



**DLA CLIFFE DEKKER
HOFMEYR**

EMPLOYMENT

ALERT

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MINING EMPLOYERS
URGED TO MAKE
REPRESENTATIONS
ON DESIGNATION OF
ESSENTIAL SERVICES

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The Essential Services Committee (the Committee) invited interested parties to make representations on whether specific services should be classified as essential services. Parties have only until 25 August 2014 to express their intention to make representations before the committee convenes to hear the representations on 1 and 2 September 2014.

Essential services are those services "the interruption of which endangers the life, personal safety or health of the whole or any part of the population", as defined in section 213 of the Labour Relations Act, No 66 of 1995 (LRA). These services typically include supply of critical services such as water, electricity, policing and fire-fighting. During 2011 the Committee declared security, electrical and safety services at airports to be essential services. In June 2012 the Committee upheld a previous determination declaring air traffic and navigation services as essential.

The Committee is a creature of statute established in terms of section 70 of the LRA. It is empowered by the same Act to designate services, wholly or in part, as essential services. The main effect of designating a service as essential is that employees engaged in essential services are prohibited from partaking in protected strike action. Essential service employees seeking to improve terms and conditions of employment, including negotiating a salary increase or bonus, are forced to have their dispute resolved through arbitration should they be unable to convince their employers to accede to their demand. While other employees are able to use their collective power in withholding their labour, essential service employees are prohibited by s65(1)(d)(i) from engaging in a strike. Similarly, an employer may also not lock essential services workers out in a bid to force the workers to accept the employer's demands.

Employers in the mining community should strongly consider making representations to the Committee about declaring control room, lamp room, fire-fighting, fore patrol and underground

emergency teams as emergency services. The Committee indicated on 15 August 2014 that it has, to date, only received written representations from the National Union of Mineworkers and Kriel Colliery. The Essential Service Committee Regulations prescribe that parties wishing to make representations must do so by stating:

- the nature of its interest in the investigation;
- whether it requires an opportunity to make oral representations, if those oral representations are to contain material or raise issues not dealt with in the written representations, and provide a brief summary of those oral representations;
- whether it relies or intends to rely on any expert evidence, and if so, provide a brief summary of that expert evidence; and
- its address, telephone number (if any) and telefax number (if any).

As the Committee will make a determination on the evidence and arguments presented it is imperative that interested parties make use of the opportunity to put the relevant facts and arguments before the Committee. Mining employers who fail to make representations may rue the missed opportunity to have these critical services designated as essential services by the Committee.

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