

# SASLAW



**Workshop on proposed Labour Law  
Amendments**

# **Bradley Conradie**

- **EMPLOYMENT SERVICES BILL**
- **LABOUR RELATIONS AMENDMENT BILL**

# EMPLOYMENT SERVICES BILL

- Broad Aim
  - Provide for public employment services
  - Registration of private employment agencies
  - Establishment of the Employment Services Board
  - Establishment of Productivity SA

# Main Purpose

- Promote employment
- Improve access to the labour market
- Provide new entrants with the opportunity to gain work experience
- Improve employment prospects of work seekers, persons with disabilities and employees facing retrenchments
- Facilitate access by work seekers to training
- Promote employment growth and productivity

# PUBLIC EMPLOYMENT SERVICES

- The Department of Labour must provide a public employment service which includes:
  - Registering work seekers
  - Registering vacancies and other placement opportunities
  - Matching work seekers with available opportunities
  - Facilitating the placement of work seekers with employers or in other placement opportunities
  - Advising workers on access to social security benefits
  - Specialised services to assist the youth, new entrants, disabled persons and members of rural communities
  - Facilitating the exchange of information among labour market participants (employers, employees, work seekers, private employment agencies, SETA's and training providers)

# Reporting on vacancies and filling of positions

- Employers must notify the department of any vacancy or new position in their establishment within 14 working days after the position became vacant
- Director-General must be informed of the filling of a vacancy within 14 days of an appointment

# EMPLOYMENT INFORMATION SYSTEM

- The Department may develop an information system which records-
  - Names, qualifications and previous occupations of work seekers
  - Vacancies
  - Training opportunities
  - Specialised skills and qualifications of work seekers
  - Employer's details
  - Employment trends

# Youth

- Work schemes for unemployed youth may be established on terms and conditions as determined by the Minister on the recommendation of the Employment Conditions Commission
- The Bill allows for the possibility of an incentive or subsidy for employers in terms of the scheme

# Persons with disabilities

- Sheltered Employment Factories established to promote the employment of persons with disabilities
- Sheltered Employment Factories must-
  - provide work opportunities for disabled people
  - facilitate on the job training that will lead to qualifications and competencies that enable access to jobs and income generation
  - assist with placement
  - provide technical assistance to enterprises that promote the employment of people with disabilities
- Conditions of service to be determined by the Minister on recommendation of the Employment Commission

# Recession and closures

- Schemes may be established by the Minister to respond to recession
- The Minister may develop regulations dealing with turn around strategies, lay-offs and alternative employment opportunities
- The Minister may also subsidise worker allowances and or employer costs

# Employment of Foreigners

- Permitted in certain categories
- Must not compromise a South African citizens opportunity for employment, employment conditions, economic development or social stability
- Cannot dismiss or lay-off a South African as a result of having employed a foreigner

# Private employment agencies

- Defined as “any natural or juristic person who procures for or provides to an employer, other persons who render service or perform work for the employer”
- May only provide the following services-
  - Matching work seekers
  - Referring “workers” to employers
  - Providing career information
- Must be registered and issued with a licence
- May not charge a work seeker a fee. Only the employer can be charged
- The private employment agency must keep an electronic and manual register showing the work seekers registered with it, the workers that have been placed and the details of the employer where the worker has been placed

# EMPLOYMENT SERVICES BOARD

- Purpose is to advise the Minister on-
  - the employment services strategy
  - employment trends and statistics
  - employment schemes and opportunities

# PRODUCTIVITY SOUTH AFRICA

Aim is to promote employment growth and productivity

Functions include-

- promoting a culture of productivity
- developing productivity competencies
- facilitating and evaluating productivity improvement in the workplace
- measuring and evaluating productivity in the workplace
- research
- supporting initiatives aimed at preventing job losses

# LRA

## Section 115 – Functions of the CCMA

- Review any rules at least every 2 years
- Assist parties with serving of notices or documents
- Assist a party to enforce an arbitration award
- Representation of parties
- Consequence of non-attendance

## Section 136 – Appointment of commissioner to resolve dispute through arbitration

- An arbitrator must be appointed not only if certificate issued but also if the 30 day period (or longer as agreed) has ended

## Section 143 – Effect of arbitration awards

- Certified arbitration award in respect of a sum of money has the status of a writ of execution of the Magistrate's Court or High Court

## Section 144 – Variation and rescission

- Seeks to include certificates of outcome in addition to awards and rulings.
- Grounds for rescission of awards or rulings extended to include *“if there is good cause on any other ground for the award or ruling to be rescinded.”*

# Section 147 – dispute resolution functions in exceptional circumstances

- The CCMA must resolve a dispute referred to it which otherwise should have been dealt with through private dispute resolution if-
  - The employee is required to pay any part of the cost of the private dispute resolution, or
  - The person or body appointed is not independent of the employer

## Section 150 – Public interest conciliation

- CCMA may appoint a commissioner at the request of the parties or if the director believes it is in the public interest to do so
- Must be done in consultation with parties and the Secretary of the bargaining council with jurisdiction over the parties to the dispute
- A representative of organised labour and business may also be appointed
- Unless the parties agree otherwise – the right to strike or lock-out is suspended if a commissioner is appointed

## Section 187A

- Employees earning more than a prescribed amount will not be allowed to refer to the CCMA labour disputes in respect of unfair dismissals, unfair labour practices and section 197 disputes
- Does not affect automatically unfair dismissals

## Section 188 – pre-dismissal arbitration (inquiry)

- Now termed an inquiry as opposed to an arbitration.
- May be regulated by a collective agreement
- Ruling has the same status as an arbitration award
- Inquiry, without agreement, into allegations that the Protected Disclosures Act or section 5 of the Act has been contravened

# Section 191 – Disputes about unfair dismissals and Ulp

- Arbitration to follow immediately after certificate issued unless the parties and the commissioner agree otherwise or the commissioner concludes that it is unreasonable to do so after considering-
  - the nature of the dispute
  - the complexity of the dispute
  - the public interest

# Operational requirements dismissals

- An employee can go to the Labour Court or CCMA if
  - The employer followed a consultation procedure that applied to that employee only, irrespective of whether that procedure complied with section 189;
  - The employer's operational requirements for the dismissal relate to that employee only; or
  - The employer employs less than 10 employees

## Section 198 – Labour brokers

- Repealed in its entirety
- Does this mean the end of labour brokers?
- Definition and functions of PEA
- If they are still able to operate is there still an incentive to use them?
- Definition of employee-
  - “employee means any person employed by or working for an employer, who receives or is entitled to receive any remuneration, reward or benefit and works under the direction or supervision of an employer”

- Employer is now defined and means-
  - “any person, institution, organisation, or organ of state who employs or provides work to an employee or any other person and directly supervises, remunerates or tacitly or expressly undertakes to remunerate or reward such employee for services rendered”
- Contract of employment means-
  - A common law contract of employment; or
  - Any other agreement or arrangement under which a person agrees to work for an employer but excluding a contract of work as an independent contractor”

# End