

# A Short Comparison:

## Navigating Through the New 2025 Dismissal Guidelines for South African Employers.

Area	Previous Code (pre-2025)	2025 Code (Sept 2025 Gazette)	Elaboration (Practical Effect)
Grounds for Dismissal	Misconduct, incapacity, operational requirements.	Expanded: hybrid incapacity (performance + health), technology-related operational needs, reputational harm dismissals.	Broader grounds now recognised. Employers can dismiss for reputational risk (e.g., social media misconduct) and tech-driven changes. Employees must adapt to health, performance, and digital demands.
Procedural Fairness	Right to be heard, notice of allegations, fair hearing, representation by union official/colleague.	Formalised: written allegations, reasonable preparation time, mandatory recording of hearings, confirmed right to representation.	Stricter process rules. Employers must document everything and provide sufficient prep time. Hearings need to be recorded, reducing informal dismissals.
Substantive Fairness	Must be a fair reason linked to conduct, capacity, or operational needs.	Retained, but with explicit proportionality test: dismissal as last resort after weighing severity, service length, and alternatives.	Employers must now show dismissal was proportionate. Long-serving employees or less severe misconduct may require lesser sanctions first.
Progressive Discipline	Warnings and counselling before dismissal (except serious offences).	Retained, but adds coaching, restorative practices, and counselling before dismissal.	Emphasis on correction rather than punishment. Employers encouraged to rehabilitate employees before considering dismissal.
Special Protections	General anti-discrimination.	Explicit protections for pregnant employees, employees with mental health conditions, and non-standard workers (part-time, fixed-term, gig).	Stronger focus on vulnerable groups. Employers face stricter scrutiny when dismissing protected categories.
Operational Requirements	Guided by LRA s189: consultation and objective selection criteria.	Expanded: employers must explore alternatives (remote work, redeployment, short-time) and conduct meaningful consultations.	Dismissals for operational reasons (retrenchments) now require exploring flexible arrangements first. Employers must prove alternatives were considered.
Remote/Hybrid Work	Not covered.	Recognises digital presence, flexible work structures, and redefines absenteeism in remote contexts.	Absenteeism can't be measured only by physical presence; employers must adapt policies for remote/hybrid staff.
Restorative Practices	Not recognised.	Encourages mediation, coaching, reconciliation before dismissal.	Push towards resolution and repair. Employers expected to use conflict resolution and coaching instead of dismissals where possible.
Burden of Proof	Employer must prove substantive and procedural fairness.	Retained.	No change — employers remain responsible for proving dismissals were both fair and procedurally correct.
Role of CCMA & Labour Courts	Must consider the Code in dismissal cases.	Retained, with added emphasis on proportionality, vulnerable protections, and restorative alternatives.	CCMA/courts will place greater weight on fairness tests and whether alternatives were considered before dismissal.
Universality	Applies across sectors, adaptable via bargaining councils.	Retained, but with clearer accommodation for gig economy and emerging work models.	Gig workers and other non-standard employees now explicitly included in protection framework.