



LABOUR RELATIONS AMENDMENT ACT, 6 OF 2014

IN A NUTSHELL

INTRODUCTION

In response to ,

- the increased informalisation of labour to ensure that vulnerable categories of workers receive adequate protection and are employed in conditions of decent work;

AND in order to ,

- adjustment the law to ensure compliance with South Africa's obligations in terms of international labour standards;
- ensure that labour legislation gives effect to fundamental Constitutional rights, including the right to fair labour practices, to engage in collective bargaining and right to equality and protection from unfair discrimination;
- enhance the effectiveness of the primary labour market institutions such as the Labour Court, the CCMA, the essential services committee and the labour inspectorate;
- rectify anomalies and clarify uncertainties that have arisen from the interpretation and application of the Act and the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997),

the LABOUR RELATIONS ACT has been amended.

PURPOSE

The purpose of the Amendment Act 2014 is to amend the Labour Relations Act, 1995, so as to

- facilitate the granting of organisational rights to trade unions that are sufficiently representative;
- strengthen the status of picketing rules and agreements;
- amend the operation, functions and composition of the essential services committee and to provide for minimum service determinations;
- provide for the Labour Court to order that a suitable person be appointed to administer a trade union or employers' organisation;

- enable judges of the Labour Court to serve as a judge on the Labour Appeal Court;
- further regulate enquiries by arbitrators;
- provide greater protection for workers placed in temporary employment services;
- regulate the employment of fixed term contracts and part-time employees earning below the earnings threshold determined by the Minister;
- further specify the liability for employer's obligations;
- and to substitute certain definitions; and to provide for matters connected therewith.

DISCUSSION OF THE CHANGES

SECTION 021. EXERCISE OF RIGHTS CONFERRED BY THIS PART

The amendment to section 21 of the Act seeks to provide for the commissioner to consider the composition of the workforce in the workplace, taking into account the extent to which there are employees assigned to work by temporary employment services, employees engaged on fixed-term contracts, and part-time employees or employees in other categories of non-standard employment, when determining a dispute about organisational rights.

The amendment also seeks to empower a commissioner in an arbitration to grant a registered trade union that does not have as members the majority of employees employed by an employer in a workplace the rights referred to in sections 14 and 16 if no other trade union has been granted that right. This right lapses if the trade union concerned is no longer the most representative trade union in the workplace. A commissioner may in an arbitration grant the rights referred to in sections 12 (trade union access to the workplace), 13 (deduction of trade union subscriptions or levies) or 15 (leave for trade union activities) to a registered trade union, or two or more registered trade unions acting jointly, that do not meet thresholds of representativeness established by a collective agreement.

SECTION 23- LEGAL EFFECT OF A COLLECTIVE AGREEMENT

This revision provides that if a trade union seeks to exercise rights conferred by Part A in respect of employees of a temporary employment service, it may seek to exercise those rights in a workplace of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a workplace of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises.

This section is amended to ensure that where organisational rights may affect the rights and interests of third parties, such as the client of a temporary employment service or owner of the premises from which the employer operates, an arbitration award may bind those third parties as long as they have been given an opportunity to participate in the arbitration.

SECTION 032. EXTENSION OF COLLECTIVE AGREEMENT CONCLUDED IN BARGAINING COUNCIL

Section 32 of the Act is amended to improve the efficiency of the exemption procedures associated with a collective agreement concluded in a bargaining council agreement that is extended to non-parties. The amendments also ensure the independence of an exemptions appeal body from the trade union and employer parties to the council.

The amendments also seek to provide for the Minister to consult with the public when considering whether to extend a bargaining council collective agreement where the parties to the bargaining council are only sufficiently representative (section 32(5)). When considering whether the parties to a bargaining council are sufficiently representative, the Minister may take into account the extent to which there are employees within the sector employed in non-standard forms of employment.

SECTION 049. REPRESENTATIVENESS OF COUNCIL

Section 49 seeks to clarify that a certificate specifying the level of representativeness of a bargaining council may be taken into account for any purpose under the Act, including a decision by the Minister whether or not to extend a collective bargaining agreement in terms of section 32.

When considering the representativeness of the parties to a council, or parties seeking registration of a council, the registrar, having regard to the nature of the sector and the situation of the area in respect of which registration is sought, may regard the parties to a council as representative in respect of the whole area, even if a trade union or employers organisation that is a party to the council has no members in part of that area.

SECTION 051. DISPUTE RESOLUTION FUNCTIONS OF COUNCIL

Section 51 of the Act is amended to provide for the funding of dispute resolution services of bargaining councils, either by a levy required by collective agreement or by fees imposed on parties to a dispute for matters for which the CCMA is entitled to charge a fee.

SECTION 065. LIMITATIONS ON RIGHT TO STRIKE OR RECOURSE TO LOCK-OUT

The sections have been amended in order to eliminate the anomalous distinction between disputes that can be adjudicated under the Act in respect of which industrial action is currently restricted and those under other employment laws in respect of which there is no equivalent restriction. Therefore the amendments extend the rights to a determination made in terms of Chapter Eight of the *Basic Conditions of Employment Act* that regulates the *issue in dispute*, during the first year of that determination.

Amendments to section 69 of the Act seek to make picketing rules binding on third parties such as the landlords of employers. This may result in a situation in which picketing is permitted to occur on property that is owned or controlled by such a third party, where this is appropriate, but only where the third party has consented or has had an opportunity to be heard before the rules are established.

The amendments also provide that if a party has referred a employee dispute in terms of subsections (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances. The Labour Court may, in appropriate cases, order compliance with picketing rules or vary the terms of a picketing agreement or rules. The Labour Court is further granted the power to suspend a picket or strike in appropriate circumstances. Likewise, the Court may suspend a lock-out or suspend an employer from engaging replacement labour during a strike or lock-out.

AMENDMENT TO SECTIONS:

070. ESSENTIAL SERVICES COMMITTEE

070A. COMPOSITION OF ESSENTIAL SERVICES COMMITTEE.

070B. POWERS AND FUNCTIONS OF ESSENTIAL SERVICES COMMITTEE

070C. APPOINTMENT OF PANELS

070D. POWERS AND FUNCTIONS OF PANEL

070E. JURISDICTION AND ADMINISTRATION OF ESSENTIAL SERVICES COMMITTEE

070F. REGULATIONS FOR ESSENTIAL SERVICES COMMITTEE

071. DESIGNATING A SERVICE AS AN ESSENTIAL SERVICE

072. MINIMUM SERVICES

073. DISPUTES ABOUT MINIMUM SERVICES AND ABOUT WHETHER A SERVICE IS AN ESSENTIAL SERVICE";

074. DISPUTES IN ESSENTIAL SERVICES

Under the current dispensation numerous problems have been identified with the system for regulating dispute resolution in essential services.

These include the scope of essential service determinations made to date, the small number of minimum service agreements ratified by the essential services committee and the high level of strike action within essential services. Many stakeholders have negative perceptions about the operation and administration of the essential services committee. To address these problems, amendments HAVE BEEN MADE TO sections 70 to 74 of the Act.

THESE AIM TO:

- provide for the establishment of the essential services committee. The essential services committee was brought into existence by the Act. The structure and functioning of the essential services committee are to be revised to enhance its legitimacy and efficacy.
- to insert sections 70A to 70F.

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Section 70A seeks to provide for the composition of the essential services committee, which consists of eight persons. The chairperson must be independent from the NEDLAC constituencies and may be a senior commissioner of the CCMA, while the deputy chairperson must be a senior commissioner of the CCMA. This is to ensure that the essential services committee has someone who is always available to devote time to the functioning of the essential services committee. The Minister must appoint the remaining six persons from those nominated by organised business, labour and government at NEDLAC. The introduction of government nominees is an innovation to ensure that government is adequately represented on the essential services committee in its capacity as an employer, as a high proportion of essential service matters occur within the public service.

Section 70B provides for the powers and functions of the essential services committee.

Section 70C provides for the appointment of panels to preside over each matter that is before it.

Section 70D provides for the powers and functions of a panel appointed by the essential services committee.

Section 70E provides for the essential services committee to have jurisdiction throughout the Republic and for the Commission to administer the essential services committee.

Section 70F empowers the Minister of Labour to make regulations concerning any matter related to the functioning of the essential services committee and its panels.

Section 72 provides for the negotiation and conciliation of minimum service agreements. In order to promote interest arbitration and protect employees from an overly broad minimum service designation, the Bill provides that a minimum service designation will not apply if the majority of employees concerned vote to be covered by the broader essential service designation. This will have the result that there can be no strike or lock-out in the service concerned and all unresolved interest disputes will be subject to compulsory arbitration.

SECTION 103A. APPOINTMENT OF ADMINISTRATOR

Section 103A has been inserted in order to permit the Labour Court to make an order placing a trade union or employers' organisation under administration in specific circumstances, such as where the trade union is unable to perform its functions. The application may be made by the trade union or employers' organisation concerned or by the Registrar of Labour Relations. The section provides an alternative to the winding-up procedure in section 103 of the Act and provides for a more appropriate process if the circumstances facing the trade union or employers' organisation are capable of being remedied.

SECTION 111. APPEALS FROM REGISTRAR'S DECISION

Section 111 provides that a trade union or employers' organisation whose registration has been cancelled by a decision of the Registrar of Labour Relations is not entitled to continue to function pending the outcome of an appeal against the decision of the Registrar.

SECTION 115. FUNCTIONS OF COMMISSION

Section 115 empowers the Commission to provide administrative assistance to lower paid employees in the delivery of notices or documents relating to proceedings in the Commission. Often such employees are unable to serve referral documents on their employer. Another change empowers the Commission to make rules to regulate the consequences of a party's failure to attend conciliation or arbitration proceedings. This change has been necessitated by the Labour Appeal Court's interpretation of the CCMA's rule-making powers. Section 115 is also amended to clarify the powers of the Commission to make rules regulating the rights of parties to be represented in proceedings before the Commission

SECTION 138. GENERAL PROVISIONS FOR ARBITRATION PROCEEDINGS

Section 138 of the Act removes the requirement that original arbitration awards must be lodged with the Registrar of the Labour Court. This has proved to be unnecessary and administratively burdensome.

SECTION 143 EFFECT OF ARBITRATION AWARDS

Section 143 of the Act streamlines the mechanisms for enforcing arbitration awards of the Commission and to make these mechanisms more effective and accessible. Firstly, an award which has been certified by the Commission can be presented to the Deputy Sheriff for execution if payment is not made.

This removes the need for the current practice in terms of which parties have a writ issued by the Labour Court. This has proved to be time-consuming and expensive, particularly for applicants in a centre where there is no Labour Court. Secondly, in the case of awards such as reinstatement which are enforced by contempt proceedings in the Labour Court, the need to have an arbitration award made an order of the Labour Court before contempt proceedings can be commenced is removed. Finally, the enforcement of awards to pay money will occur in terms of the Rules and Tariffs applicable to the Magistrate's Court, thus simplifying and reducing the costs of these proceedings. These amendments are anticipated to simplify and expedite the enforcement of arbitration awards by the Commission and bargaining councils.

SECTION 144. VARIATION AND RESCISSION OF ARBITRATION AWARDS AND RULINGS

Section 144 provides for the variation and rescission of arbitration awards and rulings which was made in the absence of any party, on good cause shown.

SECTION 145. REVIEW OF ARBITRATION AWARDS

Section 145 introduces certain measures intended to reduce the number of review applications that are brought to frustrate or delay compliance with arbitration awards, and to expedite the finalisation of applications brought to the Labour Court to review arbitration awards. Currently, a review application does not suspend the operation of an arbitration award. This often results in separate or interlocutory applications to stay enforcement of awards pending review proceedings. It is proposed that the operation of an arbitration award would be suspended if security is provided by the applicant in an amount specified, or any lesser amount permitted by the Labour Court.

To prevent delay by applicants, the amended provisions require that an applicant must apply for a date for the hearing of a review application within six months of commencing proceedings. Judgment in review matters must be handed down within a reasonable time. The proposed amendment also seeks to provide that a review application interrupts the running of prescription in respect of an arbitration award.

SECTION 147. PERFORMANCE OF DISPUTE RESOLUTION FUNCTIONS BY COMMISSION IN EXCEPTIONAL CIRCUMSTANCES

Section 147 requires the Commission to resolve disputes even where the parties have agreed to private dispute resolution if, in the case of lower paid employees, the employee is required to pay any part of the cost of private dispute resolution, or, in the case of all employees, the person appointed to resolve the dispute is not independent of the employer.

SECTION 150. COMMISSION MAY OFFER TO RESOLVE DISPUTE THROUGH CONCILIATION

Section 150 of the Act extends and regulates the circumstances in which the Commission may intervene to attempt to resolve disputes by conciliation at the request of the parties or where this is in the public interest, even if conciliation has already been attempted. The purpose of the provision is to empower the Commission to intervene when appropriate in protracted disputes in an effort to secure their resolution in the public interest. The Commission's intervention does not affect the parties' entitlement to strike or lock-out.

SECTION 157. JURISDICTION OF LABOUR COURT

Section 157 EXCLUDES the jurisdiction of the Labour Court to adjudicate disputes that are required, not only by the Act, but by any other employment law, to be determined by arbitration.

SECTION 158. POWERS OF LABOUR COURT

Section 158 provides that only in exceptional circumstances the Labour Court may deal with review applications against decisions or rulings of the Commission before a matter has been finalised by the Commission. This seeks to limit the use of piece-meal review applications during arbitration proceedings as a mechanism to delay a matter that is with the Labour Court in terms of subsection 158(2). This means that any challenge to the Court's decision will be by way of appeal to the Labour Appeal Court, and not on review to the Labour Court. Finally, the amendment provides a period within which judgments of the Labour Court must be handed down.

SECTION 159. RULES BOARD FOR LABOUR COURTS AND RULES FOR LABOUR COURT

Section 159 of the Act ensures that a Rules Board for the Labour Court meet at least once every two years to review the rules of the Labour Court.

SECTION 161. REPRESENTATION BEFORE LABOUR COURT

Section 161 of the Act deals with the problem of labour consultants appearing in proceedings before the Labour Court under the guise of membership of, or being an official of, a trade union or employer's organisation, or of another permitted category, when in fact they appear in a professional capacity and seek to charge fees for that appearance.

SECTION 168. COMPOSITION OF LABOUR APPEAL COURT

Section 168 of the Act allows Labour Court judges to be appointed to serve in the Labour Appeal Court. This is intended to ensure that the Labour Appeal Court functions as a specialist institution.

SECTION 186. MEANING OF DISMISSAL AND UNFAIR LABOUR PRACTICE

Section 186 removes an anomaly in the definition of dismissal which meant that employees engaged for a fixed term could claim dismissal on expiry of the term only if they could show that they reasonably expected the employer to renew the fixed term, but not if they could show that they reasonably expected to be retained in indefinite employment. The proposed amendments also seek to clarify that the termination of employment is a dismissal, whether or not there is a formal or written contract of employment.

SECTION 187. AUTOMATICALLY UNFAIR DISMISSALS

Section 187 removes an anomaly arising from the interpretation of section 187(1)(c). In the case of the **National Union of Metalworkers of SA v Fry's Metals (Pty) Ltd (2005) 26 ILJ 689 (SCA)**, the court held that the clause had been intended to remedy the so-called "lock-out" dismissal which was a feature of pre-1995 labour relations practice. The effect of this decision when read with decisions of **Chemical Workers Industrial Union and others v Algorax (Pty) Ltd (2003) 24 ILJ 1917 (LAC)** is to discourage employers from offering re-employment to employees who have been retrenched after refusing to accept changes in working conditions.

The amendment seeks to give effect to the intention of the provision as enacted in 1995 which is to preclude the dismissal of employees where the reason for the dismissal is their refusal to accept a demand by the employer over a matter of mutual interest. This is intended to protect the integrity of the process of collective bargaining under the Act and is consistent with the purposes of the Act.

SECTION 188A- INQUIRY BY ARBITRATOR

Section 188A of the Act facilitates the use of CCMA commissioners to conduct disciplinary enquiries (currently referred to as predissmissal enquiries). The amendment seeks to promote the enquiries by arbitrators, which avoid the need to have both an enquiry and an arbitration hearing, by allowing their introduction through collective agreement. In addition, the section is amended to avoid disputes where an employee claims that the holding of an enquiry into allegations of misconduct, and suspension pending such an enquiry, breaches the provisions of the Protected Disclosures Act, 2000 (Act No. 26 of 2000). By permitting either party to insist on an enquiry under this section the amended provision reduces the risk of collateral litigation, including High Court litigation, which has been common in these circumstances.

SECTION 189A DISMISSALS BASED ON OPERATIONAL REQUIREMENTS BY EMPLOYERS WITH MORE THAN 50 EMPLOYEES

Section 189A precludes a party from unreasonably refusing to agree to extend the period for consultation over a proposed retrenchment. Section 189A is also amended by deleting subsection (19), which set out the test for determining the substantive fairness of a dismissal under section 189A. Specifying the test to be applied in section 189A retrenchments has led to uncertainty about whether and to what extent this should apply to cases of retrenchment where section 189 applies. The courts should retain their discretion to develop the jurisprudence in this area in the light of the circumstances and facts of each case and to articulate general principles applicable to all retrenchment cases.

SECTION 190. DATE OF DISMISSAL

Section 190 of the Act creates certainty about the date of dismissal if an employee is dismissed on notice but paid all outstanding salary due to him or her before expiry of the notice period.

SECTION 191. DISPUTES ABOUT UNFAIR DISMISSALS AND UNFAIR LABOUR PRACTICES

Section 191 caters for any agreed extension of the conciliation period. The jurisdiction of the CCMA to arbitrate disputes about dismissals for operational requirements involving only one employee is clarified. In addition, the CCMA will have jurisdiction to arbitrate disputes about dismissals for operational requirements involving small employers, namely, those employing less than 10 employees. This is aimed at providing cheaper and less formal adjudication in these circumstances.

SECTION 198. TEMPORARY EMPLOYMENT SERVICES

Section 198 effectively addresses certain problems and abusive practices associated with temporary employment services or commonly referred to as "labour brokers". The main thrust of the amendments is to restrict the employment of more vulnerable, lower-paid workers by a temporary employment service to situations of genuine and relevant "temporary work", and to introduce other measures to protect workers employed by temporary employment services.

Section 198 of the Act continues to apply to all employees. It retains the general provisions that a temporary employment service is the employer of persons whom it employs and pays to work for a client, and that a temporary employment service and its client are jointly and severally liable for specified contraventions of employment laws.

The proposed amendment seeks to clarify provisions relating to temporary employment services by providing for the following:

- (a) An employee bringing a claim for which a temporary employment services and client are jointly and severally liable may institute proceedings against either the temporary employment services or the client or both and may enforce any order or award made against the temporary employment services or client against either of them.
- (b) A labour inspector acting in terms of the Basic Conditions of Employment Act may secure and enforce compliance against the temporary employment services or the client, as if it were the employer, or both.
- (c) A temporary employment services may not employ an employee on terms and conditions of employment not permitted by the Act, a sectoral determination or a collective agreement concluded at a bargaining council that is applicable to a client for whom the employee works.
- (d) The Labour Court or an arbitrator may now rule on whether a contract between a temporary employment service and a client complies with the Act, and make an appropriate award.
- (e) A temporary employment service must be registered to conduct business, but the fact that it is not registered is no defence to any claim instituted in terms of the section 198A.
- (f) A temporary employment service must provide an employee it assigns to a client with written particulars of employment that comply with section 29 of the Basic Conditions of Employment Act, when the employee commences employment.

SECTION 198A. APPLICATION OF SECTION 198 TO EMPLOYEES EARNING BELOW EARNINGS THRESHOLD

Section 198A seeks to introduce additional protection for employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. For the purposes of the Act, employees are treated as the employees of the client if they work for a period in excess of three months. The only exception to this is employees who work as a substitute for an employee of the client who is temporarily absent. Temporary services may also be regulated by a collective agreement concluded in a bargaining council, a sectoral determination, or a Ministerial notice.

To prevent abuse of the three-month period that constitutes temporary work, the section provides that a termination by temporary employment services of an employee's assignment with a client for the purpose of avoiding deemed employment by the client constitutes a dismissal. This means that the fairness of the termination of an assignment may be challenged in terms of the Act. Employees deemed under this provision to be employees of the client must be treated on the whole not less favourably than employees of the client who perform the same or similar work, unless there is a justifiable reason for different treatment. This means, for example, that if an employee is procured by a temporary employment service for a client for three months, but is kept on after the expiry of the three-month period, then that employee must, unless there is a justifiable reason for different treatment, be paid the same wages and benefits as the client's other employees who are performing the same or similar work.

198B. FIXED TERM CONTRACTS WITH EMPLOYEES EARNING BELOW EARNINGS THRESHOLD

Like section 198A, section 198B introduces additional protection for employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. This section does not apply to employees who are employed in terms of a statute, sectoral determination or collective agreement that permits the conclusion of a fixed term contract. In addition, and in order to accommodate new and small businesses, the section does not apply to:

- (a) an employer that employs less than 10 employees; or
- (b) an employer that employs less than 50 employees and whose business has been in operation for less than two years.

These exclusions do not apply if the employer conducts more than one business or the business was formed by the division or dissolution for any reason of an existing business.

An employer is permitted to employ an employee to whom this proposed amendment applies on a fixed term contract or successive fixed term contracts for up to three months. An employee may be employed on a fixed term contract for a longer period if the nature of the work for which the employee is engaged is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract. The period of three months may be varied by a sectoral determination or a collective agreement concluded at a bargaining council.

The proposed amendment provides a non-exhaustive list of justifiable reasons for fixing the term of a contract, which include the following:

- (a) An employee to whom the section applies who is employed for a period longer than three months is deemed to be employed for an indefinite period unless the nature of the work is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract.

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(b) An employer who employs an employee to whom the section applies on a fixed term contract or who renews or extends a fixed term contract, must do so in writing and must state the reason that justifies the fixed term nature of the employment contract.

(c) An employer bears an onus to prove in any relevant proceedings that there is a justifiable reason for fixing the term of the contract and that the term was agreed.

The amendments provide the following additional protection for certain specified employees:

(a) An employee employed on a fixed term contract for more than three months (or any other period determined by a sectoral determination or collective agreement concluded at a bargaining council) must be treated on the whole not less favourably than an employee on an indefinite contract performing the same or similar work, unless there is a justifiable reason for treating the employee differently. What may constitute a justifiable reason for this purpose is dealt with in section 198D.

(b) An employer must provide an employee employed on a fixed term contract with the same access to opportunities to apply for vacancies as it provides to an employee employed on an indefinite contract of employment.

(c) If a fixed term of longer than 24 months can be justified under the section, the employer must, on expiry of the contract and subject to the terms of any collective agreement regulating the issue, pay the employee one week's remuneration for each completed year of the contract. An employee is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed-term contract, the employer offers the employee employment or procures employment for the employee with a different employer which commences no later than 30 days after expiry of the contract and on the same or similar terms.

SECTION 198C. PART-TIME EMPLOYMENT OF EMPLOYEES EARNING BELOW EARNINGS THRESHOLD

Section 198C seeks to regulate the work of vulnerable part-time employees by reflecting the provisions regulating part-time employees in the European Union, and the ILO Convention on Part-time Work (Convention 175, 1994).

Similar to sections 198A and 198B, section 198C applies only to employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. This provision does not apply to employees who ordinarily work less than 24 hours a month, or during the first three months of employment. In order to accommodate new and small businesses this section does not apply to:

(a) an employer that employs less than 10 employees; and

(b) an employer that employs less than 50 employees and whose business has been in operation for less than two years, unless the employer conducts more than one business or the business was formed by the division or dissolution for any reason of an existing business.

The amendment seeks to define part-time and comparable full-time employees, and requires employers to:

(a) Treat part-time employees on the whole not less favourably than comparable full-time employees doing the same or similar work, unless there is a justifiable reason for different treatment. What constitutes a justifiable reason for differentiation is dealt with in section 198D.

(b) Provide part-time employees with access to training and skills development that is on the whole not less favourable than the access applicable to comparable full-time employees.

(c) Provide part-time employees with the same access to opportunities to apply for vacancies as full-time employees.

SECTION 198D. GENERAL PROVISIONS APPLICABLE TO SECTIONS 198A TO 198C

Section 198D provides that disputes about the interpretation or application of sections 198A to 198C may be referred to the CCMA or a bargaining council with jurisdiction for conciliation and, if not resolved, to arbitration. A justifiable reason for different treatment (referred to in sections 198A, 198B and 198C) includes different treatment which is a result of the application of a system that takes into account—

(a) seniority, experience or length of service;

(b) merit;

(c) the quality or quantity of work performed; and

(d) any other criteria of a similar nature not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

SECTION 200A. PRESUMPTION AS TO WHO IS EMPLOYEE

Section 200A of the Act extends the application of the presumption in the section, as to who is an employee, to other employment laws and to section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936).

SECTION 200B. LIABILITY FOR EMPLOYER'S OBLIGATIONS

This new section seeks to provide for the liability of employer's obligations in order to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the Act or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this section for any failures to comply with an employer's obligations under the Act or any employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuge to disguise the identity of the true employer.

SECTION 203. CODES OF GOOD PRACTICE

This new section seeks to provide for the liability of employer's obligations in order to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the Act or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this section for any failures to comply with an employer's obligations under the Act or any employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuge to disguise the identity of the true employer.

A BIT MORE DETAIL

Note that the amendments to the Labour Relations Amendment Act, 2014 came into force on 1 January 2015.

SO WHAT DOES THE AMENDMENT SAY? SEE BELOW A DETAILED ANALYSIS AND APPLICATION OF THE AMENDMENT ACT

BREAKDOWN SECTION BY SECTION

1. AMENDMENT OF SECTION 1

Amends preamble and purpose of the Act, by stating that the Act-

"(a) gives effect to and regulates the fundamental rights conferred by section 23 of the Constitution of the Republic of South Africa, 1996;"

NOW READS

001. PURPOSE OF THIS ACT

- 1) The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are –
 - a) to give effect to and regulate the fundamental rights conferred by section 23 of the Constitution of the Republic of South Africa, 1996;
 - b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
 - c) to provide a framework within which employees and their trade unions, employers and employers' organisations can –

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- i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and
- ii) formulate industrial policy; and
- d) to promote –
 - i) orderly collective bargaining;
 - ii) collective bargaining at sectoral level;
 - iii) employee participation in decision-making in the workplace; and
 - iv) the effective resolution of labour disputes.

Notes :

- 1) An italicised word or phrase indicates that the word or phrase is defined in section 213 of this Act. In the hypertext version the italicised words are replaced by underlined green words which, when clicked, pop up the appropriate definition from Section 213.
- 2) Section 27, which is in the Chapter on Fundamental Rights in the Constitution entrenches the following rights :
 - a) Every person shall have the right to fair labour practices
 - b) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organisations.
 - c) Workers and employers shall have the right to organise and bargain collectively.
 - d) Workers shall have the right to strike for the purpose of collective bargaining.
 - e) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired, subject to subsection 33(1).

IMPACT

Clause 1 aligns the principal Act (originally drafted under the Interim Constitution) with the Constitution of the Republic of South Africa, 1996.

2. AMENDMENT OF SECTION 21

Inserts subsection (8)(b) (v)

"(v)the composition of the work-force in the workplace taking into account the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term contracts, part-time employees or employees in other categories of non-standard employment; and";

Inserts subsection 8A

"(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered trade union that does not have as members the majority of employees employed by an employer in a workplace—
(a)the rights referred to in section 14, despite any provision to the contrary in that section, if—
(i)the trade union is entitled to all of the rights referred to in sections 12, 13 and 15 in that workplace; and
(ii)no other trade union has been granted the rights referred to in section 14 in that workplace.
(b)the rights referred to in section 16, despite any provision to the contrary in that section, if—
(i)the trade union is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that workplace; and
(ii)no other trade union has been granted the rights referred to in section 16 in that workplace.

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(8B) A right granted in terms of subsection (8A) lapses if the trade union concerned is no longer the most representative trade union in the workplace.

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered trade union, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a collective agreement in terms of section 18, if—

(a) all parties to the collective agreement have been given an opportunity to participate in the arbitration proceedings; and

(b) the trade union, or trade unions acting jointly, represent a significant interest, or a substantial number of employees, in the workplace.

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date."; and

Inserts a section 12

"(12) If a trade union seeks to exercise the rights conferred by Part A in respect of employees of a temporary employment service, it may seek to exercise those rights in a workplace of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a workplace of a client of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises."

THIS SECTION NOW READS AS FOLLOWS:

21. EXERCISE OF RIGHTS CONFERRED BY THIS PART

- 1) Any registered trade union may notify an employer in writing that it seeks to exercise one or more of the rights conferred by this Part in a workplace.
- 2) The notice referred to in subsection (1) must be accompanied by a certified copy of the trade union's certificate of registration and must specify –
 - a) the workplace in respect of which the trade union seeks to exercise the rights;
 - b) the representativeness of the trade union in that workplace, and the factor relied upon to demonstrate that it is a representative trade union; and
 - c) the rights that the trade union seeks to exercise and the manner in which it seeks to exercise those rights.
- 3) Within 30 days of receiving the notice, the employer must meet the registered trade union and endeavour to conclude a collective agreement as to the manner in which the trade union will exercise the rights in respect of that workplace.
- 4) If a collective agreement is not concluded, either the registered trade union or the employer may refer the dispute in writing to the Commission.
- 5) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on the other party to the dispute.
- 6) The Commission must appoint a commissioner to attempt to resolve the dispute through conciliation.
- 7) If the dispute remains unresolved, either party to the dispute may request that the dispute be resolved through arbitration.
- 8) If the unresolved dispute is about whether or not the registered trade union is a representative trade union, the commissioner –
 - a) must seek –
 - i) to minimise the proliferation of trade union representation in a single workplace and, where possible, to encourage a system of a

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- representative trade union in a workplace; and
- ii) to minimise the financial and administrative burden of requiring an employer to grant organizational rights to more than one registered trade union;
 - b) must consider –
 - i) the nature of the workplace;
 - ii) the nature of the one or more organisational rights that the registered trade union seeks to exercise;
 - iii) the nature of the sector in which the workplace is situated; and
 - iv) the organizational history at the workplace or any other workplace of the employer;
 - v) the composition of the work-force in the *workplace* taking into account the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment; and";
 - c) may withdraw any of the organisational rights conferred by this Part and which are exercised by any other registered trade union in respect of that workplace, if that other trade union has ceased to be a representative trade union.
- "(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered *trade union* that does not have as members the majority of *employees* employed by an employer in a *workplace*—
- (a) the rights referred to in section 14, despite any provision to the contrary in that section, if—
 - (i) the *trade union* is entitled to all of the rights referred to in sections 12, 13 and 15 in that *workplace*; and
 - (ii) no other *trade union* has been granted the rights referred to in section 14 in that *workplace*.
 - (b) the rights referred to in section 16, despite any provision to the contrary in that section, if—
 - (i) the *trade union* is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that *workplace*; and
 - (ii) no other *trade union* has been granted the rights referred to in section 16 in that *workplace*.
- (8B) A right granted in terms of subsection (8A) lapses if the *trade union* concerned is no longer the most representative *tradeunion* in the *workplace*.
- (8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered *tradeunion*, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a *collective agreement* in terms of section 18, if—
- (a) all parties to the *collective agreement* have been given an opportunity to participate in the arbitration proceedings; and
 - (b) the *trade union*, or *tradeunions* acting jointly, represent a significant interest, or a substantial number of *employees*, in the *workplace*.
- (8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date."; and
- 9) In order to determine the membership or support of the registered trade union, the commissioner may –
 - a) make any necessary inquiries;
 - b) where appropriate, conduct a ballot of the relevant employees; and
 - c) take into account any other relevant information.
 - 10) The employer must co-operate with the Commissioner when the commissioner acts in terms of subsection (9), and must make available to the commissioner any information and facilities that are reasonably necessary for the purposes of that subsection.

11) An employer who alleges that a trade union is no longer a representative trade union may apply to the Commission to withdraw any of the organizational rights conferred by this Part, in which case the provisions of subsections (5) to (10) apply, read with the changes required by the context.

"(12) If a trade union seeks to exercise the rights conferred by Part A in respect of employees of a temporary employment service, it may seek to exercise those rights in a workplace of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a workplace of a client of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises."

Impact

Extends these rights to *employees* of a temporary employment service.

The amendment to section 21 of the Act seeks to provide for the commissioner to consider the composition of the workforce in the workplace, taking into account the extent to which there are employees assigned to work by temporary employment services, employees engaged on fixed-term contracts, and part-time employees or employees in other categories of non-standard employment, when determining a dispute about organisational rights.

The proposed amendment also seek to empower a commissioner in an arbitration to grant a registered trade union that does not have as members the majority of employees employed by an employer in a workplace the rights referred to in sections 14 and 16 if no other trade union has been granted that right. This right lapses if the trade union concerned is no longer the most representative trade union in the workplace. A commissioner may in an arbitration grant the rights referred to in sections 12 (trade union access to the workplace), 13 (deduction of trade union subscriptions or levies) or 15 (leave for trade union activities) to a registered trade union, or two or more registered trade unions acting jointly, that do not meet thresholds of representativeness established by a collective agreement.

3. AMENDMENT OF SECTION 22

Inserts subsection 5

"(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to—

(a)the extent that it applies to the employees of a temporary employment service, a client of the temporary employment service for whom an employee covered by the award is assigned to work; and

(b)any person other than the employer who controls access to the workplace to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings."

This section now reads as follows:

22. DISPUTES ABOUT ORGANIZATIONAL RIGHTS

- 1) Any party to a dispute about the interpretation or application of any provision of this Part, other than a dispute contemplated in section 21, may refer the dispute in writing to the Commission.
- 2) The party who refers a dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- 3) The Commission must attempt to resolve the dispute through conciliation.
- 4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration as soon as possible.

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"(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to—

- (a) the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and
- (b) any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings."

IMPACT

Extends rights to *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.

SECTION 23 provides that if a trade union seeks to exercise rights conferred by Part A in respect of employees of a temporary employment service, it may seek to exercise those rights in a workplace of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a workplace of the temporary employment service, any reference in Chapter III to the employer's premises must be read as including the client's premises.

This section is amended to ensure that where organisational rights may affect the rights and interests of third parties, such as the client of a temporary employment service or owner of the premises from which the employer operates, an arbitration award may bind those third parties as long as they have been given an opportunity to participate in the arbitration.

SUMMARY

Any party to a dispute about the interpretation or application of any provision of this Part, other than a dispute contemplated in section 21, may refer the dispute in writing to the Commission. The party who refers a dispute to the Commission must satisfy that a copy of the referral has been served on all the other parties to the dispute. The Commission must attempt to resolve the dispute through conciliation. If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration as soon as possible. An arbitration award may be made binding on the employer and in addition to the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.

4. AMENDMENT OF SECTION 32

Inserts subsection (dA)

"(dA)the bargaining council has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the collective agreement and is able to decide an application for an exemption within 30 days;"

Amends subsection (3)(e)

"provision is made in the collective agreement for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—"

Inserts subsection (3A)

"(3A) No representative, office-bearer or official of a trade union or employers' organization party to the bargaining council may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3)(e).";

Adds in (5) (c and d)

"(c) the Minister has published a notice in the Government Gazette stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and (d) the Minister has considered all comments received during the period referred to in paragraph (c).";

Inserts subsection (5A)

"(5A) When determining whether the parties to the bargaining council are sufficiently representative for the purposes of subsection (5)(a), the Minister may take into account the composition of the workforce in the sector, including the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term contracts, part-time employees or employees in other categories of non-standard employment."; and

Inserts subsection (11)

"(11) A bargaining council that has a collective agreement extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3)(f)."

This section now reads as follows:

032. EXTENSION OF COLLECTIVE AGREEMENT CONCLUDED IN BARGAINING COUNCIL

- 1) A bargaining council may ask the Minister in writing to extend a collective agreement concluded in the bargaining council to any non-parties to the collective agreement that are within its registered scope and are identified in the request, if at a meeting of the bargaining council –
 - a) one or more registered trade unions whose members constitute the majority of the members of the trade unions that are party to the bargaining council vote in favour of the extension; and
 - b) one or more registered employers' organizations, whose members employ the majority of the employees employed by the members of the employers' organizations that are party to the bargaining council, vote in favour of the extension. 2) Within 60 days of receiving the request, the Minister must extend the collective agreement, as requested, by publishing a notice in the Government Gazette declaring that, from a specified date and for a specified period, the collective agreement will be binding on the non-parties specified in the notice.
- 3) A collective agreement may not be extended in terms of subsection (2) unless the Minister is satisfied that –
 - a) the decision by the bargaining council to request the extension of the collective agreement complies with the provisions of subsection (1)
 - b) the majority of all the employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council;
 - c) the members of the employers' organisations that are parties to the bargaining council will, upon extension of the collective agreement be found to employ the majority of all the employees who fall within the scope of the collective agreement;
 - d) the non-parties specified in the request fall within the bargaining council's registered scope;

(dA) the bargaining council has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the collective agreement and is able to decide an application for an exemption within 30 days;

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- e) provision is made in the *collective agreement* for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—
- i) the bargaining council's refusal of a non-party's application for exemption from the provisions of the collective agreement;
- ii) the withdrawal of such an exemption by the bargaining council;
- f) the collective agreement contains criteria that must be applied by the independent body when it considers an appeal, and that those criteria are fair and promote the primary objects of this Act; and
- g) the terms of the collective agreement do not discriminate against non-parties.
- 3A) No representative, office-bearer or official of a *trade union or employers' organization* party to the *bargaining council* may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3)(e).
- 4) [Sub. (4) deleted by Section 2 of Act No. 127 of 1998]
- 5) Despite subsection (3)(b) and (c), the Minister may extend a collective agreement in terms of subsection (2) if –
 - a) the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council;
 - b) the Minister is satisfied that failure to extend the agreement may undermine collective bargaining at sectoral level or in the public service as a whole;
- "(c) the *Minister* has published a notice in the *Government Gazette* stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and
- (d) the *Minister* has considered all comments received during the period referred to in paragraph (c);"
- "(5A) When determining whether the parties to the *bargaining council* are sufficiently representative for the purposes of subsection (5)(a), the *Minister* may take into account the composition of the workforce in the sector, including the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment."; and
- 6)a) After a notice has been published in terms of subsection (2), the Minister, at the request of the bargaining council, may publish a further notice in the *Government Gazette* –
 - i) extending the period specified in the earlier notice by a further period determined by the Minister; or
 - ii) if the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective.
- b) The provisions of subsections (3) and (5), read with the changes required by the context, apply in respect of the publication of any notice in terms of this subsection.
- 7) The Minister, at the request of the bargaining council, must publish a notice in the *Government Gazette* cancelling all or part of any notice published in terms of subsection (2) or (6) from a date specified in the notice.
- 8) Whenever any collective agreement in respect of which a notice has been published in terms of subsection (2) or (6) is amended, amplified or replaced by a new collective agreement, the provisions of this section apply to that new collective agreement.
- 9) For the purposes of extending collective agreements concluded in the Public Service Co-ordinating Bargaining Council or any bargaining council contemplated in section 37(3) or (4) –
 - a) any reference in this section to an employers' organisation must be read as a reference to the State as an employer; and
 - b) subsections (3)(c), (e) and (f) and (4) of this section will not apply.
- 10) If the parties to a collective agreement that has been extended in terms of this section terminate the agreement, they must notify the Minister in writing.

- (11) A bargaining council that has a collective agreement extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3)(f).

Impact

Section 32 of the Act is amended to improve the efficiency of the exemption procedures associated with a collective agreement concluded in a bargaining council agreement that is extended to non-parties. The amendments also ensure the independence of an exemptions appeal body from the trade union and employer parties to the council.

The proposed amendments also seek to provide for the Minister to consult with the public when considering whether to extend a bargaining council collective agreement where the parties to the bargaining council are only sufficiently representative (section 32(5)). When considering whether the parties to a bargaining council are sufficiently representative, the Minister may take into account the extent to which there are employees within the sector employed in non-standard forms of employment.

SUMMARY

A bargaining council may ask the Minister in writing to extend a collective agreement concluded in the bargaining council to any non-parties to the collective agreement that are within its registered scope and are identified in the request, if at a meeting of the bargaining council –one or more registered trade unions whose members constitute the majority of the members of the trade unions that are party to the bargaining council vote in favour of the extension; and one or more registered employers' organizations, whose members employ the majority of the employees employed by the members of the employers' organizations that are party to the bargaining council, vote in favour of the extension. Within 60 days of receiving the request, the Minister must extend the collective agreement, as requested, by publishing a notice in the Government Gazette declaring that, from a specified date and for a specified period, the collective agreement will be binding on the non-parties specified in the notice.

A collective agreement may not be extended unless the Minister is satisfied that – the decision by the bargaining council to request the extension of the collective agreement complies with the above, the majority of all the employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council; the members of the employers' organisations that are parties to the bargaining council will, upon extension of the collective agreement be found to employ the majority of all the employees who fall within the scope of the collective agreement; the non-parties specified in the request fall within the bargaining council's registered scope; the bargaining council has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the collective agreement and is able to decide an application for an exemption within 30 days; provision is made in the collective agreement for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—the bargaining council's refusal of a non-party's application for exemption from the provisions of the collective agreement; the withdrawal of such an exemption by the bargaining council; the collective agreement contains criteria that must be applied by the independent body when it considers an appeal, and that those criteria are fair and promote the primary objects of this Act; and the terms of the collective agreement do not discriminate against non-parties.

No representative, office-bearer or official of a trade union or employers' organization party to the bargaining council may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3)(e).

the Minister may extend a collective agreement if –the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council; the Minister is satisfied that failure to extend the agreement may undermine collective bargaining at sectoral level or in the public service as a whole; the Minister has published a notice in the Government Gazette stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and the Minister has considered all comments received during the period;

When determining whether the parties to the bargaining council are sufficiently representative the Minister may take into account the composition of the workforce in the sector, including the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term contracts, part-time employees or employees in other categories of non-standard employment."; and

After a notice has been published in terms of subsection (2), the Minister, at the request of the bargaining council, may publish a further notice in the Government Gazette –extending the period specified in the earlier notice by a further period determined by the Minister; or if the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective.

The Minister, at the request of the bargaining council, must publish a notice in the Government Gazette cancelling all or part of any notice published from a date specified in the notice.

Whenever any collective agreement in respect of which a notice has been published is amended, amplified or replaced by a new collective agreement, the provisions of this section apply to that new collective agreement.

For the purposes of extending collective agreements concluded in the Public Service Co-ordinating Bargaining Council or any bargaining council contemplated in section 37(3) or (4) –any reference in this section to an employers' organisation must be read as a reference to the State as an employer; and subsections (3)(c), (e) and (f) and (4) of this section will not apply.

If the parties to a collective agreement that has been extended in terms of this section terminate the agreement, they must notify the Minister in writing. *A bargaining council that has a collective agreement extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified.*

5. AMENDMENT OF SECTION 49

Amends subsection (2)

"A bargaining council, having a collective agreement that has been extended by the Minister in terms of section 32, must inform the registrar annually, in writing, on a date to be determined by the registrar as to the information specified in subsection (3) and the number of employees who are—";

Amends subsection (3)

"A bargaining council other than one contemplated in subsection (2) must on request by the registrar, inform the registrar in writing within the period specified in the request as to the number of employees who are—"; and

Amends subsection (4)

"(4) A determination of the representativeness of a bargaining council in terms of this section is sufficient proof of the representativeness of the council for the year following the determination for any purpose in terms of this Act, including a decision by the Minister in terms of sections 32(3)(b), 32(3)(c) and 32(5)."

This section now reads as follows:

049. REPRESENTATIVENESS OF COUNCIL

- 1) When considering the representativeness of the parties to a council, or parties seeking registration of a council, the registrar, having regard to the nature of the sector and the situation of the area in respect of which registration is sought, may regard the parties to a council as representative in respect of the whole area, even if a trade union or employers organisation that is a party to the council has no members in part of that area.
- 2) *A bargaining council, having a collective agreement that has been extended by the Minister in terms of section 32, must inform the registrar annually, in writing, on a date to be determined by the registrar as to the information specified in subsection (3) and the number of employees who are—*
 - a) covered by the collective agreement;
 - b) members of the trade unions that are parties to the agreement;
 - c) employed by members of the employers' organisations that are party to the agreement.
- 3) *A bargaining council, having a collective agreement that has been extended by the Minister in terms of section 32, must inform the registrar annually, in writing, on a date to be determined by the registrar as to the information specified in subsection (3) and the number of employees who are—*
 - a) employed within the registered scope of the council;
 - b) members of the trade unions that are parties to the council;

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- c) employed by members of the employers' organisations that are party to the council.
- 4) A determination of the representativeness of a bargaining council in terms of this section is sufficient proof of the representativeness of the council for the year following the determination for any purpose in terms of this Act, including a decision by the Minister in terms of sections 32(3)(b), 32(3)(c) and 32(5).
- 5) This section does not apply to the public service.

Impact

Section 49 seeks to clarify that a certificate specifying the level of representativeness of a bargaining council may be taken into account for any purpose under the Act, including a decision by the Minister whether or not to extend a collective bargaining agreement in terms of section 32. When considering the representativeness of the parties to a council, or parties seeking registration of a council, the registrar, having regard to the nature of the sector and the situation of the area in respect of which registration is sought, may regard the parties to a council as representative in respect of the whole area, even if a trade union or employers organisation that is a party to the council has no members in part of that area.

SUMMARY

A bargaining council, having a collective agreement that has been extended by the Minister in terms of section 32, must inform the registrar annually, in writing, on a date to be determined by the registrar as to the information below and the number of employees who are—

- a) covered by the collective agreement;
- b) members of the trade unions that are parties to the agreement;
- c) employed by members of the employers' organisations that are party to the agreement.

A bargaining council, having a collective agreement that has been extended by the Minister in terms of section 32, must inform the registrar annually, in writing, on a date to be determined by the registrar as to the information specified below and the number of employees who are—

- a) employed within the registered scope of the council;
- b) members of the trade unions that are parties to the council;
- c) employed by members of the employers' organisations that are party to the council.

A determination of the representativeness of a bargaining council in terms of this section is sufficient proof of the representativeness of the council for the year following the determination for any purpose in terms of this Act, including a decision by the Minister.

This section does not apply to the public service.

6. AMENDMENT OF SECTION 51

Amends subsection (9)

"(9) A bargaining council may, by collective agreement—
(a) establish procedures to resolve any dispute contemplated in this section;
(b) provide for payment of a dispute resolution levy; and
(c) provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115(2A)(l), which may not exceed the fee provided for in that section."

This section now reads as follows:

051. DISPUTE RESOLUTION FUNCTIONS OF COUNCIL

- 1) In this section, dispute means any dispute about a matter of mutual interest between –
 - a) on the one side –
 - i) one or more trade unions;
 - ii) one or more employees; or
 - iii) one or more trade unions and one or more employees; and
 - b) on the other side -
 - i) one or more employers' organisations;
 - ii) one or more employers; or
 - iii) one or more employers' organizations and one or more employers.
- 2) a)
 - i) The parties to a council must attempt to resolve any dispute between themselves in accordance with the constitution of the council.
 - ii) For the purposes of subparagraph (i), a party to a council includes the members of any registered trade union or registered employers' organisation that is a party to the council.
 - b) Any party to a dispute who is not a party to a council but who falls within the registered scope of the council may refer the dispute to the council in writing.
 - c) The party who refers the dispute to the council must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- 3) If a dispute is referred to a council in terms of this Act and any party to that dispute is not a party to that council, the council must attempt to resolve the dispute -

The following disputes must be referred to a council: disputes about the interpretation or application of the provisions of Chapter II (see section 9 disputes that form the subject matter of a proposed strike or lock-out (see section 64(1) disputes in essential services (see section 74 disputes about unfair dismissals (see section 191 disputes about severance pay (see section 196 and disputes about unfair labour practices (see item 2 in Schedule 7).

(see sections 16, 21 and 22 disputes about collective agreements where the agreement does not provide for a procedure or the procedure is inoperative or any party frustrates the resolution of the dispute (see section 24(2) to (5) disputes about agency shops and closed shops (see section 24(6) and (7) and section 26(11) disputes about determinations made by the Minister in respect of proposals made by a statutory council (see section 45 disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled (see section 61(5) to (8) disputes about the demarcation of sectors and areas of councils (see section 62 disputes about the interpretation or application of Part C (bargaining councils), Part D (bargaining councils in the public service), Part E (statutory councils) and Part F. (general provisions concerning councils) (see section 63 disputes concerning pickets (see section 69(8) to (10) disputes about proposals that are the subject of joint decision-making in workplace forums (see section 86 disputes about the disclosure of information to workplace forums (see section 89 and disputes about the interpretation or application of the provisions of Chapter V which deals with workplace forums (see section 94).

- a) through conciliation; and
- b) if the dispute remains unresolved after conciliation, the council must arbitrate the dispute if-
 - 4) a) this Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or
 - b) all the parties to the dispute consent to arbitration under the auspices of the council.

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- 5) If one or more of the parties to a dispute that has been referred to the council do not fall within the registered scope of that council, it must refer the dispute to the Commission.
- 6) The date on which the referral in terms of subsection (4) was received by a council is, for all purposes, the date on which the council referred the dispute to the Commission. A council may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the council, its dispute resolution functions in terms of this section.
- 7) Subject to this Act, a council may not provide in a collective agreement for the referral of disputes to the Commission, without prior consultation with the director.
- 8) Unless otherwise agreed to in a collective agreement, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a bargaining council.
- (9) *A bargaining council may, by collective agreement—*
 - (a) *establish procedures to resolve any dispute contemplated in this section;*
 - (b) *provide for payment of a dispute resolution levy; and*
 - (c) *provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115(2A)(f), which may not exceed the fee provided for in that section.*

Impact

Section 51 of the Act is amended to provide for the funding of dispute resolution services of bargaining councils, either by a levy required by collective agreement or by fees imposed on parties to a dispute for matters for which the CCMA is entitled to charge a fee.

SUMMARY

In this section, dispute means any dispute about a matter of mutual interest between –

- a) on the one side –
 - i) one or more trade unions;
 - ii) one or more employees; or
 - iii) one or more trade unions and one or more employees; and
- b) on the other side -
 - i) one or more employers' organisations;
 - ii) one or more employers; or
 - iii) one or more employers' organizations and one or more employers.

The parties to a council must attempt to resolve any dispute between themselves in accordance with the constitution of the council. A party to a council includes the members of any registered trade union or registered employers' organisation that is a party to the council.

Any party to a dispute who is not a party to a council but who falls within the registered scope of the council may refer the dispute to the council in writing.

The party who refers the dispute to the council must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

If a dispute is referred to a council in terms of this Act and any party to that dispute is not a party to that council, the council must attempt to resolve the dispute through conciliation; and if the dispute remains unresolved after conciliation, the council must arbitrate the dispute if- this Act requires arbitration and any party to the dispute has requested that it be resolved through arbitration; or all the parties to the dispute consent to arbitration under the auspices of the council.

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If one or more of the parties to a dispute that has been referred to the council do not fall within the registered scope of that council, it must refer the dispute to the Commission.

The following disputes must be referred to a council: disputes about the interpretation or application of the provisions of Chapter II (see section 9 disputes that form the subject matter of a proposed strike or lock-out (see section 64(1) disputes in essential services (see section 74 disputes about unfair dismissals (see section 191 disputes about severance pay (see section 196 and disputes about unfair labour practices (see item 2 in Schedule 7).
The following disputes may be referred to a council: 82 disputes about collective agreements where the agreement does not provide for a procedure or the procedure is inoperative or any party frustrates the resolution of the dispute (see section 24(2) to (5) disputes about agency shops and closed shops (see section 24(6) and (7) and section 26(11) disputes about determinations made by the Minister in respect of proposals made by a statutory council (see section 45 disputes about the interpretation or application of collective agreements of a council whose registration has been cancelled (see section 61(5) to (8) disputes about the demarcation of sectors and areas of councils (see section 62 disputes about the interpretation or application of Part C (bargaining councils), Part D (bargaining councils in the public service), Part E (statutory councils) and Part F. (general provisions concerning councils) (see section 63 disputes concerning pickets (see section 69(8) to (10) disputes about proposals that are the subject of joint decision-making in workplace forums (see section 86 disputes about the disclosure of information to workplace forums (see section 89 and disputes about the interpretation or application of the provisions of Chapter V which deals with workplace forums (see section 94).

The date on which the referral was received by a council is, for all purposes, the date on which the council referred the dispute to the Commission. A council may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the council, its dispute resolution functions in terms of this section.

Subject to this Act, a council may not provide in a collective agreement for the referral of disputes to the Commission, without prior consultation with the director.

Unless otherwise agreed to in a collective agreement, sections 142A and 143 to 146 apply to any arbitration conducted under the auspices of a bargaining council.

A bargaining council may, by collective agreement establish procedures to resolve any dispute contemplated in this section; provide for payment of a dispute resolution levy; and provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115(2A)(f), which may not exceed the fee provided for in that section.

7. AMENDMENT OF SECTION 65

Amends subsection (1) (c) of the following paragraph:

"(c) the issue in dispute [is] is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act or any other employment law;" and

Amends subsection (3) (b)

"(b) any determination made in terms of [the Wage Act] Chapter Eight of the Basic Conditions of Employment Act and that regulates the issue in dispute, during the first year of that determination."

This section now reads as follows:

No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if- that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute; that person is bound by an agreement that requires the issue in dispute to be referred to arbitration; *the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act or any other employment law; and* that person is engaged in- an essential service; or a maintenance service. (Essential services, agreed minimum services and maintenance services are regulated in sections 71 to 75.)

A person may take part in a strike or a lock-out or in any conduct in contemplation or in furtherance of a strike or lock-out if the issue in dispute is about any matter dealt with in sections 12 to 15. (These sections deal with organisational rights.)

If the registered trade union has given notice of the proposed strike in terms of section 64(1) in respect of an issue in dispute referred to above it may not exercise the right to refer the dispute to arbitration in terms of section 21 for a period of 12 months from the date of the notice.

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Subject to a collective agreement, no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or lock-out- if that person is bound by- any arbitration award or collective agreement that regulates the issue in dispute; or any determination made in terms of section 44 by the Minister that regulates the issue in dispute; or **any determination made in terms of Chapter Eight of the Basic Conditions of Employment Act and that regulates the issue in dispute, during the first year of that determination.**

Impact

Section 65 has been amended in order to eliminate the anomalous distinction between disputes that can be adjudicated under the Act in respect of which industrial action is currently restricted and those under other employment laws in respect of which there is no equivalent restriction. Therefore the amendment extends the rights to a determination made in terms of Chapter Eight of the *Basic Conditions of Employment Act* that regulates the *issue in dispute*, during the first year of that determination.

8. AMENDMENT OF SECTION 67

Deletes subsection (9).

9. AMENDMENT OF SECTION 69

Amends subsection (6)

**"(6) The rules established by the Commission may provide for picketing by employees—
(a) in a place contemplated in section 69(2)(a) which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or
(b) on their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld.";**

Amends subsection (8)

"Any party to a dispute about any of the following issues, including a person contemplated in subsection (6)(a), may refer the dispute in writing to the Commission—"; and

Adds the following subsections:

**"(12) If a party has referred a dispute in terms of subsection (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include—
(a) an order directing any party, including a person contemplated in subsection (6)(a), to comply with a picketing agreement or rule; or
(b) an order varying the terms of a picketing agreement or rule;**

**(13) The Labour Court may not grant an order in terms of subsection (12) unless—
(a) 48 hours' notice of an application seeking relief referred to in subsection (12)(a) or (b) has been given to the respondent; or
(b) 72 hours' notice of an application seeking relief referred to in subsection (12)(c) or (d) has been given to the respondent.**

**(14) The Labour Court may permit a shorter period of notice than required by subsection (13) if the—
(a) applicant has given written notice to the respondent of its intention to apply for the order;
(b) respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and
(c) applicant has shown good cause why a period shorter than that contemplated by subsection (13) should be permitted."**

This section now reads as follows:

069. PICKETING

- 1) A registered trade union may authorise a picket by its members and supporters for the purposes of peacefully demonstrating-
 - a) in support of any protected strike; or
 - b) in opposition to any lock-out.
- 2) Despite any law regulating the right of assembly, a picket authorised in terms of subsection (1), may be held -
 - a) in any place to which the public has access but outside the premises of an employer; or
 - b) with the permission of the employer, inside the employer's premises.
- 3) The permission referred to in subsection(2)(b) may not be unreasonably withheld.
- 4) If requested to do so by the registered trade union or the employer, the Commission must attempt to secure an agreement between the parties to the dispute on rules that should apply to any picket in relation to that strike or lock-out.
- 5) If there is no agreement, the Commission must establish picketing rules, and in doing so must take account of-
 - a) the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised; and
 - b) any relevant code of good practice.
- 6) ~~The rules established by the Commission may provide for picketing by employees—~~
 - (a) ~~in a place contemplated in section 69(2)(a) which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or~~
 - (b) ~~on their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld.~~
- 7) The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section.
- 8) ~~Any party to a dispute about any of the following issues, including a person contemplated in subsection(6)(a), may refer the dispute in writing to the Commission—~~
 - a) an allegation that the effective use of the right to picket is being undermined;
 - b) an alleged material contravention of subsection (1) or (2)
 - c) an alleged material breach of an agreement concluded in terms of subsection (4 or
 - d) an alleged material breach of a rule established in terms of subsection (5).
- 9) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- 10) The Commission must attempt to resolve the dispute through conciliation.
- 11) If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.
- (12) ~~If a party has referred a dispute in terms of subsection(8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include—~~
 - (a) ~~an order directing any party, including a person contemplated in subsection (6)(a), to comply with a picketing agreement or rule; or~~
 - (b) ~~an order varying the terms of a picketing agreement or rule;~~

- (13) The Labour Court may not grant an order in terms of subsection (12) unless—
- (a) 48 hours' notice of an application seeking relief referred to in subsection (12)(a) or (b) has been given to the respondent; or
 - (b) 72 hours' notice of an application seeking relief referred to in subsection (12)(c) or (d) has been given to the respondent.
- (14) The Labour Court may permit a shorter period of notice than required by subsection(13) if the—
- (a) applicant has given written notice to the respondent of its intention to apply for the order;
 - (b) respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and
 - (c) applicant has shown good cause why a period shorter than that contemplated by subsection(13) should be permitted.

IMPACT

Amendments to section 69 of the Act seek to make picketing rules binding on third parties such as the landlords of employers. This may result in a situation in which picketing is permitted to occur on property that is owned or controlled by such a third party, where this is appropriate, but only where the third party has consented or has had an opportunity to be heard before the rules are established.

The amendments also provide that if a party has referred a employee dispute in terms of subsections (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances. The Labour Court may, in appropriate cases, order compliance with picketing rules or vary the terms of a picketing agreement or rules. The Labour Court is further granted the power to suspend a picket or strike in appropriate circumstances. Likewise, the Court may suspend a lock-out or suspend an employer from engaging replacement labour during a strike or lock-out.

SUMMARY

A registered trade union may authorise a picket by its members and supporters for the purposes of peacefully demonstrating-in support of any protected strike; or in opposition to any lock-out.

Despite any law regulating the right of assembly, a picket authorised in terms of the above may be held -in any place to which the public has access but outside the premises of an employer; or with the permission of the employer, inside the employer's premises. The permission may not be unreasonably withheld.

If requested to do so by the registered trade union or the employer, the Commission must attempt to secure an agreement between the parties to the dispute on rules that should apply to any picket in relation to that strike or lock-out.

If there is no agreement, the Commission must establish picketing rules, and in doing so must take account of- the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised; and any relevant code of good practice.

The rules established by the Commission may provide for picketing by *employees*— in a place above which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or on their employer's premises if the Commission is satisfied that the employer's permission has been unreasonably withheld.

The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section.

Any party to a *dispute* about any of the following issues, may refer the *dispute* in writing to the Commission—

- a) an allegation that the effective use of the right to picket is being undermined;
- b) an alleged material contravention of the place where the picketing may be held

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- c) an alleged material breach of an agreement
- d) an alleged material breach of a rule established

The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

The Commission must attempt to resolve the dispute through conciliation.

If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.

If a party has referred a *dispute* the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include—an order directing any party, including a person contemplated in subsection (6)(a), to comply with a picketing agreement or rule; or an order varying the terms of a picketing agreement or rule; The Labour Court may not grant an order unless—48 hours' notice of an application seeking relief referred to in subsection (12)(a) or (b) has been given to the respondent; or 72 hours' notice of an application seeking relief referred to in subsection (12)(c) or (d) has been given to the respondent.

The Labour Court may permit a shorter period of notice than required if the—applicant has given written notice to the respondent of its intention to apply for the order; respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and applicant has shown good cause why a period shorter than that allowed should be permitted.

10. SUBSTITUTION OF SECTION 70

Amends section 70

"70. Essential services committee .—The Minister, after consulting NEDLAC, must establish an essential services committee under the auspices of the Commission in accordance with the provisions of this Act."

IMPACT

SECTION 70 - provides for the establishment of the essential services committee. The essential services committee was brought into existence by the Act. The structure and functioning of the essential services committee are to be revised to enhance its legitimacy and efficacy.

SUMMARY

This section now reads as follows:

"70. Essential services committee

The Minister, after consulting NEDLAC, must establish an essential services committee under the auspices of the Commission in accordance with the provisions of his Act."

11. INSERTION OF SECTIONS 70A, 70B, 70C, 70D, 70E AND 70F IN ACT 66 OF 1995

Adds in a number of new sections -70A, 70B, 70C, 70D, 70E and 70F which read as follows

"70A. Composition of essential services committee.

1) The Minister must appoint to the essential services committee on terms that the Minister considers fit—

(a) a chairperson, who is independent from the constituencies contemplated in subsection (3) and who may be a senior commissioner;

- (b) a deputy chairperson, who must be a senior commissioner; and
- (c) six persons nominated in accordance with the provisions of subsections (3) and (4).
- (2) A member of the essential services committee—
- (a) must be a citizen of South Africa, who is ordinarily resident in South Africa, or a permanent resident of South Africa;
- (b) must have suitable qualifications or experience in labour law, labour relations, commerce, public affairs, the administration of justice, industry or a sector of the economy;
- (c) must not be an unrehabilitated insolvent; and
- (d) must not be subject to an order of a competent court holding that person to be mentally unfit or disordered.
- (3) Organised business, labour and government at *NEDLAC* must each nominate to the *Minister* the names of two persons to be appointed to the essential services committee.
- (4) The *Minister* must appoint the persons nominated by organised business, labour and government at *NEDLAC* if these persons meet the requirements set out in subsection (2).
- (5) The *Minister* may fill any vacancy that arises in accordance with the provisions of this section.
- (6) A member of the essential services committee may not represent any person before a panel of the essential services committee, but may be appointed by the *trade union* and employer parties to serve as an assessor in terms of section 70C.

IMPACT

SECTION 70A seeks to provide for the composition of the essential services committee, which consists of eight persons. The chairperson must be independent from the NEDLAC constituencies and may be a senior commissioner of the CCMA, while the deputy chairperson must be a senior commissioner of the CCMA. This is to ensure that the essential services committee has someone who is always available to devote time to the functioning of the essential services committee. The Minister must appoint the remaining six persons from those nominated by organised business, labour and government at NEDLAC. The introduction of government nominees is an innovation to ensure that government is adequately represented on the essential services committee in its capacity as an employer, as a high proportion of essential service matters occur within the public service.

SUMMARY

The *Minister* must appoint to the essential services committee on terms which he considers fit— and which comply with the following:
Chairperson is independent from the constituencies and who may be a senior commissioner; deputy chairperson must be a senior commissioner; and six persons must be nominated as members of the essential services committee—must be a citizen of South Africa, who is ordinarily resident in South Africa, or a permanent resident of South Africa; must have suitable qualifications or experience in labour law, labour relations, commerce, public affairs, the administration of justice, industry or a sector of the economy; must not be an unrehabilitated insolvent; and must not be subject to an order of a competent court holding that person to be mentally unfit or disordered.

Organised business, labour and government at *NEDLAC* must each nominate to the *Minister* the names of two persons to be appointed to the essential services committee and the *Minister* must appoint the persons nominated by organised business, labour and government at *NEDLAC* if these persons meet the requirements

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The *Minister* may fill any vacancy that arises in accordance with the provisions set out above.

A member of the essential services committee may not represent any person before a panel of the essential services committee, but may be appointed by the *trade union* and employer parties to serve as an assessor in terms of section 70C.

70B. POWERS AND FUNCTIONS OF ESSENTIAL SERVICES COMMITTEE

The powers and functions of the essential services committee are to—

- monitor the implementation and observance of essential services determinations, minimum services agreements, maintenance services agreements and determinations;
- promote effective *dispute resolution* in essential services;
- develop guidelines for the negotiation of minimum services agreements;
- decide, on its own initiative or at the reasonable request of any interested party, whether to institute investigations as to whether or not the whole or a part of any service is an essential service;
- manage its caseload; and
- appoint the panels contemplated in section 70C to perform one or more of the functions set out in section 70D.

At the request of a *bargaining council*, the essential services committee must establish a panel to perform any function in terms of section 70D(1).

The essential services committee may request the Commission or any other appropriate person to conduct an investigation to assist the essential services committee in an investigation and to submit a report to it.

70C. Appointment of panels

The essential services committee must, taking into account the nature and complexity of the issue, assign each matter before it to a panel consisting of either three or five persons, including the assessors.

A panel must be presided over by the chairperson or deputy chairperson of the essential services committee or by a senior commissioner

The Commission must compile a list of suitably trained senior commissioners who may preside at panel hearings.

If the essential services committee constitutes a three-member panel, it must either—appoint two of its members to serve as assessors; or invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

If the essential services committee constitutes a five-member panel, it must—appoint two of its members to serve as its assessors; and invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

If the essential services committee appoints assessors from its members to serve on a panel, it must appoint one who was nominated to the essential services committee by—organised labour; and organised business or government, depending on the sector concerned.

A member of the essential services committee may be nominated to serve as an assessor .

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The essential services committee may appoint an assessor if the *trade union* or employer parties participating in the hearing fail to nominate an assessor. When appointing or nominating an assessor the essential services committee, and any party to a matter before it, must take into account the person's skills, experience, expertise and knowledge of the sector concerned.

IMPACT

Section 70B provides for the powers and functions of the essential services committee.

70C. Appointment of panels

The essential services committee must, taking into account the nature and complexity of the issue, assign each matter before it to a panel consisting of either three or five persons, including the assessors.

A panel must be presided over by the chairperson or deputy chairperson of the essential services committee or by a senior commissioner

The Commission must compile a list of suitably trained senior commissioners who may preside at panel hearings.

If the essential services committee constitutes a three-member panel, it must either—appoint two of its members to serve as assessors; or invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

If the essential services committee constitutes a five-member panel, it must—appoint two of its members to serve as its assessors; and invite the employer and *trade union* parties participating in the hearing to each nominate an assessor.

If the essential services committee appoints assessors from its members to serve on a panel, it must appoint one who was nominated to the essential services committee by—organised labour; and organised business or government, depending on the sector concerned.

A member of the essential services committee may be nominated to serve as an assessor .

The essential services committee may appoint an assessor if the *trade union* or employer parties participating in the hearing fail to nominate an assessor. When appointing or nominating an assessor the essential services committee, and any party to a matter before it, must take into account the person's skills, experience, expertise and knowledge of the sector concerned.

IMPACT

Section 70C provides for the appointment of panels to preside over each matter that is before it.

70D. Powers and functions of panel

The powers and functions of a panel appointed by the essential services committee are to—

- conduct investigations as to whether or not the whole or a part of any service is an essential service;
- determine whether or not to designate the whole or a part of that service as an essential service;
- determine *disputes* as to whether or not the whole or a part of any service falls within the scope of a designated essential service;
- determine whether or not the whole or a part of any service is a maintenance service;
- ratify a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service; and
- determine, in accordance with the provisions of *this Act*, the minimum services required to be maintained in the service that is designated as an essential service.

The presiding member of the panel must determine any question of procedure or law, including whether an issue is a question of procedure or law.

The chairperson of the essential services committee or any person presiding at a hearing may, sitting alone, make an order— extending or reducing any period prescribed by the rules of the essential services committee; and condoning the late performance of an act contemplated by the rules of the essential services committee.

The decision or finding of the majority of the panel is the decision of the essential services committee.

The decision of a panel must be in writing and signed by the person referred to in section 70C(2), and include the reasons for that decision.

A panel appointed by the essential services committee may make any appropriate order relating to its functions.

IMPACT

Section 70D provides for the powers and functions of a panel appointed by the essential services committee.

70E. Jurisdiction and administration of essential services committee

The essential services committee has jurisdiction throughout the Republic.

The seat of the essential services committee is the Commission's head office.

The functions of the essential services committee, including the functions of the panels, may be performed at any place in the Republic.

The Commission must administer the essential services committee.

The *director* is the accounting officer of the essential services committee and must allocate adequate resources to the essential services committee in order for it to perform its functions.

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The *director* may appoint staff to the essential services committee after consulting the essential services committee and the governing body, and the governing body must determine their remuneration and other terms and conditions of appointment.

The allowances of members of the essential services committee, assessors and persons appointed to investigate matters are determined by the Minister of Finance.

The essential services committee will be financed and provided with working capital from the monies that Parliament may appropriate to the Commission in terms of section 122; and grants, donations and bequests made to it.

IMPACT

Section 70E provides for the essential services committee to have jurisdiction throughout the Republic and for the Commission to administer the essential services committee.

70F. Regulations for essential services committee

The Minister, after consulting the essential services committee, may make regulations concerning the functioning of the essential services committee; and panels appointed by the essential services committee. The rules made by the Commission remain in force until replaced by regulations.

IMPACT

Section 70F empowers the Minister of Labour to make regulations concerning any matter related to the functioning of the essential services committee and its panels.

12. Amendment of section 71

Amendment of subsections (8) and (9):

"(8) If the panel appointed by the essential services committee designates the whole or a part of a service as an *essential service*, the essential services committee must publish a notice to that effect in the Government *Gazette*.

(9) ~~[The]~~ A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an essential service or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out in subsections (1) to (8), read with the changes required by the context."

This section now reads as follows:

71. DESIGNATING A SERVICE AS AN ESSENTIAL SERVICE

- (1) The essential services committee must give notice in the Government Gazette of any investigation that it is to conduct as to whether the whole or a part of a service is an essential service.
- (2) The notice must indicate the service or the part of a service that is to be the subject of the investigation and must invite interested parties, within a period stated in the notice—
 - (a) to submit written representations; and
 - (b) to indicate whether or not they require an opportunity to make oral representations.
- (3) Any interested party may inspect any written representations made pursuant to the notice, at the Commission's offices.
- (4) The Commission must provide a certified copy of, or extract from, any written representations to any person who has paid the prescribed fee.
- (5) The essential services committee must advise parties who wish to make oral representations of the place and time at which they may be made.
- (6) Oral representations must be made in public.
- (7) After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an essential service.
- (8) If the panel appointed by the essential services committee designates the whole or a part of a service as an essential service, the essential services committee must publish a notice to that effect in the Government Gazette.
- (9) A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an essential service or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.
- (10) The Parliamentary service and the South African Police Service are deemed to have been designated an essential service in terms of this section.

IMPACT

Section 71 - provides for the establishment of the essential services committee. The essential services committee was brought into existence by the Act. The structure and functioning of the essential services committee are to be revised to enhance its legitimacy and efficacy.

SUMMARY

The essential services committee must give notice in the Government Gazette of any investigation that it is to conduct as to whether the whole or a part of a service is an essential service. The notice must indicate the service or the part of a service that is to be the subject of the investigation and must invite interested parties, within a period stated in the notice—to submit written representations; and to indicate whether or not they require an opportunity to make oral representations.

Any interested party may inspect any written representations made pursuant to the notice, at the Commission's offices.

The Commission must provide a certified copy of, or extract from, any written representations to any person who has paid the prescribed fee.

The essential services committee must advise parties who wish to make oral representations of the place and time at which they may be made.

Oral representations must be made in public.

After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an essential service.

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If the panel appointed by the essential services committee designates the whole or a part of a service as an *essential service*, the essential services committee must publish a notice to that effect in the Government *Gazette*.

A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an *essential service* or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out above read with the changes required by the context.

The Parliamentary service and the South African Police Service are deemed to have been designated an essential service in terms of this section.

13. SUBSTITUTION OF SECTION 72

Inserts a new section 72

"72. Minimum services

- (1) When making a determination in terms of section 71, a panel of the essential services committee may issue an order—
 - (a) directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order;
 - (b) if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a *bargaining council* having jurisdiction.
- (2) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.
- (3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service—
 - (a) the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*; and
 - (b) the provisions of section 74 do not apply.
- (4) A minimum service determination—
 - (a) is valid until varied or revoked by the essential services committee; and
 - (b) may not be varied or revoked for a period of 12 months after it has been made.
- (5) Despite subsections (3) and (4), section 74 applies to a designated essential service in respect of which the essential services committee has made a determination of minimum services if the majority of *employees* employed in the essential services voted in a ballot in favour of this.
- (6) Subsection (5) does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.
- (7) Despite subsection (4), a panel may vary a determination by ratifying a *collective agreement* concluded between or on behalf of one or more—
 - (a) *trade unions* representing a majority of the *employees* covered by the determination; and
 - (b) employers employing the majority of the *employees* covered by the determination.

- (8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable *collective agreement*, refer a *dispute* arising from those negotiations to the Commission or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination."

IMPACT

Section 72 of the Act provides for the negotiation and conciliation of minimum service agreements. In order to promote interest arbitration and protect employees from an overly broad minimum service designation, the ACT provides that a minimum service designation will not apply if the majority of employees concerned vote to be covered by the broader essential service designation. This will have the result that there can be no strike or lock-out in the service concerned and all unresolved interest disputes will be subject to compulsory arbitration.

SUMMARY

72. Minimum services

When making a determination in terms of section 71, a panel of the essential services committee may issue an order directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order; if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a *bargaining council* having jurisdiction.

If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.

If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service—the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*; and the provisions of section 74 do not apply.

A minimum service determination—is valid until varied or revoked by the essential services committee; and may not be varied or revoked for a period of 12 months after it has been made.

Despite the above section 74 applies to a designated essential service in respect of which the essential services committee has made a determination of minimum services if the majority of *employees* employed in the essential services voted in a ballot in favour of this. But this does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.

And Despite this a panel may vary a determination by ratifying a *collective agreement* concluded between or on behalf of one or more—*trade unions* representing a majority of the *employees* covered by the determination; and employers employing the majority of the *employees* covered by the determination.

Any party to negotiations concerning a minimum services agreement may, subject to any applicable *collective agreement*, refer a *dispute* arising from those negotiations to the Commission or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.

14. AMENDMENT OF SECTION 73

Amends Section 73 by inserts a new heading - "**Disputes about minimum services and about whether a service is an essential service**";

Inserts the following amendments

"Any party to a *dispute* about one or more of the following issues may refer the *dispute* in writing to the essential services committee—"; and

"(c)whether or not the employer and a registered *trade union* or trade unions representing *employees in the essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service; and

(d)the terms of such a *collective agreement*."

IMPACT

Any party to a *dispute* about one or more of the following issues may refer the *dispute* in writing to the essential services committee:

- whether or not a service is an essential service;
- whether or not an employee or employer is engaged in a service designated as an essential service;
- whether or not the employer and a registered *trade union* or trade unions representing *employees in the essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service;
- the terms of such a *collective agreement*.

The party who refers the dispute to the essential services committee must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

The essential services committee must determine the dispute as soon as possible.

READS AS

073. DISPUTES ABOUT MINIMUM SERVICES AND ABOUT WHETHER A SERVICE IS AN ESSENTIAL SERVICE";

(1) Any party to a *dispute* about one or more of the following issues may refer the *dispute* in writing to the essential services committee:

1) Any party to a dispute about either of the following issues may refer the dispute in writing to the essential services committee:

a) whether or not a service is an essential service;

b) whether or not an employee or employer is engaged in a service designated as an essential service;

(c) *whether or not the employer and a registered trade union* or trade unions representing *employees in the essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service; and

(d) the terms of such a *collective agreement*.

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- 2) The party who refers the dispute to the essential services committee must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- 3) The essential services committee must determine the dispute as soon as possible.

15. AMENDMENT OF SECTION 74

Amends subsection (1)

"[Any] Subject to section 73(1), any party to a dispute that is precluded from participating in a strike or a lock-out because that party is engaged in an essential service may refer the dispute in writing to—".

Now reads as follows:

074. DISPUTES IN ESSENTIAL SERVICES

- 1) Subject to section 73(1), any party to a dispute that is precluded from participating in a strike or a lock-out because that party is engaged in an essential service may refer the dispute in writing to:
 - a) a council, if the parties to the dispute fall within the registered scope of that council; or
 - b) the Commission, if no council has jurisdiction.
- 2) The party who refers the dispute must satisfy the council or the Commission that a copy of the referral has been served on all the other parties to the dispute.
- 3) The council or the Commission must attempt to resolve the dispute through conciliation.
- 4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration by the council or the Commission.
- 5) Any arbitration award in terms of subsection (4) made in respect of the State and that has financial implications for the State becomes binding-
 - a) 14 days after the date of the award, unless a Minister has tabled the award in Parliament within that period; or
 - b) 14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding.
- 6) If Parliament passes a resolution that the award is not binding, the dispute must be referred back to the Commission for further conciliation between the parties to the dispute and if that fails, any party to the dispute may request the Commission to arbitrate.
- 7) If Parliament is not in session on the expiry of-
 - a) the period referred to in subsection (5)(a), that period or the balance of that period will run from the beginning of the next session of Parliament;
 - b) the period referred to in subsection (5)(b), that period will run from the expiry of the period referred to in paragraph (a) of this subsection or from the beginning of the next session of Parliament.

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IMPACT

Any party to a *dispute* that is precluded from participating in a *strike* or a *lock-out* because that party is engaged in an *essential service* may refer the *dispute* in writing to: a council, if the parties to the dispute fall within the registered scope of that council; or the Commission, if no council has

The party who refers the dispute must satisfy the council or the Commission that a copy of the referral has been served on all the other parties to the dispute.

The council or the Commission must attempt to resolve the dispute through conciliation.

If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration by the council or the Commission.

Any arbitration award made in respect of the State and that has financial implications for the State becomes binding-14 days after the date of the award, unless a Minister has tabled the award in Parliament within that period; or 14 days after the date of tabling the award, unless Parliament has passed a resolution that the award is not binding.

If Parliament passes a resolution that the award is not binding, the dispute must be referred back to the Commission for further conciliation between the parties to the dispute and if that fails, any party to the dispute may request the Commission to arbitrate.

If Parliament is not in session on the expiry of- the period referred to in subsection (5)(a), that period or the balance of that period will run from the beginning of the next session of Parliament; the period referred to in subsection (5)(b), that period will run from the expiry of the period referred to in paragraph (a) of this subsection or from the beginning of the next session of Parliament.

16. INSERTION OF SECTION 103A

Inserts a new section 103A

"103A. Appointment of administrator

- (1) The Labour Court may order that a suitable person, who may be a Commissioner, be appointed to administer a *trade union* or *employers' organisation* on such conditions as the Court may determine if the—
 - (a) Court is satisfied that it is just and equitable to do so; and
 - (b) *trade union* or *employers' organisation* has resolved that an administrator be appointed and has applied to the Court for an order to give effect to that resolution; or
 - (c) *registrar* has applied to the Court to appoint an administrator.
- (2) Without limiting the generality of subsection (1)(a), it may be just and equitable to make an order in terms of subsection (1) if—
 - (a) the *trade union* or *employers' organisation* fails materially to perform its functions; or
 - (b) there is serious mismanagement of the finances of the *trade union* or *employers' organisation*.
- (3) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must consider their interests before deciding whether or not to grant the order.
- (4)
 - (a) The registrar of the Labour Court must determine the administrator's fees.
 - (b) The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

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- (c) The administrator's fees will be paid as an expense of the *trade union or employers' organisation*.
- (5) The Labour Court may, on the application by the *trade union, employer's organisation or registrar—*
 - (a) vary or amend any prior order made in terms of this section; or
 - (b) if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions."

IMPACT

Section 103A has been inserted in order to permit the Labour Court to make an order placing a trade union or employers' organisation under administration in specific circumstances, such as where the trade union is unable to perform its functions. The application may be made by the trade union or employers' organisation concerned or by the Registrar of Labour Relations. The section provides an alternative to the winding-up procedure in section 103 of the Act and provides for a more appropriate process if the circumstances facing the trade union or employers' organisation are capable of being remedied.

SUMMARY

The Labour Court may order that a suitable person, who may be a Commissioner, be appointed to administer a *trade union or employers' organization* on such conditions as the Court may determine if the—Court is satisfied that it is just and equitable to do so; and *trade union or employers' organization* has resolved that an administrator be appointed and has applied to the Court for an order to give effect to that resolution; or *registrar* has applied to the Court to appoint an administrator. Without limiting the generality it may be just and equitable to make an order if— *the trade union or employers' organisation fails materially to perform its functions; or there is serious mismanagement of the finances of the trade union or employers' organisation*. If there are any persons not represented before the Labour Court whose interests may be affected by an order the Court must consider their interests before deciding whether or not to grant the order.

The registrar of the Labour Court must determine the administrator's fees.

The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.

The administrator's fees will be paid as an expense of the *trade union or employers' organisation*.

The Labour Court may, on the application by the *trade union, employer's organisation or registrar—* vary or amend any prior order made in terms of this section; or if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions.

17. AMENDMENT OF SECTION 111

Inserts subsection (5)

"(5) An appeal in terms of this section against a decision by the *registrar* in terms of section 106 does not suspend the operation of the *registrar's* decision."

Now reads as:

111. APPEALS FROM REGISTRAR'S DECISION

- 1) Within 30 days of the written notice of a decision of the registrar, any person who is aggrieved by the decision may demand in writing that the registrar provide written reasons for the decision.
- 2) The registrar must give the applicant written reasons for the decision within 30 days of receiving a demand in terms of subsection (1).
- 3) Any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that decision, within 60 days of-
 - a) the date of the registrar's decision; or
 - b) if written reasons for the decision are demanded, the date of those reasons.
- 4) The Labour Court, on good cause shown, may extend the period within which a person may note an appeal against a decision of the registrar.

"(5) An appeal in terms of this section against a decision by the registrar in terms of section 106 does not suspend the operation of the registrar's decision."

IMPACT

Section 111 provides that a trade union or employers' organisation whose registration has been cancelled by a decision of the Registrar of Labour Relations is not entitled to continue to function pending the outcome of an appeal against the decision of the Registrar.

SUMMARY

Within 30 days of the written notice of a decision of the registrar, any person who is aggrieved by the decision may demand in writing that the registrar provide written reasons for the decision. The registrar must give the applicant written reasons for the decision within 30 days of receiving a demand. Any person who is aggrieved by a decision of the registrar may appeal to the Labour Court against that decision, within 60 days of the date of the registrar's decision; or if written reasons for the decision are demanded, the date of those reasons.

The Labour Court, on good cause shown, may extend the period within which a person may note an appeal against a decision of the registrar. An appeal in terms of this section against a decision by the registrar in terms of section 106 does not suspend the operation of the registrar's decision."

18. AMENDMENT OF SECTION 115

Inserts the following amendments

"(e)at least every second year, review any rules made in terms of this section;";

"(bA)if requested, provide assistance of an administrative nature to an employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act to serve any notice or document in respect of conciliation or arbitration proceedings in terms of this Act, provided that the employee remains responsible in law for any such service;";

"(k)the right of any [person or category of persons to represent any] partyto be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;";

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"(kA)the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings:"; and

"[If asked, the] The Commission may provide employees, employers, registered trade unions, registered employers' organisations, federations of trade unions, federations of employers' organisations or councils with advice or training relating to the primary objects of this Act or any other employment law, including but not limited to—".

NOW READS AS :

115. FUNCTIONS OF COMMISSION

- 1) The Commission must-
 - a) attempt to resolve, through conciliation, any dispute referred to it in terms of this Act;
 - b) if a dispute that has been referred to it remains unresolved after conciliation, arbitrate the dispute if-
 - i) this Act requires arbitration and any party to the dispute has requested that the dispute be resolved through arbitration; or
 - ii) all the parties to a dispute in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the Commission;
 - c) assist in the establishment of workplace forums in the manner contemplated in Chapter V;
 - d) compile and publish information and statistics about its activities; and
 - "(e) at least every second year, review any rules made in terms of this section.";**
- 2) The Commission may-
 - a) if asked, advise a party to a dispute about the procedure to follow in terms of this Act; (See section 148)
 - b) if asked, assist a party to a dispute to obtain legal advice, assistance or representation; (See section 149)
 - "(bA) if requested, provide assistance of an administrative nature to an employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act to serve any notice or document in respect of conciliation or arbitration proceedings in terms of this Act, provided that the employee remains responsible in law for any such service;"**
 - c) offer to resolve a dispute that has not been referred to the Commission through conciliation; (See section 150)
 - cA) deleted - 2014 LRAA**
 - d) [deleted by Labour Relations Amendment Act, 1996, Act No 42 of 1996]
 - e) [deleted by Labour Relations Amendment Act, 1996, Act No 42 of 1996]
 - f) conduct, oversee or scrutinise any election or ballot of a registered trade union or registered employers' organisation if asked to do so by that trade union or employers' organization;
 - g) publish guidelines in relation to any matter dealt with in this Act;
 - h) conduct and publish research into matters relevant to its functions; and
 - i) [deleted by Labour Relations Amendment Act, 1996, Act No 42 of 1996]
- 2A) The Commission may make rules regulating-
 - a) the practice and procedure in connection with the resolution of a dispute through conciliation or arbitration;
 - b) the process by which conciliation is initiated, and the form, content and use of that process;
 - c) the process by which arbitration or arbitration proceedings are initiated, and the form, content and use of that process;

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- d) the joinder of any person having an interest in the dispute in any conciliation and arbitration proceedings;
- e) the intervention of any person as an applicant or respondent in conciliation or arbitration proceedings;
- f) the amendment of any citation and the substitution of any party for another in conciliation or arbitration proceedings;
- g) the hours during which offices of the Commission will be open to receive any process;
- h) any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to any proceedings;
- i) the forms to be used by parties and the Commission;
- j) the basis on which a commissioner may make any order as to costs in any arbitration;
- (k) the right of any party to be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;
- (kA) the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings;
- l) the circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and
- m) all other matters incidental to performing the functions of the Commission.
- (3) The Commission may provide *employees, employers, registered trade unions, registered employers' organisations, federations of trade unions, federations of employers' organisations or councils* with advice or training relating to the primary objects of *this Act or any other employment law*, including but not limited to—
 - a) establishing collective bargaining structures;
 - b) designing, establishing and electing workplace forums and creating deadlock-breaking mechanisms;
 - c) the functioning of workplace forums;
 - d) preventing and resolving disputes and employees' grievances;
 - e) disciplinary procedures;
 - f) procedures in relation to dismissals;
 - g) the process of restructuring the workplace;
 - h) affirmative action and equal opportunity programmes; and
 - i) the prevention of sexual harassment in the workplace.
- 4) The Commission must perform any other duties imposed, and may exercise any other powers conferred, on it by or in terms of this Act and is competent to perform any other function entrusted to it by any other law.
- 5) The governing body's rules of procedure, the terms of appointment of its members and other administrative matters are dealt with in Schedule 3.
- 6)
 - a) A rule made under subsection (2)(cA) or (2A) must be published in the Government Gazette. The Commission will be responsible to ensure that the publication occurs.
 - b) A rule so made will not have any legal force or effect unless it has been so published.
 - c) A rule so made takes effect from the date of publication unless a later date is stipulated.

IMPACT

Clause 18 of the Bill seeks to amend section 115 of the Act which empowers the Commission to provide administrative assistance to lower paid employees in the delivery of notices or documents relating to proceedings in the Commission. Often such employees are unable to serve referral documents on their employer. Another change empowers the Commission to make rules to regulate the consequences of a party's failure to attend conciliation or arbitration proceedings. This change has been necessitated by the Labour Appeal Court's interpretation of the CCMA's rule-making powers. Section 115 is also amended to clarify the powers of the Commission to make rules regulating the rights of parties to be represented in proceedings before the Commission

SUMMARY

The Commission must-

- a) attempt to resolve, through conciliation, any dispute referred to it in terms of this Act;
- b) if a dispute that has been referred to it remains unresolved after conciliation, arbitrate the dispute if-
 - i) this Act requires arbitration and any party to the dispute has requested that the dispute be resolved through arbitration; or
 - ii) all the parties to a dispute in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the Commission;
- c) assist in the establishment of workplace forums in the manner contemplated in Chapter V;
- d) compile and publish information and statistics about its activities; and

"(e) at least every second year, review any rules made in terms of this section.

The Commission may-

- a) if asked, advise a party to a dispute about the procedure to follow in terms of this Act; (See section 148)
- b) if asked, assist a party to a dispute to obtain legal advice, assistance or representation; (See section 149)

"(bA) if requested, provide assistance of an administrative nature to an employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act to serve any notice or document in respect of conciliation or arbitration proceedings in terms of this Act, provided that the employee remains responsible in law for any such service;"

- c) offer to resolve a dispute that has not been referred to the Commission through conciliation; (See section 150)
- f) conduct, oversee or scrutinise any election or ballot of a registered trade union or registered employers' organisation if asked to do so by that trade union or employers' organization;
- g) publish guidelines in relation to any matter dealt with in this Act;
- h) conduct and publish research into matters relevant to its functions; and

The Commission may make rules regulating-

- a) the practice and procedure in connection with the resolution of a dispute through conciliation or arbitration;
- b) the process by which conciliation is initiated, and the form, content and use of that process;
- c) the process by which arbitration or arbitration proceedings are initiated, and the form, content and use of that process;
- d) the joinder of any person having an interest in the dispute in any conciliation and arbitration proceedings;
- e) the intervention of any person as an applicant or respondent in conciliation or arbitration proceedings;

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- f) the amendment of any citation and the substitution of any party for another in conciliation or arbitration proceedings;
- g) the hours during which offices of the Commission will be open to receive any process;
- h) any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to any proceedings;
- i) the forms to be used by parties and the Commission;
- j) the basis on which a commissioner may make any order as to costs in any arbitration;

(k) the right of any party to be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;

(kA) the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings:

- l) the circumstances in which the Commission may charge a fee in relation to any conciliation or arbitration proceedings or for any services the Commission provides; and
- m) all other matters incidental to performing the functions of the Commission.

The Commission may provide *employees, employers, registered trade unions, registered employers' organisations, federations of trade unions, federations of employers' organisations or councils* with advice or training relating to the primary objects of *this Act or any other employment law*, including but not limited to—

- a) establishing collective bargaining structures;
- b) designing, establishing and electing workplace forums and creating deadlock-breaking mechanisms;
- c) the functioning of workplace forums;
- d) preventing and resolving disputes and employees' grievances;
- e) disciplinary procedures;
- f) procedures in relation to dismissals;
- g) the process of restructuring the workplace;
- h) affirmative action and equal opportunity programmes; and
- i) the prevention of sexual harassment in the workplace.

The Commission must perform any other duties imposed, and may exercise any other powers conferred, on it by or in terms of this Act and is competent to perform any other function entrusted to it by any other law.

The governing body's rules of procedure, the terms of appointment of its members and other administrative matters are dealt with in Schedule 3.

A rule made under subsection (2)(cA) or (2A) must be published in the Government Gazette. The Commission will be responsible to ensure that the publication occurs.

A rule so made will not have any legal force or effect unless it has been so published.

A rule so made takes effect from the date of publication unless a later date is stipulated.

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19. AMENDMENT OF SECTION 138

Deletes subsection (7)

IMPACT

Section 138 of the Act by removes the requirement that original arbitration awards must be lodged with the Registrar of the Labour Court. This has proved to be unnecessary and administratively burdensome.

20. AMENDMENT OF SECTION 143

Inserts a new subsection (1)

"(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.";

Inserts subsection (4)

"(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court."; and

Adds the following subsections:

"(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

(6) Subsections (1), (4) and (5), as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014, and applies to an arbitration award issued after such commencement date."

NOW READS AS

143. EFFECT OF ARBITRATION AWARDS

- 1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.
 - 2) If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise.
 - 3) An arbitration award may only be enforced in terms of subsection (1) if the director has certified that the arbitration award is an award contemplated in subsection (1).
 - 4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court."; and
- "(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

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- (6) Subsections(1), (4) and (5), as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014,and applies to an arbitration award issued after such commencement date."

IMPACT

Section 143 of the Act streamlines the mechanisms for enforcing arbitration awards of the Commission and to make these mechanisms more effective and accessible. Firstly, an award which has been certified by the Commission can be presented to the Deputy Sheriff for execution if payment is not made. This removes the need for the current practice in terms of which parties have a writ issued by the Labour Court. This has proved to be time-consuming and expensive, particularly for applicants in a centre where there is no Labour Court. Secondly, in the case of awards such as reinstatement which are enforced by contempt proceedings in the Labour Court, the need to have an arbitration award made an order of the Labour Court before contempt proceedings can be commenced is removed. Finally, the enforcement of awards to pay money will occur in terms of the Rules and Tariffs applicable to the Magistrate's Court, thus simplifying and reducing the costs of these proceedings. These amendments are anticipated to simplify and expedite the enforcement of arbitration awards by the Commission and bargaining councils.

SUMMARY

An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.

If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed from time to time in respect of a judgment debt in terms of section 2 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), unless the award provides otherwise.

An arbitration award may only be enforced if the director has certified that the arbitration award is an award.

If a party fails to comply with an arbitration award certified that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court and despite this an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court.

These provisions as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014,and applies to an arbitration award issued after such commencement date."

21. AMENDMENT OF SECTION 144

Adds a new subsection (1) (d)

"(d) made in the absence of any party, on good cause shown."

NOW READS AS

144. VARIATION AND RESCISSION OF ARBITRATION AWARDS AND RULINGS

- 1) Any commissioner who has issued an arbitration award, or ruling, or any other commissioner appointed by the director for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling-
 - a) erroneously sought or erroneously made in the absence of any party affected by that award;
 - b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - c) granted as a result of a mistake common to the parties to the proceedings, or

(d) made in the absence of any party, on good cause shown.

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IMPACT

Clause 21 of the Bill seeks to amend section 144 of the Act to provide for the variation and rescission of arbitration awards and rulings which was made in the absence of any party, on good cause shown.

SUMMARY

Any commissioner who has issued an arbitration award, or ruling, or any other commissioner appointed by the director for that purpose, may on that commissioner's own accord or, on the application of any affected party, vary or rescind an arbitration award or ruling - erroneously sought or erroneously made in the absence of any party affected by that award; in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or granted as a result of a mistake common to the parties to the proceedings or made in the absence of any party, on good cause shown.

22. AMENDMENT OF SECTION 145

Adds the following subsections:

"(5) Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

(6) Judgment in an application brought under subsection (1) must be handed down as soon as reasonably possible.

(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).

(8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must—

(a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

(b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.

(9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and subsection (9) applies to an arbitration award issued after such commencement date."

NOW READS AS

145. REVIEW OF ARBITRATION AWARDS

- 1) Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award-
 - a) within six weeks of the date that the award was served on the applicant, unless the alleged defect involves corruption; or
 - b) if the alleged defect involves corruption, within six weeks of the date that the applicant discovers the corruption.
- 1A) The Labour Court may on good cause shown condone the late filing of an application in terms of subsection (1).

- 2) A defect referred to in subsection (1), means-
 - a) that the commissioner-
 - i) committed misconduct in relation to the duties of the commissioner as an arbitrator;
 - ii) committed a gross irregularity in the conduct of the arbitration proceedings; or
 - iii) exceeded the commissioner's powers; or
 - b) that an award has been improperly obtained.
- 3) The Labour Court may stay the enforcement of the award pending its decision.
- 4) If the award is set aside, the Labour Court may-
 - a) determine the dispute in the manner it considers appropriate; or
 - b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

"(5) Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

- (6) Judgment in an application brought under subsection (1) must be handed down as soon as reasonably possible.
- (7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).
- (8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must—
 - (a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or
 - (b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.
- (9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.
- (10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and subsection (9) applies to an arbitration award issued after such commencement date."

IMPACT

Section 145 introduces certain measures intended to reduce the number of review applications that are brought to frustrate or delay compliance with arbitration awards, and to expedite the finalisation of applications brought to the Labour Court to review arbitration awards. Currently, a review application does not suspend the operation of an arbitration award. This often results in separate or interlocutory applications to stay enforcement of awards pending review proceedings. It is proposed that the operation of an arbitration award would be suspended if security is provided by the applicant in an amount specified, or any lesser amount permitted by the Labour Court.

To prevent delay by applicants, the amended provisions require that an applicant must apply for a date for the hearing of a review application within six months of commencing proceedings. Judgment in review matters must be handed down within a reasonable time. The proposed amendment also seeks to provide that a review application interrupts the running of prescription in respect of an arbitration award.

SUMMARY

Any party to a dispute who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for an order setting aside the arbitration award within six weeks of the date that the award was served on the applicant, unless the alleged defect involves corruption; or if the alleged defect involves corruption, within six weeks of the date that the applicant discovers the corruption.

The Labour Court may on good cause shown condone the late filing of an application .

A defect means that the commissioner committed misconduct in relation to the duties of the commissioner as an arbitrator; committed a gross irregularity in the conduct of the arbitration proceedings; or exceeded the commissioner's powers; or that an award has been improperly obtained.

The Labour Court may stay the enforcement of the award pending its decision.

If the award is set aside, the Labour Court may determine the dispute in the manner it considers appropriate; or make any order it considers appropriate about the procedures to be followed to determine the dispute.

Subject to the rules of the Labour Court, a party who brings an application must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard.

Judgment in an application must be handed down as soon as reasonably possible.

The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court.

Unless the Labour Court directs otherwise, the security must—in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or in the case of an order of compensation, be equivalent to the amount of compensation awarded.

An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.

The above apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and to an arbitration award issued after such commencement date.

23. AMENDMENT OF SECTION 147

Inserts subsection (6A) :

"(6A) For the purpose of making a decision in terms of subsection (6), the Commission must appoint a commissioner to resolve the dispute—

(a) if an employee earning less than the threshold prescribed by the Minister, in terms of section 6(3) of the Basic Conditions of Employment Act, is required to pay any part of the cost of the private dispute resolution procedures; or

(b) if the person or body appointed to resolve the dispute is not independent of the employer."

NOW READS AS :

147. PERFORMANCE OF DISPUTE RESOLUTION FUNCTIONS BY COMMISSION IN EXCEPTIONAL CIRCUMSTANCES

- 1)a) If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute is about the interpretation or application of a collective agreement, the Commission may-
 - i) refer the dispute for resolution in terms of the procedures provided for in that collective agreement; or
 - ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.
- b) The Commission may charge the parties to a collective agreement a fee for performing the dispute resolution functions if-
 - i) their collective agreement does not provide a procedure as required by section 24(1) (Section 24(1) states that every collective agreement

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- must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement.) or
- ii) the procedure provided in the collective agreement is not operative.
 - c) The Commission may charge a party to a collective agreement a fee if that party has frustrated the resolution of the dispute.
- 2)a) If at any stage after a dispute has been referred to the Commission, it becomes apparent that the parties to the dispute are parties to a council, the Commission may-
- i) refer the dispute to the council for resolution; or
 - ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.
 - b) The Commission may charge the parties to a council a fee for performing the dispute resolution functions if the council's dispute resolution procedures are not operative.
- 3)a) If at any stage after a dispute has been referred to the Commission, it becomes apparent that the parties to the dispute fall within the registered scope of a council and that one or more parties to the dispute are not parties to the council, the Commission may-
- i) refer the dispute to the council for resolution; or
 - ii) appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.
 - b) The Commission may charge the parties to a council a fee for performing the dispute resolution functions if the council's dispute resolution procedures are not operative.
- 4) a) If a dispute has been referred to the Commission and not all the parties to the dispute fall within the registered scope of a council or fall within the registered scope of two or more councils, the Commission must resolve the dispute in terms of this Act.
- b) In the circumstances contemplated in paragraph (a), the Commission has exclusive jurisdiction to resolve that dispute.
- 5)a) If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute ought to have been referred to an accredited agency, the Commission may-
- i) refer the dispute to the accredited agency for resolution; or
 - ii) appoint a commissioner to resolve the dispute in terms of this Act.
 - b) The Commission may-
 - i) charge the accredited agency a fee for performing the dispute resolution functions if the accredited agency's dispute resolution procedures are not operative; and
 - ii) review the continued accreditation of that agency.
- 6) If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute ought to have been resolved through private dispute resolution in terms of a private agreement between the parties to the dispute, the Commission may-
- a) refer the dispute to the appropriate person or body for resolution through private dispute resolution procedures; or
 - b) appoint a commissioner to resolve the dispute in terms of this Act.

"(6A) For the purpose of making a decision in terms of subsection (6), the Commission must appoint a commissioner to resolve the *dispute*—

- (a) if an *employee* earning less than the threshold prescribed by the *Minister*, in terms of section 6(3) of the *Basic Conditions of Employment Act*, is required to pay any part of the cost of the private *dispute* resolution procedures; or
- (b) if the person or body appointed to resolve the *dispute* is not independent of the employer."

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- 7) Where the Commission refers the dispute in terms of this section to a person or body other than a commissioner the date of the Commission's initial receipt of the dispute will be deemed to be the date on which the Commission referred the dispute elsewhere.
- 8) The Commission may perform any of the dispute resolution functions of a council or an accredited agency appointed by the council if the council or accredited agency fails to perform its dispute resolution functions in circumstances where, in law, there is an obligation to perform them.
- 9) For the purposes of subsections (2) and (3), a party to a council includes the members of a registered trade union or registered employers' organisation that is a party to the council.

IMPACT

SECTION 147 requires the Commission to resolve disputes even where the parties have agreed to private dispute resolution if, in the case of lower paid employees, the employee is required to pay any part of the cost of private dispute resolution, or, in the case of all employees, the person appointed to resolve the dispute is not independent of the employer.

SUMMARY

If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute is about the interpretation or application of a collective agreement, the Commission may refer the dispute for resolution in terms of the procedures provided for in that collective agreement; or appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.

The Commission may charge the parties to a collective agreement a fee for performing the dispute resolution functions if their collective agreement does not provide a procedure as required by section 24(1) (Section 24(1) states that every collective agreement must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement.) or the procedure provided in the collective agreement is not operative.

The Commission may charge a party to a collective agreement a fee if that party has frustrated the resolution of the dispute.

If at any stage after a dispute has been referred to the Commission, it becomes apparent that the parties to the dispute are parties to a council, the Commission may refer the dispute to the council for resolution; or appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.

The Commission may charge the parties to a council a fee for performing the dispute resolution functions if the council's dispute resolution procedures are not operative.

If at any stage after a dispute has been referred to the Commission, it becomes apparent that the parties to the dispute fall within the registered scope of a council and that one or more parties to the dispute are not parties to the council, the Commission may refer the dispute to the council for resolution; or appoint a commissioner or, if one has been appointed, confirm the appointment of the commissioner, to resolve the dispute in terms of this Act.

The Commission may charge the parties to a council a fee for performing the dispute resolution functions if the council's dispute resolution procedures are not operative.

If a dispute has been referred to the Commission and not all the parties to the dispute fall within the registered scope of a council or fall within the registered scope of two or more councils, the Commission must resolve the dispute in terms of this Act. In the circumstances the Commission has exclusive jurisdiction to resolve that dispute.

If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute ought to have been referred to an accredited agency, the Commission may refer the dispute to the accredited agency for resolution; or appoint a commissioner to resolve the dispute in terms of this Act.

The Commission may charge the accredited agency a fee for performing the dispute resolution functions if the accredited agency's dispute resolution procedures are not operative; and review the continued accreditation of that agency.

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If at any stage after a dispute has been referred to the Commission, it becomes apparent that the dispute ought to have been resolved through private dispute resolution in terms of a private agreement between the parties to the dispute, the Commission may- refer the dispute to the appropriate person or body for resolution through private dispute resolution procedures; or appoint a commissioner to resolve the dispute in terms of this Act.

For the purpose of making a decision the Commission must appoint a commissioner to resolve the dispute if an employee earning less than the threshold prescribed by the Minister, in terms of section 6(3) of the Basic Conditions of Employment Act, is required to pay any part of the cost of the private dispute resolution procedures; or if the person or body appointed to resolve the dispute is not independent of the employer."

Where the Commission refers the dispute in terms of this section to a person or body other than a commissioner the date of the Commission's initial receipt of the dispute will be deemed to be the date on which the Commission referred the dispute elsewhere.

The Commission may perform any of the dispute resolution functions of a council or an accredited agency appointed by the council if the council or accredited agency fails to perform its dispute resolution functions in circumstances where, in law, there is an obligation to perform them.

A party to a council includes the members of a registered trade union or registered employers' organisation that is a party to the council.

24. SUBSTITUTION OF SECTION 150

Inserts a new section 150 of the principal Act:

"150. Commission may appoint commissioner to conciliate in public interest

- (1) Despite any provision to the contrary in *this Act*, the *director* may appoint one or more commissioners who must attempt to resolve the *dispute* through conciliation, whether or not that *dispute* has been referred to the Commission or a *bargaining council*—
 - (a) with the consent of the parties; or
 - (b) in the absence of consent by the parties, if the *director* believes it is in the public interest to do so.
- (2) Before appointing a commissioner in terms of this section, the *director* must consult—
 - (a) the parties to the *dispute*; and
 - (b) the secretary of a *bargaining council* with jurisdiction over the parties to the *dispute*.
- (3) The *director* may appoint a commissioner who has already conciliated that *dispute*.
- (4) In addition, to assist a commissioner appointed in terms of subsection (1), the *director* may appoint—
 - (a) one person from a list of at least five names submitted by the representatives of organised labour on the governing body of the Commission; and
 - (b) one person from a list of at least five names submitted by the representatives of organised business on the governing body of the Commission.
- (5) Unless the parties to the *dispute* agree otherwise, the appointment of a commissioner in terms of this section does not affect any entitlement, of an *employee* to *strike* or an *employer* to *lock-out*, that the party to the dispute may have acquired in terms of Chapter IV."

IMPACT

Section 150 of the Act extends and regulates the circumstances in which the Commission may intervene to attempt to resolve disputes by conciliation at the request of the parties or where this is in the public interest, even if conciliation has already been attempted. The purpose of the provision is to empower the Commission to intervene when appropriate in protracted disputes in an effort to secure their resolution in the public interest. The Commission's intervention does not affect the parties' entitlement to strike or lock-out.

SUMMARY

Despite any provision to the contrary in *this Act*, the *director* may appoint one or more commissioners who must attempt to resolve the *dispute* through conciliation, whether or not that *dispute* has been referred to the Commission or a *bargaining council*— with the consent of the parties; or in the absence of consent by the parties, if the *director* believes it is in the public interest to do so.

Before appointing a commissioner, the *director* must consult the parties to the *dispute*; and the secretary of a *bargaining council* with jurisdiction over the parties to the *dispute*. The *director* may appoint a commissioner who has already conciliated that *dispute*. In addition, to assist a commissioner the *director* may appoint— one person from a list of at least five names submitted by the representatives of organised labour on the governing body of the Commission; and one person from a list of at least five names submitted by the representatives of organised business on the governing body of the Commission.

Unless the parties to the *dispute* agree otherwise, the appointment of a commissioner in terms of this section does not affect any entitlement, of an *employee* to *strike* or an *employer* to *lock-out*, that the party to the dispute may have acquired in terms of Chapter IV."

25. AMENDMENT OF SECTION 157 OF ACT 66

Inserts a revised subsection (5)

"(5) Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if this Act or any employment law requires the *dispute* to be resolved through arbitration."

NOW READS

157. JURISDICTION OF LABOUR COURT

- 1) Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.
- 2) The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from--
 - a) employment and from labour relations;
 - b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
 - c) the application of any law for the administration of which the Minister is responsible.

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- 3) Any reference to the court in the Arbitration Act, 1965 (Act No. 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any dispute that may be referred to arbitration in terms of this Act. 4)
- a) The Labour Court may refuse to determine any dispute, other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the dispute through conciliation.
- b) A certificate issued by a commissioner or a council stating that a dispute remains unresolved is sufficient proof that an attempt has been made to resolve that dispute through conciliation.
- (5) Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if this Act or any employment law requires the *dispute* to be resolved through arbitration.

IMPACT

Section 157 EXCLUDES the jurisdiction of the Labour Court to adjudicate disputes that are required, not only by the Act, but by any other employment law, to be determined by arbitration.

SUMMARY

Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.

The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from-- employment and from labour relations; any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and the application of any law for the administration of which the Minister is responsible.

Any reference to the court in the Arbitration Act, 1965 (Act No. 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any dispute that may be referred to arbitration in terms of this Act.

The Labour Court may refuse to determine any dispute, other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the dispute through conciliation.

A certificate issued by a commissioner or a council stating that a dispute remains unresolved is sufficient proof that an attempt has been made to resolve that dispute through conciliation.

Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if this Act or any employment law requires the *dispute* to be resolved through arbitration.

26. AMENDMENT OF SECTION 158

Amends subsection (1) (b)

"(b) order compliance with any provision of this Act or any employment law";

Inserts subsection (1B)

"(1B) The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any bargaining council in terms of the provisions of this Act before the issue in dispute has been finally determined by the Commission or the bargaining council, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the issue in dispute has been finally determined.";

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Amends subsection (2) (b)

"(b)[with the consent of the parties and] if it is expedient to do so, continue with the proceedings [with the Court sitting as an arbitrator], in which case the Court may only make any order that a commissioner or arbitrator would have been entitled to make: Provided that in relation to the question of costs, the provisions of section 162(2)(a) are applicable."; and

Adds subsection (5)

"(5) A judgment of the Labour Court must be handed down as soon as reasonably possible."

IMPACT

Section 158 provides that only in exceptional circumstances the Labour Court may deal with review applications against decisions or rulings of the Commission before a matter has been finalised by the Commission. This seeks to limit the use of piece-meal review applications during arbitration proceedings as a mechanism to delay a matter that is with the Labour Court in terms of subsection 158(2). This means that any challenge to the Court's decision will be by way of appeal to the Labour Appeal Court, and not on review to the Labour Court. Finally, the amendment provides a period within which judgments of the Labour Court must be handed down.

27. AMENDMENT OF SECTION 159

Inserts subsection (11)

"(11) The Judge President must ensure that the Rules Board for Labour Courts meet at least once every two years to review the rules of the Labour Court."

IMPACT

Section 159 of the Act ensures that a Rules Board for the Labour Court meet at least once every two years to review the rules of the Labour Court.

28. AMENDMENT OF SECTION 161

Amends (1) (c)

"(c) any [member,] office-bearer or official of that party's registered trade union or registered employers' organisation"; and

Adds (2)

"(2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs (b) to (e) of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court."

IMPACT

Section 161 of the Act deals with the problem of labour consultants appearing in proceedings before the Labour Court under the guise of membership of, or being an official of, a trade union or employer's organisation, or of another permitted category, when in fact they appear in a professional capacity and seek to charge fees for that appearance.

29. AMENDMENT OF SECTION 168

Amends subsection (1) (c)

"(c) such number of other judges who are judges of the Labour Court or High Court, as may be required for the effective functioning of the Labour Appeal Court."

IMPACT

Section 168 of the Act allows Labour Court judges to be appointed to serve in the Labour Appeal Court. This is intended to ensure that the Labour Appeal Court functions as a specialist institution.

30. AMENDMENT OF SECTION 186

Amends subsection (1) (a) and (b)

"(a) an employer has terminated **[a contract of]** employment with or without notice;

(b) an employee employed in terms of a fixed term contract of employment reasonably expected the employer —

(i) to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee."; and

Amends subsection (1) (e) and (f)

"(e) an employee terminated **[a contract of]** employment with or without notice because the employer made continued employment intolerable for the employee.; or

(f)an *employee* terminated [a contract of] employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the *employee* with conditions or circumstances at work that are substantially less favourable to the *employee* than those provided by the old employer."

IMPACT

Section 186 removes an anomaly in the definition of dismissal which meant that employees engaged for a fixed term could claim dismissal on expiry of the term only if they could show that they reasonably expected the employer to renew the fixed term, but not if they could show that they reasonably expected to be retained in indefinite employment. The proposed amendments also seek to clarify that the termination of employment is a dismissal, whether or not there is a formal or written contract of employment.

31. AMENDMENT OF SECTION 187

Amends subsection (1) (c)

"(c) [to compel the *employee*] a refusal by employees to accept a demand in respect of any matter of mutual interest between [the] them and their employer [and employee];"

IMPACT

Section 187 removes an anomaly arising from the interpretation of section 187(1)(c). In the case of the **National Union of Metalworkers of SA v Fry's Metals (Pty) Ltd (2005) 26 ILJ 689 (SCA)**, the court held that the clause had been intended to remedy the so-called "lock-out" dismissal which was a feature of pre-1995 labour relations practice. The effect of this decision when read with decisions of **Chemical Workers Industrial Union and others v Algorax (Pty) Ltd (2003) 24 ILJ 1917 (LAC)** is to discourage employers from offering re-employment to employees who have been retrenched after refusing to accept changes in working conditions.

The amendment seeks to give effect to the intention of the provision as enacted in 1995 which is to preclude the dismissal of employees where the reason for the dismissal is their refusal to accept a demand by the employer over a matter of mutual interest. This is intended to protect the integrity of the process of collective bargaining under the Act and is consistent with the purposes of the Act.

32. AMENDMENT OF SECTION 188A

Inserts new heading:

"[Agreement for pre-dismissal arbitration] Inquiry by arbitrator";

Amends subsection (1)

"(1) An employer may, with the consent of the *employee* or in accordance with a collective agreement, request a *council*, an accredited agency or the Commission to appoint an arbitrator to conduct an [arbitration] inquiry into allegations about the conduct or capacity of that *employee*;"

Amends subsection (4)

"(4) (a) An *employee* may only consent to [a pre-dismissal arbitration] an inquiry in terms of this section after the *employee* has been advised of the allegation referred to in subsection (1) [and in respect of a specific arbitration].

(b) Despite [subparagraph (a),] any other provision in this Act, an *employee* earning more than the amount determined by the Minister in terms of section 6(3) of the *Basic Conditions of Employment Act at the time*, may [consent] agree in a contract of employment to the holding of [a pre-dismissal arbitration in a contract of employment] an inquiry in terms of this section;"

Amends subsection (5)

"In any **[arbitration]** inquiry in terms of this section a party to the *dispute* may appear in person or be represented only by—";

"(c)**[any member,]** an office bearer or official of that party's registered *trade union* or registered *employers' organisation*; or

(d)a legal practitioner, on agreement between the parties or if permitted by the arbitrator in accordance with the rules regulating representation at an arbitration before the Commission.";

Amends subsection (6)

"(6) Section 138, read with the changes required by the context, applies to any **[arbitration]**inquiry in terms of this section.";

Amends subsection (7) (a) and (b)

"(a)the secretary of the *council*, if the**[arbitration]** inquiry is held under the auspices of the *council*;

(b)the *director* of the accredited agency, if the **[arbitration]** inquiry is held under the auspices of an accredited agency.";

Amends subsections (8), (9) and (10)

"(8) The ruling of the arbitrator in an inquiry has the same status as an arbitration award, and the provisions of sections 143 to 146 apply with the changes required by the context to any [award made by an arbitrator in terms of this section]such ruling.

(9) An arbitrator conducting an **[arbitration]**inquiry in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, [direct] rule as to what action, if any, [should] may be taken against the *employee*.

(10) (a) A private agency may only appoint an arbitrator to conduct an [arbitration] inquiry in terms of this section if it is accredited for **[this purpose]** arbitration by the Commission.

(b) A *council* may only appoint an arbitrator to conduct an [arbitration] inquiry in terms of this section in respect of which the employer or the employee is not a party to the council, if the council has been accredited for [this purpose] arbitration by the Commission."; and

Adds subsections (11) and (12)

"(11) Despite subsection (1), if an employee alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act No. 26 of 2000), that employee or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the employee.

(12) The holding of an inquiry by a arbitrator in terms of this section and the suspension of an employee on full pay pending the outcome of such an inquiry do not constitute an occupational detriment as contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000)."

IMPACT

Section 188A of the Act facilitates the use of CCMA commissioners to conduct disciplinary enquiries (currently referred to as predissmissal enquiries). The amendment seeks to promote the enquiries by arbitrators, which avoid the need to have both an enquiry and an arbitration hearing, by allowing their introduction through collective agreement. In addition, the section is amended to avoid disputes where an employee claims that the holding of an enquiry into allegations of misconduct, and suspension pending such an enquiry, breaches the provisions of the Protected Disclosures Act, 2000 (Act No. 26 of 2000). By permitting either party to insist on an enquiry under this section the amended provision reduces the risk of collateral litigation, including High Court litigation, which has been common in these circumstances.

33. AMENDMENT OF SECTION 189A

Inserts subsection (2)

"(d) a consulting party may not unreasonably refuse to extend the period for consultation if such an extension is required to ensure meaningful consultation."; and

Deletes subsection (19).

IMPACT

Section 189A precludes a party from unreasonably refusing to agree to extend the period for consultation over a proposed retrenchment. Section 189A is also amended by deleting subsection (19), which set out the test for determining the substantive fairness of a dismissal under section 189A. Specifying the test to be applied in section 189A retrenchments has led to uncertainty about whether and to what extent this should apply to cases of retrenchment where section 189 applies. The courts should retain their discretion to develop the jurisprudence in this area in the light of the circumstances and facts of each case and to articulate general principles applicable to all retrenchment cases.

34. AMENDMENT OF SECTION 190

Inserts subsection (2) (d)

"(d) if an employer terminates an employee's employment on notice, the date of dismissal is the date on which the notice expires or, if it is an earlier date, the date on which the employee is paid all outstanding salary."

IMPACT

Section 190 of the Act creates certainty about the date of dismissal if an employee is dismissed on notice but paid all outstanding salary due to him or her before expiry of the notice period.

35. AMENDMENT OF SECTION 191

Amends subsection (5) (a)

"If a *council* or a commissioner has certified that the *dispute* remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the *council* or the Commission received the referral and the *dispute* remains unresolved—"; and

Amends subsection (12)

"(12) [If an] An employee who is dismissed by reason of the employer's operational requirements following a consultation procedure in terms of section 189 that applied to that employee only, the employee may elect to refer the *dispute* either to arbitration or to the Labour Court if—
(a) the employer followed a consultation procedure that applied to that employee only, irrespective of whether that procedure complied with section 189;

(b) the employer's operational requirements lead to the dismissal of that employee only; or

(c) the employer employs less than ten employees, irrespective of the number of employees who are dismissed."

IMPACT

Section 191 caters for any agreed extension of the conciliation period. The jurisdiction of the CCMA to arbitrate disputes about dismissals for operational requirements involving only one employee is clarified. In addition, the CCMA will have jurisdiction to arbitrate disputes about dismissals for operational requirements involving small employers, namely, those employing less than 10 employees. This is aimed at providing cheaper and less formal adjudication in these circumstances.

36. SUBSTITUTION OF HEADING TO CHAPTER IX

Inserts a new heading

"REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS".

37. AMENDMENT OF SECTION 198

Amends subsection (1) (a)

"(a) who [render services to, or] perform work for [,] the client; and";

Amends subsection (4) (d)

"(d) a sectoral determination made in terms of the [Wage] Basic Conditions of Employment Act"; and

Inserts subsection (4A)

"(4A) If the client of a temporary employment service is jointly and severally liable in terms of section 198(4) or is deemed to be the employer of an employee in terms of section 198A(3)(b)—

(a) the employee may institute proceedings against either the temporary employment service or the client or both the temporary employment service and the client;

(b) a labour inspector acting in terms of the Basic Conditions of Employment Act may secure and enforce compliance against the temporary employment service or the client as if it were the employer, or both; and

(c) any order or award made against a temporary employment service or client in terms of this subsection may be enforced against either.

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(4B) (a) A temporary employment service must provide an employee whose service is procured for or provided to a client with written particulars of employment that comply with section 29 of the Basic Conditions of Employment Act, when the employee commences employment.

(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to a person whose services were procured for or provided to a client by a temporary employment service in terms of subsection 198(1) prior to the commencement of the Labour Relations Act, 2014.

(4C) An employee may not be employed by a temporary employment service on terms and conditions of employment which are not permitted by this Act, any employment law, sectoral determination or collective agreement concluded in a bargaining council applicable to a client to whom the employee renders services.

(4D) The issue of whether an employee of a temporary employment service is covered by a bargaining council agreement or sectoral determination, must be determined by reference to the sector and area in which the client is engaged.

(4E) In any proceedings brought by an employee, the Labour Court or an arbitrator may—

(a) determine whether a provision in an employment contract or a contract between a temporary employment service and a client complies with subsection (4C); and

(b) make an appropriate order or award.

(4F) No person must perform the functions of a temporary employment service unless it is registered in terms of any applicable legislation, and the fact that a temporary employment service is not registered will not constitute a defence to any claim instituted in terms of this section or 198A."

IMPACT

Section 198 effectively addresses certain problems and abusive practices associated with temporary employment services or commonly referred to as "labour brokers". The main thrust of the amendments is to restrict the employment of more vulnerable, lower-paid workers by a temporary employment service to situations of genuine and relevant "temporary work", and to introduce other measures to protect workers employed by temporary employment services.

Section 198 of the Act continues to apply to all employees. It retains the general provisions that a temporary employment service is the employer of persons whom it employs and pays to work for a client, and that a temporary employment service and its client are jointly and severally liable for specified contraventions of employment laws.

The proposed amendment seeks to clarify provisions relating to temporary employment services by providing for the following:

- (a) An employee bringing a claim for which a temporary employment services and client are jointly and severally liable may institute proceedings against either the temporary employment services or the client or both and may enforce any order or award made against the temporary employment services or client against either of them.
- (b) A labour inspector acting in terms of the Basic Conditions of Employment Act may secure and enforce compliance against the temporary employment services or the client, as if it were the employer, or both.
- (c) A temporary employment services may not employ an employee on terms and conditions of employment not permitted by the Act, a sectoral determination or a collective agreement concluded at a bargaining council that is applicable to a client for whom the employee works.
- (d) The Labour Court or an arbitrator may now rule on whether a contract between a temporary employment service and a client complies with the Act, and make an appropriate award.
- (e) A temporary employment service must be registered to conduct business, but the fact that it is not registered is no defence to any claim instituted in terms of the section 198A.
- (f) A temporary employment service must provide an employee it assigns to a client with written particulars of employment that comply with section 29 of the Basic Conditions of Employment Act, when the employee commences employment.

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38. INSERTION OF SECTIONS 198A – 198D

Inserts sections 198A-198D

"198A. Application of section 198 to employees earning below earnings threshold

- (1) In this section, a 'temporary service' means work for a client by an *employee*—
 - (a) for a period not exceeding three months;
 - (b) as a substitute for an *employee* of the client who is temporarily absent; or
 - (c) in a category of work and for any period of time which is determined to be a temporary service by a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8).
- (2) This section does not apply to *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*.
- (3) For the purposes of *this Act*, an *employee*—
 - (a) performing a temporary service as contemplated in subsection (1) for the client is the *employee* of the temporary employment services in terms of section 198(2); or
 - (b) not performing such temporary service for the client is—
 - (i) deemed to be the *employee* of that client and the client is deemed to be the employer; and
 - (ii) subject to the provisions of section 198B, employed on an indefinite basis by the client.
- (4) The termination by the temporary employment services of an *employee's* service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of subsection (3)(b) or because the *employee* exercised a right in terms of this Act, is a *dismissal*.
- (5) An *employee* deemed to be an *employee* of the client in terms of subsection (3)(b) must be treated on the whole not less favourably than an *employee* of the client performing the same or similar work, unless there is a justifiable reason for different treatment.
- (6) The *Minister* must by notice in the *Government Gazette* invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the *Minister* in terms of subsection (1)(c).
- (7) The *Minister* must consult with *NEDLAC* before publishing a notice or a provision in a sectoral determination contemplated in subsection (1)(c).
- (8) If there is conflict between a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice by the *Minister* contemplated in subsection (1)(c)—
 - (a) the *collective agreement* takes precedence over a sectoral determination or notice; and
 - (b) the notice takes precedence over the sectoral determination.
- (9) Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of section 198(1) before the commencement of the Labour Relations Amendment Act, 2014, acquire the rights contemplated in subsections (3), (4) and (5) with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

198B. Fixed term contracts with employees earning below earnings threshold

- (1) For the purpose of this section, a 'fixed term contract' means a contract of employment that terminates on—
 - (a) the occurrence of a specified event;
 - (b) the completion of a specified task or project; or
 - (c) a fixed date, other than an *employee's* normal or agreed retirement age, subject to subsection (3).

- (2) This section does not apply to—
 - (a) *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*;
 - (b) an employer that employs less than 10 *employees*, or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—
 - (i) the employer conducts more than one business; or
 - (ii) the business was formed by the division or dissolution for any reason of an existing business; and
 - (c) an *employee* employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or *collective agreement*.
- (3) An employer may employ an *employee* on a fixed term contract or successive fixed term contracts for longer than three months of *employment* only if—
 - (a) the nature of the work for which the *employee* is employed is of a limited or definite duration; or
 - (b) the employer can demonstrate any other justifiable reason for fixing the term of the contract.
- (4) Without limiting the generality of subsection (3), the conclusion of a fixed term contract will be justified if the *employee*—
 - (a) is replacing another *employee* who is temporarily absent from work;
 - (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
 - (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
 - (d) is employed to work exclusively on a specific project that has a limited or defined duration;
 - (e) is a non-citizen who has been granted a work permit for a defined period;
 - (f) is employed to perform seasonal work;
 - (g) is employed for the purpose of an official public works scheme or similar public job creation scheme;
 - (h) is employed in a position which is funded by an external source for a limited period; or
 - (i) has reached the normal or agreed retirement age applicable in the employer's business.
- (5) *Employment* in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration.
- (6) An offer to employ an *employee* on a fixed term contract or to renew or extend a fixed term contract, must—
 - (a) be in writing; and
 - (b) state the reasons contemplated in subsection (3)(a) or (b).
- (7) If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract as contemplated in subsection (3) and that the term was agreed.
- (8)
 - (a) An *employee* employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an *employee* employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.
 - (b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.
- (9) As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an *employee* employed in terms of a fixed term contract and an *employee* employed on a permanent basis with equal access to opportunities to apply for vacancies.
- (10)
 - (a) An employer who employs an *employee* in terms of a fixed term contract for a reason contemplated in subsection (4)(d) for a period exceeding 24 months must, subject to the terms of any applicable *collective agreement*, pay the *employee* on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the *Basic Conditions of Employment Act*.
 - (b) An *employee* employed in terms of a fixed-term contract, as contemplated in paragraph (a), before the commencement of the Labour Relations Amendment Act, 2014, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.

- (11) An *employee* is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed term contract, the employer offers the *employee* employment or procures employment for the *employee* with a different employer, which commences at the expiry of the contract and on the same or similar terms.

198C. Part-time employment of employees earning below earnings threshold

- (1) For the purpose of this section—
- (a) a part-time *employee* is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who works less hours than a comparable full-time *employee*; and
- (b) a comparable full-time *employee*—
- (i) is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who is identifiable as a full-time *employee* in terms of the custom and practice of the employer of that *employee*; and
- (ii) does not include a full-time *employee* whose hours of work are temporarily reduced for *operational requirements* as a result of an agreement.
- (2) This section does not apply—
- (a) to *employees* earning in excess of the threshold determined by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*;
- (b) to an employer that employs less than 10 *employees* or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—
- (i) the employer conducts more than one business; or
- (ii) the business was formed by the division or dissolution, for any reason, of an existing business;
- (c) to an *employee* who ordinarily works less than 24 hours a month for an employer; and
- (d) during an *employee's* first three months of continuous *employment* with an employer.
- (3) Taking into account the working hours of a part-time *employee*, irrespective of when the part-time *employee* was employed, an employer must—
- (a) treat a part-time *employee* on the whole not less favourably than a comparable full-time *employee* doing the same or similar work, unless there is a justifiable reason for different treatment; and
- (b) provide a part-time *employee* with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time *employee*.
- (4) Subsection (3) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time *employees* employed before the commencement of the Labour Relations Amendment Act, 2014.
- (5) After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time *employee* with the same access to opportunities to apply for vacancies as it provides to full-time *employees*.
- (6) For the purposes of identifying a comparable full-time *employee*, regard must be had to a full-time *employee* employed by the employer on the same type of *employment* relationship who performs the same or similar work—
- (a) in the same *workplace* as the part-time *employee*; or
- (b) if there is no comparable full-time *employee* who works in the same *workplace*, a comparable full-time *employee* employed by the employer in any other *workplace*.

198D. General provisions applicable to sections 198A to 198C

- (1) Any *dispute* arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or a *bargaining council* with jurisdiction for conciliation and, if not resolved, to arbitration.
- (2) For the purposes of sections 198A(5), 198B(8) and 198C(3)(a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account—
 - (a) seniority, experience or length of service;
 - (b) merit;
 - (c) the quality or quantity of work performed; or
 - (d) any other criteria of a similar nature,and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).
- (3) A party to a dispute contemplated in subsection (1), other than a dispute about a dismissal in terms of section 198A(4), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.
- (4) The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.
- (5) If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.
- (6) The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in subsection (3) or (5)."

IMPACT

Section 198A seeks to introduce additional protection for employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. For the purposes of the Act, employees are treated as the employees of the client if they work for a period in excess of three months. The only exception to this is employees who work as a substitute for an employee of the client who is temporarily absent. Temporary services may also be regulated by a collective agreement concluded in a bargaining council, a sectoral determination, or a Ministerial notice.

To prevent abuse of the three-month period that constitutes temporary work, the section provides that a termination by temporary employment services of an employee's assignment with a client for the purpose of avoiding deemed employment by the client constitutes a dismissal. This means that the fairness of the termination of an assignment may be challenged in terms of the Act. Employees deemed under this provision to be employees of the client must be treated on the whole not less favourably than employees of the client who perform the same or similar work, unless there is a justifiable reason for different treatment. This means, for example, that if an employee is procured by a temporary employment service for a client for three months, but is kept on after the expiry of the three-month period, then that employee must, unless there is a justifiable reason for different treatment, be paid the same wages and benefits as the client's other employees who are performing the same or similar work.

Like section 198A, the proposed section 198B introduces additional protection for employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. This section does not apply to employees who are employed in terms of a statute, sectoral determination or collective agreement that permits the conclusion of a fixed term contract. In addition, and in order to accommodate new and small businesses, the section does not apply to:

- (a) an employer that employs less than 10 employees; or
- (b) an employer that employs less than 50 employees and whose business has been in operation for less than two years.

These exclusions do not apply if the employer conducts more than one business or the business was formed by the division or dissolution for any reason of an existing business.

An employer is permitted to employ an employee to whom this proposed amendment applies on a fixed term contract or successive fixed term contracts for up to three months. An employee may be employed on a fixed term contract for a longer period if the nature of the work for which the employee is engaged is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract. The period of three months may be varied by a sectoral determination or a collective agreement concluded at a bargaining council.

The proposed amendment provides a non-exhaustive list of justifiable reasons for fixing the term of a contract, which include the following:

(a) An employee to whom the section applies who is employed for a period longer than three months is deemed to be employed for an indefinite period unless the nature of the work is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract.

(b) An employer who employs an employee to whom the section applies on a fixed term contract or who renews or extends a fixed term contract, must do so in writing and must state the reason that justifies the fixed term nature of the employment contract.

(c) An employer bears an onus to prove in any relevant proceedings that there is a justifiable reason for fixing the term of the contract and that the term was agreed.

The amendments provide the following additional protection for certain specified employees:

(a) An employee employed on a fixed term contract for more than three months (or any other period determined by a sectoral determination or collective agreement concluded at a bargaining council) must be treated on the whole not less favourably than an employee on an indefinite contract performing the same or similar work, unless there is a justifiable reason for treating the employee differently. What may constitute a justifiable reason for this purpose is dealt with in section 198D.

(b) An employer must provide an employee employed on a fixed term contract with the same access to opportunities to apply for vacancies as it provides to an employee employed on an indefinite contract of employment.

(c) If a fixed term of longer than 24 months can be justified under the section, the employer must, on expiry of the contract and subject to the terms of any collective agreement regulating the issue, pay the employee one week's remuneration for each completed year of the contract. An employee is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed-term contract, the employer offers the employee employment or procures employment for the employee with a different employer which commences no later than 30 days after expiry of the contract and on the same or similar terms.

Section 198C seeks to regulate the work of vulnerable part-time employees by reflecting the provisions regulating part-time employees in the European Union, and the ILO Convention on Part-time Work (Convention 175, 1994).

Similar to sections 198A and 198B, section 198C applies only to employees who earn on or below the threshold prescribed in terms of section 6(3) of the Basic Conditions of Employment Act. This provision does not apply to employees who ordinarily work less than 24 hours a month, or during the first three months of employment. In order to accommodate new and small businesses this section does not apply to:

(a) an employer that employs less than 10 employees; and

(b) an employer that employs less than 50 employees and whose business has been in operation for less than two years, unless the employer conducts more than one business or the business was formed by the division or dissolution for any reason of an existing business.

The amendment seeks to define part-time and comparable full-time employees, and requires employers to:

(a) Treat part-time employees on the whole not less favourably than comparable full-time employees doing the same or similar work, unless there is a justifiable reason for different treatment. What constitutes a justifiable reason for differentiation is dealt with in section 198D.

(b) Provide part-time employees with access to training and skills development that is on the whole not less favourable than the access applicable to comparable full-time employees.

(c) Provide part-time employees with the same access to opportunities to apply for vacancies as full-time employees.

Section 198D provides that disputes about the interpretation or application of sections 198A to 198C may be referred to the CCMA or a bargaining council with jurisdiction for conciliation and, if not resolved, to arbitration. A justifiable reason for different treatment (referred to in sections 198A, 198B and 198C) includes different treatment which is a result of the application of a system that takes into account—

(a) seniority, experience or length of service;

(b) merit;

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(c) the quality or quantity of work performed; and

(d) any other criteria of a similar nature not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

THESE SECTIONS READ AS FOLLOWS AS SUMMARIES

"198A. Application of section 198 to employees earning below earnings threshold

Note - a 'temporary service' means work for a client by an *employee*—for a period not exceeding three months; as a substitute for an *employee* of the client who is temporarily absent; or in a category of work and for any period of time which is determined to be a temporary service by a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice published by the Minister.

Note - This section does not apply to *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*.

Note - an *employee* performing a temporary service for the client is the *employee* of the temporary employment services in terms of section 198(2); or not performing such temporary service for the client is deemed to be the *employee* of that client and the client is deemed to be the employer; and subject to the provisions of section 198B, employed on an indefinite basis by the client.

The termination by the temporary employment services of an *employee's* service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of this new amendment reflected above or because the *employee* exercised a right in terms of this Act, is a *dismissal*.

An *employee who is* deemed to be an *employee* of the client in terms of the above provisions must be treated on the whole not less favourably than an *employee* of the client performing the same or similar work, unless there is a justifiable reason for different treatment.

The *Minister* must by notice in the *Government Gazette* invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the *Minister*. The *Minister* must consult with *NEDLAC* before publishing a notice or a provision in a sectoral determination.

If there is conflict between a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice by the *Minister* the *collective agreement* takes precedence over a sectoral determination or notice; and the notice takes precedence over the sectoral determination.

Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of section 198(1) before the commencement of the Labour Relations Amendment Act, 2014, acquire the rights contemplated above with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

198B. Fixed term contracts with employees earning below earnings threshold

Note a 'fixed term contract' means a contract of employment that terminates on the occurrence of a specified event; the completion of a specified task or project; or a fixed date, other than an *employee's* normal or agreed retirement age.

Note that this section does not apply to— *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*; an employer that employs less than 10 *employees*, or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless— the employer conducts more than one business; or the business was formed by the division or dissolution for any reason of an existing business; and an *employee* employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or *collective agreement*.

An employer may employ an *employee* on a fixed term contract or successive fixed term contracts for longer than three months of *employment* only

if the nature of the work for which the *employee* is employed is of a limited or definite duration; or the employer can demonstrate any other justifiable reason for fixing the term of the contract. Without limiting the generality the conclusion of a fixed term contract will be justified if the *employee* is replacing another *employee* who is temporarily absent from work; is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months; is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession; is employed to work exclusively on a specific project that has a limited or defined duration; is a non-citizen who has been granted a work permit for a defined period; is employed to perform seasonal work; is employed for the purpose of an official public works scheme or similar public job creation scheme; is employed in a position which is funded by an external source for a limited period; or has reached the normal or agreed retirement age applicable in the employer's business.

Employment in terms of a fixed term contract concluded or renewed in contravention of the above is deemed to be of indefinite duration.

An offer to employ an *employee* on a fixed term contract or to renew or extend a fixed term contract, must be in writing; and state the reasons.

If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract and that the term was agreed.

An *employee* employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an *employee* employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment. This provision applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.

As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an *employee* employed in terms of a fixed term contract and an *employee* employed on a permanent basis with equal access to opportunities to apply for vacancies.

An employer who employs an *employee* in terms of a fixed term contract for a period exceeding 24 months must, subject to the terms of any applicable *collective agreement*, pay the *employee* on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the *Basic Conditions of Employment Act*.

An *employee* employed in terms of a fixed-term contract before the commencement of the Labour Relations Amendment Act, 2014, is entitled to the remuneration in respect of any period worked after the commencement of the said Act. But An *employee* is not entitled to payment if, prior to the expiry of the fixed term contract, the employer offers the *employee* employment or procures employment for the *employee* with a different employer, which commences at the expiry of the contract and on the same or similar terms.

198C. Part-time employment of employees earning below earnings threshold

Note- a part-time *employee* is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who works less hours than a comparable full-time *employee*; and a comparable full-time *employee*— is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who is identifiable as a full-time *employee* in terms of the custom and practice of the employer of that *employee*; and does not include a full-time *employee* whose hours of work are temporarily reduced for *operational requirements* as a result of an agreement.

This section does not apply to *employees* earning in excess of the threshold determined by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*; to an employer that employs less than 10 *employees* or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—the employer conducts more than one business; or the business was formed by the division or dissolution, for any reason, of an existing business; to an *employee* who ordinarily works less than 24 hours a month for an employer; and during an *employee's* first three months of continuous *employment* with an employer.

Taking into account the working hours of a part-time *employee*, irrespective of when the part-time *employee* was employed, an employer must— treat a part-time *employee* on the whole not less favourably than a comparable full-time *employee* doing the same or similar work, unless there is a justifiable reason for different treatment; and provide a part-time *employee* with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time *employee*. This does not apply, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time employees employed before the commencement of the Labour Relations Amendment Act, 2014.

After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time *employee* with the same access to opportunities to apply for vacancies as it provides to full-time *employees*.

For the purposes of identifying a comparable full-time *employee*, regard must be had to a full-time *employee* employed by the employer on the same type of *employment* relationship who performs the same or similar work—in the same *workplace* as the part-time *employee*; or if there is no comparable full-time *employee* who works in the same *workplace*, a comparable full-time *employee* employed by the employer in any other *workplace*.

198D. General provisions applicable to sections 198A to 198C

Any *dispute* arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or a *bargaining council* with jurisdiction for conciliation and, if not resolved, to arbitration.

For the purposes of sections 198A(5), 198B(8) and 198C(3)(a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account—

(a) seniority, experience or length of service;

(b) merit;

(c) the quality or quantity of work performed; or

(d) any other criteria of a similar nature,

and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

A party to a dispute other than a dispute about a dismissal in terms of section 198A(4), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.

The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.

If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.

The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute, after the relevant time limit set out above.

39. AMENDMENT OF SECTION 200A

Insertion under subsection (1)

"Until the contrary is proved, for the purposes of this Act, any employment law and section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936), a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present:"

IMPACT

Section 200A of the Act extends the application of the presumption in the section, as to who is an employee, to other employment laws and to section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936).

40. INSERTION OF SECTION 200B IN ACT 66 OF 1995.

Insertion of section 200B

"200B. Liability for employer's obligations

(1) For the purposes of this Act and any other employment law, 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of this Act or any other employment law.

(2) If more than one person is held to be the employer of an employee in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of this Act or any other employment law."

Note- , 'employer' includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of *this Act* or any other *employment law*. If more than one person is held to be the employer of an *employee* those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of *this Act* or any other *employment law*.

IMPACT

This new section seeks to provide for the liability of employer's obligations in order to prevent simulated arrangements or corporate structures that are intended to defeat the purposes of the Act or any other employment law, and to provide for joint and several liability on the part of persons found to be employers under this section for any failures to comply with an employer's obligations under the Act or any employment law. This is particularly important in the context of subcontracting and outsourcing arrangements if these arrangements are subterfuge to disguise the identity of the true employer.

41. AMENDMENT OF SECTION 203

Insertion of subsection (2A) and (2B)

"(2A) The Minister may issue a code of good practice by publishing it in the Government Gazette in accordance with the provisions of this section, if—

(a) proposals relating to the code of good practice have been tabled and considered by NEDLAC; and

(b) NEDLAC has reported to the Minister that it has been unable to reach agreement on the matter.

(2B) Subsection (2A) applies to the amendment or replacement of an existing code of good practice."

IMPACT

Section 203 of the Act permits the Minister of Labour to issue a code of good practice to be published in the Gazette where parties to NEDLAC have not been able to reach agreement on the code. The Minister can only do this if proposals relating to the code have been tabled at NEDLAC and NEDLAC has reported to the Minister that it has been unable to reach agreement on the code.

42. AMENDMENT OF SECTION 213

Inclusion of the following definitions

" 'Commission' mean the Commission for Conciliation, Mediation and Arbitration established by section 112.;"

" 'serve' means to send by electronic mail, registered post, telegram, telex, telefax or to deliver by hand, and—

(a) in respect of the Labour Courts, any other method of service specified in the rules of the Labour Court;

(b) in respect of the Commission, any other method of service specified in the Rules of the Commission;

(c) in respect of a bargaining council, any other method of service specified in a collective agreement concluded in the bargaining council."

REFERENCE

THE PRESIDENCY

No. 1011 9 December 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 37 of 2014., 2014

APPLIES TO:

APPLIES TO ALL EMPLOYERS AND EMPLOYEES INCLUDING PART TIME EMPLOYEES.

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75 KING STREET, BERARIO, JOHANNESBURG, SOUTH AFRICA | P.O. BOX 731336, FAIRLAND, 2030 | TEL: 011 678 0602 | FAX: 011 476 9863 | DIRECTORS: ALISON LEE