



EMPLOYMENT ALERT

LET OUR STRIKE GUIDELINES BE THE STARTING POINT FOR YOUR STRIKE STRATEGY

At Cliffe Dekker Hofmeyr we pride ourselves in providing our clients with practical solution driven information in line with the current challenges faced by our clients.

Due to the increase in strikes and strike violence in South Africa, our employment practice developed useful strike guidelines for our clients' benefit. These guidelines will provide clients with practical information about strikes, lock-outs and picketing and answer some of the more complex questions around these topics. The guidelines are definitely the starting point when considering a strike strategy and when preparing for industrial action. Our strike guidelines can be accessed on our website.

IN THIS ISSUE

THE BASIC CONDITIONS OF EMPLOYMENT BILL: DOES THIS SIGNAL THE DEATH OF THE SECTORAL DETERMINATION?

On 17 November 2017, the Department of Labour gazetted the Basic Conditions of Employment Bill. The Bill proposes a number of far-reaching amendments to the Basic Conditions of Employment Act, No 75 of 1997.

BILL: DOES THIS SIGNAL THE DEATH OF THE SECTORAL DETERMINATION?

Sectoral Determinations play an important role in the regulation of minimum standards.

Before the Minister can cancel or suspend a Sectoral Determinations the Minister must first announce the intention to do so and allow an opportunity for public comment.

On 17 November 2017, the Department of Labour gazetted the Basic Conditions of Employment Bill (the Bill). The Bill proposes a number of far-reaching amendments to the Basic Conditions of Employment Act, No 75 of 1997 (BCEA).

The primary amendments are:

1. the repeal of the provisions dealing with the making of Sectoral Determinations (Chapter 8 of the BCEA) and the powers and functions of the Employment Conditions Commission (Chapter 9 of the BCEA);
2. the extension of the provisions for monitoring and enforcement by labour inspectors to include the National Minimum Wage Act, the Unemployment Insurance Act and Unemployment Insurance Contributions Act; and
3. the extension of the jurisdiction of the CCMA to include enforcement procedures in terms of the BCEA and claims for underpayment.

Sectoral Determinations play an important role in the regulation of minimum standards. Amongst other things, the Sectoral Determinations cater for differences in standards brought about by sector-specific needs such as regulating the wages of commission earners, different hours of work and setting minimum wages in certain sectors. The anticipated introduction of a national minimum wage will replace the function served by the Sectoral Determinations in respect of minimum wages, as these will in future be set by the National Minimum Wage Act.

The Bill allows for transitional provisions that existing Sectoral Determinations remain in force, except to the extent that they prescribe a minimum wage that is less than the national minimum wage. Section 56 to 58 of the BCEA, dealing with the period, legal effect and keeping copies of the Sectoral Determinations, however, remain in force until they are cancelled or suspended by the Minister in terms of s56.

Before the Minister can cancel or suspend a Sectoral Determinations the Minister must first announce the intention to do so and allow an opportunity for public comment. Given the nature of the proposed amendments this, in the long run, is cold comfort for sectors that rely on the differentiation provided by the Sectoral Determinations.

The extension of monitoring and enforcement by labour inspectors to include the National Minimum Wage Act, the Unemployment Insurance Act and Unemployment Insurance Contributions Act is not contentious. This would provide a necessary mechanism for the policing of those Acts.

Disputes arising from an employer's non-compliance with the BCEA after a written undertaking or a compliance order has been issued by an inspector are currently referred to the Labour Court. The amendments seek to provide a cheaper and more expeditious method

BILL: DOES THIS SIGNAL THE DEATH OF THE SECTORAL DETERMINATION?

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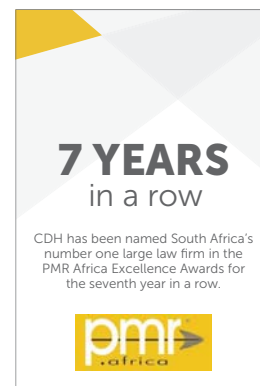
In terms of the amendments, the CCMA will have the power to make an arbitration award to enforce an undertaking or compliance order.

of resolving these disputes by vesting that jurisdiction in the CCMA. In terms of the amendments, the CCMA will have the power to make an arbitration award to enforce an undertaking or compliance order. Employers who dispute the terms of a compliance order will also be able to refer a dispute to the CCMA for arbitration. The Socio-Economic Impact Assessment System gazetted with the Bill estimates that R20,8 million will be required by the CCMA to deal with training, advocacy and the increased workload that will be brought about by this amendment. This

estimate is most likely understated. This particular amendment, laudable though it may be, will place increased pressure on an already under-resourced and under-funded CCMA.

The Bill was tabled in Parliament last week. Interested parties are invited to submit written comments on the Bill to be delivered to the Department of Labour by 30 November 2017.

Jose Jorge and Steven Adams



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Recognised Chris Charter as Lawyer of the Year for Competition Law (Johannesburg).

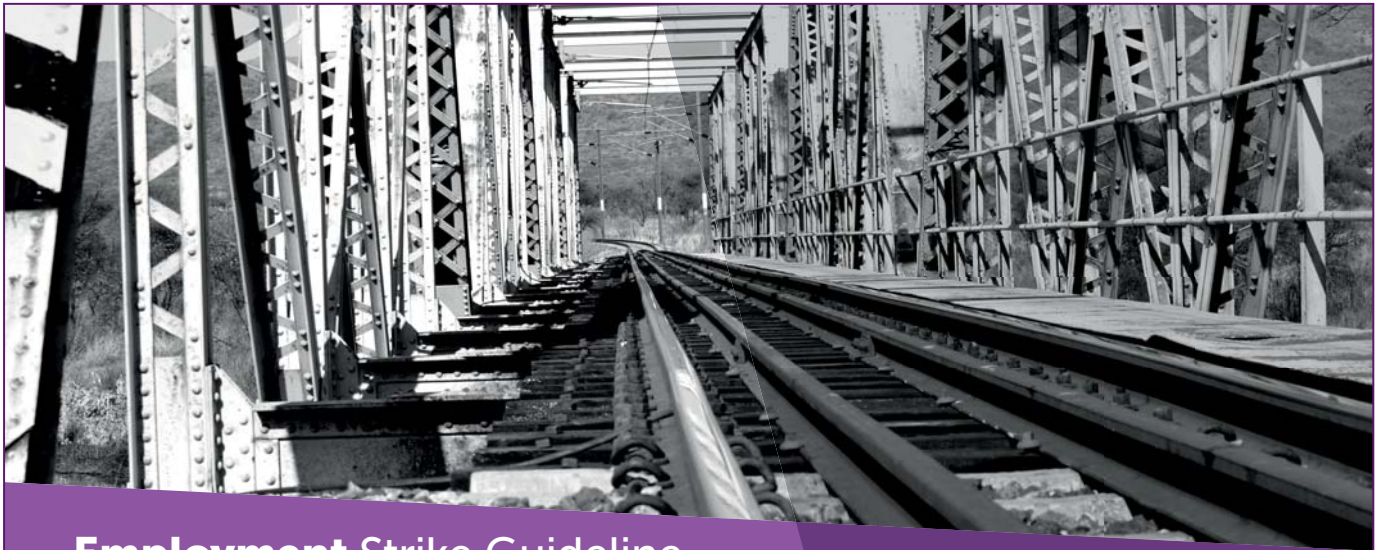
Recognised Faan Coetzee as Lawyer of the Year for Employment Law (Johannesburg).

Recognised Peter Hesseling as Lawyer of the Year for M&A Law (Cape Town).

Recognised Terry Winstanley as Lawyer of the Year for Environmental Law (Cape Town).

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Employment Strike Guideline

Find out when a lock-out will be protected.

 [Click here to find out more](#)

CHAMBERS GLOBAL 2014 - 2017 ranks our Employment practice in Band 2: Employment.


Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2017 in Band 2: Employment.

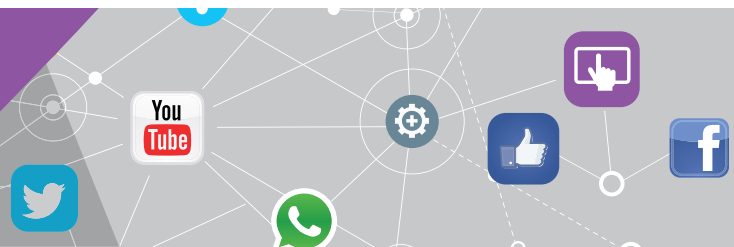
Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2017 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2017 in Band 3: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2017 in Band 4: Employment.



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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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.

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