

LABOUR BILLS RELEASED

If you have followed us on Twitter , you would be aware that the Basic Conditions of Employment and Labour Relations Bills have been released.

Cabinet has approved the 2 bills without a NEDLAC report and despite the fact that there are at least 40 areas of disagreement on these. A further concern is that the Bills were consented to without a further Regulatory Impact Assessment being done.

We briefly outline some of the proposed changes and the impact for you in this brief :

- The burning issue has always been the TES (commonly called labour broker industry). This industry remains subject to certain conditions and regulation. **(Please note you can still have TES employees (labour broker) after 6 months);**
- The Department of labour inspectors are able to go straight to the Labour Court to enforce compliance orders;
- The draft amendments give atypical employees (includes fixed term contracts, part time and TES employees) a right to be treated on the whole not less favourably than comparable permanent employees;
- There has been an insertion of a clause introducing termination without process for high paid executives (defined as those earning above R1 million rand);
- Unfortunately not enough done to curb violence in strikes. There were proposals by Government on the table but this was vehemently contested by COSATU, resulting in a watered down version being included in the Bill;
- Other changes make it possible for minority unions to claim organisational rights previously restricted to majority unions in certain circumstances;
- The Minister is also given the power to make a sectoral determination of general application – applicable to all sectors not otherwise covered and an increase based on actual wages not the minimum wage

BUSA outlined its concerns in a recent media briefing based on its own analysis which identifies some of the impacts of the Bills on jobs. These include and in summary are :

- Certain amendments would raise the cost and complexity of conducting business in South Africa. This then would have a ripple effect on employment.
- Over-regulation of atypical employment, most notably the new equal treatment requirements across categories of work, will result in the cost of employment rising significantly.
- The labour elasticity ratio is 0.7% in South Africa – i.e. for every 1% increase in employment cost there is a corresponding 0.7% decrease in employment levels. The equal treatment provision for contract and part-time workers will result in a considerable increase in the cost

of employment and consequently have a negative impact on job creation. The minimum prescribed increases in actual rates of pay, will also result in less employment and additional wage restraint in lower earning categories. This could result in employers using less labour-intensive methods. Alternatively, employers will resort to paying at the minimum wage, rather than above the minimum. This will further undermine collective bargaining, weaken trade unions and result in job losses.

- The amendments related to strikes and lock-outs are weak, misdirected and will not achieve their intended purpose of protecting people and property.
- The amendments proposed to Sections 68 – 73 of the Basic Conditions of Employment Amendment Bill intended to remove bottlenecks and delays in the enforcement process are punitive and will not achieve the intended outcome.

BUSA went further to state that “Business believes that in their current format, the Bills are hugely onerous and punitive and will have a negative impact on business. We are also concerned that these amendments will limit the employer’s ability to adjust and adapt consistently to changing market conditions. For example, the proposed changes to Section 187 of the Labour Relations Amendment Bill make it an automatically unfair dismissal if an employee refuses to accept a change due to the employer’s operational requirements. Proposed changes to section 189A of the Bill extend the time period for facilitation prior to retrenchment beyond the current 60 days.

The proposed amendments go way beyond preventing abusive practices, and actually interfere with the flexibility of daily business operations and practices, which is an important factor in making business more competitive.”

Public hearings kick off next week on labour bills. Here is the schedule :

Province	Venue	Date	Time
04 April 2012	Orion Devonshire Hotel	Johannesburg	10h00-13h00
05 April 2012	Fountains Hotel	Cape Town	10h00-13h00
12 April 2012	Tropicana Hotel	Durban	10h00-13h00
17 April 2012	Eastern Cape Training Centre	Port Elizabeth	10h00-13h00
20 April 2012	Hunters Rest	Rustenburg	10h00-13h00
23 April 2012	President Hotel	Bloemfontein	10h00-13h00
24 April 2012	ICC Kimberley	Kimberley	10h00-13h00
26 April 2012	Protea Hotel	Witbank	10h00-13h00
02 May 2012	Meropa Casino	Limpopo – Polokwane	10h00-13h00

We urge business to attend the session in their area to stay up to date with the changes and provide your input. Our Grant Wilkinson will be attending the sessions. Please feel free to engage with Grant while you are there should you have any queries or concerns regarding the impact of the Bills on your business.

We will keep you updated with any developments and as the roadshow progresses.

If you want a full list of the changes, a copy of the Bills or if you want to discuss same, feel free to contact us on the details set out hereunder :

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