



# EMPLOYMENT ALERT

## PART - TIME EMPLOYEES

Evident from the Explanatory Memorandum on the Labour Relations Amendment Bill, one of the key themes of the Bill is to ensure that vulnerable categories of workers receive adequate protection under employment legislation. Accordingly, substantive amendments have been proposed in an attempt to extend protection to certain categories of non-standard employees, such as those employed by a temporary employment service, those employed on a fixed term basis, and part-time employees.

Our previous alerts have addressed the first two categories of non-standard employees. This alert focuses on the proposed new section 198C, which seeks to extend protection to part-time employees earning below the threshold prescribed by the Minister of Labour in terms of section 6(3) of the Basic Conditions of Employment Act, which is currently R172, 000 per annum.

A part-time employee is defined in the proposed section 198C as 'an employee who is remunerated wholly or partly by reference to the time that the employee works and who works less hours than a comparable full-time employee'.

In this context, a comparable full-time employee is an employee who is remunerated wholly or partly by reference to the time that he or she works and who is identifiable as a full-time employee in terms of the custom and practice of the employer and does not exclude employees whose hours have been reduced, by agreement, on account of the employer's operational requirements. The section furthermore provides a guideline on the manner in which to identify a comparable full-time employee where an employer comprises of different workplaces.

Excluded from this section are:

- employees earning in excess of the earnings threshold referred to above,
- employees who ordinarily work less than 24 hours a month for an employer; and

- during the first six months of the employee's continuous employment with an employer.

In addition, small and new businesses have been given a respite as the section does not apply (subject to listed exceptions) to an employer that employs less than 10 employees or that employs less than 50 employees and whose business has been in operation for less than two years.

The amendment prescribes that, taking into account the working hours of a part-time employee, an employer must treat the part-time employee on the whole not less favourably than a comparable full-time employee doing the same or similar work. The *proviso* to this is where there is a justifiable reason for differential treatment, this may still be permitted. A suggestion of factors that could constitute a "justifiable reason" for differential treatment can be found in the proposed new section 198D and include, among others, seniority, merit and the quality or quantity of work performed.

In addition to the above, the section prescribes that an employer must provide a part-time employee with access to training and skills development on the whole not less favourable to a comparable full-time employee and the same access to opportunities to apply for vacancies as it provides to full-time employees.

This proposed amendment is in-line with the theme of the amendments, and given that it applies to employees only after they have been in employment for six months, there appears to have been an attempt by the Legislature to balance the commercial need for flexibility with short-term placements and the need to protect vulnerable categories of employees.

*Pranisha Maharaj*

## CONTACT US

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



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



**Tim Mills**  
Director  
**T** + 27 (0)11 562 1160  
**E** tim.mills@dcladh.com



**Sherisa Rajah**  
Senior Associate  
**T** + 27 (0)11 562 1181  
**E** sherisa.rajah@dcladh.com



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



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



**Mabasa Sibanda**  
Senior Associate  
**T** + 27 (0)11 562 1182  
**E** mabasa.sibanda@dcladh.com



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



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



**Mark Meyerowitz**  
Associate  
**T** + 27 (0)11 562 1125  
**E** mark.meyerowitz@dcladh.com



**Melanie Hart**  
Director  
**T** + 27 (0)11 562 1179  
**E** melanie.hart@dcladh.com



**Pranisha Maharaj**  
Senior Associate  
**T** + 27 (0)21 481 6460  
**E** pranisha.maharaj@dcladh.com



**Lerato Phashe**  
Associate  
**T** + 27 (0)11 562 1202  
**E** lerato.phashe@dcladh.com



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



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

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### 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@dcladh.com

#### CAPETOWN

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@dcladh.com

[www.cliffedekkerhofmeyr.com](http://www.cliffedekkerhofmeyr.com)

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