Employment Law

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SOUTH AFRICA

- Minister of Employment and Labour's intention to deem certain people in the film and arts industry as employees
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Minister of Employment and Labour's intention to deem certain people in the film and arts industry as employees

There has long been a push by associations in the film and arts industry to have certain categories of people who are independent contractors, considered as employees. Meaning, existing contractors, despite not falling within the net of employment, have sought benefits and protections which come from a traditional employment relationship.

On 23 January 2026, the Department of Employment and Labour (DEL) published a notice (Notice) confirming the Minister of Employment and Labour's (Minister) intention to deem "*all performers in advertising, artistic and cultural activities as employees*" in respect of certain provisions under the Basic Conditions of Employment Act 75 of 1997 (BCEA); the National Minimum Wage Act 9 of 2018 (NMWA); the Compensation for Occupational injuries and Diseases Act 130 of 1993 (COIDA); and the Labour Relations Act 66 of 1995 (LRA). Interested parties have 30 days to make written representations on the intention to deem performers as employees.

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Why the notice?

In December 2019 the DEL first issued a notice proposing to deem "*film and television industry workers*" as employees under the NMWA, COIDA and certain BCEA and LRA protections. That proposal did not result in any further legislative processes, with the notice having lapsed in early 2020. However, on 23 January 2026, the Minister issued the Notice.

The Notice indicates the Minister's intention to deem *"all performers in advertising, artistic and cultural activities as employees"* for the purposes of:

- **BCEA:** Protections around working time, leave entitlements, written particulars of employment, notice periods, record keeping of remuneration, termination and severance pay.
- **NMWA:** Provision of a minimum wage.
- **COIDA:** Compensation claims as employees who are injured or become diagnosed with an occupational disease. Performers in the identified industries will be entitled to the Compensation Fund if they are injured or fall ill due to work.
- **LRA:** Protections for fixed-term employees.

The Notice provides that the Minister has also considered the representations received following the 2019 notice.

The Notice explains that these workers are frequently labelled as "*independent contractors*" despite conditions mirroring employment relationships.

The Notice also describes workers in the identified industries as vulnerable and seeks to: *"extend the fundamental protections of employment law ... and provide a basis for regulatory and enforcement mechanisms that promote decent work in the creative economy"*.

The Minister has also requested the National Minimum Wage Commission to investigate wage and employment conditions in the sector, with a possible sectoral determination to follow.

The Minister is exercising his powers under section 83(2)(a) and (b) of the BCEA. If this carries, it will be the first time that any Minister of Employment and Labour has exercised these extensive powers. It will extend the employment protections to people who are currently independent contractors and provide them with benefits as if they were employees. This would also set a precedent which may be followed by the Minister in other industries.

Scope of the Notice

However, some immediate questions under the Notice are unclear:

- Who will be deemed to be performers.
- What is meant by an advertising, artistic and cultural activity.

While the Notice refers to *"all performers in the performance of advertising, artistic and cultural activities"*, it appears from a media statement issued by the DEL that the DEL's intention is to classify *"performers and crew members in the film, television, advertising, artistic and cultural sectors as employees"*. The media statement is not consistent with the Notice.

Practical implications

For businesses operating in these industries, this will have a significant impact on the existing contracting arrangement with *"performers"* and how business is conducted. Contractor agreements would then also need to be assessed for a misclassification risk, particularly where relationships resemble that of employment.

Interested parties have 30 days from the date the Notice was published to submit written representations to the Director-General, Acting Deputy Director-General: Labour Policy and Industrial Relations, at Private Bag X117, Pretoria, 0001, or SDinvestigations@labour.gov.za.

Imraan Mahomed and Sashin Naidoo

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On site, but off duty: A generous interpretation of COIDA

In *Bent v Rand Mutual Assurance (Pty) Ltd* [2025] (9 December 2025), the High Court considered an appeal by the employee challenging Rand Mutual Assurance's (RMA) rejection of a claim for compensation under section 22 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) where the employee was injured after finishing work, but was still on the employer's premises.

Facts

Ms Sophia Bent (the employee) was employed by MacCarthy (Pty) Ltd (the employer) as a credit clerk, who worked on the third floor of the employer's premises. On 27 July 2022, the employee was walking down the stairs while still inside building, having just finished work, when she slipped and fractured her ankle. The employer lodged a claim with RMA on behalf of the employee in line with the provisions of section 22 of COIDA. The claim was rejected by RMA on the basis that the employee was not performing her duties when she was injured and so the claim did not meet the requirement of an accident in terms of COIDA. The employer filed an objection arguing, *inter alia*, that the injury arose at the workplace and was therefore, an injury on duty. The objection was rejected and dismissed by the sitting tribunal. The employee brought an appeal before the High Court, seeking to appeal the decision of the tribunal.

Applicable law

Section 22 of COIDA gives employees the right to claim compensation if they are injured or die due to an accident at work or an illness contracted in the course and scope of employment.

Section 1 of COIDA requires an accident to arise out of and in the course of an employee's employment which results in personal injury, illness or the death of the employee.

A successful claim under section 22 of COIDA requires proof that the employee's injury was sustained both as a consequence of, and in the course of, their employment. This means that the accident must be sufficiently linked to the work environment or activities undertaken as part of the employment contract.

Application of law to the facts

The court had to determine whether the rejection of the claim and the reasons given by RMA and the tribunal were consistent with the law. In order words, the court had to determine whether the injury suffered by the employee fell within the statutory definition of an accident.

The court considered various case authorities that dealt with the interpretation of the relevant provisions of COIDA, and, in particular, the phrase *"arising out of employment and in course and scope of employment"*.

The court found that there had been conflicting judgments on these aspects.

COIDA provides compensation for employees who are injured in work-related accidents, or who contracted occupational diseases, on a 'no fault' basis. Both employer and employee benefit from this social legislation because the employer is relieved of the prospects of a costly damages claim while the employee does not have to prove that the employer's negligence caused the accident or disease.

The court held that:

- COIDA must be interpreted in a manner that is favourable to employees.
- For purposes of COIDA, an accident shall be deemed to have arisen out of and in the course of employment if the employee was acting in the interests of or in connection with the business of the employer at the time of the accident.
- The employee's injury in this matter arose out of her employment because the action of coming and going away from her workstation was sufficiently and closely connected to her employment.
- The risk of sustaining an injury while walking between floors in the employer's building was inherent and incidental to the employee's normal duties as she was expected to *"shuttle between floors"* even though on this occasion she would be leaving the building to go home.

The court set aside the tribunal's decision and substituted it with an order that the employee was entitled to compensation. The matter was referred back to RMA for a calculation of the amount of compensation payable to the employee and it was ordered to pay costs of the litigation.

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Key Takeaways

- COIDA should be interpreted in a generous manner for the benefit of employees.
- COIDA benefits both the employer and the employee because the employer is absolved from a damages claim, while the employee is not required to prove negligence on the part of the employer.
- The action of walking from a workstation to the exit of the employer's premises is sufficiently and closely connected to the employment relationship.
- The risk of sustaining an injury while walking between floors of the employer's premises is inherent and incidental to the employee's normal duties.

Fiona Leppan and Biron Madisa

Deal or no deal? Procedural fairness guidelines when an independent chairperson rejects a plea agreement

The Labour Appeal Court (LAC) in SAPS v Mkonto & Others (PA 8/24, 8 January 2026) has set out clear guidelines for how an independent chairperson in a disciplinary enquiry may accept or reject plea-bargain agreements in a procedurally fair manner.

A plea-bargain agreement is an arrangement in which a guilty plea is exchanged for a more lenient sanction. While rooted in criminal procedure, South African labour forums may accept plea-bargain agreements as an efficient and cost-effective tool in disciplinary hearings.

The Facts

A Sergeant in the South African Police Service (SAPS) faced serious allegations, including unauthorised use of a state vehicle; garaging the vehicle at his private residence without approval; and falsifying or manipulating travel records. During the disciplinary process, the Sergeant concluded a plea-bargain agreement with SAPS in terms of which he would plead guilty to all charges in exchange for a lenient sanction: a suspended dismissal for six months and a R500 fine.

The independent chairperson accepted the guilty plea but considered the agreed sanction inappropriate, given the seriousness and dishonest nature of the misconduct, and rejected it. The chairperson then imposed the sanction of dismissal.

The Sergeant challenged both the procedural and substantive fairness of his dismissal at the Safety and Security Sectoral Bargaining Council (SSSBC). The arbitrator held that the chairperson was bound by the plea-bargain terms and should have imposed the agreed sanction. The Labour Court upheld the arbitrator's award and reinstated the Sergeant.

The LAC's analysis

On appeal, the LAC held that an independent chairperson, who acts with the persona of the employer in a disciplinary enquiry, is not automatically bound by a plea-bargain agreement when determining sanction. A chairperson must independently assess whether the proposed sanction is fair, appropriate and commensurate with the misconduct. On the facts, the chairperson was entitled to consider the agreed sanction too lenient.

However, the LAC found the chairperson committed a procedural irregularity by accepting the guilty plea while rejecting the bargain's agreed sanction. By doing so, the chairperson effectively "collapsed" the plea agreement without affording the Sergeant the opportunity to revert to a not-guilty plea, thereby undermining his right to be heard. This rendered the process procedurally unfair.

Importantly, the LAC confirmed that arbitration is a *de novo* hearing: an arbitrator must independently assess the evidence and sanction afresh. On the merits, the LAC held the dismissal substantively fair in light of the serious misconduct and dishonesty, but procedurally unfair due to the flawed handling of the plea agreement. It awarded the Sergeant compensation equivalent to three months' remuneration.

Rejecting plea-bargains – A fair procedure

The LAC proposed the following procedural guidelines when a chairperson rejects a plea-bargain agreement:

An independent chairperson should:

- inform the parties of the intention not to endorse the agreed sanction and provide reasons; and
- allow the parties an opportunity to review their positions, which may involve:
  - renegotiating the sanction in light of the chairperson's reasons; or
  - terminating the plea-bargain agreement.

If the parties intend to terminate the plea-bargain agreement:

- the employee must be allowed to withdraw the guilty plea; and
- the disciplinary enquiry should commence *de novo* before a different chairperson, unless the employee consents to the same chairperson continuing.

Additionally, the LAC reaffirmed that an arbitrator at the CCMA or a bargaining council must hear disputes *de novo*, applying an independent mind to the evidence and determining the fairness of the sanction without deference to the employer's decision.

Key takeaways for employers

- Subject to the employer's disciplinary policy and the employment contract, plea-bargain agreements are not binding on an independent chairperson. The chairperson retains a discretion to determine an appropriate sanction.
- To avoid compensation awards for procedural unfairness, a chairperson who declines to endorse an agreed sanction must follow a fair process: give reasons, allow reconsideration or termination of the agreement, permit withdrawal of the guilty plea, and, if terminated, ensure *de novo* hearing before a different chair unless the employee consents otherwise.
- Employers should review and update disciplinary codes and procedures to provide clear guidance on the use, scrutiny and potential rejection of plea-bargain agreements by independent chairpersons.

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