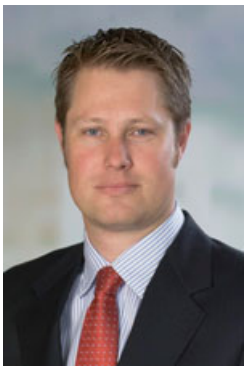
New bill will impact on labour relations

The Labour Relations Amendment Bill (LRAB) that was recently adopted by Parliament will have a significant impact on labour relations in South Africa. Gavin Stansfield, director in the employment practice says the LRAB provides more protection to fixed-term employees.



"The proposed amendment to s186(b) of the LRAB provides that a failure by an employer to permanently retain an employee, who was engaged under a fixed term contract of employment and who reasonably expected to be permanently retained on the same or similar terms, constitutes a dismissal."

In this regard, temporary employment services, or labour broker employees will be subject to a maximum period of three months after which those employees will be deemed to be permanent employees of the labour broker's client.

"The amendments seek to achieve a balance that considers the commercial sustainability of businesses while protecting the interests of workers who earn less than R193 805.00 per annum. The underlying principle in the proposed s198B is justifiability. Employers must be able to justify fixing the duration of an employment contract," Stansfield notes.

Procedure is streamlined

Johan Botes, director in the employment practice notes that the LRAB proposes streamlining the procedure to be followed when reviewing CCMA arbitration awards. It further discourages litigants from instituting review applications as a tactical ploy to frustrate or delay compliance with the award. "The amended s145(5) will provide that a person who institutes a review application must arrange for the matter to be heard by the Labour Court within six months of commencing proceedings. However, the Court has been given the power to condone a failure to comply with this provision on good cause shown.

"In terms of a new s145(6), judges will be required to hand down judgment in review applications, "as soon as reasonably possible." This provision reiterates the need for the speedy resolution of review applications. Botes notes that if review applications are to be finalised speedily, litigants will have to adhere to the timelines provided for pleadings.

"We expect that, given the renewed imperative to quickly dispose of matters, the court will be less inclined to grant condonation for failure to comply with these timelines. This should especially assist employers who find themselves at the mercy of slow ex-employees who fail to timeously review arbitration awards handed down against them. Employers should, however, take care in managing their own review applications. They should take all necessary steps to progress the matter to avoid censure for delays in the proceedings," he says.

Composition of workforce

Faan Coetzee, consultant in the employment practice says in terms of the proposed amendments, a commissioner determining a dispute about organisational rights will also have to consider the general composition of the workforce. This will include considering the extent to which employees are employed in non-standard forms of employment, such as through a temporary employment service provider or on a fixed-term contract.

"Effectively, these amendments allow the CCMA to award organisational rights that traditionally require majority membership to minority unions who nevertheless have substantial membership. However, these rights will be contingent on the trade union effectively being the only or most representative union in the workplace.

"Another proposed amendment to s21 will give arbitrators discretion to award organisational rights under s12, s13 and/or s15 in instances where a union does not meet the threshold established by a collective agreement in terms of s18. The threshold in the agreement may be disregarded if applying it would unfairly affect a trade union that represents a 'significant interest' or 'substantial number' of employees. The commissioner will be required to draw a balance between the majority trade union and the trade union seeking to enforce the rights," he says.

Less strike action

Coetzee notes that these amendments are aimed at promoting the inclusion of non-standard employees in the collective bargaining framework and expanding the application of organisational rights. This will effectively expand the employee pool in a workplace for purposes of procuring organisational rights. The amendments will have the effect of creating a more inclusive collective bargaining arena in the workplace.

"Hopefully, this will lessen the need felt by smaller unions to use industrial action as the only route to obtain organisational rights previously ordained for more representative unions only. In the current climate of violent strike action, any proposal that could result in the need to use less strike action should probably be welcomed," Coetzee says.

Mark Meyerowitz, an associate in the employment practice says a further amendment to this Bill proposes the insertion of a new s188B. "This new section will stipulate that employees who earn in excess of a certain amount of money - which is currently rumoured to be set at around R1 million per year - will no longer be afforded the protection of the general unfair dismissal provisions of the LRA.

"The new s188B will state that a dismissal will be deemed substantively and procedurally fair if an employee earning more than R1 million per year is given at least three months' notice of his or her dismissal, or if notice is not given, then compensation equal to at least three months' salary. However, these employees will still be afforded protection against unfair labour practices (such as disputes relating to the provision of benefits or suspensions) and against dismissals which are automatically unfair (such as dismissals based on racial discrimination or pregnancy).

"The explanatory memorandum to the LRAB states that this new provision is designed to create more flexibility for employers in dealing with the dismissal of high earning employees while still providing these employees with protection from unfair labour practices and automatically unfair dismissals," he adds.

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