

# EMPLOYMENT LAW



Scan the QR code  
to view our team  
OR

[Click here to view](#)

*"Notwithstanding their knowledge of the law, they carry out extensive research if required. They have also managed to identify weaknesses in issues raised by the other party and then structure arguments on technical grounds. They take ownership of the matter."*

THE LEGAL 500 EMEA 2023

## PRACTICE OVERVIEW

Cliffe Dekker Hofmeyr Inc. is a leading commercial law firm with an established South African presence in Johannesburg, Cape Town and Stellenbosch as well as a presence in Nairobi, Kenya.

Employment law has become increasingly complex with greater legislative intervention. Keeping abreast of changes in legislation is demanding and non-compliance with legal obligations can be costly in financial terms as well as having a negative impact on employee relations.

Our employment law practice in South Africa and in East Africa has a strong reputation for delivering efficient solutions-based advice and supporting clients in the day-to-day management of their legal issues and risks.

We act for clients of all sizes across a spectrum of industries. Our clients include local, national and international companies as well as all levels of government.

Our team's broad commercial insight and approach to developing a deep understanding of a client's needs enables us to deliver pragmatic advice to support the client's business objectives.

We focus on delivering proactive solutions to the challenges our clients face in the management of their people resource.

We advise clients on all contentious and non-contentious areas of employment law.

Our Employment team has extensive experience in wide-ranging employment issues relating to large-scale restructurings, mergers and acquisitions, redundancies, business transfers, temporary employment services, pension benefits and international secondments.

We advise on collective disputes, disciplinary hearings, employee benefits and incentives, occupational health and safety, national minimum wage, basic conditions of employment, statutory contributions like UIF contributions and skills development.

We also specialise in other contractual, common law and statutory employment related causes, such as restraints of trade and claims based on unlawful employer/employee behaviour.

We pride ourselves on remaining abreast of the latest legal developments and for instance, prepare our clients through seminars, workshops, training and project planning for amendments to a variety of employment legislation.

## OUR EXPERIENCE

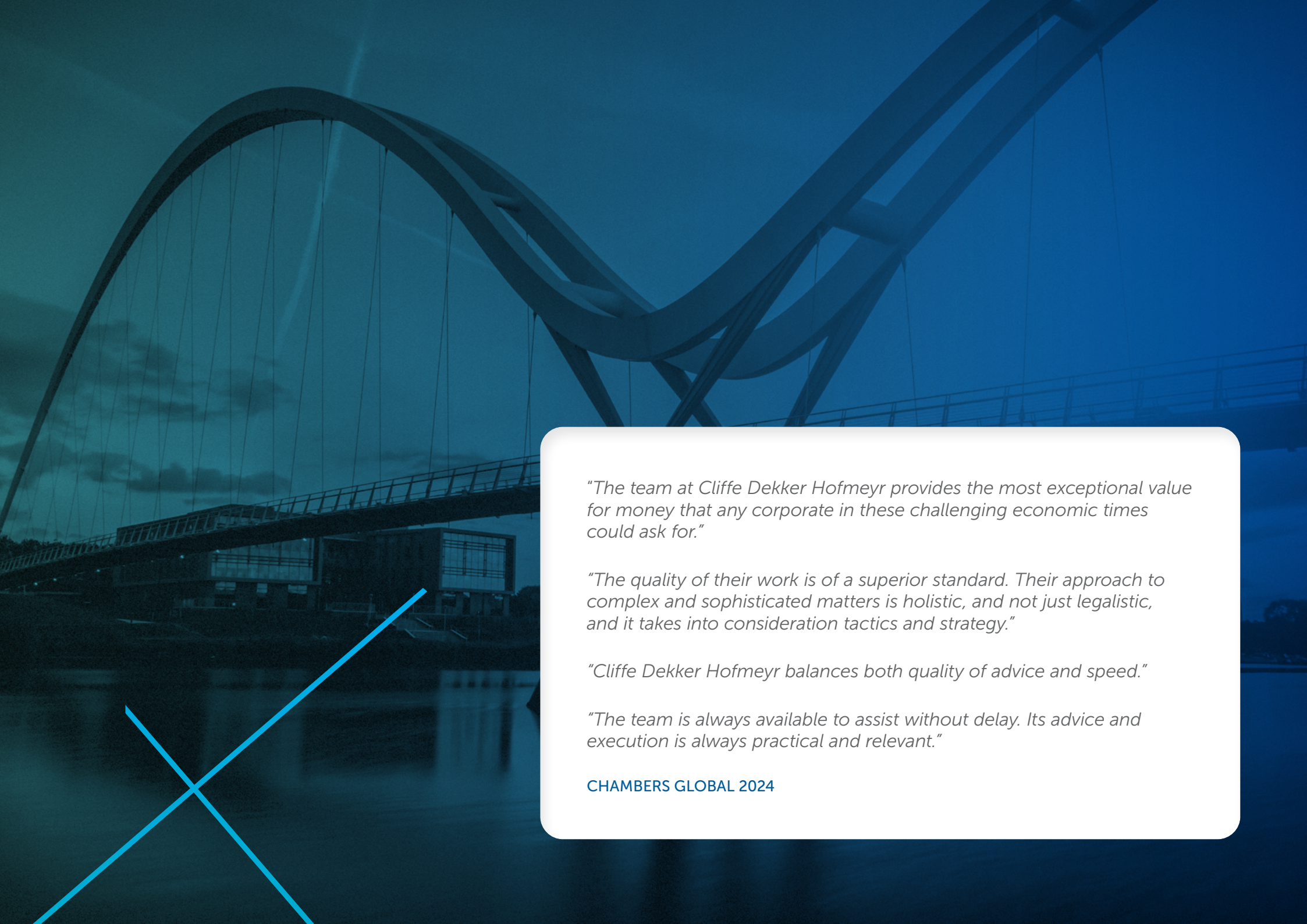
We have been involved in a number of groundbreaking matters published in the labour law reports. Examples of matters in which we have been involved include:

- Providing strategic advice to employers regarding collective bargaining and advice on the interpretation of the Constitution
- Advising large organisations, locally and internationally, on complex and challenging restructurings, retrenchments, disciplinary matters, transfer of undertakings, collective bargaining issues, individual labour law matters, dismissals and unfair labour practices
- Advising on essential services, minimum service agreements and compulsory arbitrations
- Advising on employment matters concerning the merging of large corporate companies and the reorganisation and streamlining of operations
- Acting for corporate clients in high profile strike and lock-out matters including:
  - Obtaining urgent strike interdicts
  - Establishing picketing rules
  - Matters relating to secondary strikes
- Drafting specialised employment agreements including restraint of trade agreements and related documents, and unlawful competition interdicts
- Representing high level executives in dismissals, unfair labour practice and disciplinary enquiries
- Representing clients in major international arbitrations
- Interpreting, advising and training on legislative changes
- Advising on dealing with temporary employment services
- Advising on discrimination issues and litigation relating to discrimination in the Constitutional Court

*"Cliffe Dekker Hofmeyr provide a very personal kind of service, as well as tailor-made solutions for corporate clients," explained one source.*

THE LEGAL 500 EMEA 2023






*"The team at Cliffe Dekker Hofmeyr provides the most exceptional value for money that any corporate in these challenging economic times could ask for."*

*"The quality of their work is of a superior standard. Their approach to complex and sophisticated matters is holistic, and not just legalistic, and it takes into consideration tactics and strategy."*

*"Cliffe Dekker Hofmeyr balances both quality of advice and speed."*

*"The team is always available to assist without delay. Its advice and execution is always practical and relevant."*

**CHAMBERS GLOBAL 2024**

The background of the slide features a dark blue image of a suspension bridge, likely the San Francisco-Oakland Bay Bridge, with its intricate steel structure and cables. Overlaid on this image are several bright blue geometric lines that intersect to form a star-like pattern in the upper right quadrant. The overall aesthetic is professional and modern.

WE ALSO  
HAVE ONLINE  
TRAINING TOOLS  
AVAILABLE.

## OUR SERVICES

### DISPUTE RESOLUTION

We support our clients by appearing in all employment-related forums including the Commission for Conciliation, Mediation and Arbitration (CCMA), Statutory Councils, Labour Court, Labour Appeal Court, High Court, Supreme Court of Appeal and Constitutional Court. We also assist our clients with private arbitrations. We represent our clients in their dealings with the Department of Employment and Labour.

Our expertise extends to advising and representing clients in the following disputes:

- Unfair dismissals
- Unfair labour practices
- Organisational rights
- Collective agreements
- Lock-outs
- Strikes
- Alleged non-compliance with the Employment Equity Act (EEA)
- Unfair discrimination
- Non-payment of wages, overtime, leave and severance pay
- Equal pay disputes

*"Cliffe Dekker Hofmeyr are highly customer-centric and highly responsive to our requirements."*

CHAMBERS GLOBAL 2023



## OUR SERVICES...continued

### CONSULTING

We advise clients and give opinions on a wide range of non-litigious employment law matters and commercial matters with employment law implications.

We undertake the following:

#### Corporate restructuring exercises

- Offer a step-by-step guide on the retrenchment process
- Manage the restructuring process
- Draft all notices and documentation
- Consult with trade unions, employees and their representatives
- Scrutinise minutes from consultation meetings
- Advise on selection criteria
- Formulate severance packages
- Draft retrenchment agreements
- Represent clients at CCMA or bargaining council facilitation meetings

#### Disciplinary proceedings

- Draft notices of disciplinary hearings
- Assist in preparing for disciplinary hearings
- Represent our clients at hearings, when permissible

#### Performance management issues

- Manage poor performers
- Introduce performance management systems and employee grading systems

#### Transfer of a business as a going concern

- Valuation and apportionment of liability
- Restructuring of a joint venture, merged entity or service provider following transfer

#### The impact of a merger on employees

- Assist in the consultative process with employees and their representatives
- Prepare the necessary impact reports and documentation to support a merger filing with the Competition Commission and the Kenya Competition Authority

#### We advise clients of their obligations under the following Acts

- Basic Conditions of Employment Act (BCEA), and the Kenya Employment Act: annual leave, leave pay, sick leave, parental leave, adoption leave, commissioning parent leave and overtime
- EEA: How to draft an employment equity plan and report
- Compensation for Occupational Injuries and Diseases Act: Reporting obligations in cases of injuries on duty
- Employment Services Act
- Occupational Health and Safety Act (OHSA)
- National Minimum Wage Act (NMW)

*"The team at CDH are an exceptional team to work with. They are efficient, pro-active, extremely knowledgeable about case studies and always willing to assist. My interactions with the team have always been professional and to the point."*

*"Exceptional knowledge in our industry and of relevant case law. Always knowledgeable of the latest applicable case law. Adapted easily to virtual/digital client meetings and DRC arbitrations etc."*

THE LEGAL 500 EMEA 2022

## OUR SERVICES...continued

### INDUSTRY EXPERTISE

Our Employment team works extensively in an ever-expanding list of industries including:

Aviation



Banking



Catering and  
hospitality



Cellular services



Chemical



Financial  
services



Insurance



Luxury  
goods



Mining



Media and  
telecommunications



Pharmaceutical



Petroleum



Retail



Transport



State-owned  
enterprises



Government  
departments



## OUR SERVICES...continued

### TRAINING

To help guide clients through the intricacies of employment law, we present seminars and run customised training sessions and workshops on a range of issues, including how to run disciplinary hearings and how to prepare for and run arbitrations. We also have online training tools available.

We develop compliance checklists that are designed to help companies avoid or minimise costly employment disputes.

We keep clients informed on proposed legislation and regulations affecting aspects of the employment relationship, and support clients with seminars, conferences and specialist newsletters and email alerts.

### DRAFTING

We draft a wide range of agreements, reports, policies, guidelines and procedures including:

- Contracts of employment for executives, managers, permanent employees and employees employed for a fixed term or specific task
- Collective agreements at all bargaining levels
- Severance and settlement agreements
- Restraints of trade and confidentiality agreements
- Agreements contemplated by s197 of the Labour Relations Act (LRA)
- Valuation and apportionment agreements in relation to transfers of businesses, undertakings or services
- Temporary employment services agreements
- Training agreements
- Independent contractor agreements
- Disciplinary and grievance regulations and procedures, warnings and dismissal notices
- Lock-out notices and ultimata
- Codes on sexual harassment, retrenchment, picketing, social networking and various others
- Picketing rules

### ALTERNATIVE DISPUTE RESOLUTION AND COLLECTIVE BARGAINING

We chair various hearings on behalf of our clients, including grievance, disciplinary and appeal hearings. We also mediate employment disputes and assist in collective bargaining.

### PUBLIC LAW

We advise on the Constitution and the influence it has on the operations of both public and private organisations and corporations. We advise government departments and state-owned entities on wide-ranging legislation.

### AUDITING

We undertake statutory or collective agreement compliance audits, including assessing whether the client's terms and conditions of employment comply with the Kenya Employment Act, BCEA, NMW, sectoral determinations, collective agreements, an arbitration award or Labour Court ruling.

### OCCUPATIONAL HEALTH AND SAFETY

In terms of the OHSA, we conduct accident investigations and represent clients in serious incident and fatality inquiries. We also conduct legal compliance audits and advise on health and safety policies and procedures.



## OUR SERVICES...continued

### DUE DILIGENCE

We undertake employment law due diligences in relation to the transfer of a business, undertaking and service as a going concern, or the purchase of shares. The results of this process form the basis of the warranties and valuation and apportionment agreements required under s197 of the LRA.

### CORPORATE IMMIGRATION

We assist international, South African and Kenyan companies with the immigration requirements associated with the import of foreign skills and relocation of expatriates and their families.

#### Our services include:

- General work permits
- Intra-company transfer work permits
- Special skills work permits
- Section 11(2) business visitors' visas
- Quota work permits
- Visa applications for spouses and dependent children
- Study permits
- Permanent residence applications
- Temporary residence status within the borders of South Africa

We assist with legal queries regarding immigration-related issues; especially the current requirements of the Department of Home Affairs and the Kenya Department of Immigration Services.

### EMPLOYEE BENEFITS

We assist public officers and other representative taxpayers with the onerous obligations of related tax provisions including:



The application of pay-as-you-earn to independent contractors and fringe benefits



Share schemes



Other benefits employers must provide

We help clients to identify potential non-compliance and to restructure employment benefits (including share incentive schemes) to improve tax efficiency.

We assist with pension and provident funds and retirement benefits.


### THE COMPANIES ACT

The Companies Act, which came into effect on 1 May 2011 in South Africa and the Kenyan Companies Act which came into effect from 15 September 2015, has a significant impact on employment relationships. From an employment law perspective, our team of experts can:

- Advise on the impact of the Act on:
  - Policies
  - Processes
  - Employment agreements
- Collective relationships and agreements
- Conduct audit compliance with the Act
- Redraft policies, processes and agreements to ensure compliance with the Act
- Provide training on clients' responsibilities under the Act

Some of the more significant areas in which the Act impacts on employment relationships are:

- Removal of directors
- Extended director, prescribed officer and committee member liabilities
- Indemnities and insurance for directors, prescribed officers and committee members
- Whistle-blower protections
- Employee, board and statutory committees
- Share incentive schemes
- Mandatory notices to employees and unions
- Retrenchments during business rescue processes
- Extended union rights (eg access to sensitive financial information)



## KENYAN OFFERING

### KENYA OFFERING

Cliffe Dekker Hofmeyr (CDH) has joined forces with Nairobi-based boutique corporate law firm, Kieti Law LLP (Kieti), in a move to bolster the capabilities of both firms in the continent's East African economic hub.

Our Nairobi office, Kieti Law LLP, is a leading Kenyan law firm that provides personalised legal services of the highest quality in key specialist areas of practice.

Through this partnership, both firms will not only be enabled to expand their service offerings in the region but will benefit from the alchemy of Kieti's regional expertise and embedded knowledge and CDH's depth of legal history and capability. With significant experience in market leading transactions in Kenya, Kieti Law LLP is perfectly poised to partner with CDH in the setting up of a firm base of CDH's operations in East Africa and will, in turn, benefit from CDH's depth of top-tier capability, experience, expertise and talent.

As a firm that has regularly been retained by both local and foreign investors, Kieti's partnership with CDH is predominantly client-driven. Our overarching goal is to provide seamless legal services in East Africa through this office so as to enable our worldwide clients to harness the vast opportunities for sustainable investment that lie within that region of the continent and beyond.

The services provided by our Kenyan office are as follow:

#### DRAFTING

We draft a wide range of contracts including:

- Contracts of employment
- Collaborative bargaining agreements
- Human resources manuals
- Secondment agreements
- Settlement agreements
- Termination notices and documents

#### REVIEW

We review the following:

- Contracts of employment
- Human Resources Manuals
- Secondment agreements

#### ADVICE

We provide advice on the following:

- Data protection
- Deductions and benefits
- Employee termination and disciplinary procedures
- Employee redundancy
- Pensions
- Summary dismissal
- Secondment agreements employees
- Transfer of employees
- Work permits and immigration

## AFRICA OFFERING

Each jurisdiction in Africa poses its own complex political and legislative landscape, tax regime and various other regulations. Labour laws and employee relations are imperative considerations for companies looking to establish a presence on the African continent. When it comes to hiring, transferring and dismissing employees, each of Africa's jurisdictions requires employers to navigate a unique labour law landscape which is often employee friendly.

The CDH Employment Law team provides specialist employment law analysis and strategic advice on the continent's key jurisdictions in partnership with local counsel. Our Africa offering includes a wide range of labour law advice and drafting which is confirmed by leading local experts in the relevant jurisdictions.

*"The lawyers understand the dynamics of the industry we are operating in and provide solutions accordingly."*

CHAMBERS GLOBAL 2023

*"Cliffe Dekker Hofmeyr has many strengths but for me the most important one is the personal touch you receive when dealing with them."*

THE LEGAL 500 EMEA 2023



## MARKET RECOGNITION

Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

*Chambers Global 2014–2023* ranked our Employment Law practice in Band 2 for employment. *The Legal 500 EMEA 2020–2023* recommended the South African practice in Tier 1, and our Kenyan practice in Tier 3 for employment.

The way we support and interact with our clients attracts significant external recognition.

**Aadil Patel** is the Practice Head of the Employment Law team, and the Joint Sector Head of the Government & State-Owned Entities sector.

*Chambers Global 2015–2023* ranked him in Band 2 for employment. *The Legal 500 EMEA 2021–2023* recommended Aadil as a leading individual for employment and recommended him from 2012–2020.

*The Legal 500 EMEA 2021–2023* recommended **Anli Bezuidenhout** for employment.

*The Legal 500 EMEA 2020–2023* recommended **Jose Jorge** for employment.

*Chambers Global 2018–2023* ranked **Fiona Leppan** in Band 2 for employment. *The Legal 500 EMEA 2022–2023* recommend her for mining. *The Legal 500 EMEA 2019–2023* recommended her as a leading individual for employment, and recommended her from 2012–2018.

*Chambers Global 2021–2023* ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2023* recommended him for employment.

*The Legal 500 EMEA 2023* recommended **Phetheni Nkuna** for employment.

*The Legal 500 EMEA 2022* recommended **Desmond Odhiambo** for dispute resolution.

**Hugo Pienaar** is the Head of the Infrastructure, Logistics, and Transport sector, and a director in our Employment Law practice. *Chambers Global 2014–2023* ranked Hugo in Band 2 for employment. *The Legal 500 EMEA 2014–2023* recommended him for employment.

*The Legal 500 EMEA 2023* recommended **Thabang Rapuleng** for employment.

*The Legal 500 EMEA 2022–2023* recommended **Njeri Wagacha** for employment. *The Legal 500 EMEA 2023* recommends Njeri for corporate, commercial/M&A.



**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.

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