



AMENDMENTS TO LABOUR LEGISLATION: WHAT SHOULD EMPLOYERS BE DOING RIGHT NOW?

Amendments to the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA) and the Employment Equity Act (EEA) will come into effect in the not too distant future. A new Employment Services Bill contains provisions that regulate the activities of labour brokers. Below are some of the steps employers can take in anticipation of the amendments.

Fixed-term contracts: The Labour Relations Amendment Bill proposes that an employer should only employ someone for a fixed term if the employer can justify it. If not, the employer should employ the person permanently. Employers should therefore be very particular about the operational reason for a fixed-term contract and to specifically include these in fixed-term contracts, for example linking it to a project of a temporary nature.

High earners excluded from protection: Employees earning more than the threshold determined by the Minister in the Government Gazette (presumably the current threshold referred to in the section 6(3) of the BCEA) will be excluded from referring dismissal and unfair labour practice disputes to the CCMA and Labour Court (with the exception of automatically unfair dismissals). When appointing senior managers or highly-paid staff, or renewing or extending their contracts, employers should pay more attention to the termination, breach and dispute resolution provisions in the contract of employment.

Liability of Client Company: Where an unfair labour practice is committed by a subcontractor, both the subcontractor and the client could be held liable. This means that a "client company" should be mindful of the labour practices of those who provide services to it. If not, the client company could be held liable. Employers should therefore give consideration to obtaining appropriate assurances/ indemnity from the service providers they contract with.

Benefits of equal value for fixed-term employees: The Basic Conditions of Employment Bill proposes that employers must contribute benefits of similar or equal value to employees employed on a fixed-term contract. They cannot be treated less favourably than permanent employees. Where it is not practicable to afford employees on fixed-term contracts certain benefits (e.g. pension and medical aid), the employer will have to pay them the cash value thereof. This should be taken into account in the financial planning of employers that make extensive use of employees on fixed-term contracts.

Work of equal value: According to the Employment Equity Amendment Bill it could be regarded as unfair discrimination if there is a difference in terms and conditions of employment between employees of the same employer who perform the same or substantially the same work or work of equal value. Employers should re-evaluate their conditions of employment so that they do not fall foul of this form of discrimination.

Enforcement procedures: Several of the current enforcement provisions (labour inspectors securing undertakings, compliance orders, objections and appeals against compliance orders) will fall away. While this might appear innocuous at first glance, it seems that, consequently, non-compliance issues can be referred directly to the Labour Court. Employers could therefore lose the opportunity they have at the moment to become compliant. In addition, non-compliance with most of the provisions of the BCEA that are currently not criminalised will become criminal offences. Furthermore, the penalties, even for minor transgressions, will include minimum fines and possible prison sentences. Employers are therefore encouraged to ensure that they are fully compliant with the provisions of the Basic Conditions of Employment Act.

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