

Impact of amendments to Labour Relations Act

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Recent comments by the Minister of Labour, Mildred Oliphant, criticising employers who were laying off workers after a three month contract after which they would be deemed permanent employees, should be seen as a warning to labour brokers and clients, since the liability and risks associated with circumvention of the Act are real, and are easily accessible to employees.



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According to the new amendments of the Labour Relations Act (LRA), an employee of a labour broker is deemed to be an employee of a client after three months if there is not a need for genuine temporary employment. We have seen an increase in advisory work to labour brokers and their clients in light of the LRA amendments, and parties to labour broking agreements should be well advised on the inherent risks in the practice of terminating the placement of an employee at a client before the three month deeming provisions apply.

This practice by labour brokers, whether it is at the insistence of the client or the labour brokers themselves, exposes both parties to liability at the CCMA or the Labour Court. The amendments to the LRA have specifically included an anti-avoidance provision which renders the termination of the employee's placement with a client as a dismissal if the purpose of such a termination is to avoid the consequences of the amendments. In this case, both the labour broker and the client can be held jointly and severally liable for the consequences of an unfair dismissal dispute.

CCMA jurisdiction

The LRA amendments have specifically provided the CCMA with jurisdiction to hear any disputes relating to the interpretation or application of the new amendments in addition to the powers that it has in dealing with unfair dismissal and unfair labour practice disputes. Therefore, an employee may allege that he or she was unfairly dismissed by the client or the labour broker and can refer an unfair dismissal dispute to the CCMA for conciliation and arbitration.

The consequence of a finding of an unfair dismissal by an arbitrator may be reinstatement or re-employment - either at the labour broker or at the client, and can include an award of compensation to the maximum of 12 months' remuneration. Moreover, such a finding may result in costly review proceedings at the Labour Court.

In conclusion, labour brokers should heed caution when attempting to circumvent the amendments in the Act, since this could result in time consuming and costly litigation not only for themselves, but also for the client.

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