



# MISA MONTHLY

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### Can a managerial employee join MISA as a member ?

There are continuous discussions as to whether managerial employees may join MISA or not. To understand this issue we need to know what the law and the Labour Court have to say about this.

In terms of Section 23 of the Republic's Constitution, every employee has the right to:

- participate in forming a trade union or federation of trade unions; and
- to join a trade union, subject to its constitution.

The Labour Relations Act sets out the following rights as part of the right to join a trade union in terms of the trade unions' constitution:

- To participate in its lawful activities;
- To participate in the election of any office-bearers, officials or trade union representatives;
- To stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office, and
- To stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of the LRA or any collective agreement.

The MISA constitution **does not exclude** managerial employees from joining as members.

In a Labour Court case ***IMATU and others v Rustenburg Transitional Council*** [1999] 12 BLLR 1299 (LC) the court held:

When employees join a trade union they commit themselves to a body, the primary object of which to maximise the benefits its members derive from their employment by negotiation or by industrial action. By committing themselves to unions employees “go over to the opposition”.

The Court said that the Constitution and the LRA granted every employee the right to join and hold office in a union and to participate in its activities. Had the legislature wished to draw a distinction in this regard between managerial and ordinary employees, it would have done so expressly. There was nothing untoward or absurd about giving senior managers the right to take part in union activities.

However, employees who join unions must still perform the work for which they were engaged. If they did not, they could be disciplined for misconduct.

This principle applies to all employees and not only managerial employees.

**Nothing prevents senior managerial employees to join MISA as members and to enjoy the same protection and benefits as all our other members.**

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**Join today and ensure professional assistance when you need it most !**

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