

Report of the Public Consultations on the Labour Amendment Bills, dated 23 April 2012 held at the President Hotel, Bloemfontein

1. Introduction

This was the fifth scheduled session and a follow – up on the one held in Durban on 18 April 2012. The Rustenburg session had been postponed from Friday to the 10th of May.

The proceedings started after 10:00 am. Marsha Bronkhorst introduced proceedings. Today was introduced as the feedback session.

Parties present were introduced : Mr Mkalipi(Chief Director of LR); Ian Macun(Director-collective bargaining);Virgil Seafield(Director – Employment Standards);Pume(Provincial control inspector)

Copies of the tabled Bills and slideshow were provided in a well set out pack upon signing in.

There was a poor turnout – perhaps 75 people, which eventually grew to over 100 after 10am.

It was made clear (again) from the outset that the purpose of the session was not to obtain input from stakeholders but only to provide clarity on the tabled Bills. Parliament was where one should go to for inputs.

They hope to finish the other 2 bills by the end of May or maybe one extra week in June.

Mr Mkalipi then did a similar introduction as per the other areas. As such it will not be repeated again. Mr Mkalipi emphasised that these Bills were the only Bills that went through a RIA and public hearings in all provinces and an extensive NEDLAC process.

Slideshow presentation:

This followed similar content as per the previous presentations. I will therefore not set out the same content again, however I will set out any additions/extra comments made by Mr Mkalipi. Additional points set out hereunder :

- Difficult to enforce against labour brokers
- Social benefits not given to labour broker employees
- Difficult for trade unions to recruit within the labour broker industry.
- **6 months : now he says client deemed to be employer if there is a dispute. You can still have them on the TES' books though and UIF etc. After 6 months equal pay for equal work. Entitled to all benefits of client's employees, as long as after 6 months and earn less than R172 000. After 6 months client can only terminate for misconduct/retrenchment.(GW comment : presume that he just left out incapacity per error).**
Mr Mkalipi then referred to the fact that it is not 6 months for one employee but 6 months for a specific job.
6 months cannot be broken by using a different labour broker or people in order to break 6 months. It is about the position.
If you terminate an assignment to avoid being deemed, it will be viewed as dismissal
- S198B – the exclusion does not apply where a person bought a business in terms of s197. There was also a hint that lee way won't be given to business people who own more than one business. According to Mr Mkalipi, these provisions are made for start-up businesses.
- NEDLAC : no agreement on Labour broker issue : Business -12 month labour broker; 24 month fixed term. Business also against equality. He then went on to explain how this was fought against in apartheid.Mr Mkalipi then went on to say that business have been told to go argue case in public arena. These are two areas of disagreement that business have according to Mr Mkalipi. Labour – COSATU, not FEDUSA(they agree), want banning of labour brokers and disagree on temporal employment

- State law advisors have indicated the time limit for judge’s outcome could be unconstitutional(due to interference with judiciary), despite there being agreement between the parties at NEDLAC
- Security : Besides the usual, if you don’t do anything for 6 months, you forfeit the security
- COSATU is “spitting fire” with the changes in a strike
- ILO position : if you exercise authority in name of state you should be regarded as essential service. Labour said that this is too wide. Confined to : Immigration, customs and judicial officials. If exercise authority in name of state you should be able to be considered essential services. COSATU not happy with this. Teachers, etc is another debate.
- Discretion to inspectors to accept a promise or not. They know who to trust and who not to.
- The Department wants to give the Minister the ability to amend fines into BCEA via regulation.

Questions/comments raised by floor and DoL feedback:

Name, organisation and summary of question/comment	Summary of DoL response
<p>Belinda Wana</p> <p>Central University of Technology</p> <ul style="list-style-type: none"> • 50% of workforce TES. They don’t get interviewed. Do they come in or interview • Part time – do they get benefits as well? • Service fee to contractor – who bears costs • Picketing rules – include other retailers in mall in 	<ul style="list-style-type: none"> • The issue of interviews : amendments don’t deal with but present law will apply • Not answered other queries • Picketing rules : If other retailers affected by picketing rules. This is aimed at the mall type situation. Not a general right to site a third party.

<p>mtg?</p>	
<p>Thabie Majola</p> <p>NEHAWU</p> <ul style="list-style-type: none"> • Rule covering part-time workers. What about those not working 8hrs. Are they also covered by the Labour Broker provisions • Contract of employment – does it start at beginning or end of 6 months? 	<ul style="list-style-type: none"> • Part time is defined as anyone not working full week. Eg rate per hour is same. Only difference is that work less hours so there will be a proportional situation. • Doesn't matter – we've explained this situation. It doesn't matter the contract between client and Labour Broker. Repeats example provided in presentation. • The law will not operate back dated. The law only starts operating on the date the President signs it into law. • NEHAWU asks how monitor this. It is not the Department's responsibility as we don't deal with dismissals. Trade unions must know the law and when to take a matter on. The Department then doesn't have to monitor anything. The union must take the matter to the CCMA.
<p>Telford</p> <p>SATAWU</p> <ul style="list-style-type: none"> • How do you deal with situation where 4-5 year contract signed with Labour Broker and client? • How is DoL going to monitor the chop and change of employees. I sign 5 months and have other clients. I remove them from this side and put them on other side where start new contract. • Sometimes an employee commits offence with perm employee and client writes letter and says I don't want. Labour Broker company says I did not dismiss you but client said remove and no other site. How will this be dealt with? 	<ul style="list-style-type: none"> • General repeated discussion as per the presentation notes above on the 6 month deeming provision.(appears tried to address the first two points in one go) • Last point : eg given of security guard being asked to wash cars and he refuses because not in job description. Client requests move and then the employee is moved or dismissed. Changes suggest both the security company and client are liable for dismissal. <p>DoL says Labour Broking is bad but the problem is not just them it is the client who is problem. The clients want lower costs.</p> <p>It is not our business what Labour Broker is paid, but only where it affects the worker. As long as the worker gets what is due.</p> <p>Can you be reinstated by being put on a database/list? The law has dealt with this. They can put on list but must be paid. Cannot be reinstated</p>

	<p>on a list.</p>
<p>POPCRU</p> <ul style="list-style-type: none"> • Dispute resolution : not only employer who makes use of review. How is security applicable to unions and employees? 	<ul style="list-style-type: none"> • We believe that 80-90% of application for review are employer applications. <p>No cost implications for employee</p> <p>We don't apologise for protecting labour. That is why labour law is there. To protect interests.</p> <p>No need for trade unions to put security.</p> <p>Chances of employee dismissed getting employment may take 5-6 years.</p>
<p>Unidentified</p> <ul style="list-style-type: none"> • Dispute resolution : what would constitute high earning employee 	<ul style="list-style-type: none"> • If you read memorandum attached to the Bills. We think the threshold around R1million. That's the way we see it but minister may change the figure. • National Planning Council talks about high earner. Their report talks about R300 000. • Minister will publish intention and then ECC will be consulted and maybe NEDLAC.
<p>Grant Wilkinson</p> <p>CAPES and business</p> <ul style="list-style-type: none"> • What are your comments on the most recent comments on the limiting impact of the legislation on employment made by such bodies like : SACCI, IMF and individuals such as Herman Mashaba? • What about the impact on jobs? The rest of the world is flexing Labour Law we are going in the opposite direction? Why? we have some of the highest unemployment figures 	<ul style="list-style-type: none"> • What we say IMF says. Sakhwe says. We had this debate with BUSA. There is this notion that SA labour market inflexible. During recession SA lost more than a million jobs- these are people who were dismissed. If we say too rigid, how is it possible lost R1m jobs. No other country of similar size had these type of losses. <p>Argument is not supported by the data</p> <p>We are not buying this issue</p> <p>There is other research eg OECD document. In terms of research (unclear) sometimes</p> <p>Business wouldn't go to OECD</p>

	<p>research</p> <p>Secondly at the CCMA it deals with thousands of cases per annum. Cases at the CCMA On average you spend 2 hours. 70% of cases at CCMA spend 2 hours because settle.</p> <p>CCMA allocates 2 hours a case for conciliation</p> <p>Other 30% spend another 4hours.</p> <p>Therefore can conciliate within 28 days</p> <p>If you say CCMA is affecting economy negatively what about these stats</p> <p>This argument about unflexibility – there are other issues</p>
<p>TAWUSA(UNCLEAR)</p> <ul style="list-style-type: none"> • Joint and several liability (unclear) • CCMA assisting – will this not raise challenge from other employees. If only labour broker – unfair • Unclear third question 	<ul style="list-style-type: none"> • You can enforce on whoever you want to. <p>Who you cite is your decision.</p> <ul style="list-style-type: none"> • It is an administrative action so subject to review.

Closure : When this becomes law there will be public sessions.

Session closed

There were grumblings in the audience throughout the presentation, but in the end very few people asked questions. This is disappointing and one gets the feeling that a number of people have consigned themselves to the fact that this will happen and it is pointless fighting.

This is a pity and I think it is imperative that business organisations mobilize their members to keep up the fight. If we stop fighting now we will be stuck with this legislation.

I have engaged a few attendees from business and they will keep in touch with us as the roadshow goes along.

COMPILED BY GRANT WILKINSON

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