

LABOUR
Review

SEP '14



FAQ's on the labour legislation amendments

At GBS we are at the forefront of the amendment process. We have already advised you of the impact of the various pieces of legislation in articles sent out over the past few weeks.

This document is an attempt on our part to deal with the more pertinent questions which have been raised by our clients. We trust this reference document will be a useful quick reference guide.

Labour Relations Act (not yet implemented)

- ***Can I use temporary employment service employees after three months?***

Yes, as long as there is a justifiable reason. The Act itself deals with a number of justifications as examples for this. .

- ***But I thought that I have to take over my temporary staff from the supplier after 3 months?***

There are 2 possible interpretations. Our interpretation (supported by senior counsel) is that there are a few things that change:

- 1) There is several liability for breaches of the Labour Relations Act only
- 2) As a result of this, the temporary employee may refer both the supplier and the client to the CCMA in the event of dismissal
- 3) Equal treatment applies unless there is justification for a differential. We believe there are many such justifications and does not necessitate a graduation to the highest (R205433)

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- ***Does this apply to all temporary employees?***

No, only to those earning below the earnings threshold

- ***Can I use fixed term contract and part-time workers after 3 months?***

Yes, as long as there are justifiable grounds for the use of the contract. A list of the justifiable grounds can be found in the Act

- ***What is equal treatment?***

Equal treatment goes beyond equal work for equal pay. It includes access to promotions, benefits, opportunities etc



- ***What does the new security required to take a matter on review to the Labour Court mean to me?***

Should you be unhappy with the outcome of a CCMA matter and wish to take a matter on review, you would have to first pay security in the following amounts:

Compensation: an equivalent amount
Reinstatement: 24 months' security

- ***How do the amendments affect representivity of unions in workplaces?***

Commissioners will be able to grant majority status to unions even if they do not have 50% plus one membership in a workplace. There is an ease of access provided for by the amendments.

Employment Equity Act (implemented 1 August 2014)

- ***How have the grounds for discrimination been expanded?***

The grounds for discrimination have now been expanded to include any arbitrary ground. This will mean that any ground which is not rational and justifiable.

What are the new fines imposed by the Act?

The fines for minor offences as a first offence will be R1.5 million and for more severe offences R1.5 million or 2 percent of turnover, whichever is the greater.

- ***What is the impact of the amendment of s42?***

The replacement of the word "must" for "may" allows inspectors discretion of which grounds to take

into account when assessing compliance with the Act. The concern is that this discretion may lead to corruption.

Basic Conditions of Employment Act (implemented 1 September 2014)

- ***What are the increases in fines?***

Schedule 2, table 1 of the Act provides for Increased fines for administrative non-compliance by 200%.

- ***If I pay more than the minimum wage in a sectoral determination, can I freely negotiate increases with my staff?***

Unfortunately not, the Minister has the discretion to recommend increases on actuals rather than on the minimum wage. The unintended consequence thereof could be a reduction to the minimum wage.



Employment Services Act (not yet implemented)

- *What is the Employment Services Act?*

This Act is enacted to create public employment services.

It has a number of purposes which further deal with the employment of foreign nationals as well as the registration of private employment services.

- *What does this affect and how?*

It requires the registration of private employment agencies.

The Minister may after consulting with the Employment Services Board, make regulations requiring employers to notify the Department of Labour of: a) any vacancy or new position in their establishment in a manner and within such period as the Minister may determine; b) the employment of any work seeker referred by a labour centre; and c) any matter necessary to promote the provision of efficient matching services.





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