



LABOUR LAW UPDATE



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Labour Newsflash

Welcome to the next edition of the labour newsflash, brought to you earlier than usual due to the recent Employment Conference.

Future Thinking, Now

At Global, our slogan is "Future Thinking Now". This was no more visible than when a crowd of over a hundred people attended our inaugural Employment Conference.

An idea born on the beach at a strategic session held in Cape Town in November last year, quickly got a head of steam and concluded in what will no doubt become an annual event.

Our inaugural Employment Conference

Quoting from the hit 1989 movie Field of Dreams, (apt as this was also the founding year of GBS) "If you build it they will come", attendees streamed into the OR Tambo Premier Hotel from as far afield as Queenstown. A big thank you must go out to all the attendees for their support.

The purpose of the Employment Conference was to provide an interactive platform to engage some of the most important role players in the labour market.

As expected, the panellists and speakers did not disappoint.

One of the hits of the conference was the "ask the expert" tables where attendees could sit around the table with experts such as Charles Nupen, Grant Wilkinson, Anndine Dippenaar, Natalie Singer, Menet Hamel, Robyn Evans and other associates and unpack the current topical issues of their choice. All this while registering, having a cup of coffee or enjoying your lunch.

Politics and Labour Law

Opening the proceedings was Justice Malala with his keynote "Beyond the Noise: SA Politics 2015-2025". Now one may ask what does politics have to do with Labour Law?





No doubt the two are intrinsically intertwined. Justice shared some eye-opening insights with the key message being the necessity to ensure that our institutions work. Added to this was the current elephant in the room “Racism” which he feels is a discussion which is to be had internally rather than “out there”. There is no doubt a change of mindset required in order to stride into the transformation area with confidence.

Employment Equity

Justice’s talk laid the foundation for the Chair of the Employment Equity Commission, Tabea Kabinde. We were fortunate to get some insights into the launch of the Employment Equity Commission’s report. The talk emphasised the need for an inclusive environment, preceded by the mindset shift listed above.

Tabea shared some telling facts on Employment Equity for context in the panel debate. She emphasised that rather than being pre-occupied with reporting, organisations should first focus on the environment. Tabea concluded that the Employment Equity Act is achieving its objectives albeit not as fast as we want.

The talk was followed by a lively panel debate on whether Employment Equity is achieving its objectives. The panel featured Tabea, Justice and our very own Thembi Chagonda (recently appointed Employment Equity Commissioner) and Johnny Goldberg.

Takeouts from the debate were that there was some progress being made; that the Commission is actively engaging all stakeholders in an attempt to improve the system, as well as the need for organisations to put in the work and not just follow a tick box process which amounts to malicious compliance. Added to that a constructive engagement is required where the inspectorate not only wields the proverbial big stick but works with business where a business is willing, to ensure sustainable compliance strategies.

What’s gone wrong with Labour Law?

After the break Charles Nupen unpacked what’s gone wrong with Labour Law in South Africa. Charles emphasised the need to focus on the things we can change and to find a new way of doing things. His view is that despite the intention of the architects of the LRA to have less industrial action, this has in fact become more under the current dispensation.

Charles made the telling comment that he feels the CCMA is on an unsustainable trajectory and feels its direction should be that of dispute prevention.

Added to this, employers and unions need to build a shared vision of the kind of workplace they want, thus pushing engagements to solution based. To get to this point, he suggests, amongst other solutions, relationship driven entities with better educated role players. The telling question was asked: “When last did you train Managers and Shop Stewards...together?”

After this insightful talk, a panel discussion ensued with Justice, Charles, Johnny and Elias Monage. How good it was to see Johnny and Elias, once on other sides of a negotiation table, on the same panel.

Elias, who is part of the CCMA board, raised concern at the costs of not being able to filter claims as well as the necessity to talk about violence in strikes. He closed his opening salvo by emphasising the need for decisive leadership that would equate to talking about issues that matter.





Johnny bemoaned the short-term thinking occurring in a number of organisations. He echoed the view earlier stated of the need to build skills to engage each other.

Mixed messaging is a BIG problem. Organisations reward wrong behaviour, eg Pikitup workers were on an illegal strike but were still paid & receive bonuses. Elias emphasised that the lack of decisive leadership, mentioned earlier, entrenches incorrect behaviour.

A National Minimum Wage

Prof Ingrid Woolard unpacked key points of the report on the feasibility of a National Minimum wage. There was no clear indication that it impacts employment either way if set at a reasonable rate. However, if it were to be set at too high a level it would no doubt lead to job losses. The negative impact of a National Minimum Wage can be minimised if the changes are small and incrementally implemented.

The impact on jobs is different based on how easily manpower could be substituted by machinery or import of a finished product.

The other concern would be the impact on poverty. Things are not much clearer on that front in that the impact on poverty varies. It seems to have both the potential to slightly increase or reduce poverty from 55% currently to between 50 -57%.

Prof Woolard then went further to illustrate the complexities by informing the audience that SA has 124 separate Sectoral Determinations, not counting Collective Bargaining. This makes for an already highly complex environment.

A panel discussion followed with Justice, Prof Woolard, Elias as well as Dennis George of FEDUSA and Leon Louw of the Free Market Foundation.

One of the most pertinent issues was raised by Leon Louw of the Free Market Foundation. He asked whether, in a country with the highest unemployment rate in the world, the acceptance of any job losses relative to a National Minimum Wage is acceptable?

Elias Monage argued for the maintenance of sectoral minimums approach because they are linked to differences of skills, economic realities etc.

Equal Pay for work of Equal Value

The conference was closed off with Johnny discussing the Equal Pay challenge facing businesses and discussing the return to the value exchange equation.

Johnny unpacked some important case law which shows that retrenchment to avoid Equal Pay issues is unjustifiable. There are alternative options, like ring-fencing.

Johnny highlighted that unless business is competitive there's no point arguing about Equal Pay/Minimum Wage. What is important is that this hinges on Productivity. To ensure productivity though, performance management is key. There is a need to act on non-performers and not be afraid of recognising high performers, which will ensure fairness.





Conclusion

Overall, all present felt that the conference achieved its objectives and set a high watermark for us to aim for in years to come.

One of the attendees, Donna Merrifield of Diverse Human Resources, had the following to say after the event:

“What a great conference.... what a great Team GBS is too.... The round table expert discussions were excellent too! I am going to complete the booking form for Tony and I to attend the Mid-Year LLU – the topics just get better and better and obviously VERY appropriate to what is happening in the LL Arena now.

Thank you once again for all the arranging you did, especially around my booking for hotel and shuttle – what a difference it made to my experience.”

Thank you for your kind words, Donna. It is feedback like this that motivates us to keep doing what we do.

A big thank you once again to those who attended – especially those who travelled from far, as well as our media partners, exhibition stand holders and our speakers and panelists.

We are proud to announce that this will become an annual feature on the Global calendar and we hope to take labour law conferencing to new heights in the years to come.

We look forward to seeing you there!

Kind Regards

Johnny and Grant
Global Business Solutions

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