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EMPLOYMENT ALERT

IN THIS ISSUE

CDH WELCOMES GAVIN STANSFIELD AND SAMIKSHA SINGH

We are delighted to welcome Gavin Stansfield and Samiksha Singh to our employment team.

CLAIMS FOR PAYMENT OF ARREAR WAGES PROSPECTIVE FROM THE DATE OF A REINSTATEMENT ORDER MAY PRESCRIBE SOONER RATHER THAN LATER

The recent Labour Appeal Court (LAC) judgment of *Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd) v Numsa* (JA55/2014) [2015] ZALAC 49 dealt with the payment of arrear wages that becomes due from the date of a reinstatement order until the actual date of reinstatement.

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We continue to grow our service offering to ensure that our clients receive holistic and innovative advice. We are confident that Gavin's re-appointment and Samiksha's appointment will enhance our existing team of talented employment specialists and we are proud to have them on board.

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Gavin Stansfield

Gavin has over 15 years' of service and re-joins our firm as a Director. He has extensive advisory experience, focussed mainly on employment matters in Sub-Saharan Africa.

His areas of specialisation include all types of labour law including strikes and lock-outs, unfair dismissals, collective bargaining, unlawful competition, restraint of trade and Occupational Health and Safety.

He specialises in public service and administrative law, municipal structures and public sector financial management legislation, including the Public Finance Management Act and the Municipal Finance Management Act. He has also extensive experience in procurement and supply chain management legislation.



Samiksha Singh

Samiksha Singh has been appointed as a Director in the Employment Practice as from November this year.

She has considerable professional experience in all aspects of employment law which includes drafting of contracts, guidelines and policies, assisting and advising clients on unfair dismissal disputes at the various bargaining councils and the Labour Courts, obtaining interdicts during strikes, general strike management, lock – outs, retrenchment processes and disputes arising therefrom and advice on s197 transfers.

Samiksha has also directly assisted clients in the civil engineering, construction and building industries during protected, unprotected and violent strikes at several major projects in South Africa, which include the Kusile and Medupi Power Station Projects as well as the Cecilia Makiwane Hospital Project. She also has substantial experience in assisting and advising clients on all disciplinary and employment issues, disputes at the various bargaining councils and Labour Courts, retrenchments processes and s197 transfers.

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CLAIMS FOR PAYMENT OF ARREAR WAGES PROSPECTIVE FROM THE DATE OF A REINSTATEMENT ORDER MAY PRESCRIBE SOONER RATHER THAN LATER

The employees were reinstated on 29 September 2009 by the Employer, but were not paid any arrear wages from 1 January 2007 until the date of reinstatement.

On appeal, the LAC held that the Labour Relations Act, No 66 of 1996 (LRA) does not provide for prospective relief beyond the date of reinstatement and that a reinstatement order does not result in an order for payment of any future remuneration that arises from the date of the order until the date it is actually complied with.



The recent Labour Appeal Court (LAC) judgment of *Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd) v Numsa* (JA55/2014) [2015] ZALAC 49 dealt with the payment of arrear wages that becomes due from the date of a reinstatement order until the actual date of reinstatement.

On 18 August 2003, Hendor Mining Supplies (Employer) dismissed employees for taking part in an unprotected strike. The Labour Court (LC) found the dismissals to be unfair and ordered a reinstatement of the employees from 1 January 2007 and that they report to duty on 23 April 2007. The employees were reinstated on 29 September 2009 by the Employer, but were not paid any arrear wages from 1 January 2007 until the date of reinstatement. On 19 September 2012, the Employees applied to the LC for an order quantifying the arrear wages.

One of the defences raised by the Employer against the application of the employees was that the employees' claim for payment of the arrear wages for the period 23 April 2007 until 28 September 2009 prescribed as it was a claim in contract and it thus fell within the definition of a 'debt due' under the Prescription Act, No 68 of 1969 (Act). The LC found that the employees' claims did not prescribe and thus ordered the Employer to pay back pay for the period 1 January 2007 until 28 September 2009.

On appeal, the LAC held that the Labour Relations Act, No 66 of 1996 (LRA) does not provide for prospective relief beyond the date of reinstatement and that a reinstatement order does not result in an order for payment of any future remuneration that arises from the date

of the order until the date it is actually complied with. Once the employment contract is restored the employee then holds a contractual claim for the payment of arrear wages accruing under the contract.

In terms of the reinstatement order, the arrear wages that were payable from the period 1 January 2007 until 22 April 2007, as set out in the order, constituted a judgment debt which prescribes after 30 years. The employment contracts were thus restored retrospectively to 1 January 2007. While the employees were entitled to claim arrear wages until their reinstatement on 29 September 2009, the reinstatement order did not provide for the payment of wages prospective from the date of the order.

The wages that were thus due for the period 23 April 2007 until reinstatement on 29 September 2009 was based on a contractual claim that fell within the definition of a 'debt due' under s11(d) of the Act in terms of which such debts would prescribe within three years.

It is thus important to note that, while a reinstatement order creates a debt that is due, this will not constitute an order for the payment of arrear wages prospective from the date of the order.

Aadil Patel and Batool Hayath

**NEW
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Employment Retrenchment Guideline

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CHAMBERS GLOBAL 2014 - 2015 ranks our Employment practice in Band 2: Employment.

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

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2015 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2015 in Band 4: Employment.



OUR TEAM

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