

EMPLOYMENT

Employment Services Act

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The Employment Services Act No. 4 of 2014 (“**the Act**”) comes into operation as from 9 August 2015. The purpose of the Act is, inter alia, to

- provide for public employment services;
- provide for the establishment of schemes to promote the employment of young work seekers and other vulnerable persons;
- provide for schemes to assist employees in distressed companies to retain employment;
- facilitate the employment of foreign nationals in a manner that is consistent with the objects of the Act and the Immigration Act No.13 of 2002;
- provide for the registration and regulation of private employment agencies;
- provide for the establishment of the Employment Services Board, of Productivity South Africa, and Supported Employment Enterprises;

Public Employment Services

The Act requires the department of labour to provide a number of public employment services including matching and placing work seekers with available work opportunities. This goal is facilitated by the establishment of labour centres in order to allow the public easy access to the public employment services.

The Act alludes to regulations which may be promulgated by the Minister of Labour (“**the Minister**”) and which would oblige employers to notify the Department of Labour of any vacancies or new positions, or if any work seekers referred by a labour centre, have been employed by a particular employer.

The Act also empowers the Minister to establish schemes to minimise the retrenchment of employees when an employer is experiencing financial or operational difficulties which could lead such employer to contemplate retrenchments.

Employment of Foreign Nationals

An additional important aspect of the Act is that it confirms the principle established in our case law that an employee who is employed without a valid work permit may nevertheless enforce any claim afforded to the employee by South African labour law.

Private Employment Services

Of particular importance are the provisions of the Act which relate to private employment agencies. The Act defines a ‘private employment agency’ to mean any person who provides employment services for gain. Both labour brokers as well as recruitment agencies constitute private employment agencies for purposes of the Act.

The Act prescribes that each private employment agency must be registered. Although the Act does not provide much detail regarding the practical aspect of registration of a private employment agency, it provides that the Minister may issue regulations regarding the procedure and forms in terms of which private employment agencies may apply for registration.

The transitional provisions of the Act, provide more clarity regarding the obligation to register as a private employment agency, and provide in particular that

- any private employment agency registered in terms of [section 24\(1\)](#) of the Skills Development Act shall be deemed to be registered as a private employment agency in terms of the Act; and
- a private employment agency must apply for registration –
 - within two years of the Act coming into effect in the case of labour brokers; or
 - within three years of the Act coming into effect, in the case of recruitment agencies.

To date, no regulations have been published in this regard and consequently, it is not possible at this stage, for a private employment agency to register in accordance with of the Act. Additional provisions which are intended to regulate private employment agencies include the requirements that

- a work seeker may not be charged a fee in respect of any employment services provided to such work seeker;
- a private employment agency must display a certificate of registration in a conspicuous place on its premises;
- no amount may be deducted from an employee’s remuneration in respect of the placement of that employee.

Contravention of the provisions listed directly above could lead a private employment agency to incur a fine not exceeding R50 000 per contravention.

Conclusion

It is evident that the Act has introduced a number of new concepts in order to further regulate the South African labour industry, particularly in those industries which employ employees that have historically been perceived as vulnerable.

This Act, in conjunction with the recent amendments to existing labour legislation, continues the journey to change the face of South African labour law.



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