



## LABOUR LAW UPDATE

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### Labour Newsflash

Welcome to the next edition of the labour newsflash.

We thought we'd use the opportunity to highlight a flagship event in our calendar and also have this serve as a "Save the Date" for what was an exceptionally popular Employment Conference.

For more than two decades, Johnny has delivered his Labour Law Updates, unpacking some lessons from case law, as well as highlighting trends and providing insights into the latest developments affecting the labour market.

This year will prove no different, with the Annual Labour Law Update taking place on the following dates at a venue near you:

[East London: 22 September 2016](#)

[Port Elizabeth: 5 October 2016](#)

[Johannesburg: 19 October 2016](#)

[Durban: 21 October 2016](#)

[Cape Town: 11 November 2016](#)

As a teaser, we have provided you with a case which will be covered in the update, as well as an update on the position on the National Minimum Wage.

We are also proud to announce that due to the success of our inaugural Employment Conference earlier this year, we will be running this again next year on the 20<sup>th</sup> of April 2017 in Johannesburg.

The Employment Conference received rave reviews this year and we aim to make it bigger and better next year, with a veritable who's who already on the confirmed list of speakers.





Keep an eye on our various media to get the details and see who the speakers and exhibitors will be at what has become a marquee event on the Global calendar.

**Breakdown of the trust relationship**

***Communication Workers Union obo Mthembu / Telkom SA SOC Ltd - (2016)25 CCMA 8.37.2 also reported at [2016] 5 BALR 483 (CCMA)***

The employee, a technical officer, was dismissed for being absent without leave or being late for work on several occasions, and claiming over-time pay for periods he had not worked.

The Commissioner concluded that he had made himself guilty of misconduct.

When it came to the sanction of dismissal, however, the employee had relied on Edcon Ltd v Pillemer NO and others [2008] 5 BLLR 391 (SCA), in which it was held that employers are required to lead evidence to prove that the employment relationship has been destroyed by a dismissed employee's misconduct.

The CCMA noted that the LAC case (previous case discussed) had not followed the Edcon case (SCA).

The employer had led no evidence to prove that revival of the employment relationship would be intolerable.

The employer had, accordingly, failed to discharge the onus of proving that the dismissal was fair.

The employee was reinstated with retrospective effect.

*Comment: This supports our opinion of leading such evidence at the disciplinary hearing and at the arbitration.*

**Update on the national minimum wage**

Following bilateral meetings between the Deputy President and the Nedlac constituencies, the Committee of Principals meeting of 25 June 2016 agreed to the establishment of a multi-disciplinary panel of experts to advise on the NMW, and also to make recommendations on the level at which the first NMW should be set.

The following sets out the Terms of Reference for the Advisory Panel.

The setting of a NMW will involve determining a meaningful level at which the first NMW could be set.

Different levels or ranges for a possible NMW that have been proposed by the NEDLAC constituencies should be considered along with the positions of the constituencies.





In particular, the Advisory Panel will be expected to make recommendations on the following areas, in order to determine:

A meaningful level range for the first NMW;

What the potential impact of the level of the NMW will be on employment; bargaining council agreement, collective agreements, and sectoral determinations;

Actions that can be taken to mitigate any negative impact of a NMW including, but not limited to: whether exclusions and/or exemptions or phasing in periods for small enterprises will be required to minimise the negative impact of the NMW;

Social and economic benchmarks that can be used to review the NMW, together with the recommended review period; and

The type of body that should be tasked to review the NMW.

**Timelines for completion of the advisory panel's work:**

06 July 2016: Notify Advisory Panel members on their appointment

13 July 2016: Initial meeting between the Deputy President and the Advisory Panel

14 July – 26 July: Meetings with constituencies on the Technical Task Team

12 September 2016: Submission of the panel's report to the Deputy President

22 September 2016: Submission of the panel's report to the Committee of Principals

We look forward to seeing you at both of the above mentioned events and look forward to engaging you on this ever developing topic that is labour law.

'Till next time

Johnny and Grant  
Global Business Solutions

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