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EMPLOYMENT ALERT

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The LAC demystifies the LRA circumvention clause: Section 200B of the LRA

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The LAC demystifies the LRA circumvention clause: Section 200B of the LRA

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Section 200B(1) and (2) of the Labour Relations Act, No 66 of 1995 (LRA), which was one of the 2015 amendments to the LRA, provides that *"for the purposes of this Act and any other employment law, 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent and effect of the doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law. If more than one person is held to be the employer of an employee in terms of subsection(1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law".*

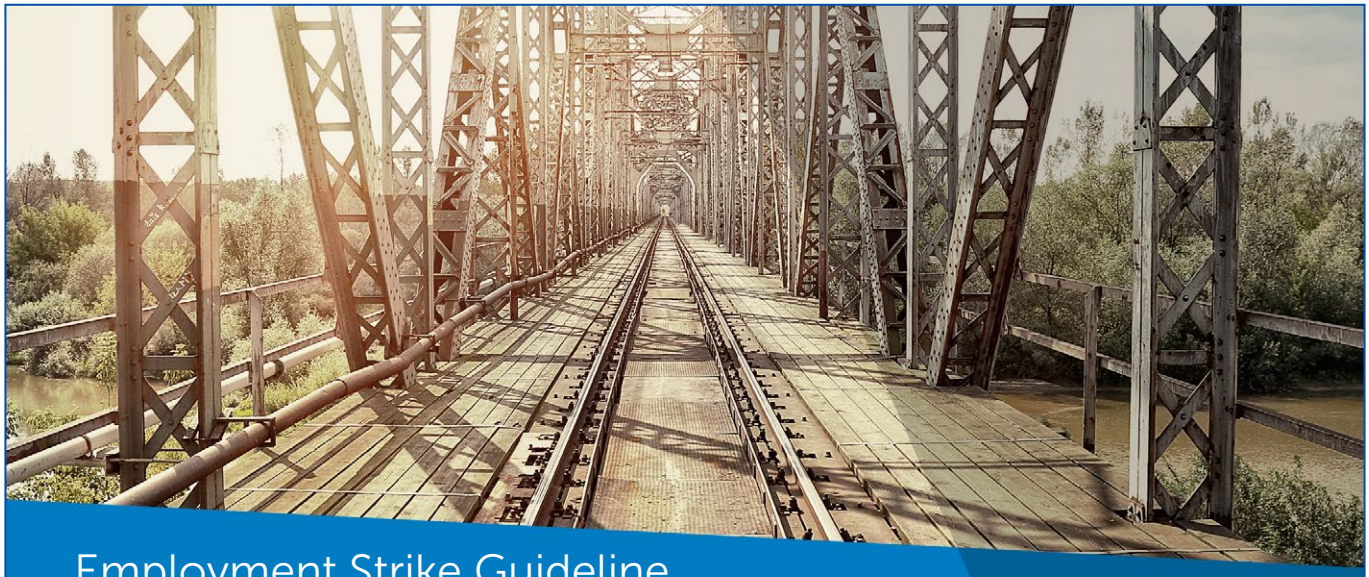
The LAC confirmed the Labour Courts finding in which the Commissioner incorrectly, out of his own accord, invoked s200B as a self-standing and general test for determining whether one or more associated persons or entity are jointly and severally liable toward a particular employee, and in the case before it, employees who claimed to fall under s198A of the LRA dealing with temporary employment services. Section 200B was not invoked by either of the parties nor was it mentioned in any of the evidence given. The Commissioner also crucially failed to make any underlying finding as to which Act, employment law, and then which provision thereof, had allegedly been defeated, relying on s200B alone.

The effect of the LAC's decision in upholding the Labour Courts finding is that s200B cannot be utilised as a self-standing and general test for finding persons or entities to be jointly and severally liable as employers.

Therein, s200B was found to be a bolt on provision, requiring an initial finding of circumvention of either the LRA, or any other employment law, before it can be triggered. This is in line with the intention of the legislature which sought to prevent creative structures being put in place to avoid the operation of the Act and the protections it provides for.

In conclusion, following the *Masoga* case, any party intending to rely on s200B or who is subject to a finding thereon, must be mindful of its underlying requirements, before it can find application.

Nicholas Preston and Nelisiwe Khumalo



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