COMMENCEMENT OF THE LABOUR RELATIONS ACT AMENDMENT, 2014: HOW DOES IT IMPACT YOUR COMPANY?

After much uncertainty and debate on whether the amendments to the Labour Relations Act will ever be effective, the President of the Republic of South Africa, Jacob Gedleyihlekisa Zuma, has finally published the effective date of the said Act.

In terms of Section 45 of the Labour Relations Amendment Act, 2014, the President has declared the 1 January 2015 as the effective date for the amendments. The said determination was gazetted on the 19th December 2014 as Number 38317.

Employers will have three (3)months from the 1st January 2015 to comply with the Amendment Act.

WHO WILL THIS AMENDMENT IMPACT?

- All employees
- All employers
- Registered Trade Unions

TEMPORARY EMPLOYMENT SERVICES (TES)

In terms of section 198A(1), "temporary services" is defined as only one of three things, being:

1. services limited to a fixed time period of not more than three months, or
2. where the employee is substituting for a temporarily absent permanent employee of another employer, or
3. where a particular work category is designated as a temporary service, or the maximum temporary period is determined by way of a collective agreement in a bargaining council or by way of a sectoral determination.

- Section 198A(2) stipulates that the provisions of Section 198A would only apply to those employees earning less than the threshold prescribed in terms of Section 6(3) of the BCEA from time to time.
- Section 198A(3) records that only those employees falling under the ambit of "temporary services" as defined will be regarded to be actual employees of the temporary employment service itself. Employees that fall outside the ambit of the definition are deemed to be employees of the client of the temporary employment service and not employees of the temporary employment service.
- i.e. A labour broker supplies you (the client) with an employee and this employee does not fall within the above definition, this employee will be deemed to be your permanent employee, irrespective of the agreement between your company and the labour broker.
- Joint and several liability between the client and the labour broker – An employee has recourse to refer both you (the client) and the Labour Broker to the CCMA or Labour Court regarding any labour disputes. I.e. should an employee be employed for a period longer than 3 months by a Labour Broker in your company, and the employee is subsequently dismissed, the employee would be able to institute action against both you the client and the labour broker.
- Deemed employees must have the same employment conditions as all other employees of the client – i.e. An employee employed through a labour broker or an employee on a fixed

term contract exceeding 3 months would have to receive the same benefits (Pension, Medical, Leave Conditions, Bonuses, and any other benefit given to employees due to their association with the company) as received by permanent employees of the client.

ORGANISATIONAL RIGHTS

- The LRAA makes it much easier for unions to obtain rights within the organisation. Commissioners can now give majority rights to sufficiently represented unions who do not have majority representation. I.e. In the past you had to have 50% + 1 union representivity to qualify for majority rights such as the right to union representatives and access to information; now even if there is not 50% +1 representivity, a commissioner can award majority rights to a union that is at least sufficiently represented, where no other union in that workplace already has majority rights.
- A commissioner can now extend a collective agreement to a 3rd party – Collective agreement between a TES and his employees, a commissioner can enforce this agreement on the client, and vice versa

STRIKES

- The subject matter for employees to strike about has been limited. An employee cannot strike on any labour dispute which can be adjudicated nor can they strike about the content of any sectoral determinations within the first 12 months of it being published. I.e. Where wage rates were published in a sectoral determination, no employee can strike about the minimum wage for 12 months after publication.
- Labour Court has a lot more power in terms of dealing with misconduct during strikes. I.e The Labour Court can suspend a strike, they can vary or change picketing agreements to make them more effective and suspend a lockout where an employer is in breach of the agreement. Protection against civil liability is also suspended where picketing agreements are breached.

DISMISSALS

- Definition of dismissal has changed the new definition as per LRAA:
- In terms of Section 186(1)(a), dismissal is not just limited to the termination of a contract of employment by an employer, but termination of any employment perse. The same amendment applies to Section 186(1)(e) and Section 186(1)(f). Dismissal is not limited to termination of an employment contract but applies to terminations of employment perse –
- I.e. where an employee is stationed with the client of a labour broker, and the client decides to terminate his employment, the employee can refer the client to the CCMA irrespective of the contract with the labour broker, due to the fact that the employment relationship is between the employee and the client.
- Failure to offer permanent employment once a fixed term contract has lapsed can be seen as unfair dismissal, where the employer cannot justify why no such permanent appointment can be made.
- Any dismissals will be automatically “unfair” if the reason for the dismissal is that the employee refused to accept a demand in respect of any matter of mutual interest between them and their employer - eg. Pay cut, longer hours. Such changes are now left solely to the ambit of collective bargaining.
- Dismissal date – Where an employee is not required to work their notice period and the employer ops to pay out the notice period, the date of dismissal is the day when the notice expires or day employee receives final payment, whichever comes first.

FIXED TERM CONTRACTS

Fixed term contracts cannot exceed 3 months, unless justifiable reason can be shown such as:

- If the employee replaces a permanent employee of an employer that is temporarily absent;
- If there is a temporary increase in the volume of work of an employer, provided the contract is then not for a period of more than 12 (twelve) months;
- If the employee is a student or recent graduate being trained for a profession;
- If the employee is exclusively employed on a specific project that has a limited or defined duration;
- If the employee is not a citizen and the employment is linked to the period of the employee's work permit
- If the employee performs of "seasonal work"
- If the employee is engaged in an official public works scheme or public job creation scheme
- Where the position the employee occupies is funded by an external source for a limited period
- If the employee has reached normal or agreed retirement age

- Fixed term contract that exceeds 3 months without justifiable reason would result in that employee automatically becoming a permanent employee of your organisation.
- Fixed term employees working for longer than 3 months must work under and receive the same benefits as all other permanent employees – unless a justifiable reason to differentiate in terms and conditions exists, such as length of service, seniority, etc.
- Should a Fixed term contract run in excess of 2 years, an employee would be entitled to severance pay equal to 1 week's remuneration for every full year of service upon termination of employment.