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Agriculture, Aquaculture & Fishing Sector ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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On 21 August 2023, Fairtrade Africa, in collaboration with the Wine and Agriculture Ethical Trade Association (WIETA), hosted an event that focused on the challenges associated with temporary employment services (TES) and contract workers within the South African wine industry and the establishment of a working group to address these challenges.

Fairtrade Africa is an independent, non-profit umbrella organisation representing all Fairtrade certified producers in Africa. It is owned by its members, who are African producer organisations certified against international Fairtrade standards producing export commodities, and represents over 1 million producers across Africa. Fairtrade Africa seeks to secure better process, decent working conditions and fair terms of trade for farmers and works. WIETA is a globally recognised ethical auditing body registered with the Global Social Compliance Programme. It represents the interests of trade unions, wine brands and their producers.

The principal aim of the event was to initiate a dialogue and secure input from relevant stakeholders in order to establish terms of reference for the working group and in so doing, ensure that the working group is effective.

The TES model

The Labour Relations Act 66 of 1995 (LRA) defines a TES as “any person who, for reward, procures for or

provides to a client other persons (a) who perform work for the client; and (b) who are remunerated by the temporary employment service.” The TES is the employer of the employee. Within the wine industry this model, for example, affords a wine producer flexibility to engage seasonal works and/or additional employees required when demand is high, via the TES.

Some of the previous advantages for a client of using the services of a TES have been restricted since the introduction of section 198A of the LRA, in terms of which an employee is deemed, for the purposes of the LRA, to be an employee of the client and permanently employed by the client, if the employee earns below the annual earnings threshold set by the Minister of Employment and Labour from time to time (currently R241,110.59 per annum) and has worked for the client for a period exceeding three months, or is not a substitute for an employee who is temporarily absent.



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The TES and the client are jointly and severally liable if the TES breaches the Basic Conditions of Employment Act 75 of 1997 (BCEA) or any collective agreement which regulates terms and conditions of employment and is concluded within a bargaining council.

Any wine producer using the services of a TES should ensure that the TES is properly registered and that the terms and conditions of employment offered by the TES to the TES employees are in compliance with relevant legislation and agreements.

For further detail regarding the law applicable to a TES, please refer to CDH's [Temporary Employment Services Guideline](#).

Benefits and risks associated with the use of TES employees in the wine industry

A major benefit for wine producers from using the services of a TES is the flexibility which it affords the producers given the seasonal nature of the industry and its fluctuating demands. A TES can also relieve some of the administrative burden and time that can be associated with the recruitment and employment of employees.

A risk may arise if the TES, for example, does not comply with the BCEA by not affording employees paid leave. The wine producer who makes use of the TES will then be jointly and severally liable with the TES for the breach of the legislation.

Sharing industry insights and challenges

Among the concerns and challenges discussed at the event were those raised by WIETA, based on its internal research, including:

- absence of written contracts between the TES and TES employees;
- if written contracts exist, the failure of the contractual terms to comply with relevant labour legislation;
- lack of relevant documentation of TES employees (e.g. identification documents) on record; and
- TES' failure to register in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (Compensation for Occupational Injuries and Diseases Act).

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A challenge identified from a compliance perspective is the general lack of transparency in on-the-ground relationships between farmers and temporary workers, which is not restricted to the wine industry. There is often no paper trail of the contractual relationship as a result of a lack of formalities and temporary workers simply being identified and brought in from local communities on an ad hoc basis.

Among the challenges faced specifically by women engaged by a TES or as contract workers within the industry are a lack of job security, disparity in wages and sexual harassment which goes unsanctioned.

A suggestion was made that the concerns and challenges raised be tabled and presented to the Department of Employment and Labour in order for the department to dispatch labour inspectors into the wine industry to conduct inspections.

The power of labour inspectors

Under the BCEA labour inspectors appointed by the Minister of Employment and Labour monitor and enforce compliance with any employment law which includes:

- the BCEA;
- the Unemployment Insurance Act 63 2001;
- the Skills Development Act 97 of 1998;
- the Employment Equity Act 55 of 1998;
- the Occupational Health and Safety Act 85 of 1993;
- the Compensation for Occupational Injuries and Diseases Act; and
- any other act, the administration of which has been assigned to the Minister of Employment and Labour

As part of monitoring and enforcing employment law, labour inspectors may, *inter alia*, advise employees and employers of their rights and obligations under employment laws, investigate any complaints made to labour inspectors, secure undertakings from employers to comply with employment laws, and issue compliance orders to employers.

Conclusion

The establishment of the working group and its drive toward positive change as a collective with the ultimate objective being to ensure fairness, transparency and ethical practices, is laudable. What employers within the wine industry need to be aware of is that with this drive there is an increased focus on the industry and compliance with employment laws and ensuring decent work and that as a result, employers and users of a TES should ensure their compliance with employment laws as well as that of any TES with which they contract.

Gillian Lumb and Alex van Greuning

OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



André de Lange

Sector Head:
Agriculture, Aquaculture & Fishing
Director: Corporate & Commercial
T +27 (0)21 405 6165
E andre.delange@cdhlegal.com



Sammy Ndolo

Partner | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E sammy.ndolo@cdhlegal.com



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Chris Charter

Practice Head & Director:
Competition Law
T +27 (0)11 562 1053
E chris.charter@cdhlegal.com



Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com



Tobie Jordaan

Sector Head: Business Rescue,
Restructuring & Insolvency
Director: Dispute Resolution
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com



Mashudu Mphafudi

Practice Head & Director:
Finance & Banking
T +27 (0)11 562 1093
E mashudu.mphafudi@cdhlegal.com



David Thompson

Deputy Practice Head & Director:
Corporate & Commercial
T +27 (0)21 481 6335
E david.thompson@cdhlegal.com



Albert Aukema

Director:
Competition Law
T +27 (0)11 562 1205
E albert.aukema@cdhlegal.com



Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com



Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
E tessa.brewis@cdhlegal.com



Simone Franks

Director:
Real Estate Law
T +27 (0)21 481 6464
E simone.franks@cdhlegal.com



Andries Le Grange

Director:
Competition Law
T +27 (0)11 562 1092
E andries.legrange@cdhlegal.com

OUR TEAM

For more information about our Agriculture, Aquaculture & Fishing sector and services in South Africa and Kenya, please contact:



Gillian Lumb

Director:
Employment Law
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com



John Webber

Director:
Real Estate Law
T +27 (0)11 562 1444
E john.webber@cdhlegal.com



Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com



Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com



Charl Williams

Director:
Corporate & Commercial
T +27 (0)21 405 6037
E charl.williams@cdhlegal.com



Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com



Roux van der Merwe

Director:
Corporate & Commercial
T +27 (0)11 562 1199
E roux.vandermerwe@cdhlegal.com



Lauriene Maingi

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lauriene.maingi@cdhlegal.com



Susan Meyer

Sector Head:
Healthcare & Pharmaceuticals
Director: Competition Law
T +27 (0)21 481 6469
E susan.meyer@cdhlegal.com



Clarice Wambua

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E clarice.wambua@cdhlegal.com



Akhona Mgwaba

Associate:
Corporate & Commercial
T +27 (0)21 481 6321
E akhona.mgwaba@cdhlegal.com



Hugo Pienaar

Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

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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@cdhlegal.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@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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