

# EMPLOYMENT ALERT

18 February 2013

## LABOUR RELATIONS ACT AMENDMENTS TO CCMA PROCEDURE

Once enacted later this year, the Labour Relations Amendment Bill (Bill) will amend a number of provisions in the Labour Relations Act, No 66 of 1995 (LRA), that deal with the powers of and the procedures relating to the Commission for Conciliation, Mediation and Arbitration (CCMA).

This alert deals briefly with the impact of these amendments on each of the amended sections below.

### ■ Section 115

This section is amended to introduce what are primarily formal amendments to the powers of the CCMA. One change empowers the CCMA to provide purely administrative assistance to lower paid employees in the delivery of notices or documents relating to CCMA proceedings. Another change empowers the CCMA to make rules to regulate the consequences of a party's failure to attend conciliation or arbitration proceedings. This change has been necessitated by the Labour Appeal Court's interpretation of the CCMA's rule-making powers. In addition, the section is amended to clarify the powers of the CCMA to make rules regulating the rights of parties to be represented in proceedings before the CCMA.

### ■ Section 143

The amendments to this section intend to further streamline the mechanisms for enforcing arbitration awards of the CCMA and to make these mechanisms more effective and accessible to low earning litigants. Firstly, an award that has been certified by the CCMA can be presented to the Deputy-Sheriff for execution if payment is not made. This removes the need for the current practice in terms of which parties have a writ issued by the Labour Court. Secondly, in the case of awards such as reinstatement which are enforced by contempt proceedings in the Labour Court, the need to have an arbitration award made an order of the Labour Court before contempt proceedings can be commenced is removed. Finally, the enforcement of awards to

pay money will occur in terms of the Rules and Tariffs applicable to the Magistrate's Court, thus simplifying and reducing the costs of these proceedings.

### ■ Section 144

This section is amended to bring the LRA in line with decisions of the Labour Court which hold that the common law grounds which allow for rescission on good cause apply to proceedings before the CCMA.

### ■ Section 147

This section is amended to require the CCMA to resolve disputes even where the parties have agreed to private dispute resolution if, in the case of lower paid employees, the employee is required to pay any part of the cost of private dispute resolution, or, in the case of all employees, the person appointed to resolve the dispute is not independent of the employer.

### ■ Section 191

The section is amended to cater for any agreed extension of the conciliation period. The jurisdiction of the CCMA to arbitrate disputes about dismissals for operational requirements involving only one employee is clarified. In addition, the CCMA will have jurisdiction to arbitrate disputes about dismissals for operational requirements involving small employers - those employing less than 10 employees. This is aimed at providing cheaper and less formal adjudication in these circumstances.

*Lauren Salt*

## IN THIS ISSUE

- **Labour Relations Act amendments to CCMA procedure**

## CONTACT US

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



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



**Gavin Stansfield**  
Director  
T +27 (0)21 481 6314  
E gavin.stansfield@dcladh.com

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



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



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

**Mark Meyerowitz**  
Associate  
T +27 (0)11 562 1125  
E mark.meyerowitz@dcladh.com



**Johan Botes**  
Director  
T +27 (0)11 562 1124  
E johan.botes@dcladh.com



**Faan Coetzee**  
Consultant  
T +27 (0)11 562 1600  
E faan.coetzee@dcladh.com

**Inez Moosa**  
Associate  
T +27 (0)11 562 1420  
E inez.moosa@dcladh.com



**Melanie Hart**  
Director  
T +27 (0)11 562 1179  
E melanie.hart@dcladh.com



**Mabasa Sibanda**  
Senior Associate  
T +27 (0)11 562 1182  
E mabasa.sibanda@dcladh.com

**Mandlakazi Ngumbela**  
Associate  
T +27 (0)21 481 6460  
E mandlakazi.ngumbela@dcladh.com



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

**Zinhle Ngwenya**  
Associate  
T +27 (0)11 562 1119  
E zinhle.ngwenya@dcladh.com

**Lauren Salt**  
Associate  
T +27 (0)11 562 1378  
E lauren.salt@dcladh.com

**Ndumiso Zwane**  
Associate  
T +27 (0)11 562 1231  
E ndumiso.zwane@dcladh.com

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.

### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

#### 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@dcladh.com

#### CAPETOWN

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@dcladh.com