EMPLOYMENT

IN THIS ISSUE

MINORITY TRADE UNIONS ARE BOUND BY EXTENDED COLLECTIVE AGREEMENTS

The Labour Relations Act, No 66 of 1995 (LRA) endeavours to promote and facilitate collective bargaining at sectoral level and in the workplace.

The outcome of negotiations in the workplace is often embodied in a collective agreement concluded by the employer and majority trade union(s) which may, amongst other things, regulate wages and conditions of employment.

Section 23(1)(d) of the LRA caters for the extension of these collective agreements to non-parties of the agreement, provided that certain requirements are met. The requirements are that the:

- employees must be identified in the agreement;
- agreement expressly binds the employees; and
- trade union(s) have as their members the majority of employees employed by the employer in the workplace.

Should the requirements be satisfied, minority trade unions and non-unionised employees will be bound by collective agreements extended in terms of this section.

In the case of *Chamber of Mines of South Africa acting in its own name and obo Harmony Gold Mining Company Ltd and another v Association of Mineworkers and Construction Union (AMCU) and others* [2014] 3 BLLR 258 (LC), the court held that AMCU, as a minority trade union, was bound by the collective agreement concluded by the employer and three other trade unions who, acting jointly, had as their members the majority of employees employed by the employer in a workplace.

The basis for the application was that AMCU members were bound by a collective agreement entered into by the Chamber of Mines and the majority trade unions which regulated wages and other terms and conditions of employment (which agreement extended to all employees in the sector) and, among other things, prohibited a strike by those bound by the agreement over issues which were regulated by same.

AMCU alleged that their members were not bound by the agreement as it would constitute an infringement of their members' constitutional right to strike in support of demands for more generous terms and conditions of employment.

The very purpose of s23(1)(d) of the LRA is to bind non-parties in the workplace in respect of collective agreements concluded by the majority trade union(s). Similarly, the purpose of s65(1)(a) of the LRA is to prohibit these persons from embarking on a strike if the issue in dispute is regulated by a collective agreement. There is no less restrictive means of achieving the applicable purposes. What would also remain is the ordinary common law principle that contracting parties are bound by their agreements.

Section 23(1)(d) of the LRA allows employers to prevent minority trade unions from sabotaging wage negotiations at the workplace. Further, it ensures that these trade unions are bound by collective agreements entered into by the employer and the majority trade union(s) thereby precluding them from embarking on a strike where the issue in dispute is regulated by the agreement.

Hugo Pienaar and Joloudi Badenhorst

THE XXI WORLD CONGRESS OF THE INTERNATIONAL SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW IS TAKING PLACE IN CAPE TOWN FROM 15 TO 18 SEPTEMBER 2015, HOSTED BY THE SOUTH AFRICAN SOCIETY FOR LABOUR LAW (SASLAW) AND PROUDLY SPONSORED BY CLIFFE DEKKER HOFMEYR AND DLA PIPER AFRICA.

The 21st World Congress promises to provide a platform for a stimulating discussion on labour and social security law in a global environment where sustained economic and social uncertainty appears to have become the norm.

How do we continue to give effect to the basic objectives of labour and social security law under these conditions, and how best might those objectives be secured?

These and other questions will inform our order of business.

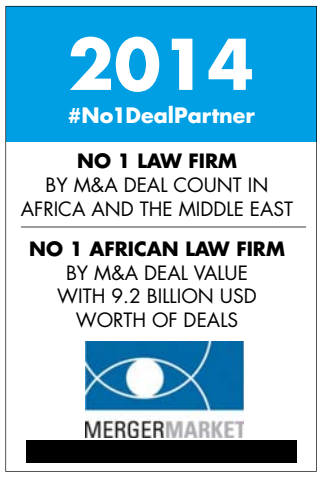
CLICK HERE FOR MORE INFORMATION.

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.



CONTACT US

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

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

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

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

Mohsina Chenia
Director
T +27 (0)11 562 1299
E mohsina.chenia@dlacdh.com

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

Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@dlacdh.com

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

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

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

Nicholas Preston
Senior Associate
T +27 (0)11 562 1788
E nicholas.preston@dlacdh.com

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

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

Anli Bezuidenhout
Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@dlacdh.com

Katlego Letlonkane
Associate
T +27 (0)21 481 6319
E katlego.letlonkane@dlacdh.com

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

Thandeka Nhleko
Associate
T +27 (0)11 562 1280
E thandeka.nhleko@dlacdh.com

Sihle Tshetlo
Associate
T +27 (0)11 562 1196
E sihle.tshetlo@dlacdh.com

BBBEE STATUS: LEVEL TWO 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@dlacdh.com

CAPE TOWN
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@dlacdh.com

cliffedekkerhofmeyr.com

Cliffe Dekker Hofmeyr is a member of DLA Piper Group, an alliance of legal practices.

DLA CLIFFE DEKKER HOFMEYR