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LABOUR LAW REFORM:
KEY PROPOSED AMENDMENTS

CDH

Introduction

Following negotiations on substantive labour law reforms between organised business, organised labour, and Government at the National Economic Development and Labour Council (NEDLAC)—which began in April 2022—the NEDLAC Report on the Labour Law Reform Process was published.

Click Here

NEDLAC Report

The report outlines the proposals tabled and the outcomes of discussions among the parties. The report and the proposed amendment bills have been submitted to the Minister of Employment and Labour. These four amendment bills seek to introduce changes to:

Click Here

The Labour Relations Act, 1995 (LRA)

Click Here

The Basic Conditions of Employment Act, 1997 (BCEA)

Click Here

The National Minimum Wage Act, 2018 (NMWA)

Click Here

The Employment Equity Act, 1998 (EEA)

These proposed reforms must undergo scrutiny by the State Law Advisor and receive Cabinet approval before being tabled. The draft amendment bills will proceed through the Parliamentary process, including opportunities for public comment. We will keep you updated of further developments as they arise.

The outline below is limited to some of the most notable proposed changes.

Dismissal

Restrictions on Remedies for Unfair Dismissal of High-Earning Employees

A proposed amendment to the Labour Relations Act seeks to introduce a new provision limiting the remedies available to high-earning employees in cases of unfair dismissal. Under this proposal, reinstatement will only be granted in instances of automatically unfair dismissals. For all other types of unfair dismissal, the remedy will be restricted to capped compensation. Save for compensation in instances of an unfair labour practice related to whistleblowing, in addition to the 12-month cap on compensation awards, a compensation award will also be limited to the high-earning threshold amount prescribed by the Minister.

However, this compensation cap will not apply in cases of automatically unfair dismissals or unfair labour practices related to whistleblowing.

The proposal seeks to introduce a section 208B which allows the Minister to set a High Earnings Thresholds based on the relevant CPI for a particular year. The proposed Higher Earnings Threshold is ZAR1,800,000 with an annual adjustment as from 1 May every year according to CPI.

FIRST THREE MONTHS OR CONTRACTUAL PROBATION

Fair Hearing Not Required

HIGH EARNERS
(Above R1.8 million per year)

No Reinstatement

Compensation Capped

Test for Clarification of Procedural Fairness in Dismissals

A proposed amendment seeks to explicitly clarify procedural fairness in dismissals, stating that—unless otherwise stipulated by a collective agreement – a fair dismissal process must provide the employee with a reasonable and adequate opportunity to respond to the reason for dismissal. The report states that this provision will not apply to dismissals on the basis of operational requirements.

This clarification aligns with the newly released Draft Code of Good Practice on Dismissal, reinforcing a shift away from overly formal and adversarial pre-dismissal procedures.

Additionally, under the proposed Section 188(4) of the Labour Relations Act, protection against unfair dismissal will not apply to new employees during:

- Their first three months of employment, or
- A longer probationary period specified in their contract, provided it is both reasonable and operationally justifiable.

However, these employees will still be protected against automatically unfair dismissals. This aims to encourage employers to hire new talent, particularly young individuals without prior work experience.

Retrenchment processes, including severance pay

Reforms to Large-Scale Retrenchment Processes

A series of amendments to Section 189A of the Labour Relations Act (LRA) have been proposed and deliberated among social partners, introducing key changes to the retrenchment process.

One significant amendment transfers the authority to establish facilitation rules from the Minister to the Commission for Conciliation, Mediation and Arbitration (CCMA), ensuring a more streamlined and independent approach.

Further changes are proposed to the process for challenging procedural fairness in retrenchments under Section 189A:

- Sub-sections (13) to (18)—which currently allow urgent applications to challenge procedural fairness while the retrenchment process is ongoing—are set to be removed.
- Sub-sections (7) and (10) will be amended, enabling all aspects of a retrenchment dismissal to be challenged only after dismissal has taken place.
- Where a facilitated consultation has occurred, disputes over dismissal fairness may proceed directly to the Labour Court, without prior conciliation.

These amendments effectively reinstate the pre-Section 189A legal framework for challenging retrenchment procedures, ensuring greater procedural clarity and efficiency.

Increase in Statutory Severance Pay

A proposed amendment seeks to increase the minimum statutory severance pay for employees retrenched due to an employer's operational requirements. Under this proposal, severance pay will rise from one week to two weeks' remuneration for each completed year of continuous service.

However, the entitlement to two weeks' remuneration per year will apply prospectively, i.e. only to the years of service completed after the commencement of the Amendment Act.

This change aims to provide greater financial security for employees affected by retrenchment.

STREAMLINED SECTION 189A (LARGE-SCALE RETRENCHMENTS)

CURRENT TIMELINE

Notice → Consultation → Conciliation Referral

PROPOSED TIMELINE

Notice → Consultation → Direct Access to Labour Court

Substantive and Procedural Fairness

Narrowing the definition of ‘unfair labour practice’

A proposed amendment seeks to curtail the definition of ‘unfair labour practice’ by removing sub-sections 186(2)(a) and (c) from the Labour Relations Act (LRA). As a result, disputes classified as justiciable unfair labour practices will be limited to:

- Unfair suspension or other disciplinary action short of dismissal.
- Occupational detriment suffered due to protected whistleblowing.

However, a one-year transitional period is proposed, during which disputes related to unfair conduct in promotion will continue to be addressed as if Section 186(2)(a) remained in force.

This transitional provision applies exclusively to employers within:

- The public service and local government.
- Employers governed by the Employment of Educators Act.
- The South African Police Service.

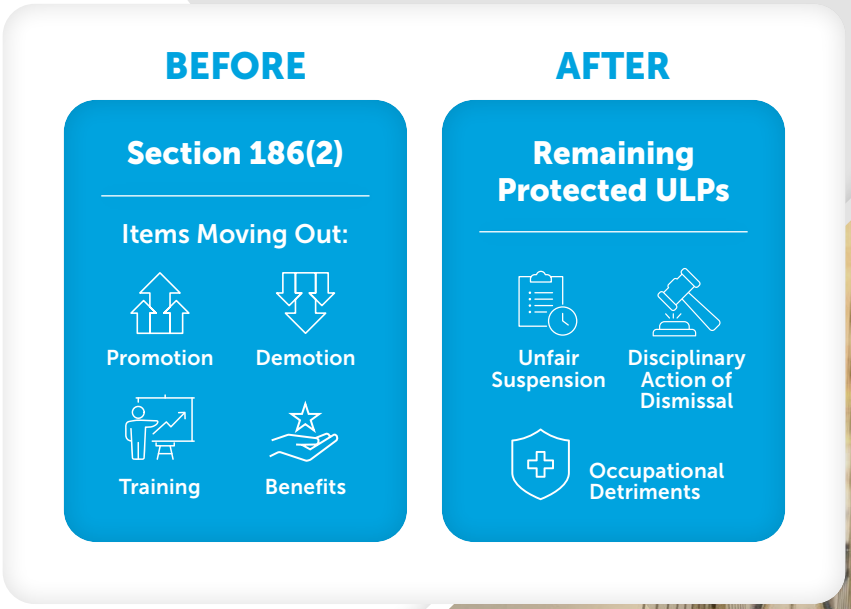
The purpose of this transition is to allow employers and trade unions in these sectors the opportunity to establish collective agreements governing promotion and related disputes.

Expanded definition of ‘employee’

A proposed Schedule 11 to the Labour Relations Act (LRA) seeks to extend freedom of association, organisational rights, and collective bargaining rights to a broader category of workers.

Under this schedule, an employee is defined as an individual who personally performs work for another, provided the person they work for is not a client or customer of their own profession, business, or trade. A presumption of employment will apply unless the employer can prove otherwise by meeting specific criteria.

A similar expanded definition is also proposed for inclusion in the Basic Conditions of Employment Act (BCEA), applying to Chapters 8 to 10, which would enable the Minister to establish sectoral determinations setting minimum employment conditions for these workers.



Enhanced regulation of ‘on-call’ and seasonal workers

A proposed amendment to the Basic Conditions of Employment Act (BCEA) introduces new provisions for employees who are required to be available for work but are not guaranteed regular working hours.

Under this proposal, employers will be obliged to provide written confirmation of key employment terms, including:

- The notice period required for the employee to report for work.
- The notice period for the cancellation of scheduled work.
- The period which the employee must be available for work.
- The guaranteed and maximum hours of work in a particular period.

Employers must take into account:

- The period which the employee must be available for work.
- The guaranteed and maximum hours of work in a particular period.

Both notice periods must be reasonable, ensuring greater predictability and fairness for on-call and seasonal workers.

The provision also limits the instances where an employer can place a prohibition, limitation or restriction on employees who wish to work for other employers when they are not on call.

Improving efficiency of CCMA functioning and other dispute resolution agencies

Several proposals to the employment laws were made to enhance clarity, consistency, and efficiency. Some of the key are as follows:

- Section 127 of the LRA:
  - Allows bargaining councils and agencies to apply for accreditation to expand their scope to deal with disputes under all employment laws.
- Section 52(5)(a) and (b) of the EEA:
  - Provides for dispute resolution for certain EEA claims in bargaining councils.
- Section 115(2)(bB) of the LRA:
  - Affirms the CCMA's role in assisting employees to enforce an arbitration award.
- Section 69(5A), (5B) and (7) of the BCEA:
  - Enables the CCMA to condone late appeals against compliance orders issued by labour inspectors.
- Section 74(2) of the BCEA:
  - Allows the CCMA to consolidate disputes under any employment law.
- Section 10(6)(a) of the EEA:
  - Enables the CCMA to consider any harassment claim at arbitration.
- Sections 69(15) & 69(16) of the LRA:
  - Clarifies who is authorised to conciliate disputes relating to picketing rules.
  - Confirms that provisions on picketing rules also apply to strikes concerning organisational rights and dismissals based on operational requirements.
- Section 143(5) of the LRA:
  - Establishes that arbitration awards for the payment of money may be enforced as if they were orders of the Magistrate's Court or the Labour Court.
- Section 191(5)(v) of the LRA:
  - Harmonises dispute resolution procedures under the LRA and the Employment Equity Act (EEA).
  - Enables the CCMA to hear unfair dismissal disputes alongside unfair discrimination claims when both arise from the same underlying issue only for employees earning below the threshold and where the employee alleges sexual harassment as a ground.
- Sections 191(11A) – (11C) of the LRA:
  - Grants the CCMA jurisdiction over certain automatically unfair dismissals for employees earning below the statutory earnings threshold.
  - Allows disputes initially classified as ordinary unfair dismissals to be reclassified as automatically unfair if such evidence emerges during the hearing.
- Section 213 of the LRA:
  - Introduces a definition of "*disputes about the interpretation or application.*" This applies to other sections dealing with "*disputes on interpretation and application,*" for example to section 198D disputes as well, which clarifies that a dispute about interpretation or application includes a dispute regarding compliance with the LRA, employment laws, Constitution, agreement or determination.

Exemption for start-up businesses from bargaining council agreements

A proposed amendment seeks to exempt start-up businesses with fewer than 50 employees from the conditions of employment prescribed by extended bargaining council collective agreements.

For the purposes of this exemption, a 'new business' is defined as one that has been in operation for less than two years. However, this excludes:

- Businesses acquired through the transfer of a going concern, as outlined in Section 197(1) of the Labour Relations Act (LRA).
- Businesses formed through the division or dissolution of an existing entity.

This proposal aims to provide greater flexibility for emerging enterprises while ensuring fair labour practices remain upheld.

Essential Services

The proposed amendments seeks to clarify the position that only employees engaged in a designated minimum service in respect of a designated essential service are precluded from strike action.

The proposed amendments also clarify the position that the Essential Services Commission operates independently and is to receive administrative support from the CCMA.

MARKET RECOGNITION

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

Chambers Global 2025 ranked our Employment Law practice in Band 1 for employment and from *2014–2024* in Band 2.
The Legal 500 EMEA 2020–2024 recommended the South African practice in Tier 1. *The Legal 500 EMEA 2023–2024* recommended the Kenyan practice in Tier 3 for employment.

Aadil Patel is the Practice Head of our Employment Law team, and the Head of our Government & State-Owned Entities sector.
Chambers Global 2024–2025 ranked Aadil in Band 1 for employment. *Chambers Global 2015–2023* ranked him in Band 2 for employment.
The Legal 500 EMEA 2021–2024 recommended Aadil as a 'Leading Individual' for employment and recommended him from *2012–2020.*

The Legal 500 EMEA 2021–2024 recommended Anli Bezuidenhout for employment.

Chambers Global 2018–2025 ranked Fiona Leppan in Band 2 for employment. *The Legal 500 EMEA 2022–2024* recommend Fiona for mining.
The Legal 500 EMEA 2019–2024 recommended her as a 'Leading Individual' for employment, and recommended her from *2012–2018.*

Chambers Global 2021–2025 ranked Imraan Mahomed in Band 2 for employment and in Band 3 from *2014–2020.*
The Legal 500 EMEA 2020–2024 recommended him for employment.

The Legal 500 EMEA 2023–2024 recommended Phetheni Nkuna for employment.

The Legal 500 EMEA 2022–2024 recommended Desmond Odhiambo for dispute resolution.

The Legal 500 EMEA 2023 recommended Thabang Rapuleng for employment.

Chambers Global 2025 ranked Ngeri Wagacha in Band 2 for Fintech, and in Band 3 in *2024*. *Chambers 2025* ranked her in Band 4 for corporate/M&A. *The Legal 500 EMEA 2022–2024* recommended Njeri for employment. *The Legal 500 EMEA 2023–2024* recommends her for corporate, commercial/M&A. *IFLR1000 2024* ranked Njeri as a highly regarded lawyer in Private equity, and 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.

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