

EMPLOYMENT

AMENDMENTS TO THE
LABOUR RELATIONS
AMENDMENT
ACT TO BE
IMPLEMENTED

THE LABOUR RELATIONS AMENDMENT ACT WILL TAKE EFFECT ON 1 JANUARY 2015.

On 1 January 2015 the Labour Relations Amendment Act (No.6 of 2014) (LRAA) will take effect, with the exception of s37(c), and South African businesses will have to comply with the new obligations created in the the Act. The LRAA signals a move by government to streamline the country's labour environment and will require that South African businesses adjust the way they have traditionally employed and managed staff in their organisations.

Some key features of the LRAA:

The LRAA responds to, among other things, the increased informalisation of labour and also seeks to ensure that vulnerable groups of employees receive adequate protection. Some of the most important amendments introduced by the LRAA relates to employees employed through a Temporary Employment Service ("TES") – also known as labour brokers - and fixed term employees. These employees will, in future, enjoy far greater protection than what is currently available to them, with concomitant limitations placed on employers to utilise such employment structures. The new protections are limited in some respects, for instance, they only apply to persons earning below a statutory income threshold (currently R205 433.30 per annum), and in the case of fixed term employees, some smaller and start-up employers may be exempted. The amendments are primarily intended to limit the use of these employees to true short term contracts (three months or less; to replace another employee who is temporarily absent; or in categories of employment lawfully characterised as suitable for such employees). The underlying principle in the proposed s198B is justifiability. Employers must be able to justify fixing the duration of an employment contract. Failure to abide by the limitations will result in the employees becoming permanent employees (fixed term employees), or being deemed to be employees of the client (TES employees).

The LRAA also streamlines the procedure to be followed when reviewing CCMA arbitration awards. It further discourages litigants from instituting review applications as a tactical ploy to frustrate or delay compliance with the award. The LRAA amends s145(5) of the Labour Relations Act (LRA), to provide that a person who institutes a review application must arrange for the matter to be heard by the Labour Court within six months of commencing proceedings. However, the Court has been given the power to condone a failure to comply with this provision on good cause shown. In terms

of s145(6), judges will be required to hand down judgment in review applications, "as soon as reasonably possible". This provision reiterates the need for the speedy resolution of review applications. If review applications are to be finalised speedily, litigants will have to adhere to the timelines provided for pleadings.

Collective labour law will also be materially affected by the amendments introduced by the LRAA. These amendments are aimed at promoting the inclusion of non-standard employees in the collective bargaining framework and expanding the application of organisational rights. This will effectively expand the employee pool in a workplace for purposes of procuring organisational rights. The amendments will have the effect of creating a more inclusive collective bargaining arena in the workplace. Hopefully, this will lessen the need felt by smaller unions to use industrial action as the only route to obtain organisational rights previously ordained for more representative unions only. In the current climate of violent strike action, any proposal that could result in the need to use less strike action should probably be welcomed.

The LRA further provides that employees have the right to picket at a place controlled by someone other than their employer, provided that person has a say in the establishment of the picketing rules.

Most South African businesses have already adapted the manner in which they will be doing business in anticipation of the proposed amendments.

More information regarding this Act can be found in the Employment practice guideline to the legislation, which can be found here: [Employment Guide](#)

Aadil Patel

CONTACT US

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@dlacdh.com



Gillian Lumb
Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@dlacdh.com



Johan Botes
Director
T +27 (0)11 562 1124
E johan.botes@dlacdh.com



Mohsina Chenia
Director
T +27 (0)11 562 1299
E mohsina.chenia@dlacdh.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@dlacdh.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@dlacdh.com



Gavin Stansfield
Director
T +27 (0)21 481 6314
E gavin.stansfield@dlacdh.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@dlacdh.com



Faan Coetzee
Executive Consultant
T +27 (0)11 562 1600
E faan.coetzee@dlacdh.com

Kirsten Caddy
Senior Associate
T +27 (0)11 562 1412
E kirsten.caddy@dlacdh.com

Nicholas Preston
Senior Associate
T +27 (0)11 562 1788
E nicholas.preston@dlacdh.com

Ndumiso Zwane
Senior Associate
T +27 (0)11 562 1231
E ndumiso.zwane@dlacdh.com

Anli Bezuidenhout
Associate
T +27 (0) 21 481 6351
E anli.bezuidenhout@dlacdh.com

Inez Moosa
Associate
T +27 (0)11 562 1420
E inez.moosa@dlacdh.com

Lauren Salt
Associate
T +27 (0)11 562 1378
E lauren.salt@dlacdh.com

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa
Dx 154 Randburg and Dx 42 Johannesburg
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dlacdh.com

CAPE TOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dlacdh.com

cliffedekkerhofmeyr.com

Cliffe Dekker Hofmeyr is a member of DLA Piper Group, an alliance of legal practices.

©2014 0263/DEC14