

# EMPLOYMENT ALERT

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## LIMITING THE RIGHT TO STRIKE: SECTION 65 OF THE LABOUR RELATIONS ACT

The South African Constitution recognises the right to strike as an important bargaining tool for trade unions.

It therefore comes as no surprise that a legal mechanism aimed at limiting the scope of this right has become highly contested. The proposed amendment to s65 of the Labour Relations Act, No 66 of 1995 (LRA) has caused concern among trade unions.

Currently, s65(1)(c) of the LRA holds that no person may take part in a strike or a lock-out if the issue in dispute is one that a party may refer to arbitration or to the Labour Court in terms of the LRA.

The proposed amendment to s65(1)(c) seeks to further limit the right to strike or lock-out by excluding this right in circumstances where the issue in dispute is one that could be referred to arbitration or to the Labour Court in terms of the LRA, *or in terms of any other employment law*.

Employment law is essentially a system of rules regulating one aspect of modern society, namely the workplace. The amendment to s65(1)(c) has far reaching implications and primarily seeks to address the increasing levels of unprotected strikes (as well as violent strikes) by further proscribing the circumstances under which employees may strike. If a dispute is one that can be referred to arbitration or the Labour Court in terms of the LRA or any other employment law, then strike action taken on this basis will be unprotected. This means that the list of issues over which employees may no longer strike, or over which employers may no longer lock-out, will be extended.

As the law currently stands, employees are allowed to strike over claims of unfair discrimination because this type of employment law lives in the Employment Equity Act, No 55 of 1998 (EEA),

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and not the LRA. However, when the amendment is promulgated employees will no longer be able to do so because such matters can be referred to the Labour Court in terms of the EEA. The central reason for the proposed amendment is to emphasise and maintain the distinction between disputes that must be adjudicated in arbitrations or in the Labour Court, and those issues which are properly the realm of collective bargaining.

The trade union Solidarity, expressed its views on the proposed amendment to s65 and its concern was obvious. The right to resort to strike action is an important tool for trade unions. Solidarity's resistance is to be expected.

However, the true issue at play boils down to the reasonableness of the limitation on the right to strike. In light of the recent spate of violent strikes and intimidation of non-striking workers, it remains to be settled whether the limitation on the right to strike under s65 of the LRA, together with the proposed amendments thereto, are really as unreasonable as they are made out to be. Furthermore, the proposed amendment will have the effect of decreasing the number of unprotected strikes and forcing employees and trade unions to establish a proper purpose for the strike, and to execute the strike as the last possible resort to resolving a dispute.

*Aadil Patel and Katlego Letlonkane*

## 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@dclacdh.com



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

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



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



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

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



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



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

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



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



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

**Mandlakazi Ngumbela**  
Associate  
T + 27 (0)21 481 6460  
E mandlakazi.ngumbela@dclacdh.com



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



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

**Zinhle Ngwenya**  
Associate  
T + 27 (0)11 562 1119  
E zinhle.ngwenya@dclacdh.com



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



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

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

**Andrea Taylor**  
Associate  
T + 27 (0)11 562 1687  
E andrea.taylor@dclacdh.com

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