

EMPLOYMENT ALERT

20 May 2013

We congratulate Michael Yeates, a Director in our Employment practice, on his appointment as Vice President of the SASLAW Gauteng chapter.

PROPOSED AMENDMENTS TO LABOUR LEGISLATION, WHERE ARE WE?

Over the last few years the Minister of Labour has tabled numerous amendments to existing labour laws that will significantly adjust the landscape of employment law and the regulation of the employment relationship.

The long-awaited amendments to the Labour Relations Act, No 66 of 1995 and the Basic Conditions of Employment Act, No 75 of 1997 are perhaps the most anticipated of all the Labour Bills tabled by the Minister. The Basic Conditions of Employment Amendment Bill, which is currently before the National Assembly and scheduled for further debate, seeks to increase the employee's protection in the workplace. Salient amendments include provisions aimed at clarifying the jurisdictional powers of the Labour Court and the Minister's powers to make sectoral determinations. Although it will continue to be debated, the amendments are expected to be passed into law without further changes.

This Basic Conditions of Employment Amendment Bill is expected to become an act of Parliament by the end of the year, at which point the focus of employers and employees is expected to shift towards the controversial Labour Relations Amendment Bill.

The Labour Relations Amendment Bill, which is currently before a portfolio committee of Parliament, will arguably introduce the most significant changes for employers and the manner in which they conduct business. This includes the amendment which will place liability on the employer in a temporary employment service

relationship, and remove protection for employees earning more than R1 million per year. This Bill will continue to be debated in Parliament and will probably be enacted, as it stands, by the end of the year.

The Employment Equity Amendment Bill (EEAB) and the Employment Services Bill are yet to be tabled in Parliament. The EEAB's amendments will clarify the criteria of discrimination in the workplace and increase the penalty for non-compliance with the affirmative action provisions of the Employment Equity Act, No. 55 Of 1998 (EEA). The Employment Services Bill is an attempt by government to address the issue of unemployment in the workplace. This bill will allow the Minister to require vacancies to be registered by employers.

The latter bills are at the consultation phase and their provisions will still be the subject of debate and may be altered before they are enacted by Parliament.

Johan Botes and Wandile Sishi

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A UNION'S RIGHT TO PICKET ON PROPERTY BELONGING TO EMPLOYERS AND THIRD PARTIES: WHAT CHANGES ARE IN STORE?

Section 69(1) of the Labour Relations Act, No 66 of 1995 (LRA) provides that a registered trade union may authorise a picket by its members and supporters for the purposes of peacefully demonstrating in support of any protected strike, or in opposition to a lock-out. However, Parliament's Portfolio Committee on Labour has proposed certain amendments to this section.

The amended section will stipulate that pickets may only be conducted by members of the relevant trade union, and not supporters of the union. However, it remains to be seen how such a provision will be enforced in practice.

Furthermore, as the law currently stands, employees may picket at any place to which the public has access, but not on the employer's premises unless the employer provides its consent. The employer may however not unreasonably refuse such consent. In the event that the employer does unreasonably refuse to consent, a CCMA Commissioner may prescribe picketing rules which permit picketing on the premises of that employer.

Having picketing rules in place helps to ensure that all picketing is conducted within prescribed bounds, and on terms that are mutually agreed on by all the parties concerned. It is therefore advisable to enter into a picketing agreement before a protected strike commences.

However, the issue becomes complicated when the employer's place of business is situated on property belonging to a third party (such as shopping malls owned by a landlord). Over the years third parties have been reluctant to allow picketing to take place on their premises because of the detrimental effect on its business.

However, a new amendment to s69 will allow for picketing to take place on property owned and controlled by third parties. The third party must first provide its consent but it may not unreasonably refuse such consent. If the third party unreasonably refuses to consent, it will have an opportunity to make representations to the CCMA before the CCMA establishes picketing rules.

The above amendment also provides that parties may approach the Labour Court in respect of a dispute over compliance with picketing rules. The Labour Court has also been empowered to suspend a picket / strike in appropriate circumstances.

While the changes mooted by Parliament may be seen as a restriction on third parties' rights, any initiative that seeks to promote orderly and non-violent strike action should be welcomed.

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