

Employment Law

ALERT | 22 April 2024



In this issue

SOUTH AFRICA

Employers of record and their place
in South Africa



**For more insight into our
expertise and services**

**EMPLOYMENT LAW
ALERT**

Employers of record and their place in South Africa

Chambers Global 2024 Results

Employment Law

Chambers Global 2014–2024 ranked our Employment Law practice in:
Band 2: Employment.

Aadil Patel ranked by Chambers Global 2024 in
Band 1: Employment.

Fiona Leppan ranked by Chambers Global 2018–2024 in
Band 2: Employment.

Imraan Mahomed ranked by Chambers Global 2021–2024 in
Band 2: Employment.

Hugo Pienaar ranked by Chambers Global 2014–2024 in
Band 2: Employment.



The COVID-19 pandemic saw remote working become increasingly common globally, with companies taking advantage of remote working to access talent in multiple jurisdictions in a more cost-effective manner. Aligned to the increase in remote working is the increase in the employer of record (EOR) market.

An EOR is a third-party organisation that enters into a contractual agreement with a foreign entity with no established juristic presence in a country, to employ workers on its behalf in the country. The EOR operates as a facilitator by taking on the responsibility for all functions related to employment where the worker is located but the foreign client is not.

The EOR deals with the domestic employment law requirements of that country, such as employee taxes, benefits, payroll and employment law obligations. The EOR model allows a foreign entity to employ individuals in the country without the need to establish a juristic entity, with the EOR being the legal employer of the workers.

The EOR model is not, however, without employment law risk. There is a real possibility that the client of the EOR may be found to be the co-employer of the workers, thus exposing it to adverse claims. This is particularly so because in South Africa, when a dispute as to who the true employer is arises, the courts will not be confined to merely referring to the contractual agreements in place between the EOR and the foreign client but will have regard to the true and real position between the parties and the workers.

In addition, if triggered, the deeming provisions applicable to temporary employment services (colloquially known as labour brokers), as set out in our Labour Relations Act 66 of 1995, may apply. This could result in the workers being deemed to be employees of the foreign client.

The EOR model presents an opportunity for foreign entities to access talent in the South African market. Employers looking to make use of the EOR model within South Africa will need to be mindful of the associated employment law risks.

Jean Ewang and Tshephang Kekana

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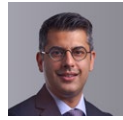
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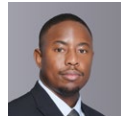
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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