

EMPLOYMENT ALERT

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 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.

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



**NEW
RELEASE**

Employment Retrenchment Guideline

Answering your pertinent questions around consultations, large-scale retrenchments, facilitation vs non-facilitation, selection criteria, voluntary separation packages and vacancies-bumping.

 [**CLICK HERE TO FIND OUT MORE**](#)

CHAMBERS GLOBAL 2014 - 2016 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2016 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2016 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2016 in Band 3: Employment.



Michael Yeates named winner in the **2015** and **2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



SASLAW 19TH ANNUAL CONFERENCE | Johannesburg, 22 - 23 July 2016
REGISTER NOW
www.conference.saslaw.org.za

OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Samiksha Singh
Director
T +27 (0)21 481 6314
E samiksha.singh@cdhlegal.com



Katlego Letlonkane
Associate
T +27 (0)21 481 6319
E katlego.letlonkane@cdhlegal.com



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



Gavin Stansfield
Director
T +27 (0)21 481 6313
E gavin.stansfield@cdhlegal.com



Sipelelo Lityi
Associate
T +27 (0)11 562 1581
E sipelelo.lityi@cdhlegal.com



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



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



Thandeka Nhleko
Associate
T +27 (0)11 562 1280
E thandeka.nhleko@cdhlegal.com



Zaaheda Mayet
Director
T +27 (0)11 562 1020
E zaaheda.mayet@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



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



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



Nicholas Preston
Director
T +27 (0)11 562 1788
E nicholas.preston@cdhlegal.com



Ndimiso Zwane
Senior Associate
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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@cdhlegal.com

CAPE TOWN

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@cdhlegal.com

©2016 1000/APR