

3 AUGUST 2017

EMPLOYMENT ALERT

TES JUDGMENT UPDATE

IN THIS ISSUE

THE HAMMER IS YET TO GO DOWN ON TEMPORARY EMPLOYMENT SERVICES: ASSIGN JUDGMENT TAKEN ON APPEAL TO THE CONSTITUTIONAL COURT

On 10 July 2017, the Labour Appeal Court (LAC) overturned the Labour Court's (LC) earlier decision, wherein the LC found that the deeming provision contained in s198A of the Labour Relations Act, No 66 of 1995 (LRA) gave rise to a dual employment relationship for purposes of the LRA between the temporary employment service (TES) and the client.

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The LAC overturned the dual employer interpretation and instead favoured what has been referred to as the "sole employer interpretation".

As anticipated and on Monday 31 July 2017, the Confederation of Associations in the Private Employment Sector (CAPES) filed an application for leave to appeal in the Constitutional Court and against the judgment of the LAC.

On 10 July 2017, the Labour Appeal Court (LAC) overturned the Labour Court's (LC) earlier decision, wherein the LC found that the deeming provision contained in s198A of the Labour Relations Act, No 66 of 1995 (LRA) gave rise to a dual employment relationship for purposes of the LRA between the temporary employment service (TES) and the client.

This dual employment relationship would for purposes of the LRA, find application after a period of three months and in relation to employees earning below the Basic Conditions of Employment Act, No 75 of 1997 (BCEA) threshold (R205,433.30 per annum).

In coming to its decision, the LAC overturned the dual employer interpretation and instead favoured what has been referred to as the "sole employer interpretation", holding that after three months, and in relation to employees who earn below the BCEA threshold, the client becomes the statutory employer as "it would make no sense to retain the TES in the employment equation for an indefinite period if the client has assumed all the responsibilities that the TES had before the expiration of the three month period".


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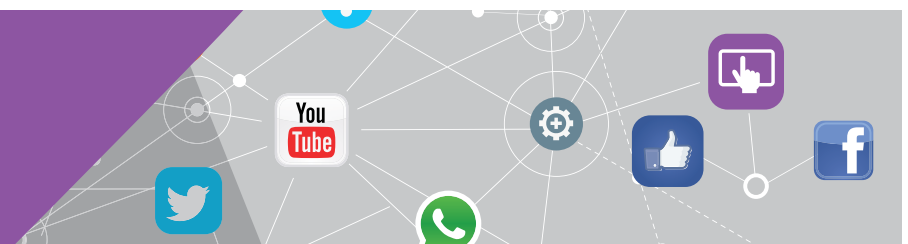
When an application for leave to appeal is filed, the operation and/or effect of the judgment or order in question (the LAC decision in this case), is suspended pending the outcome of the appeal.

Accordingly, and until such time as the Constitutional Court adjudicates the appeal, the effect of the LAC decision will be suspended and the LC decision will remain applicable for the time being.

Watch this space for further updates.

*Nicholas Preston and
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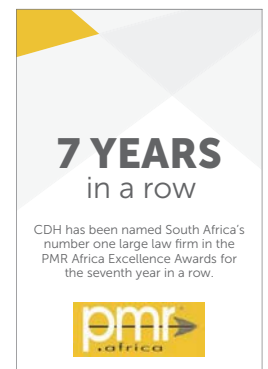
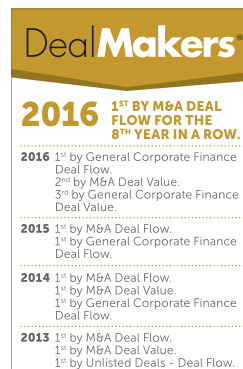




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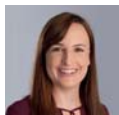
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