To broke or go broke

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Much is being spoken about the practice of labour broking. The left claiming it is exploitation of workers' rights and business seeing it as a necessary form of employment across all business sectors.

Where there is a genuine requirement to utilise temporary labour, then this is acceptable. However, when a 'temp' has been working through a labour broker for example 10 years, and in many cases is earning as little as 25% compared to a permanent employee doing the same job, then something is amiss and morally wrong.

Whilst the proposed amendments to the Labour Relations Act Amendment Bill, 2012 have been somewhat diluted, labour brokers will still be statutorily provided for and allowed to operate, despite COSATU previously calling for an outright ban. The proposed amendments, nevertheless, have far reaching consequences and ramifications for business.

Firstly, they propose a limitation on the duration for which the labour broker may procure and supply labour to a client. Secondly, they provide for significant provisions regulating terms and conditions of employment, including parity in earnings between the permanent and temporary employees. Thirdly, the legal principle of joint and several liability is extended to the law of unfair dismissal.

Proposed new section ambiguous

The proposed new Section 198A defines 'temporary services' as work for a period not exceeding six months, which means that after six months the labour broker and client are jointly and severally liable in respect of unfair dismissal claims. More importantly, it limits the rights to utilise the services of employees of a labour broker to a maximum period of six months.

However, it is ambiguous to the extent that it does not state whether the said six month period is continuous or not, or whether it is in the aggregate or not. It also does not canvass the possibility of a client utilising more than one labour broker. Furthermore, it does not provide for any explanation as to whether current law contained in bargaining council agreements, which regulate labour brokers, will remain or be superseded by the proposed new Section.

An employee of the labour broker may be deemed to be an employee of the client, however, the yardstick utilised here is in essence whether the work done is genuinely temporary or not. Reverting to the new Section 200B of the Liability for Employer Obligations, we find that it now broadens the scope of the joint and several liability principle by making provision for all 'associated' employers of an employee to be jointly and severally liable for any failure to comply with the obligations of an employer in terms of the LRA.

So whether deemed an exploitation of worker's rights or a necessary form of employment, labour broking remains under the spotlight as a highly contested area of human resources and opens an extremely wide potential for future liability among labour brokers.