

EMPLOYMENT LAW ALERT

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Compensation for Occupational Injuries and Diseases Act: Increase in monthly pensions and Amendment of Schedule 4

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Does a restraint of trade transfer with a business as a going concern under section 197 of the Labour Relations Act?

On 10 August 2022 the Johannesburg Labour Court, for now at least, appears to have settled this contentious question.

In the case of *Slo Jo Innovation (Pty) Ltd v Beedle and Another* (J 737/22) [2022] ZALCJHB 212, Slo Jo Innovation (Pty) Ltd (applicant) filed an urgent application to enforce a restraint of trade undertaking contained in the first respondent's (Ms Beedle) contract of employment. Beedle had been employed by Slo Jo Trading (Pty) Ltd (Slo Jo) as a sales representative.

In 2007 Beedle concluded a contract of employment containing a restraint of trade clause. The applicant was a wholly owned subsidiary of Slo Jo. In 2018, as part of Slo Jo's internal restructuring, three new companies were established, one of which was the applicant. The applicant's case was that Beedle was then transferred from Slo Jo to the it as part of the internal restructuring under section 197 of the Labour Relations Act 66 of 1995 (LRA).

Subsequent to the transfer, Beedle resigned from the applicant's employ and become involved with

a direct competitor of the applicant. The applicant sought to interdict Beedle from being involved with the competitor's business. Beedle opposed the application on the basis that her 2007 contract was not concluded with the applicant but with Slo Jo. According to Beedle there was no restraint of trade in place between the applicant and herself. She also argued that a restraint of trade agreement does not by law pass from one employer to another, placing reliance on the 2017 decision of the High Court in *Laser Junction* where the court held that only contracts of employment and not restraints of trade are transferrable under section 197 of the LRA. The Labour Court declined to follow the decision in *Laser Junction*, which the Labour Court found (correctly in our view) to be incorrectly decided. The Labour Court also found that there were

distinguishing features between *Laser Junction* and this matter. Unlike in *Laser Junction*, Beedle had not signed a new employment contract. Under section 197(2) the new employer (i.e. the applicant) is automatically substituted in the place of the old employer in respect of contracts of employment in existence immediately before the date of the transfer.

In short, the court concluded that a restraint of trade agreement concluded between an employer and employee and included in a contract of employment is transferable under section 197 of the LRA. This case is another in a long line of cases in which the Labour Court has upheld and enforced restraints of trade agreements against former employees who, after concluding an agreement, take up employment in breach of the undertaking. So, employees should tread carefully when it comes to breaching restraint of trade covenants.

**IMRAAN MAHOMED AND
BIRON MADISA**

A sigh of relief for another 6-month extension of validity for foreign nationals with pending visa and waiver applications

With the upcoming deadline of 30 September 2022 looming, foreign nationals who are still waiting for the outcome of their pending visa and waiver applications have been left anxiously wondering whether the Department of Home Affairs (Department) would issue another extension of their current visa status in South Africa.

This position was recently clarified in a circular dated 7 September 2022 (Circular).

In terms of the Circular, the Department once again approved the introduction of certain temporary measures to address its severe backlog in the processing of visa and waiver applications. The Circular only applies to foreign nationals who have been legally admitted into South Africa and who are currently waiting for the outcome of their visa and/or waiver applications as follows:

- A blanket temporary extension is granted to foreign nationals who have pending waiver and/or visa applications until 31 March 2023, which will allow the Department additional time to process these applications.
- The temporary blanket extension will allow foreign nationals with

pending waiver applications time to collect their waiver outcomes and apply for appropriate visas.

- Foreign nationals who decide to abandon their pending visa and/or waiver applications and depart from South Africa will be allowed to exit at a port of entry on or before 31 March 2023 without being declared undesirable.
- While waiting for the outcome of their visa applications, foreign nationals are prohibited from engaging in any activity, other than those activities that are specifically provided for as part of their current visa conditions.
- Applicants who originate from countries that are exempt from port of entry visa requirements may travel by presenting their receipt from the Visa Facilitation Services (VFS) when they arrive

at the port of entry for admission back into South Africa to collect their visa outcomes. However, applicants with pending long-term visa applications who originate from visa restricted countries must obtain a port of entry visa before being re-admitted into South Africa. In addition, these applicants must present their VFS receipt to re-enter South Africa.

As this Circular is the third (and longest) blanket temporary extension of validity that has been granted by the Department to foreign nationals, it is not clear whether any additional extensions will be granted after 31 March 2023. For now, however, foreign nationals with pending visa and waiver applications can breathe a sigh of relief for this welcome certainty (at least until 31 March 2023).

**HEDDA SCHENSEMA, TARYN YORK
AND MAPASEKA NKETU**

Compensation for Occupational Injuries and Diseases Act: Increase in monthly pensions and Amendment of Schedule 4

On 28 July 2022, the Minister of Employment and Labour published notice 1275 of 2022 under Government Gazette 46884 (page 54), in terms of section 57(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended (COIDA) which came into effect on 1 April 2022.

The Government Gazette firstly provides for an increase of 4,5% in respect of the monthly pensions payable in terms of sections 49(4) and 54(1) (a), (b), (c) and (d) of COIDA with regard to accidents that occurred before 31 March 2022, as well as occupational diseases diagnosed before 31 March 2022.

Secondly, it provides for an amendment to Schedule 4 for calculating compensation for accidents that occurred from 1 April 2022 as well as occupational diseases diagnosed from 1 April 2022.

Lastly, it provides for an increase in the maximum amount of earnings on which the assessment of an employer shall be calculated. R529,264 per employee per annum is now prescribed as the maximum amount on which an assessment of an employer shall be calculated, with effect from 1 April 2022.

**HEDDA SCHENSEMA
AND TSHEPISO RASETLOLA**



FSCA - August 2022: Summary of statement regarding payment of Pension Fund Contributions



On 19 August 2022, the Financial Sector Conduct Authority (FSCA) issued a statement in respect of the requirements related to the payment of Pension Fund Contributions, 2022 (Conduct Standard). We summarise this below:

The Conduct Standard replaces Regulation 33 of the Regulations issued under section 36 of the Pension Funds Act of 1956 and repeals Government Notice 397 which deals with the rate of interest in respect of interest payable on amounts and values in terms of section 13A(7) of the PFA.

Purpose of conduct standard is to:



Set a standard format in which a fund must inform a participating employer of its duties and obligations, under section 13A of the PFA.



Highlight the rate of interest payable on arrear contributions.



Maintain notification and reporting obligations on the board of a fund, principal officer or other authorised person, where there is a contravention of or non-compliance with section 13A of the PFA by an employer.



Note the minimum information to be furnished to a fund by an employer, regarding payments of contributions made in terms of section 13A of the PFA.



Set out the format in which a request by a fund to an employer must be made.



Set requirements where outstanding contributions are being collected by attorneys on the board of a fund and participating employer.

The Conduct Standard will come into effect six months after 19 August 2022, being the publication date or a later date determined by the FSCA by notice on its website. The FSCA may also determine different dates for the coming into effect of the different provisions of the Conduct Standard. This period may be extended.

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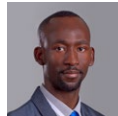
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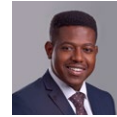
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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