

25 FEBRUARY 2019

EMPLOYMENT ALERT

IN THIS ISSUE

STRIKE BALLOTS - THE SECRET'S OUT

The Labour Relations Amendment Act of 2018 came into force on 1 January 2019, bringing with it an amendment to s95(5)(q) of the Labour Relations Act (LRA). Prior to the amendment, the LRA stated that members of a trade union or employers' organisation could not be disciplined for refusing to participate in a strike or lock-out unless a ballot was held and it was supported by the majority of voters. Although the application and enforcement of this section remained in doubt, the amendment has added that the "ballot" must now include any system of voting by members that is recorded and is in secret – so as to not identify voters.

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STRIKE BALLOTS - THE SECRET'S OUT

The Department of Labour has cautioned that trade unions and employers' organisations must use the present 180-day transitional period from the commencement of the LRAA, in order to align their constitutions and provide for balloting.

The guidelines issued in terms of s95(5) and at the end of 2018, provide inter alia that the records of the ballot must be retained for three years from the date of the ballot.



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The amendment not only brings about anonymity for voters, but the Department of Labour has cautioned that trade unions and employers' organisations must use the present 180-day transitional period from the commencement of the LRAA, in order to align their constitutions and provide for balloting, failing which punitive measures may be imposed by the Registrar, including the cancellation of registration, de-registration and the placement under administration of the guilty party.

There is however and currently, no express provision that permits that a strike or lock-out may be interdicted on account of a trade union or employers' organisation having failed to hold such a ballot, however the amendment, if properly enforced, should bring about a greater form of responsibility and

participation prior to strikes and lock-outs being embarked upon, especially where these have been previously called by small groups of dominant members.

Interestingly, the guidelines issued in terms of s95(5) and at the end of 2018, provide inter alia that the records of the ballot must be retained for three years from the date of the ballot – aiming to optimise the use of the collective bargaining framework and promote co-operative labour relations.

Trade Unions and Employers Organisations should therefore ensure compliance as soon as practically possible and prior to the expiry of the transitional period referred to above.

Nicholas Preston and Michaela Grieve

CHAMBERS GLOBAL 2014 - 2019 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2019 in Band 2: Employment.

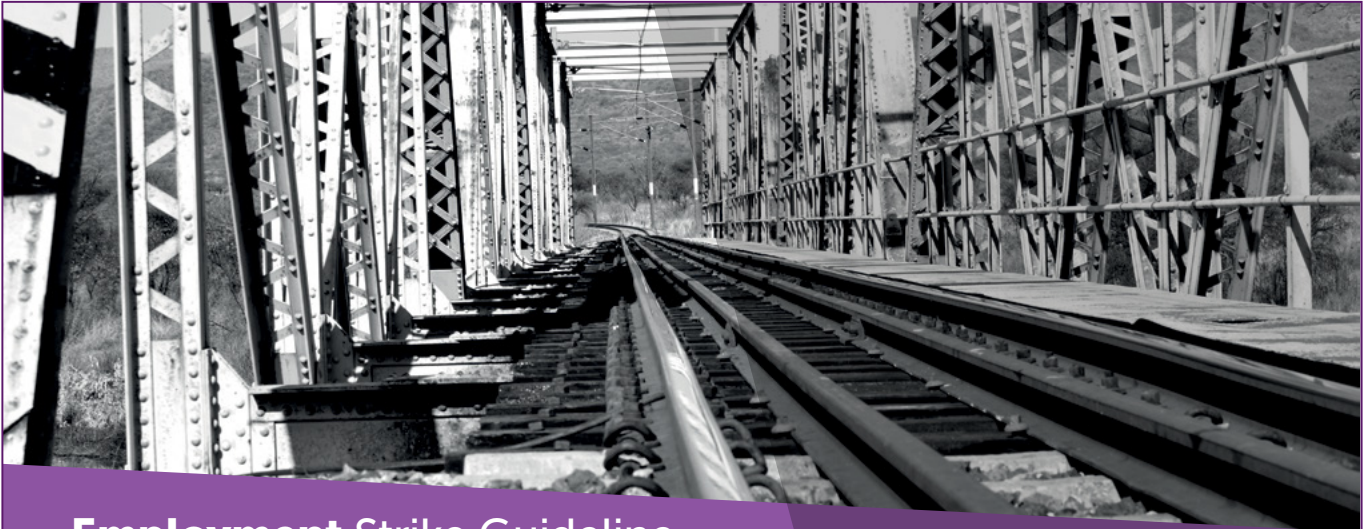
Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2019 in Band 2: Employment.

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Gillian Lumb ranked by CHAMBERS GLOBAL 2017 - 2019 in Band 4: Employment.

Gavin Stansfield ranked by CHAMBERS GLOBAL 2018 - 2019 in Band 4: Employment.





Employment Strike Guideline

Find out when a lock-out will be protected.

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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



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Anelisa Mkeme
Senior Associate
T +27 (0)11 562 1039
E anelisa.mkeme@cdhlegal.com



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



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



Sean Jamieson
Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



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



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



Zola Mcaciso
Associate
T +27 (0)21 481 6316
E zola.mcaciso@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



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



Tamsanqa Mila
Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com



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



Ndumiso Zwane
Director
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com



Bheki Nhlapho
Associate
T +27 (0)11 562 1568
E bheki.nhlapho@cdhlegal.com



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



Steven Adams
Senior Associate
T +27 (0)21 481 6341
E steven.adams@cdhlegal.com



Siyabonga Tembe
Associate
T +27 (0)21 481 6323
E siyabonga.tembe@cdhlegal.com



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



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

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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

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