

LABOUR BILLS TO WEAKEN EMPLOYERS AND STRENGTHEN JOB LOSSES

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The government's unsatisfactory service delivery record threatens its prospects for the impending local government elections. Therefore the publication of four frightening labour bills may be aimed by the government at appeasing COSATU in the hope of retaining its support at the polls. The positive aspects of the new bills are outnumbered by provisions that, if implemented, will inflict the following severe damage on employers:

- Fixed-term employment contracts will be illegal if the employer cannot justify them on grounds that the work itself is genuinely limited in duration. Employers will have to convert all unjustified fixed-term contracts to permanent contracts and give the employees the relevant benefits;
- Employers will have to give to fixed-term employees some benefits enjoyed by their permanent colleagues;
- Fixed-term employees and those employed via placement agencies will be able to take employers to CCMA if they have a reasonable expectation of being offered permanent employment;
- Employers will have the primary legal responsibility for the rights of people placed with them by temporary employment agencies and labour brokers;
- The conciliation/arbitration process will be used more often;
- Bargaining councils may charge a levy to finance their dispute resolution services. Thus, employers could be making direct payments to enable employees to take them to conciliation and arbitration;
- Section 197 of the LRA will protect employees involved in second generation outsourcing;
- The Minister of Labour will have the power to dictate the representivity thresholds at which employers are required to give trade unions organisational rights;
- The Labour Minister will have the power to increase actual wages and not only minimum wages. Thus, those employers paying wages well over the legal minimum could nevertheless be forced to pay even higher wages;
- The Minister will dictate remuneration levels and other employment conditions in industries and sectors that are as yet not affected by sectoral determinations;
- Prosecution of non-compliant employers will be strengthened; and prison terms and penalties for breaches of the Basic Conditions of Employment Act will be increased as will fines for Employment Equity Act breaches;
- Employers will be forced to pay equal salaries to their employees doing the same or similar work. Failure to comply with this requirement will constitute unfair discrimination;
- Employers will no longer be able to use their financial circumstances and the lack of available candidates as excuses for failing to implement affirmative action;

- Employers will be required to report to the Department of Labour the details of every job vacancy they have and to report when these are filled;
- The Department of Labour will be able to offer to all people claiming UIF and to other job seekers vacant positions existing at every employer even where the employer has no intention of advertising the posts;
- Brokers/agencies dealing with temporary and permanent jobs will not be able to operate without a licence and such licences could be withheld or revoked should these agencies fail to comply with statutory requirements; and
- Employment agencies and labour brokers will be required to limit their services to providing job seekers with career information, matching them to vacant posts and referring them to employers.

Should the above amendments prevail local business are likely to step up their tendency to mechanise and to move their workplaces to the Far East. Overseas businesses will be more deterred than ever before from investing here in labour intensive projects. The ANC's stated policy of creating 'decent employment' will be contaminated by fast accelerating 'indecent unemployment'. I will go more deeply into the ramifications of these suicidal amendments during my next articles.

About the author:

Labour Law Management Consulting (LLMC) offers labour law and IR consulting and training services throughout South Africa. Over 25 years of experience in the field of industrial negotiations, labour law, dispute facilitation and general consulting gives us substantial competitive advantage. In addition, LLMC's CEO writes a weekly labour law column for The Star newspaper's Workplace and is co-author of two labour relations books. He has been a CCMA Commissioner and is the Chairperson of the Labour Affairs Committee of the SA Chamber of Commerce and Industry. This, together with the fact that our CEO is in demand as a speaker at conferences and seminars places LLMC at the cutting edge of the labour relations field. In recognition for his exceptional work in this field our CEO has been included in the book "WHO'S WHO IN SOUTHERN AFRICA".

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