

EMPLOYMENT ALERT

19 November 2012

THE EMPLOYMENT EQUITY AMENDMENT BILL AND THE NEW EMPLOYMENT SERVICES BILL

Parliament's portfolio committee on labour has released the Employment Equity Amendment Bill (EEAB) and the Employment Services Bill for public comment.

When these bills come onto law they will have a significant impact on how employers conduct their business.

Among the many changes made to the current Employment Equity Act, No 55 of 1998, the EEAB introduces a new form of unfair discrimination. This will regulate situations where different employment conditions are applied to different employees who do the same or similar work (or work of equal value). Unless the employer can show that differences in wages or other conditions of employment are, in fact, based on fair criteria such as experience, skill and responsibility, such conduct will constitute unfair discrimination.

With regard to affirmative action, the Labour Department (Department) will now have increased powers to fine companies who do not comply with their employment equity obligations. The quantum of fines will be increased and may now also be determined by making reference to the employer's annual turnover.

Furthermore, the group of people who benefit from affirmative action will now be limited to persons who were citizens of South Africa before the democratic era (or would have been entitled to citizenship, but for the policies of apartheid), and to their descendants. This means that the employment of persons who are foreign nationals, or who have become citizens after April 1994, cannot assist employers to meet their affirmative action targets.

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The amendments will also affect a company's use of contract workers. In line with proposed amendments to the Labour Relations Act, No 66 of 1995, employees who are placed with a client by a Labour Broker for longer than six months will be deemed to be employees of the company for the purposes of affirmative action.

The Employment Services Bill is a new government initiative that will set up a public 'employment services agency', and will also provide for the regulation and registration of private employment services agencies. These agencies are not labour brokers but institutions that will provide job seekers with certain services such as matching job seekers with available work opportunities, registering job seekers, job vacancies and facilitating other employment opportunities. The Bill will also set up a nationwide database to monitor employment and assist with government's goal of creating more jobs, decent work and sustainable livelihoods.

The public has been invited to provide written submissions on the Bills by no later than 14 December 2012.

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