

# IN THIS **ISSUE**

# THE COURT HAS A DISCRETION TO DECIDE IF SECURITY IS REQUIRED WHEN REVIEW APPLICATIONS ARE INSTITUTED

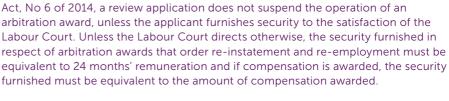
As a result of an amendment introduced by the Labour Relations Amendment Act, No 6 of 2014, a review application does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Labour Court. Unless the Labour Court directs otherwise, the security furnished in respect of arbitration awards that order re-instatement and re-employment must be equivalent to 24 months' remuneration and if compensation is awarded, the security furnished must be equivalent to the amount of compensation awarded.



# THE COURT HAS A DISCRETION TO DECIDE IF SECURITY IS REQUIRED WHEN REVIEW APPLICATIONS ARE INSTITUTED

This amendment, as interpreted by the Labour Court, allows the Labour Court to decide whether security must be paid and the amount of security required.

The court held that the amendment "should also be read to allow for the court to exercise its unfettered discretion to order that security be paid or not, and if so, whether there should be a deviation from the quantum...".



As a result of an amendment introduced by the Labour Relations Amendment

This amendment, as interpreted by the Labour Court, allows the Labour Court to decide whether security must be paid and the amount of security required.

In Free State Gambling and Liquor Authority v Commission for Conciliation Mediation and Arbitration & Others (2015) 36 ILJ 2867 (LC), the applicant, a gambling and liquor industries regulator, brought two urgent applications seeking to stay the certification and enforcement of two arbitration awards. The applicant also sought an order absolving it from paying security; alternatively, relief declaring the amendment unconstitutional.

The court held that the amendment "should also be read to allow for the court to exercise its unfettered discretion to order that security be paid or not, and if so, whether there should be a deviation from the quantum...". In arriving at its decision, the court took into account that the amendment was drafted to speed up the finalization of review applications and to deter litigants that bring review

applications to delay compliance with arbitration awards. The court held that its interpretation was aligned with the Constitution.

The court held that where the applicant's budget and financial management is governed by Treasury Regulations and the Public Finance Management Act, No 1 of 1999, as was the case, the object of security is satisfied. The court was of the view that it was impractical and unnecessary for the applicant to furnish security as it meant that a notice would have to be gazetted by the Minister of Finance each time security is furnished.

Flowing from the *Free State Gambling* decision, state owned entities are unlikely to be required to furnish security when instituting review applications. However, in respect of private employers the court has a discretion to direct whether security is required and if so the amount.

Sipelelo Lityi and Aadil Patel







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