Employment Law

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SOUTH AFRICA

- Amendments to dismissal law for high-income employees

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Amendments to dismissal law for high-income employees

The Labour Relations Amendment Bill, 2025 (2025 Bill), published on 26 February 2026, proposes changes to the remedies available to high-earning employees in unfair dismissal disputes. This alert examines the proposed amendments to sections 193 and 194 of the Labour Relations Act 66 of 1995 (LRA), compares them with two earlier legislative attempts to restrict the dismissal rights of high-income individuals, and analyses whether the current proposals bar high earners from challenging their dismissals or merely limit the remedies available to them.

The current position

Under current law, section 193 provides that reinstatement is the primary remedy for unfair dismissal. Section 194 caps compensation at 12 months' remuneration for ordinary unfair dismissals and 24 months for automatically unfair dismissals. These remedies apply equally to all employees, regardless of remuneration.

Past attempts to amend the law

The 2010 Bill proposed a new section 187A, which provided that an employee earning above a prescribed threshold could not refer disputes to the Commission for Conciliation, Mediation and Arbitration (CCMA) in respect of the right not to be unfairly dismissed (section 185), the meaning of dismissal and unfair labour practice (section 186), the requirements for a fair dismissal (section 188), dismissals for operational requirements (section 189), large-scale retrenchments (section 189A), and transfers of a business as a going concern (section 197). The effect was that high earners would have been entirely excluded from challenging unfair dismissals. The rationale was framed in terms of CCMA capacity, with the memorandum stating the amendment would ensure *"vulnerable employees are not prejudiced because of the delays caused by the volume of complaints from employees who can afford to approach the courts"*.

The 2012 Bill proposed a new section 188B, which took a different approach. Rather than preventing access to the CCMA, it deemed the dismissal of a high earner to be substantively and procedurally fair, provided three months' written notice or payment *in lieu* was given. The rationale shifted from CCMA capacity to the "*disproportionate cost, complexity and impact on an employer's operations*" of dismissing senior employees whose removal may not fall neatly within the fair reasons specified in section 188. The memorandum indicated that uniform protection for all employees "*fails to recognise the significant difference in bargaining power*" between lower paid and highly paid employees. Neither proposal was enacted.

The 2025 proposal

The 2025 Bill takes a different approach. It proposes a new section 193(2A), providing that reinstatement and re-employment do not apply to employees earning above a prescribed threshold, unless the dismissal was automatically unfair. Clause 38 further caps the earnings used to calculate compensation for such employees. The threshold is R1,8 million per annum, adjusted annually for inflation.

The rationale relies on Article 12 of the International Labour Organization's Convention 158, which the memorandum says "*allows for the differentiation in the treatment of higher-paid employees*". However, Article 12 deals with severance allowances, not dismissal remedies. The more relevant provisions are Articles 2(4) and 2(5), which permit exclusion based on the nature of employment rather than salary level.

The critical distinction

The 2025 amendment does not prevent high earners from referring unfair dismissal disputes. The 2010 Bill would have barred CCMA access entirely. The 2012 Bill would have deemed dismissals fair, stripping employees of the right to challenge fairness altogether. The 2025 Bill does neither: high earners retain the right to challenge dismissals and claim compensation, but they cannot seek reinstatement for ordinary unfair dismissals. Reinstatement remains available for automatically unfair dismissals. The 2012 amendment was accordingly far more restrictive, as it would have extinguished the right to challenge fairness entirely, whereas the 2025 Bill merely limits the remedy.

However, the right not to be unfairly dismissed lies at the very heart of individual labour law, encompassing the right to security of tenure, the primary expression of which is reinstatement when one is unfairly dismissed. It remains uncertain whether the proposed amendments would withstand constitutional scrutiny if challenged, or whether they are excessively restrictive of the right to fair labour practices enshrined in section 23 of the Constitution.

Prevention of duplicate claims

The 2025 Bill also proposes amendments to sections 195 and 196. Currently, section 195 provides that compensation under Chapter VIII is in addition to any other amount owed to the employee, which permits employees to pursue both a statutory unfair dismissal claim and a common law unlawful dismissal claim. The new section 196 requires employees to elect between a fairness claim under the LRA or an unlawfulness claim at common law – they may no longer pursue both in respect of the same dismissal. This is particularly significant for high earners whose statutory remedies may be curtailed, as it forecloses the possibility of supplementing a capped statutory award with a concurrent common law claim.

Implications

Employers must still ensure dismissals of high earners are fair, as employees retain the right to challenge fairness and claim compensation. However, the removal of reinstatement as a remedy significantly reduces the practical consequences of an adverse finding. The 2025 Bill is open for public comment and will proceed through Parliament before enactment.

Nadeem Mahomed and Sashin Naidoo

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