more easily lead to large money awards in court and even punitive damage recovery by the person harmed.</p>
domestic staff	<p>Anyone that you considered employing, employ or have employed to perform domestic duties for remuneration at your private home.</p> <p>The definitions of an employee and domestic worker are given in the Basic Conditions of Employment Act ("BCEA") as follows:</p> <p>An "employee" means:</p> <p>(a) Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive remuneration; and</p> <p>(b) Any other person who, in any manner, assists in carrying on or conducting the business of an employer.</p> <p>A "Domestic Worker" means:</p> <p>"an employee who performs domestic work in the home of his or her employer and includes—</p> <p>(a) A gardener;</p> <p>(b) A person employed by a household as driver of a motor vehicle;; and</p> <p>(c) A person who takes care of children, the aged, the sick, the frail or the disabled."</p>
exemplary damages	<p>These are often called punitive damages and are damages requested and/or awarded in a lawsuit when the defendant's wilful acts were malicious, violent, oppressive, fraudulent, wanton or grossly reckless. Examples of acts warranting exemplary damages:</p> <ul style="list-style-type: none"> • Publishing that someone had committed murders when the publisher knew it was not true but hated the person. • An ex-husband trashes his form wife's motor vehicle and threatens further property damage.

Word or phrase used	Definition and description
	<ul style="list-style-type: none"> • A stockbroker buys and sells a widow's stocks to generate commissions, resulting in her losing all her capital (money). <p>These damages are awarded both as a punishment and to set a public example. They reward the plaintiff for the horrible nature of what he/she went through or suffered. Although often requested, exemplary damages are seldom awarded.</p>
legal proceedings	<p>This phrase means legal, administrative or regulatory proceedings which include:</p> <ul style="list-style-type: none"> • Issuing a summons, subpoena or counter claim, whether by the insured or against him/her; • Any written communication alleging an unfair labour practice by the insured, and indicating that the worker intends to hold him/her responsible.
sexual harassment	<p>Unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.</p> <p>Sexual attention becomes sexual harassment if:</p> <ul style="list-style-type: none"> • The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or • The recipient has made it clear that the behaviour is considered offensive; and/or • The perpetrator should have known that the behaviour is regarded as unacceptable.
subpoena	<p>A court order requiring a witness to appear in court to give evidence in a case.</p> <p>There are two common types of subpoena:</p> <ul style="list-style-type: none"> • <u>Subpoena ad testificandum</u> orders a person to testify before the ordering authority or face punishment. The subpoena can require the testimony to be given by telephone or in person. • <u>Subpoena duces tecum</u> orders a person or organisation to bring physical evidence before the

Word or phrase used	Definition and description
	<p>court or face punishment. This is often used for requests for documents and other items that need to be used in the court case, possibly as evidence.</p>
<p>summons</p>	<p>The document that informs a defendant that he/she is being sued and declares the power of the court to hear and determine the case. It instructs the defendant to appear before the court on a specific day and to answer the complaint made by the plaintiff.</p> <p>The summons is the document that officially starts a lawsuit. It must be in a form prescribed by the law governing procedure in the court involved, and it must be properly served on, or delivered to, the defendant.</p>
<p>trade union labour union</p>	<p>An <u>organisation</u> whose <u>membership</u> consists of <u>workers</u> and union <u>leaders</u>, united to protect and <u>promote</u> the group's <u>common interests</u>.</p> <p>According to www.businessdictionary.com, the <u>principal</u> purposes of a <u>trade union</u> are to:</p> <ul style="list-style-type: none"> • <u>Negotiate wages</u> and working <u>condition terms</u> for the members; • Regulate relations between workers (its <u>members</u>) and the <u>employer</u>; • Take <u>collective action</u> to <u>enforce</u> the terms of <u>collective bargaining</u>; • Raise new <u>demands on behalf of</u> its members; and • Help <u>settle</u> their <u>grievances</u>. <p>A trade union may be:</p> <ul style="list-style-type: none"> • A <u>company union</u> that <u>represents</u> interests of only one company and may not have any <u>connection</u> with other <u>unions</u>; • A <u>general union</u> that represents workers from several <u>companies</u> in the same <u>industry</u>. Also called an <u>industrial union</u>; <p>2 or</p> <ul style="list-style-type: none"> • A <u>craft union</u> that represents <u>skilled workers</u> in a particular field such as carpentry or welding.

The concept of unfair labour practice for the domestic worker

In terms of Section 185(b) of the Labour Relations Act (No 66 of 1995), every employee has the right not to be subjected to unfair labour practices. According to the statutory definition, an unfair labour practice is “anything the industrial court deems to be an unfair labour practice”.

In terms of the Act, this definition identifies the following as unfair labour practice, when related to the domestic worker:

<p>Unfair discrimination against any domestic staff on the grounds of:</p>	<p>Race, Gender, Pregnancy, Birth, Colour, Ethnic or social origin, Sexual orientation, Age, Disability, Religion, HIV status, Conscience belief, Political opinion, Culture, Language, Marital status or Family responsibility.</p>
<p>Sexual harassment includes unwelcome sexual advances, requests for sexual favours and any type of unwelcome contact of a sexual nature, which:</p>	<ul style="list-style-type: none"> • Is made an implied or explicit term of the employment contract; • Creates a hostile or offensive work environment; • Becomes a basis for decisions regarding that domestic staff’s employment.
<p>Defamation relating to the domestic staff’s:</p>	<p>Job skills, Performance, Qualifications, Reputation, Disciplinary history, Termination of employment.</p>

Unfair dismissal or unfair refusal to hire.
Negative changes in the terms of the domestic worker's employment because they have exercised or tried to exercise a legal right, or have helped someone else exercise or try to exercise a legal right.

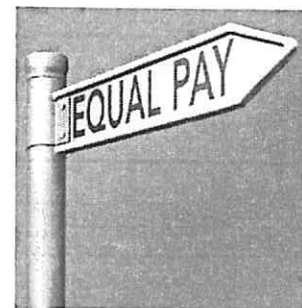
In an employment situation, employees and employers need to know their rights and read through the relevant contracts properly.

You should know a little more than just the definition of statements like unfair dismissal. Therefore, in this section of the policy we need to consider the following issues:

Unfair discrimination

Examples of unfair discrimination are given in the policy wording. There are two forms of discrimination related to unfair discrimination.

Direct discrimination is easily identifiable and involves obvious different treatment between employees and job applicants on the basis of arbitrary grounds, for example, an employer follows a policy of remunerating a female employee on a lower scale than a male simply because she is a woman.



Indirect discrimination is not as easily recognisable as it is a more subtle form of discrimination. It involves the application of policies and practices that are apparently neutral and do not explicitly distinguish between employees or job applicants but that, in reality, have an inconsistent and negative effect on certain individuals or groups.

Unfair dismissal

This takes place when an employer is in breach of contract. A common example would be where an employee is fired without being given notice. The law concerning unfair dismissal ensures that the employer carefully considers the consequences when weighing up disciplinary procedures or the dismissal of an employee.

There are numerous situations where past employees have been unfairly dismissed but, due to their lack of knowledge about the current labour law, have no idea that they have a legal standing to voice these concerns.

19.2 Who we insure

Under this section only the policyholder and his/her spouse are covered in terms of the policy wording.

19.3 What we insure

The insurer will compensate the policyholder for all amounts that he/she is legally liable to pay as a result of any legal proceedings against him/her for any unfair labour practice.

19.4 What we do not insure (exclusions)

In terms of the policy wording, under this section the insurer will not compensate the policyholder for the following circumstances.

Your liability relating to trade union activity

Cover will not exist for any liability that results from unlawful trade union activities or membership, industrial disputes or negotiations, except costs and expenses incurred in getting an interdict in the case of an unprotected strike action.

Legal obligations

This exclusion confirms that cover will not exist in respect of:

- Liability that results from payments that the insured is legally required to make in relation to remuneration, workers' compensation, disability benefits, unemployment insurance, retirement benefits, or any other legally required payment;
- Liability arising from labour or grievance proceedings as a result of a collective bargaining agreement;
- Taxes, fines, penalties, punitive, exemplary or aggravated damages other than exemplary or aggravated damages arising from a claim for defamation;
- Liability that results from a breach of the laws and regulations related to minimum payment and other conditions of employment;
- Costs related to adapting the insured's home or working methods to accommodate a person with a disability, or to meet legal health and safety standards.

Bodily injury, sickness, death and damage to property

This excludes all liability that results from bodily injury, sickness or death of any person and any loss or damage to property.

Your actions

All liability that results from any wilful, dishonest, fraudulent or malicious act on the part of the policyholder is excluded.

Prior claims

This excludes all liability that results from any incident or legal demand that the policyholder was aware of when he/she took out this cover.

19.5 Compensation

Limit of compensation

The policyholder will be compensated up to the limit shown in the policy schedule.

Legal costs

The limit shown in the policy schedule includes all legal costs and expenses for:

- Damages, judgments and costs made against the policyholder by a competent court or tribunal;
- Settlements that the policyholder entered into with the insurer's written consent;
- Costs that the policyholder incurred with the insurer's consent, relating to the investigation, negotiation, defence and appeal of claims against him/her.



19.6 Special conditions

There is only one special condition that appears under this section. This special condition states that, before the policyholder starts any disciplinary procedures against the domestic staff, the policyholder must firstly contact the Labour Help Line on 0860 24 7 365 and he/she must follow the advice that the help line provides.

19.7 Claiming

The policyholder must report any legal demand as soon as reasonably possible to the Claims Direct Line on 0860 24 7 365.

Underwriting Rules

This section can only be selected with either a Household Goods or Motor section.

Cover is available in South Africa for South African citizens only.

The limit of cover provided is R30 000.



ACTIVITIES

Activity 1

Mrs Jones, the insured, interviewed Florence for a vacancy she had for a domestic worker. Florence had all the qualifications required by Mrs Jones and had excellent references. Mrs Jones then advised Florence that she would have employed her if she was not in the wrong age group. Florence felt that this was unfair of Mrs Jones and decided to take legal action against Mrs Jones.

Would this litigation be covered in terms of the Home Employer's Labour Dispute policy wording, and why or why not?

Activity 2

Angela has been working for the Johnson family for a period of three years. Recently Angela got married and fell pregnant. Angela advised Mrs Johnson that she is pregnant and is prepared to work until four weeks before the due date of the birth of the baby. Mrs Johnson advised Angela that she is not happy about the situation and gave her two months' notice of employment termination. Angela went to the CCMA to find out what her rights are.

What would be covered in terms of the Home Employer's Labour Dispute policy wording, and why or why not?

Activity 3

Happiness works for the Van der Merwe family. Happiness is a member of the Home Workers Trade Union. She received a call from the trade union saying that they are unhappy with the salary and working conditions of some of their members and a strike had been called. Although Happiness was not satisfied with the situation, she informed her employee that a strike was looming. Mr Van der Merwe was uncertain about the situation and decided to obtain an interdict to prevent Happiness from striking.

Would this be covered in terms of the Home Employer's Labour Dispute policy wording, and why or why not?



Final Activities

Activity 1

Mr James has an allsure policy, which covers the following:-

Section	Risk address/Items covered	Sum insured
Houseowners	25 Park Street, Paarl	R15,050,000
Household Goods	25 Park Street, Paarl	R 2,500,000
All Risks		
- General all risks		R 50,000
- Specified items	Samsung S5	R 11,000
	9ct diamond engagement ring	R 65,000
	Seiko watch	R 5,000
	Kodak camera	R 12,750
	Zoom lens	R 5,500
	Leather jacket	R 25,000
Personal Liability		R 5,000,000
Motor	2015 Audi Q5 3.0 TFSI SE QUATTRO TIP	R 722,500
	2013 VW Jetta V1 1.4 TFSi Highline	R 235,800
	2012 Honda CRV 2.4 VTEC Elegance	R 234,300
	2014 Honda Jazz 1.3 Comfort	R 170,300

On Mr and Mrs James' 35th wedding anniversary, Mr James surprised his wife with a weekend away to Sun City. They left the house in the capable hands of their 17 year old daughter, Candice. Candice decided that she would make some steak and chips for supper on evening.

She had barely started cooking when the electricity went off. She checked with the neighbours, who advised her that there was load shedding for roughly four hours. Candice then phoned her best friend, Samantha and arranged to meet her at Northgate Mall to have a quick bite to eat. She had every intention of getting home again before the load shedding ended. Unbeknown to her, the load shedding only lasted for an hour.

Activity 2

Mr Singh has an Allsure policy, which covers the following:-

Section	Risk address/Items covered	Sum insured
Household Goods	25 Globe Road, Chatsworth, Durban	R 550,000
All Risks		
- General all risks		R 10,000
- Specified items	Nokia cellular phone	R 3,500
	Engagement ring	R 7,000
	Gold man's chain	R 5,500
	3 x gold bangles @ R1,000 each	R 3,000
Personal Liability		R5,000,000
Motor	2013 Toyota Auris 1.6 XS	R 184,100
	2014 Nissan Juke 1.6 Acentra	R 185,500
	2011 Venter Trailer	R 35,000

The Singh family was watching television in their bedroom when they heard a massive noise from the back of their house. They went to investigate and found three armed robbers in the main lounge area. The robbers had forcibly opened the security gate and broken the glass of the patio door. The robbers tied up the policyholder and his spouse and ransacked the house. The robbers forcibly pulled out the cords for the telephone as well as the intercom system. As a result the wall and skirting boards were damaged. They also threw Mr Singh's cellular phone onto the floor and stamped on it, to remove any possibility of calls being made after they had left. As the cellular phone was an older model, they were not interested in it.

The robbers packed all the goods they stole in the policyholder's trailer and attached the trailer to the Nissan Juke which they used as their getaway vehicle. On leaving the premises, they took all the house and motor vehicle keys with them as well as the remote control for the gate.

A couple of hours later, Mr Singh managed to free himself. He first helped to untie his wife and then ran to the neighbour's house to seek their assistance in contacting the South African Police Service.

