

EMPLOYMENT ALERT

7 November 2012

LABOUR RELATIONS AMENDMENT BILL 2012

The Labour Relations Amendment Bill 2012 is currently in the process of parliamentary debate. If passed, it is likely to come into effect towards the end of 2012 or the beginning of 2013. In the first of a series of articles, the most important proposed amendments shall be discussed as they are likely to affect most employees within South Africa.

The term 'organisational rights' refers to those rights granted to a trade union within the workplace. They are governed by chapter 3 of the Labour Relations Act (LRA). The rights afforded to a trade union are dependent on their level of representativeness in the workplace. There are two levels of representativeness in the workplace: sufficient and majority representation. Although not specifically defined in the LRA, a union is regarded as being sufficiently representative if it enjoys anywhere between 15% and 50% membership of all employees within a workplace. A union that has attained sufficient representation is entitled to enter an employer's premises in order to recruit members or otherwise serve their members' interests. In addition to that, a sufficiently representative trade union is entitled to insist that an employer deduct from the wages of a union member union subscriptions or levies payable to that trade union which are paid over to the union directly. In addition, if an employee happens to be an office-bearer of a sufficiently representative union, such employees are entitled to reasonable paid time off every year in order to carry out union functions.

Majority unions (50% + 1 member within a workplace) enjoy all of the preceding rights, in addition to which they are entitled to appoint shop stewards, the number of which depends on the total number of employees employed within that workplace. This is a crucial right for majority unions as shop stewards act as the voice of the union within the workplace.

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In terms of the 2012 Amendment Bill, it is proposed that unions who have only reached sufficient representation within a particular workplace shall nonetheless be entitled to appoint shop stewards and to have access to certain information of the employer provided that no other trade union within that workplace has been granted majority status within the workplace. These 'majority rights' lapse if the trade union concerned ceases to remain the most representative trade union within the workplace. The practical effect of this is that unions will no longer have to achieve majority status within a workplace in order to demand the appointment of shop stewards and to exercise the right to information (s16 of the LRA) currently afforded only to majority unions. This is without doubt a victory for labour as these rights are currently the exclusive preserve of majority unions.

Supporters of the amendment argue that it is appropriate for minority unions to be afforded the rights in question. Those not in favour of the amendments argue that the sections dilute the principle of majoritarianism and will increase competition and probably friction between trade unions at the workplace.

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