

# LEGALFOXES LAW TIMES

## UNFAIR LABOUR PRACTICES- WORKMEN & TRADE UNION

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The ties between the employer and the employee, as well as the labour practises that result from these relationships' interests, are the primary focus of labour relations. Both national and international businesses may have labour relations. Concerns including compensation, job security, minimum wages, health and safety, social security, and working hours are all addressed in all of them. Unfair labour relations are thus defined as any breach of such laws by employers or unions.

**It has been incorporated into Schedule V of the Act and prohibits the following for the employer:<sup>1</sup>**

1. Preventing workers from organising a union movement and discouraging unions supported by companies.
2. Dismissing workers by victimising them and fabricating charges.
3. The management's methods for ending strikes by hiring contract workers.
4. Engaging in fraudulent transfer
5. Poor hiring practises, long-term casual and temporary employment, etc.

**Unfair Labor Practices Section 25-T:** Unfair labour practises are prohibited when: No unfair labour practise shall be engaged in by an employer, employee, or trade union, whether or not such entity is registered under the Trade Unions Act of 1926.

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<sup>1</sup> Schedule V of Industrial Disputes Act 1947| Unfair Labour Practices (aaptaxlaw.com)

**Section 25-U:** Penalties for engaging in unfair labour practises: Anyone found guilty of engaging in unfair labour practises is subject to a term of imprisonment that may not exceed six months, a fine that may not exceed one thousand rupees, or both.

The Industrial Disputes (Amendment) Act, 1982 established a new schedule V. Unfair labour practises are defined under this Schedule. The practises that are unfairly treated by employers or their trade unions, or by employees and their trade unions, are listed in the document.<sup>2</sup>

**I. Unfair labor practices on the part of employers and trade unions of employers.**

1. Interfering with, preventing, or coercing workers from exercising their freedom to form, join, or support a trade union, or to participate in coordinated actions for collective bargaining or other forms of mutual aid or protection, or, in other words:
  - a. When employers threaten to fire or dismiss workers for joining a union,
  - b. Threaten a lockout or shut down if a union forms, or
  - c. Grant salary rises during key times for union organisation, the trade union's efforts to become organised are undermined.
2. To exert control over, interfere with, or provide any form of support to any trade union, i.e.
  - a. An employer who takes a direct interest in helping his employees form a trade union; and B.
  - b. An employer who shows favouritism or bias toward one of the many trade unions trying to organise his employees, or to their members, when that trade union is not a recognised trade union.

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<sup>2</sup> Labour & Industrial Law, Prof. S. N. Mishra (28th Ed.)

3. To create workmen's unions funded by employers
4. To promote or discourage worker discrimination by encouraging or discouraging membership in any trade union, that is:
  - a. Dismissing or punishing a worker for encouraging other workers to form or join a union;
  - b. Dismissing or punishing a worker for participating in a strike (provided it was not an illegal strike under this act);
  - c. Altering a worker's seniority rating because of trade union activities;
  - d. Refusing to promote a worker to a higher position because of their trade union activities;
  - e. Awarding undeserved promotions to some workers to higher positions.
5. **Terminating or dismissing employees:**<sup>3</sup>
  - a. Through victimisation;
  - b. Not in good faith, but rather a questionable exercise of the employer's rights;
  - c. By falsely accusing a worker of a crime based on fabricated or fabricated evidence;
  - d. For blatantly false reasons;
  - e. Based on false or fabricated allegations of absence without leave;
  - f. In flagrant violation of the principles of natural justice in the course of a domestic investigation or with excessive haste; and
  - g. For misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the record or service of the workman, thereby leading to disproportionate punishment.
6. Eliminating routine labour performed by workers and replacing it with work performed by contractors as a means of ending a strike.
7. Falsely moving a worker from one location to another while claiming to be adhering to management policy

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<sup>3</sup> <https://www.nolo.com/legal-encyclopedia/unfair-labor-practices.html>

8. To require that each worker participating in a legitimate strike sign a good behaviour bond before being allowed to return to work.
9. To treat one group of employees more favourably than another, regardless of merit.
10. Hiring workers as "badlis," casual workers or temporary employees and keeping them in that position for years with the intention of denying them the status and rights of permanent employees
11. To fire or treat unfairly any employee who complains about their employer or provides testimony against them in a hearing or investigation related to a labour dispute.
12. To hire workers while engaged in a legitimate strike.
13. Non-application of judgement, settlement, or agreement.
14. To engage in violent or coercive behaviour.
15. Refusing to engage in legitimate collective bargaining with registered trade unions.
16. Starting or continuing a lockout that is prohibited by this Act.

## II. Unfair labour practises on the side of workmen and the trade unions of workmen<sup>4</sup>

1. To counsel, actively promote, or incite any strike that is deemed illegal by this Act in any way.
2. To use force or threat of force against employees in order to prevent them from exercising their right to self-organization, from joining a trade union, or from refraining from joining any trade union, that is to say:
  - a. When a trade union or its members picket in such a way that workers who are not participating in the strike are physically prevented from entering their places of employment;

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<sup>4</sup> S.N.Mishra, Labour & Industrial Laws, Central Law Publications, 29th Edition 2019

- b. To engage in acts of force or violence or to make threats of intimidation in conjunction with a strike against non-striking workmen or managerial staff members; to do so may be considered an act of intimidation.
3. The refusal of a recognised labour union to engage in collective bargaining in good faith with the relevant employer.
4. To engage in coercive tactics with the intention of preventing a bargaining representative from being certified.
5. To stage, support, or instigate such forms of coercive acts as wilful, "go-slow," squatting on the work premises after working hours, or "gherao" of any of the members of the management or other staff members of the organisation.
6. To stage demonstrations at the homes of the employers or members of management staff who are in charge of the company.
7. To incite or participate in the intentional destruction of the employer's property that is associated with the industry.
8. To engage in acts of force or violence or to use threats of intimidation toward any workman in order to deter that workman from reporting to work;<sup>5</sup>

### Cases

It is difficult to define unfair labour practises and to establish exhaustive criteria for determining whether or not they occur. However, it is possible to say that any practise that violates the directive principles of state policy contained in Article 43 of the constitution and such other articles that deal with providing workmen with decent wages and living conditions is unfair labour practise.

In **Gangadhar Pillai v. Siemens Ltd.**<sup>6</sup>, the appellant served in the respondent company from 1978 as a helper and his service came to an end in the year 2000. He challenged it as an unfair labor practice under item 6 of schedule IV of M.R.T.V. and P.V.L.P. Act, 1971, and failed in his attempt to get a declaration that his ending of service was unfair labor practice. Ultimately he fought his case up to Supreme Court and finally lost thereto.

<sup>5</sup> <https://indianlawportal.co.in/unfair-labour-practices/>

<sup>6</sup> (2007) 1 SCC 533 - SLIC

The Supreme Court observed that only because a person had intermittently been engaged as a casual or temporary employee for several years, the same by itself might not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee.

It was also pointed out that the burden to prove unfair labor practice was on the workman. There had been breaks in service but the same was rightly held as not artificial ones. Engagement of the appellant workman causing to end on completion of a period of contract was held retrenchment coming within the purview of Section 2(oo)(bb) of the Industrial Disputes Act, 1947. Expressing its satisfaction that the respondent was able to provide some succor to the appellant, the Supreme Court dismissed the appeal as without merit.

### **Victimization**

One of two things can be meant by the term victimisation. One example of this is when a worker who has done nothing wrong gets disciplined by their employer for doing something that the boss finds objectionable. By way of illustration, by being an active member of a Union of workmen who was acting in a manner that was detrimental to the interests of the employer.

The second instance is when an employee has committed an offence but is given a punishment that is quite out of proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer; or when the punishment is shockingly disproportioned to the misconduct; or when the punishment is such that no reasonable employer would impose it under the circumstances. If an employer punishes an employee for an offence that was committed by someone else, then it is reasonable to assume that the employee is being victimised by being made a scapegoat to him by the employer.

### **Conclusion**

It is difficult to define a test that is exhaustive or definitive of unfair labour practises; however, it is possible to say that any practises that violate the directive principles of state policies contained in Article 43 of the constitution as well as other provisions made under the delegated legislation are unfair labour practises.

