



## LABOUR LAW UPDATE

Enquiries contact: [Johnny@iafrica.com](mailto:Johnny@iafrica.com)  
[www.globalbusiness.co.za](http://www.globalbusiness.co.za)



### Labour Newsflash

Welcome to the next edition of the labour newsflash.

We'd like to start by thanking everyone who attended the Mid-Year Labour Law Update in the various regions for your support.

As always, it was a great pleasure to see familiar faces as well as welcome new attendees to the fold.

Sadly the labour market in South Africa is at an ever declining low ebb. One cannot read your daily paper without finding headlines about job losses and high wage increases.

Reports have it that government and labour are set to organise a summit to discuss ways to retain and create jobs in the tough current economic climate. Apparently a 10-person committee, consisting of ministers and two representatives each from the three largest labour federations, will arrange the summit. A date for the event has not yet been set.

Business Day reports that the University of Johannesburg's research on public protests up to 2013 reaffirmed the general opinion that SA has one of the highest global incidences of labour instability. The research indicated that Labour protests were the most common reason for crowd forming which at 46%, is more than twice that of community-based protests (including service delivery) at 22.1%. Community protests are however more likely to be disorderly than labour protests.

In the midst of this, consumer inflation has unexpectedly slowed to 6.1% in May while the expectations of unions in particular remain persistently high. Wage negotiations in several sectors are well underway and it will be interesting to see where parties settle.

The latest Salary Trends Survey conducted by ECA International indicate that companies in SA are forecasting pay increases of 6.9% this year, based on inflation forecasts of 5.9%.





Interestingly, the minimum wage rates in the Hospitality Sector have been increased by just under 14%. In that sector, the monthly increase for larger employers is just under R400 per month with effect from July 1, 2016.

This is not the type of increase one expects in the environment illustrated above. One hopes that the employers in the sector are able to mitigate this pressure and survive going ahead.

There is no point giving a 14% increase to no workers due to a company closing.

As always, the issue of fixed term contracts (FTC's) and Temporary Employment Services is always floating beneath the surface. We have summarised two cases which are clearly illustrative of the essentials to be cautious of when entering into FTC's with employees.

## **Case 1: Action according to rationale**

In *Wessels and others / Mtawelanga Trading* - **(2016)25 CCMA 7.1.14 also reported at [2016] 6 BALR 667 (CCMA)**, the four applicants were employed as painters on fixed-term contracts for the duration of a renovation contract.

Their supervisor brought their contracts to an end as the painting work had been completed.

They later referred a matter to the CCMA for unfair dismissal due to the fact that they had established that there were general workers doing their work after their departure.

Employers are not permitted to terminate fixed-term contracts before their expiry for operational requirements and because the employer had not consulted the employees, as required, the early termination was viewed as an unfair dismissal.

The employees were awarded compensation.

### ***Lessons to be learned:***

*It is important that your rationale for any fixed term contract is properly captured in the contract and that you do not terminate prior to the term thereof, unless you have a clause allowing for such early termination.*

*For longer term fixed term contracts, it is also essential to have a clause allowing for termination as a result of operational requirements.*

An example of such a clause is: Notwithstanding these provisions, the Employer shall have the right to terminate this contract prior to its expiry, either by the completion of the work or task for which the Employee was employed, or for any reason recognised as sufficient in law, including a reason relating to the Employee's conduct or capacity or to the Employer's operational requirements.





**Case 2: Need to prove reasonable expectation**

In ***Govindsamy / Sishen Iron Ore (Pty) Ltd - Kumba Iron Ore - (2016)25 CCMA 7.1.13*** also reported at **[2016] 6 BALR 622 (CCMA)** the employee claimed that the employer had unfairly dismissed her by prematurely terminating her fixed-term contract.

The employee had previously worked on two other projects on fixed-term contracts, and had been promoted while so doing. The employer claimed that the applicant's contract had not been renewed because of the collapse of the iron ore price and denied that the employee had a reasonable expectation of renewal.

The employee in question was not the only contract not renewed and she could not show that she was targeted. Added to this, the rationale of the employer could not be faulted, as fixed-term contracts to date were all linked to specific projects and as such did not give rise to an expectation of a further contract or permanency.

The application was dismissed.

***Lessons to be learned:***

*The rationale for any contract must be certain and consistently applied. The moment we have a sound business rationale and we link the contract correctly to same and consistently apply our non-renewal, we should be able to justify the use and termination of fixed term contracts.*

We are here to assist you getting your ship through these troubled waters. Let us help you strategise and get efficient structures and strategies in place to manage these challenges.

Do not hesitate to contact us should you require any assistance.

'Till next time!

Johnny and Grant  
Global Business Solutions

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