

# EMPLOYMENT ALERT

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## AMENDMENTS TO THE LABOUR RELATIONS ACT: GIVING UNIONS GREATER ACCESS TO ORGANISATIONAL RIGHTS

To represent their members and operate effectively, trade unions require certain privileges.

These privileges include access to the employer's premises, access to certain information, the ability to collect union dues and appoint shop stewards.

However, given the importance of collective bargaining in the national labour relations framework, the Labour Relations Act, No 66 of 1995 (LRA) has in certain instances elevated the above-mentioned privileges to the status of legal rights. Specifically, a trade union is entitled to such 'organisational rights' if it is sufficiently representative of the employees employed at a particular workplace.

If a trade union's request for organisational rights is declined by the employer, the union may refer a dispute to the CCMA to determine whether the union is entitled to these rights.

Section 21 of the LRA sets out considerations which a CCMA commissioner must take into account when resolving a dispute about organisational rights. Specifically, the commissioner must decide on the extent of the union's representation at the workplace with different rights applicable where a trade union is sufficiently representative, on the one hand, or enjoys majority membership in a workplace, on the other. Majority trade unions are entitled to elect shop stewards and have access to information in terms of s14 and s16 of the Acts respectively.

The Department of Labour has proposed certain amendments to s21.

In terms of the proposed amendments a commissioner determining a dispute about organisational rights will also have to consider the general composition of the workforce. This will include considering

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the extent to which employees are employed in non-standard forms of employment, such as through a temporary service provider or on a fixed-term contract.

It is further proposed that a commissioner be given a discretion to award the organisational rights referred to in s14 and s16 in certain circumstances where a trade union is not, in fact, the majority trade union. However, this will be subject to the proviso that:

- the trade union must already be entitled to rights in terms of s12 (access to the workplace), s13 (the deduction of union dues) and s15 (leave for trade union activities); and
- there must be no other trade union in the workplace that already has s14 or s16 rights.

Effectively, these amendments allow the CCMA to award organisational rights that traditionally require majority membership to minority unions who nevertheless have substantial membership. However, these rights will be contingent on the trade union effectively being the most representative union in the workplace.

In terms of the current Act, s18 states that an employer and a majority union may conclude a collective agreement that establishes a threshold of representativeness required for any trade union seeking to obtain

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organisational rights under s12, s13 and s15 (the right to access, the right to collect union dues, and the right to take leave for union activities, respectively).

Another proposed amendment to s21 will give arbitrators discretion to award organisational rights under s12, s13 and/or s15 in instances where a union does not meet the threshold established by a collective agreement in terms of s18. The threshold in the agreement may be disregarded if applying it would unfairly affect a trade union that represents a 'significant interest' or 'substantial number' of employees. The commissioner will be required to draw a balance between the majority trade union and the trade union seeking to enforce the rights.

The above amendments are aimed at promoting the inclusion of non-standard employees in the collective bargaining framework

and expanding the application of organisational rights. This will effectively expand the employee pool in a workplace for purposes of procuring organisational rights. The amendments will have the effect of creating a more inclusive collective bargaining arena in the workplace. The proposed amendments may assist smaller or less representative trade unions to gain greater access into the workplace than what is currently permitted under the CCMA process stipulated in s21. Hopefully, this will lessen the need felt by smaller unions to use industrial action as the only route to obtain organisational rights previously ordained for more representative unions only. In the current climate of violent strike action, any proposal that could result in the need to use less strike actions as the appropriate way to resolve disputes should probably be welcomed.

*Faan Coetzee and Samantha Kelly*

## 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

**Fiona Leppan**

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

**Nicholas Preston**

Senior Associate  
T + 27 (0)11 562 1788  
E nicholas.preston@dcladh.com

**Mandlakazi Ngumbela**

Associate  
T + 27 (0)21 481 6460  
E mandlakazi.ngumbela@dcladh.com

**Gillian Lumb**

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

**Hugo Pienaar**

Director  
T + 27 (0)11 562 1350  
E hugo.pienaar@dcladh.com

**Mabasa Sibanda**

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

**Zinhle Ngwenya**

Associate  
T + 27 (0)11 562 1119  
E zinhle.ngwenya@dcladh.com

**Johan Botes**

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

**Gavin Stansfield**

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

**Kirsten Caddy**

Associate  
T + 27 (0)11 562 1412  
E kirsten.caddy@dcladh.com

**Lauren Salt**

Associate  
T + 27 (0)11 562 1378  
E lauren.salt@dcladh.com

**Mohsina Chenia**

Director  
T + 27 (0)11 562 1299  
E mohsina.chenia@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

**Andrea Taylor**

Associate  
T + 27 (0)11 562 1687  
E andrea.taylor@dcladh.com

**Melanie Hart**

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

**Faan Coetzee**

Consultant  
T + 27 (0)11 562 1600  
E faan.coetzee@dcladh.com

**Inez Moosa**

Associate  
T + 27 (0)11 562 1420  
E inez.moosa@dcladh.com

**Ndumiso Zwane**

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

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