DLA CLIFFE DEKKER HOFMEYR

EMPLOYMENT ALERT

24 June 2013

TIME LIMITATION ON TEMPORARY EMPLOYMENT SERVICES REDUCED FROM SIX MONTHS TO THREE MONTHS

One of the great controversies surrounding the forthcoming amendments to the Labour Relations Act, No 66 of 1995 (LRA) is the continued right of existence of temporary employment services (TES), given that TES employees are often subjected to abusive labour practices, and require additional statutory protection.

TES employees are persons employed by a TES, but who are then placed at clients of the TES, to render services for that client. TESs are also known as labour brokers.

Initially some elements in organised labour held the view that the TES practice should be completely outlawed. The Labour Relations Amendment Bill of 2012 (2012 Amendment Bill) took the middle road, and sought to introduce certain limitations to the use of TES, including placing a limitation on the time for which TES clients may obtain the services of TES employees, before such employees become deemed employees of the client (that is they would switch from being TES employees, to being employees of the TES's client, if the placement persists beyond the maximum period).

Section 198 of the LRA currently regulates TES relationships. Clause 44 of the 2012 Amendment Bill sought to amend s198, by the insertion of s198A, which contains the aforementioned maximum period, set at six months. This clause only applies to employees earning below the employment threshold as determined in terms of the Basic Conditions of Employment Act, No 75 of 1997 (BCEA).

Clause 44 of the 2012 Amendment Bill has however not survived Parliamentary scrutiny in its current form, particularly with regards to the maximum time period for the use of TES employees before they become employed by the TES client. The Portfolio Committee on Labour in the National Assembly has proposed that clause 44 of the 2012 Amendment Bill (proposed amendments) should allow for only three months, rather than six months as a maximum period. This means that if a worker performs work for a TES client in excess of three months the worker shall (after the expiry of the three months period) be deemed to be the employee of the client and will be entitled to the same wage and benefits as the client's other permanent employees, unless a justifiable reason for different treatment exists.

The initial debate regarding the continued use of TES, centred around the need to increase protection for a group of vulnerable employees who were often subjected to exploitation, but balanced against legitimate business considerations, such as being able to quickly and efficiently address seasonal or other operational increases or decreases in required staff levels, and also to keep costs low. Organised business argues that outlawing, or unduly restricting TES options, will result in an increase in unemployment levels, as the previous cost saving achieved by using TES employees, will now have to be recovered in another manner, which may include general staff reductions.

This debate is by no means over yet. The DA has taken up the cudgel, and continues to oppose some of the proposed changes to the 2012 Amendment Bill, including clause 44. The proposed changes to the Bill will only be voted on in Parliament after the winter recess.

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