

Table: Section 186 of the Labour Relations Act 66 of 1995 (LRA): The meaning of ‘dismissal’

LRA Section	Explanation
<p>Section 186(1) (a): The employer terminates the contract of employment with or without notice.</p>	<p>This is the most common form of dismissal. The dismissal by the employer must relate to the employee’s conduct, capacity or the employer’s operational requirements (retrenchment) to be fair. These dismissals are generally preceded by a disciplinary hearing, a performance hearing or a retrenchment consultation process. Dismissals where the employee is not at fault, such as retrenchment or incapacity dismissals are usually on notice. Misconduct dismissals are often summary (without notice) or payment in <i>lieu</i> of notice.</p>
<p>Section 186(1) (b): An employee employed in terms of a fixed-term contract of employment reasonably expected the employer:</p> <p>i) to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms or did not renew it; or</p> <p>(ii) to retain the employee in employment on an indefinite basis, but otherwise on the same or similar terms as the fixed-term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee.</p>	<p>A fixed-term contract has been defined as a contract of employment for a fixed period, linked to a determined or determinable period, or a completion of a particular job.</p> <p>A fixed-term contract may come to an end when a project is completed.</p> <p>A dismissal may arise where an employer fails to renew a fixed-term contract or renews the contract on less favourable terms contrary to the employee’s expectations. For it to be a dismissal, the employee will need to show that s/he had a reasonable expectation of renewal of the contract.</p>
<p>Section 186(1) (c): An employer refused to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment</p>	<p>This dismissal must not be confused with an automatically unfair dismissal where the reason for the dismissal is directly related to the employee’s pregnancy or planned pregnancy. Here it is a refusal to allow the employee to resume work after an absence, which absence was statutory (in terms of the BCEA) or contractual maternity leave.</p>
<p>Section 186(1) (d): An employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another.</p>	<p>An example of this type of dismissal is where an employer retrenches a group of employees including ‘trouble makers’ and then re-employs those who are seen as being more compliant. This amounts to an unfair dismissal because it amounts to the selective re-hiring of staff.</p>
<p>Section 186(1) (e): An employee terminated a contract of employment with or without notice</p>	<p>This is referred to as a constructive dismissal because the employer does not actually dismiss the</p>



because the employer made continued employment intolerable for the employee.	employee but makes the working environment so intolerable that the employee has no option but to resign.
Section 186 (1) (f): An employee terminated a contract of employment with or without notice because the new employer, after a transfer in terms of section 197 or 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer.	Where a business is transferred as a going concern or in circumstances of insolvency, the new employer is obliged to offer conditions of employment that are substantially not less favourable to the employee. In this type of dismissal the employee would resign as a result of the terms and conditions of work being substantially less favourable than had been the case with the previous employer.
Section 198A: A Temporary Employment Services (TES) employee can refer an unfair dismissal dispute if his/her services with a client are terminated in order to avoid being deemed to be an employee of the client, or because the employee exercised a right in terms of the LRA.	This type of dismissal is specific to situations where an employee of a Temporary Service Provider is placed with a client company. In this instance the nature of the dismissal is linked to specific provisions in section 198A and not to grounds relating to conduct, capacity or operational requirements.

See information sheet: What happens when a fixed-term contract ends

See information sheet: When is a resignation a constructive dismissal

See CCMA information sheet: Insolvency and liquidation (Winding up)

