

Report of the Public Consultations on the Labour Amendment Bills, dated 17 April 2012 held at the Eastern Cape Training Centre, Port Elizabeth

1. Introduction

This was the third scheduled session and a follow – up on the one held in Cape Town on 5 April 2012.

The proceedings started at 10 am as scheduled.

Parties present were introduced and included:

DDG of DoL: Les Kettledas
CD of DoL: Thembinkosi Mkalipi
Director: Ian McCun

Packs comprising of the slideshow as well as the relevant bills were distributed upon arrival.

While the venue itself was not very big it was filled to capacity with a fair balance between representatives from both labour and business.

As with previous sessions, Mr. Mkalipi made it clear that these sessions would not be the same as the sittings held in 2011 and that these sessions were merely to brief the public and not to debate the proposed amendments.

It was also stressed that only two (2) of the for acts would be discussed as the other two are still at NEDLAC.

Mr. Mkalipi expresses that the Department was very satisfied with the “democratic” process they followed.

It was again explained that Mr. Mkalipi would go through the slide show after which the floor would be opened for questions.

Unlike the previous sessions, Mr. Mkalipi went straight into the presentation (slides)

Some key comments made during the presentation:

- Employees are to be treated the same after six months
- CCMA will assist applicants with their dispute referrals
- Arbitration awards will be final and binding with reviews not being capable of suspending the force and effect of same
- It was stated that it would become easy for employers to dismiss “high earners” and that where an employer can show that such an “high earner” was paid 3 months’ remuneration then such a dismissal would be fair
- One got the sense that what Mr. Mkalipi was suggesting was that dispute resolution mechanisms and procedures should not be for “high earners” and only the vulnerable
- Only employers who take arbitration awards on review must provide security through payment. It was stated by Mr. Mkalipi that not even trade unions have money to litigate in the courts and that they do not take matters to court?! He did however make mention of the fact that one would be able to apply for an exemption (of some sort) from paying monies as security for taking an award on review. Clarity will be sought at the Durban session on this.
- Mr. Mkalipi mentioned that only the majority of employees who vote via ballots will be sufficient for purposes of referring a dispute to the CCMA and obtaining a certificate. What he suggests is that

where you employee 1000 employees and only 5 vote and the majority of the 5 is in favour of the strike then that would be sufficient?!

- Mr. Mkalipi then briefly went through Essential Services and stated that he does not know what all the issues are surrounding this as public servants are clearly defined

Note:

If one has regard to the previous sessions it is quite clear that Mkalipi rushed through the slide show without much elaboration.

The writer hereof got the distinct sense that the department had an element of growing confidence (which can very well be viewed as arrogance) about them throughout the session.

Questions/comments raised by floor and DoL feedback :

| Name, organisation and summary of question/comment | Summary of DoL response |
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| <p>Unidentified</p> <ul style="list-style-type: none"> • Are only employers required to provide security for reviews? • Would one still be able to apply for rescission of awards at the CCMA? | <ul style="list-style-type: none"> • Yes because they have the money. Employees and trade unions don't have money • Yes but it will be made more onerous |
| <p>Unidentified</p> <ul style="list-style-type: none"> • What about employees employed on a month-to-month basis? | <ul style="list-style-type: none"> • It doesn't matter, after 6 months the employee is treated the same |
| <p>Unidentified</p> <ul style="list-style-type: none"> • S198 is not clear on how an employee is to realise that he or she has now become permanent? • Does Essential Services include all public service employees | <ul style="list-style-type: none"> • Did not answer this • Simply stated that employees who fall within essential services are clearly defined, no reason to debate this |
| <p>Unidentified</p> <ul style="list-style-type: none"> • If there no list of ballots along with the CCMA referral can the commissioner still issue a certificate stating that the matter is unresolved? | <ul style="list-style-type: none"> • Mkalipi stated that the union will have to follow its constitution and that no certificate will be issued if there is no list of ballots |
| <p>Comment made</p> <ul style="list-style-type: none"> • Our view is that labour law contraventions is that the punishment is lenient and that employers budget for this | <ul style="list-style-type: none"> • No response |
| <p>Unidentified</p> <ul style="list-style-type: none"> • Labour broker employees cannot join unions so | <ul style="list-style-type: none"> • You can now organise at the place where you are stationed/work so it |

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| how do the new bills aid them? | must be easier |
| Unidentified <ul style="list-style-type: none"> The new legislation is silent on the con – arb process | <ul style="list-style-type: none"> Employers must be limited in terms of their objections to con – arb proceedings. Employers just object and we do not know why. This does frustrate the process at the CCMA |
| Unidentified <ul style="list-style-type: none"> My request is to ban all labour brokers | <ul style="list-style-type: none"> There will be no ban, only regulation |
| Unidentified (From Nelson Mandela University) <ul style="list-style-type: none"> What about extend probationary periods (6 months and more) can one apply for extension or exemption from the minister of education? | <ul style="list-style-type: none"> There is no reason why people should be on probation or learnership contract for that long. I don't know of applications for exemption but you are welcome to try that. |
| Denver Brandt (CAPES) <ul style="list-style-type: none"> It appears as though facilitator's will have carte blanche in extended the consultative period in terms of S189 A proceedings? What is the maximum time period that such consultations may be extended with? With picketing, who will stop the employer from making use of replacement labour? | <ul style="list-style-type: none"> The test is reasonableness. The extension must be reasonable The union can interdict you at court |
| Unidentified <ul style="list-style-type: none"> Why are labour brokers not being banned? Was COSATU blackmailed? | <ul style="list-style-type: none"> No, reference was made to an Alliance entered into in 2009 |
| Unidentified <ul style="list-style-type: none"> What is the attitude regarding the definition of "employee"? Why is this not defined? | <ul style="list-style-type: none"> There is already a definition as well as assumption as to who is an employee there is also a NEDLAC code on who is an employee |
| Unidentified <ul style="list-style-type: none"> Why do we regulate labour brokers when we have so many problems with them | <ul style="list-style-type: none"> COSATU wanted them banned and we said that we will do it if they can provide us with a legal argument that will succeed in the Constitutional Court. We're still waiting for that opinion from COSATU |

Session closed

One got the distinct feeling that the Department rushed through this session with an overwhelming degree of confidence.

It should also be pointed out that not many people were prepared to pose questions and in fact started leaving throughout the Q & A session.

COMPILED BY DENVER BRANDT

17/04/2011