

Employment Law



20 April 2026

SOUTH AFRICA

- New earnings threshold effective 1 May 2026
- When is calling someone a “racist” a fair reason for dismissal?
- Alive or dead? The status of an archived review application and the effect of security on enforcement of an arbitration award

For more insight into our expertise and services



New earnings threshold effective 1 May 2026

As of 1 May 2026, South Africans will see the implementation of the increased earnings threshold, determined by the Minister of Employment and Labour, in the amount of R269,600.90. This represents an increase of R7,852.45 from the previous amount of R261,748.45, which has been in effect since 1 April 2025.

The earnings threshold impacts the application of provisions of the Basic Conditions of Employment Act 75 of 1997 (BCEA), the Labour Relations Act 66 of 1995 (LRA) and the Employment Equity Act 55 of 1998 (EEA).

In terms of the BCEA, employees earning more than the earnings threshold are excluded from the provisions, which regulate ordinary hours of work, overtime, compressed working weeks, averaging of hours of work, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work and pay for work on public holidays.

With regards to the LRA, employees earning more than the earnings threshold are not subject to the deeming provision in accordance with which employees engaged by a temporary employment service or labour broker who is not performing a temporary service are deemed to be employees of the client for purposes of the LRA.

In addition, employees earning in excess of the earnings threshold fall outside the scope of the provisions relating to fixed-term employees who are deemed to be employed indefinitely after three months (in the absence of justifiable reasons for fixing the term of the contract).

Looking at the EEA, an employee earning in excess of the earnings threshold who has a dispute under Chapter II of the EEA relating to unfair discrimination, is not permitted to refer the dispute to the Commission for Conciliation, Mediation and Arbitration for arbitration (unless the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties all agree to arbitration) and is obliged to refer the dispute to the Labour Court for adjudication.

For purposes of determining whether an employee earns in excess of the earnings threshold, "*earnings*" means an employee's regular annual remuneration before the deduction of income tax, pension fund contributions, medical aid contributions and similar payments, but excludes similar payments or contributions made by the employer in respect of the employee. This is subject to the proviso that subsistence and transport allowances received, achievement awards and payments for overtime worked do not fall within the scope of remuneration.

Employment Law practice



When is calling someone a “racist” a fair reason for dismissal?

In the recent judgment of *Commercial Stevedoring Agricultural and Allied Workers Union obo Vuyani Qomoyi v CCMA and Others* (CA18/2024) [2026] ZALAC 15 (8 April 2026), the Labour Appeal Court (LAC) provided clarity on the sensitive and complex issue of racial accusations in the workplace. The LAC unpacked the central legal question: under what circumstances does an employee, in response to a perceived injustice, calling a manager a “white racist” constitute dismissible misconduct? The judgment establishes that context, power dynamics, and societal history are paramount, and that such an utterance is not, in and of itself, racist behaviour.



A synopsis of the facts

The matter concerned a manager and trade union shop steward (the employee) at Namaqua Wines. The incident occurred when the employee was unexpectedly summoned by his superior, a white manager, to the human resources office. There, without any prior process involving the employee in his capacity as a shop steward, he witnessed the manager inform another black employee that he had been dismissed.

Believing the dismissal to be unfair and procedurally flawed, the employee became engaged in a heated debate with the manager. He repeatedly called the manager a “white racist” and accused him of firing black people. Following this confrontation, the employee was charged with, amongst other things, displaying racist behaviour and was subsequently dismissed for this reason. The dismissal was upheld by a Commission for Conciliation, Mediation and Arbitration (CCMA) commissioner and, on review, by the Labour Court, leading to the appeal to the LAC.



The law: A tale of two judicial approaches

The primary distinction between the LAC's judgment and the decisions of the lower forums lay in the legal test they applied.

The CCMA commissioner and the Labour Court adopted an approach that effectively presumed that the employee's words constituted a "racist tirade" and then focused their enquiry on whether he had any justification for this tirade. In so doing, they failed, according to the LAC, to first address the critical antecedent question: did the words, viewed objectively and in context, amount to racist behaviour? The Labour Court went further, stating that "labelling someone as a racist when there is no truth, cause or justification for that label, is in itself racist". This approach, the LAC found, was incorrect and inconsistent with established precedent.

The LAC, in contrast, confirmed that the correct legal standard is the objective test laid down in *Rustenburg Platinum Mine v SAEWA obo Bester* (2018) 39 ILJ 1503 (CC) and approved by the Constitutional Court. This test requires an assessment of whether a reasonable, objective, and informed person, on hearing the words and considering the correct facts and the entire context, would perceive them to be racist or derogatory. The test is not based on the subjective feelings of the person to whom the remark was made, but on an objective perception of the conduct.





The LAC's application of the law to the facts

Applying this objective test, the LAC analysed the context in which the words were uttered. It found that the employee's outburst was not an unprovoked attack but a reaction to witnessing what he, as a shop steward, perceived to be the procedurally unfair dismissal of a fellow black employee by a white manager. His words were not an assertion of racial superiority or an attempt to humiliate the manager based on his race; rather, they were an expression of his opinion and frustration regarding what he saw as an injustice.

The court emphasised that South Africa's history of apartheid and the power dynamics inherent in the employment relationship cannot be ignored. Given the history of white supremacy and the power imbalance between a white manager and a black general worker, the LAC found it inconceivable that the employee's intention was to devalue the manager as a member of the white race.





The LAC's findings

The LAC concluded that the CCMA commissioner had committed a reviewable error by failing to apply the binding *Bester* test, and the Labour Court had compounded this error. On a proper application of the law, the employee was not guilty of displaying racist behaviour. The LAC found that using the word "racist" is not automatically a racist act; the entire context must be assessed objectively.

Consequently, the LAC held that the dismissal was substantively unfair. The appeal was upheld, and the employer was ordered to retrospectively reinstate the employee.



Key takeaways

- **Objectivity over subjectivity:** An allegation of racism must be assessed objectively. The subjective feelings of the person accused of being racist are not the determining factor. The core question is how a reasonable, objective, and informed person would perceive the conduct in its full context.
- **Context is important:** An accusation of racism cannot be viewed in a vacuum. The events leading up to the utterance, the societal and historical context and the power dynamics between the parties must be carefully considered.
- **Distinguish racism from insolence:** While calling a manager a "racist" may be disrespectful or insolent, it does not automatically equate to racist behaviour. Racism requires an element of prejudice, discrimination or antagonism based on race, often rooted in a belief of racial superiority.
- **Investigate allegations seriously:** When an employee raises concerns about racism, it may be more prudent for an employer to investigate the underlying complaint than to immediately discipline the accuser.

**Aadil Patel, Nadeem Mahomed and
Makgane Mahlabana**



Alive or dead? The status of an archived review application and the effect of security on enforcement of an arbitration award

Sections 145(7) and (8) of the Labour Relations Act 66 of 1995 (LRA) provide that the institution of review proceedings does not suspend the operation of an arbitration award (award), unless the applicant furnishes adequate security.

In *Department of Higher Education v Ramoshwana and Others* (2025/239196) [2026] ZALCJHB (16 February 2026) the Labour Court considered whether the furnishing of security would suspend the operation of the arbitration award notwithstanding that the matter had been archived.

The dispute emanated from an arbitration award issued in favour of an employee in June 2019. Dissatisfied with the award, the Department of Higher Education (Department) instituted a review application in August 2019. The Department failed to file the record of the arbitration proceedings timeously and only furnished a security bond in June 2021; approximately two years after the review application was instituted and after it had already lapsed. Between June 2025 and November 2025, the employee sought to enforce the award. In December 2025, the Department launched an urgent application to set aside a writ of execution and to stay the enforcement of the award. The question before Kroon AJ was whether the security bond effectively stayed the enforcement of the award in circumstances where the underlying review application had been archived.



Court's findings

The court found that the archiving of a review application occurs automatically once the relevant time periods expire. In the court's view, an applicant who allows a review application to be archived, by failing to file pleadings or the record within the prescribed timelines, is regarded as having abandoned the review application. The consequence is that there is no *lis* (pending dispute) before the court. As such, any subsequent pleadings filed in respect of the lapsed review application have no legal significance, and the security bond is a nullity. The court therefore dismissed the Department's application to stay the enforcement of the award on the merits and struck the application to set aside the writ from the roll for lack of urgency.





Contrasting approaches

The approach adopted by Kroon AJ stands in direct contrast to that of the Labour Appeal Court (LAC) in *Tabata v Aspen Pharmacare Ltd* (PA17/2024) [2025] ZALAC 43 (24 July 2025)

In *Tabata*, the LAC rejected the notion that an archived review application ceases to exist. The LAC, per Van Niekerk JA, held that an archived review application acquires a unique status which requires judicial intervention to be reinstated or dismissed. Put differently, the mere fact that a review application has been archived does not mean that the matter is “dead”.

On this basis, the LAC found that the security filed operated to suspend the enforcement of the arbitration award, notwithstanding that the review application had been archived.

While the Labour Court is bound by the decisions of the LAC, these differing approaches are important for employers to note in order to understand the potential consequences of failing to timeously file adequate security and failing to comply with the time periods applicable to review applications.



Key takeaways for employers

Employers are encouraged to ensure that review applications in the Labour Court are prosecuted diligently and that the provisions of sections 145(7) and (8) of the LRA governing the furnishing of security and the Rules of the Labour Court are complied with. Non-compliance may result in an employee being able to execute on or enforce an award.

**Aadil Patel, Leila Moosa,
Thato Maruapula and
Mbulelo Qotoyi**

OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



Aadil Patel

Practice Head & Director:
Employment Law
Sector Head:
Government & State-Owned Entities
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Anli Bezuidenhout

Director:
Employment Law
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Frieda Kishi

Director | Namibia
T +264 83 373 0100
E frieda.kishi@cdhlegal.com



Fiona Leppan

Director:
Employment Law
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Imraan Mahomed

Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Nadeem Mahomed

Director:
Employment Law
T +27 (0)11 562 1936
E nadeem.mahomed@cdhlegal.com



Yvonne Mkefa

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



Phetheni Nkuna

Chief Operating Officer
Director: Employment Law
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Desmond Odhiambo

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



Jean Ewang

Counsel:
Employment Law
T +27 (0)11 562 1499
E jean.ewang@cdhlegal.com



Thabang Rapuleng

Counsel:
Employment Law
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



JJ van der Walt

Counsel:
Employment Law
T +27 (0)11 562 1289
E jj.vanderwalt@cdhlegal.com



Ebrahim Patelia

Legal Consultant:
Employment Law
T +27 (0)11 562 1000
E ebrahim.patelias@cdhlegal.com



Daniel Kiragu

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



Biron Madisa

Senior Associate:
Employment Law
T +27 (0)11 562 1031
E biron.madisa@cdhlegal.com



Thato Maruapula

Senior Associate:
Employment Law
T +27 (0)11 562 1774
E thato.maruapula@cdhlegal.com



Lee Masuku

Senior Associate:
Employment Law
T +27 (0)11 562 1213
E lee.masuku@cdhlegal.com



Leila Moosa

Senior Associate:
Employment Law
T +27 (0)21 481 6318
E leila.moosa@cdhlegal.com



Christine Mugenyu

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



Kgodisho Phashe

Senior Associate:
Employment Law
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com



Taryn York

Senior Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa, Kenya and Namibia, please contact:



Rashaad Dadoo

Associate:
Employment Law
T +27 (0)21 481 6317
E rashaad.dadoo@cdhlegal.com



Chantell De Gouveia

Associate:
Employment Law
T +27 (0)11 562 1343
E chantell.degouveia@cdhlegal.com



Ra'ees Ebrahim

Associate:
Employment Law
T +27 (0)11 562 1735
E raees.ebrahim@cdhlegal.com



Lehan Goosen

Associate:
Employment Law
T +27 (0)21 481 6319
E lehan.goosen@cdhlegal.com



Ayesha Karjieker

Associate:
Employment Law
T +27 (0)11 562 1568
E ayesha.karjieker@cdhlegal.com



Kevin Kipchirchir

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



Thato Makoaba

Associate:
Employment Law
T +27 (0)11 562 1659
E thato.makoaba@cdhlegal.com



Sheilla Mokaya

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



Sashin Naidoo

Associate:
Employment Law
T +27 (0)11 562 1482
E sashin.naidoo@cdhlegal.com



Billy Oloo

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



Melisa Wekesa

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E melisa.wekesa@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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

WINDHOEK

2nd Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

©2026 15632/APR

