

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BASIC CONDITIONS OF EMPLOYMENT AMENDMENT BILL, 2024

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

LONG TITLE TO BE INSERTED

Amendment of section 1 of Act 75 of 1997

1. Section 1 of the Basic Conditions of Employment Act, 1997 (hereinafter referred to as the "principal Act"), is hereby amended by the substitution for the definition of "employment law" of the following paragraph:

- "(1) **'employment law'** includes this Act, any other Act the administration of which has been assigned to the *Minister*, and any of the following Acts:
- (a) the Unemployment Insurance Act, 2001 (Act 63 of 2001);
 - (b) the Employment Services Act, 2014 (Act 4 of 2014);
 - (c) the Employment Equity Act, 1998 (Act 55 of 1998);
 - (d) the Occupational Health and Safety Act, 1993 (Act 85 of 1993);
 - (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);
 - (f) the National Minimum Wage Act, 2018 (Act 9 of 2018);
 - (g) the Skills Development Act, 1998 (Act 97 of 1998);
 - (h) the Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002)."

Amendment of section 2 of Act 75 of 1997

2. Section 3 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections:

- "(4) For the purposes of Chapters 8 to 10 of this Act –

- (a) **employee**” includes an individual, other than an employee as defined in section 1 of the Act, who works personally for a person that is not a client or customer of any profession, business or undertaking carried on by the individual;
 - (b) **employer**” includes **any** person or entity for whom an employee works.
- (5) For the purposes of sub-section (4), an individual is an employee contemplated by sub-paragraph 4(a) unless the employer demonstrates that the following factors are satisfied:
- (a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;
 - (b) the person is not part of the organisation of the employer; and
 - (c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.”

Addition of section 9B of Act 75 of 1997

3. Section 9B of the principal Act is hereby added after section 9A—

“9B Employees required to be available for work

- (1) This section applies to an employee who is required to—
 - (a) work only when the employer makes work available to the employee; and
 - (b) be available to accept work that the employer makes available.
- (2) An employer must specify in the employee’s written particulars of employment—
 - (a) the guaranteed hours of work in each period;
 - (b) the maximum hours of work for that period;
 - (c) the period which the employee must be available to work;
 - (d) the notice period to the employee to report for work; and
 - (e) the notice period of any cancellation of work.
- (3) The period of notice referred to in subsections (2)(d) and (e) must be reasonable and must be determined having regard to all relevant factors, including—

- (a) the nature of the employer's business;
 - (b) the employer's ability to control or foresee the circumstances that give rise to the notice to work or notice of cancellation;
 - (c) the nature of the employee's work and employment arrangements; and
 - (d) the effect of the cancellation on the employee.
- (4) An employer must remunerate an employee the hours of the cancelled work period if the employer failed to give the employee the requisite notice of cancellation of work.
- (5) An employer may not require an employee to work if the employer fails to—
 - (a) comply with subsection (2); or
 - (b) provide the employee with the requisite notice to work.
- (6) An employer may not prevent, prohibit or restrict an employee who has fulfilled the obligations to be available for work to that employer from working for another person unless—
 - (a) the employer has genuine operational reasons for doing so; and
 - (b) the reasons are stated in the employee's written particulars of employment.
- (7) For the purposes of subsection (6)(a), a genuine reason includes—
 - (a) protecting the employer's commercially sensitive information, intellectual property rights and commercial reputation; and
 - (b) preventing a conflict of interests that cannot be managed in another way.
- (8) Despite section 22 (2), an employee contemplated in this section is entitled an amount of paid sick leave equal to one day's paid sick leave for every 26 days worked.
- (9) An employer must treat employees contemplated in this section on the whole not less favourably than those of its employees to whom this section does not apply and who perform the same or similar work, unless there is a justifiable reason for different treatment.
- (10) A dispute arising from the interpretation or application of this section must be determined in accordance with the provisions of section 198D of the Labour Relations Act, 1995, read with the changes required by the context.

- (11) This section does not apply to employers who employ less than ten employees.

Amendment of section 41 of Act 75 of 1997

4. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) An employer must pay an employee who is dismissed for reasons based on the employer’s operational requirements or whose contract of employment terminates or is terminated in terms of section 38 of the Insolvency Act, 1936 (Act No. 24 of 1936) severance pay equal to at least **[one]** two week’s remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.”

- (b) by the substitution for subsection (6) of the following subsection:

“(6) If there is a dispute only about the entitlement to severance pay **[in terms of this section]**, the employee may refer the dispute in writing to —”

Amendment of section 62A of Act 75 of 1997

5. Section 62A of the principal Act is hereby amended —

“62A Definitions

For the purposes of Chapter 10, including Schedule 2 -

- (a) an employee includes a worker as defined in section 1 of the National Minimum Wage Act, 2018; and
(b) an employer’s failure to pay a contribution to a benefit fund on behalf of an employee in terms of section 34A of this Act must be treated on the same basis as the failure by an employer to pay any amount owing to an employee in terms of this Act, except that in any compliance order, court order or arbitration award the employer must be directed to make the outstanding payment to the benefit fund concerned.”

Amendment of section 69 of Act 75 of 1997

6. Section 69 of the principal Act is hereby amended—

- (a) by the addition after subsection (5) of the following subsections:

“(5A) If the employer shows good cause at any time, the CCMA may permit the employer to refer a dispute contemplated in subsection (5) after the relevant time period stated in the order has expired.”

“(5B) The referral of a dispute does not suspend the operation of a compliance order, unless the employer provides security to the satisfaction of the CCMA equivalent to the amount that the employer is required to pay in terms of the compliance order.”

(b) by the insertion after subsection (6) of the following subsection:

“(7) The Director-General may apply to the CCMA for a compliance order to be made an arbitration award if the employer has not complied with the order.”

Amendment of section 73 of Act 75 of 1997

7. Section 73 of the principal Act is hereby amended—

(a) by the deletion of subsection (1):

“[(1) The Director-General may apply to the CCMA for a compliance order to be made an arbitration award if the employer has not complied with the order.]”

(b) by the addition before subsection (2) of the following subsection:

“(1A) the CCMA must appoint a commissioner to determine by arbitration any dispute referred in terms of section 69(5) and (7), including any application for condonation in terms of section 69(5A).”

(c) by the substitution for subsection (2) of the following subsection:

“(2) The CCMA may issue an arbitration award [in terms of subsection (1)] requiring the employer to comply with the compliance order, if it is satisfied that—”

(d) by the insertion after subsection (2) of the following subsection:

“(3) An arbitrator sitting in terms of this section may –

(a) issue an award that confirms, varies or sets aside the relevant compliance order; and

(b) as part of such an award, requires the employer to pay a fine, as contemplated by section 76A or Schedule Two, within a time period specified in the award.

Amendment of section 73A of Act 75 of 1997

8. Section 73A of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the bargaining council with jurisdiction or if there is no council to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.”
- (b) by the substitution for subsection (4) of the following subsection:

“(4) The bargaining council or CCMA must **[appoint a Commissioner in terms of section 135 of the Labour Relations Act, to]** attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).”
- (c) by the substitution for subsection (5) of the following subsection:

“(5) The bargaining council or CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved **[in terms of section 135(5)]**.”

Amendment of section 74 of Act 75 of 1997

9. Section 74 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) If an employee institutes proceedings in respect of any claim under an employment law **[for unfair dismissal]**, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act or the National Minimum Wage Act, 2018.”
- (b) by the deletion of subsection (3):

[(3) A dispute concerning any amount that is owing to an employee as a result of a contravention of this Act or the National Minimum Wage Act, 2018, may be initiated jointly with a dispute instituted by that employee over the entitlement to severance pay in terms of section 41 (6).]

Amendment of section 76A of Act 75 of 1997

10. Section 76A of the principal Act is hereby amended—

- (a) by the substitution for the words before paragraph (a) of subsection (1) of the following:
- “(1) **[Subject to section 76, a]** The fine that may be imposed on an employer in any proceedings in terms of section 73 or 73A who paid an employee less than the national minimum wage is an amount that is the greater of—”
- (b) by the substitution for the words before paragraph (a) subsection (2) of the following:
- “(2) For second or further non-compliances, a fine that may be imposed on an employer in any proceedings in terms of section 73 or 73A who paid an employee less than the national minimum wage is an amount that is the greater of—”
- (c) by the addition after subsection (4) of the following subsection:
- “(5) A fine imposed upon an employer in terms of sub-sections (1) or (2) must be paid by the Department or the CCMA to the employee once recovery has been made from the employer.”

Insertion of section 77B of Act 75 of 1997

11. Section 77B of the principal Act is hereby added after section 77A—

“77B Powers of the Labour Court, CCMA and bargaining councils in respect of a failure to pay contributions to funds falling under the Pension Funds Act

- (1) This section applies to any failure by an employer to pay a contribution to a pension or provident fund on behalf of an employee in terms of any law, collective agreement or contract of employment.
- (2) The Labour Court, CCMA or bargaining council to whom a dispute contemplated by this section is referred must, in respect of any amount found to be outstanding, make an order or award, as the case may be -
- (a) directing the payment of the outstanding amount to the fund on behalf of the employee within a period specified, and on such other terms as may be specified, in the order or award;
- (b) despite the provisions of section 75 of this Act, direct the employer to pay interest on the outstanding amount at the interest rates prescribed in terms of section 13A of the Pension Funds Act, 1956 (Act No.24 of 1956).
- (3) The Labour Court, CCMA or bargaining council may not exercise jurisdiction if the Pension Fund Adjudicator established in terms of the

Pension Funds Act, 1956 (Act No.24 of 1956) has issued a determination in terms of section or any other tribunal or court of law having jurisdiction has made a ruling on the matter. “

Amendment of section 86 of Act 75 of 1997

12. Section 86 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) The Minister may make regulations specifying the purposes for which fines paid by employers in terms of Schedule 2 may be used by the CCMA.”

Amendment of Schedule 3 of Act 75 of 1997

13. Schedule 7 of the principal Act is hereby amended—

- (a) by the insertion after item 11 of the following heading :

“TRANSITIONAL PROVISIONS ARISING OUT OF THE APPLICATION OF THE BASIC CONDITIONS OF EMPLOYMENT AMENDMENT, 2025”

- (b) by the insertion of the following items after item 11:

“(12) For the purposes of this Schedule, the “Amendment Act” means the Basic Conditions of Employment Amendment Act, 2025.

(13) Entitlement to severance pay in terms of section 41(6)

The entitlement to severance pay equal to two week’s remuneration only applies to a completed year of service with that employer commenced after the commencement of the Amendment Act.

(14) Application of amendments to proceedings

Any provision in the Amendment Act relating to the powers of the Department, the Director-General, the Commission, bargaining councils and the Labour Court apply with immediate effect, irrespective of whether the dispute was referred before the commencement date.”