DLA CLIFFE DEKKER HOFMEYR

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EMPLOYMENT
ALERT

SOUTH AFRICAN BUSINESSES SHOULD START PREPARING NOW FOR THE LABOUR RELATIONS AMENDMENT BILL

The way businesses deal with fixed term contracts and labour brokers will change how they operate in South Africa when the suite of amendments to employment legislations is enacted, most likely to be in the second quarter of this year. Businesses should not be waiting for the amendments to be enacted before making strategic decisions regarding the effects of the legislation on their operations.

Businesses should be auditing their fixed term employees and labour broker numbers, preparing strategic position papers and meeting with their HR committees on how they will regulate their fixed term employees and labour broking employees in future. If they don't start doing this now, they will be caught short once amendments are enacted.

On 17 December 2010, the Department of Labour announced the publication of the following four new Bills:

- Labour Relations Amendment Bill;
- Basic Conditions of Employment Amendment Bill;
- Employment Equity Amendment Bill; and
- Employment Services Bill.

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The Labour Relations Amendment Bill essentially proposes to stop the practice of repeated contracting with employees for short-term periods and to place an onus on employers to justify the use of short term contracts of employment. It further repeals s198, which deals with Temporary Employment Services and introduces a new definition of "employer" and "employee".

Businesses need to make strategic decisions now as to how they formulate the contracts of fixed term employees and if they will use labour brokers or not. With regards to the regulation of labour brokers, the Bill seeks to ensure that those sections of persons who render services regarded as most vulnerable have some degree of protection and are treated equitably and does not propose a ban on brokers.

Those who want to continue to use fixed term employees will have to prepare their contracts on either a project basis or for a period of time. The onus will be on the employers to show they no longer need fixed term employers after a time has lapsed. In the past, fixed term employees had to prove they were let go unfairly, so there will be a shift of responsibility in this regard.

The issues in the Bill have been hotly contested since it first published in December 2010 and this has contributed to holding up its enactment. However, it looks like the Bill will be enacted in the second quarter of this year – almost two years down the line. Businesses can no longer put off preparing for the changes.

Aadil Patel

NO EXTRA PAY FOR EXTRA DAY'S WORK – LEAP YEAR LIMP FOR WORKERS…

Workers may feel disgruntled at the prospect of having worked an extra day during leap year at no extra remuneration. Leap year sees the insertion of an extra day in the calendar, which fell on a Wednesday in 2012, a typical working day for most employees. Workers thus worked a day more than they do during non-leap years. Yet, they are not entitled to extra remuneration for this extra day's toil.

Most employees earn salaries or wages for work done per week, fortnight or month. Their remuneration thus would remain unaffected where the calendar year contains an extra day. Employees earning hourly or daily wages, on the other hand, would be rewarded for the extra day they are expected to work in that their remuneration is based on the work done per hour or day. Where they work a day extra per year that they otherwise would not have, they are entitled to remuneration for this extra day. Weekly or monthly wage or salary earners, on the other hand, receive their remuneration based on a normal work week of 45 hours or work month of 4.33 weeks per month, in accordance with s35 of the Basic Conditions of Employment Act 75 of 1997.

The work year for many employees comprises 365 days, with 104 weekend days and a further 15 statutory weekdays for annual leave (21 if you were to include the weekends) and 12 public holidays. Employees would thus work 239 of 365 days if all 12 public holidays were to fall on normal workdays (65.479% of the year). During a leap year, this goes up to 240 of 366 days (65.574% of the year). Employees thus have a longer work year in leap year while their remuneration remains the same.

Interestingly, during 2012, 11 of the 12 public holidays fall in the normal work week with only Youth Day falling on a Saturday. During 2011, 10 of the 12 public holidays fell on normal workdays. Thus, while employees will have to work harder for the same remuneration in 2012, they will gain some reprieve over last year in that they can enjoy the benefit of more public holidays falling in the normal work week. Whether this will still be an issue after 2012 remains to be seen, if the Mayan calendar is to be believed…

Johan Botes

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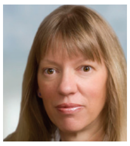

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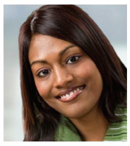

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