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EMPLOYMENT

The Labour Relations Amendment Act 6 of 2014 – TES

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On 18 August 2014, the President of the Republic of South Africa assented to the Labour Relations Amendment Act 6 of 2014 ("**Amendment Act**").

It is anticipated that the Amendment Act will come into operation on **1 January 2015**. The Amendment Act introduces a number of significant amendments to the Labour Relations Act 66 of 1995 ("**LRA**"), the most salient of which are briefly summarised below.

1. Trade Unions

Trade unions representing the employees of a temporary employment service/labour broker will in future be in a position to exercise their organisational rights not only at the workplace of the temporary employment services/labour brokers, but also at the client's workplace; despite the employees not being employees of the client.

2. Picketing

Employees participating in protected strike action may be permitted to picket not only at their employer's premises, but also at premises owned or controlled by other parties. This change in the law will, for example, entitle the employees of a labour broker to picket at the client's premises.

3. Review of Arbitration Awards

3.1 Review proceedings brought by employers in respect of arbitration awards handed down by, for example, the CCMA, will no longer suspend the enforcement of those arbitration awards; unless the employer furnishes security to the Labour Court or can demonstrate that it is in the interests of justice that security should not be tendered. Security, in the case of a reinstatement or re-employment order, must be equivalent to two years' remuneration for the employee in question. In the case of awards for compensation, the security tendered must be equal to the compensation awarded.

3.2 The applicant to a review application must apply for a date for the matter to be heard by the Labour Court within six months of the application having been filed at the Labour Court.

4. Operational Requirements Dismissal Disputes

A retrenched employee may elect to refer an unfair dismissal dispute either to the CCMA or a bargaining council or to the Labour Court if –

4.1 the employer followed a consultation procedure that applies only to that employee;

4.2 the employer's operational requirements led to the retrenchment of that employee only; or

4.3 the employer employs less than 10 employees, irrespective of the number of employees retrenched.

5. Temporary Employment Services (TES)

5.1 In order to continue operating as a temporary employment service ("TES")/labour broker, such operations will in due course have to be registered as such with a statutory body. The mechanism for registration has yet to be confirmed.

5.2 Once registered, the TES and its clients will be jointly and severally liable, in the event that, the TES contravenes-

5.2.1 a collective agreement that regulates terms and conditions of employment;

5.2.2 a binding arbitration award that regulates terms and conditions of employment;

5.2.3 the Basic Conditions of Employment Act 75 of 1997 ("BCEA") and/or a sectoral determination made in terms of the BCEA.

5.3 An employee may not be employed by a TES on terms and conditions not permitted by the LRA, or any employment law, sectoral determination or collective agreement applicable to the employees of the client to whom the TES employee renders services.

5.4 TES employees earning below the BCEA earnings threshold (currently R205 433.30 per annum) and not performing "temporary services" –

5.4.1 will be deemed to be the permanent employees of the client to which they have been assigned and must be employed indefinitely by that client; and

5.4.2 may not be treated less favourably than employees of that client who perform same or similar work, unless the distinction is justifiable.

6. Fixed-Term Employees and Part-Time Employees

6.1 Fixed-term employees, employed for a period in excess of three months and earning below the BCEA earnings threshold, will be deemed to be employed indefinitely unless the employer can demonstrate a justifiable reason for employing such an employee on a fixed-term basis.

6.2 Employees employed on a fixed-term or part-time basis, for a period in excess of three months, may not be treated less favourably than permanent employees performing the same or similar work, unless there is a justifiable reason for doing so.

6.3 Fixed-term employees, employed for a period in excess of 24 months must, upon the expiry of their contract period, receive a severance payment equivalent to at least one week's remuneration for every completed year of service, unless the employer offers the employee permanent employment or procures employment for the employee with another employer on similar terms and conditions.

When considering the changes to the LRA together with recent changes to the BCEA and the Employment Equity Act 55 of 1998, it is self-evident that the legislation is changing to keep pace with the move away from traditional employment structures in an effort to protect the increasing number of employees working in these structures. What we know for certain is that both business and labour will need to evolve in order to keep pace with these changes.

Should you require any advice on the Amendment Act and the effect thereof on your business, please do not hesitate to contact us.



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