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EMPLOYMENT ALERT

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STRIKE HERE, STRIKE THERE, STRIKE EVERYWHERE – ARE THE PREMISES OF THE CLIENT IMMUNE TO STRIKE ACTION BY EMPLOYEES THAT ARE SUPPLIED BY TEMPORARY EMPLOYMENT SERVICES?

History has demonstrated that the second half of each year brings with it increased industrial action and labour unrest. But what does this mean for companies that utilise the services of Temporary Employment Services (TES), or as they are more commonly referred to, Labour Brokers?

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On 1 January 2015, certain amendments were introduced by the Labour Relations Amendment Act, No 6 of 2014, one of which included an amendment to s21 of the Labour Relations Act, No 66 of 1995 (LRA), making it possible for the employees supplied to a client by a TES, to now also strike at the premises of the client.

The analysis begins with Chapter III of the LRA which deals with organisational rights. For majority trade unions these include:

- trade union access to the workplace;
- deduction of trade union subscriptions;
- election of trade union representatives (shop stewards);
- leave for trade union activities; and
- disclosure of information.

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The exercise of these organisational rights and the amendment under s21(12) of the LRA, now make it possible for organisational rights to be exercised at the workplace of either the TES company itself or at the workplace and/or premises of the client of the TES.

With this at the fore, disputes regarding the interpretation or application of organisational rights can be dealt with in one of two ways:

- the matter can either be referred to arbitration and adjudicated; or
- strike action can be embarked upon in terms of s65(2)(a) of the LRA, but then with the qualifier that the matter cannot be referred to arbitration for a period of 12 months after the strike, as provided for in s65(2)(b).

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This possibility is amplified by the amendment found in s69(6) of the LRA, which permits employees and supporters to picket at a place which is owned or controlled by a person other than the employer (ie a client, landlord or other third party), provided that person is given the opportunity to make representations at the time that any picketing rules are established.

For these reasons, employers that make use of TES companies should ensure that their service level agreements cater for the above possibilities and specifically incorporate picketing rules so as to regulate picketing at their premises and safeguard their interests before strike action becomes inevitable. They should also ensure that they participate at Commission for Conciliation, Mediation and Arbitration proceedings regulating picketing rules.

*Nicholas Preston
and Elizabeth Sonnekus*

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