LABOUR LAW AMENDMENTS

PUBLIC CONSULTATION
Introduction

1. **Purpose of consultation**
   - Clarify amendments
   - Support informed debate
   - Receive public input on proposed amendments

2. **Agenda**
   - Overview of amendment bills (LRA, BCEA, EEA)
   - Overview of Employment Services Bill
   - Questions and comments
1. To respond to growth of non-standard forms of employment in South Africa, in particular, labour broking;

2. To ensure that labour legislation is in line with developments in labour law;

3. To enhance the effectiveness of labour market institutions e.g. CCMA.

4. To fulfill our obligations as a member state of the International Labour Organization (ILO).
AMENDMENTS PROPOSED TO THE LABOUR RELATIONS ACT (ACT NO. 66 OF 1995)
Proposed amendments to Labour Relations Act (LRA)

1. **Addressing labour broking**

   - Proposed deletion of section 198: Temporary Employment Services. Regulation of TES to be dealt with under forthcoming Employment Services Bill;

   - Narrower definition of employer and employee and presumption of being an employee regardless of form of contract;

   - TES will be able to place persons in work, but will not be able to be the employer.
2. Regulating contract work

- New section 200B declaring temporary work to be permanent unless employer can establish a justification for employment on a fixed term basis.

3. Prohibiting abusive practice

- Clarification of ‘employee’ status will prevent situations arising where employees are deprived of their rights such as, freedom of association and collective bargaining.
4. CCMA

- Review of rules at least every second year;
- May assist a party with serving notice and/or enforcing an arbitration award;
- May make rules limiting or prohibiting representation in conciliation and arbitration proceedings;
- Giving arbitration awards the status of a writ of execution;
- Powers of the CCMA to intervene to resolve disputes in the public interest extended;
- Proposed that all disputes should be dealt with via “con-arb” proceeding unless Commission and all parties agree to the contrary.
5. Collective bargaining

- Statutory councils empowered to apply for extension of collective agreements subject to conditions required by LRA;
- Bargaining councils enabled to charge for dispute resolution services where CCMA charges a fee;
- Justifiable restriction of strike action where a party has the right to refer the matter to arbitration or to the Labour Court.
PROPOSED AMENDMENTS TO THE BASIC CONDITIONS OF EMPLOYMENT ACT (ACT NO.75 OF 1997)
Proposed amendments to Basic Conditions of Employment Act (BCEA)

1. Addressing labour broking

- Employers must contribute equal or similar benefits for fixed term contract and permanent workers;

- Sectoral Determinations may prohibit or regulate the placement of employees by temporary employment services, sub-contracting and contract work;

- Minister may publish sectoral determinations covering employers and employees who are not covered by other determinations.
2. Sectoral Determinations

- A sectoral determination may apply to bargaining councils in respect of matters not dealt with by collective agreements concluded by the council;

- A sectoral determination may prescribe minimum increases in remuneration;

- A sectoral determination may prescribe a threshold for representativeness for a registered trade union to have organizational rights of access to employer premises and deduction of trade union subscriptions.
3. Child labour

- Prohibition on work by children under 15 years of age;

- No person may require or permit a child to work or perform services that are inappropriate for a person of that age or place at risk the child’s well-being, education, physical or mental health or social development;

- Contravention of the amended sections amounts to a criminal offence.
4. Strengthening the power of the inspectorate

- Inspectors no longer required to secure undertaking or issue compliance order;

- Sections of the BCEA are deleted which deal with securing undertakings and compliance orders in order to streamline enforcement of the Act.

- Inspectors may be accompanied by an interpreter, members of the SAPS or any other assistant, when performing functions in terms of the BCEA.

- Penalties have been increased for offences and contraventions of the Act.
PROPOSED AMENDMENTS TO THE EMPLOYMENT EQUITY ACT (ACT NO. 55 OF 1998)
Proposed amendments to Employment Equity Act (EEA)

1. Equal pay for work of equal value

- A new clause is proposed to deal with unfair discrimination by employers in respect of terms and conditions of employment of employees doing the same work, similar work or work of equal value;

- Differences in pay and conditions of work between employees performing the same or substantially the same work or work of equal value will amount to unfair discrimination unless the employer can show that differences are fair in relation to experience, skill, responsibility and qualifications.
EEA Amendments cont.

3. Disputes concerning discrimination

- An amendment is proposed to provide for lower paid employees to refer a dispute concerning discrimination (including equal pay claims) to the CCMA for arbitration.

4. Reporting

- It is proposed that all designated employers be required to report on progress in implementing their Employment Equity Plan on an annual basis. Reports will be due on 1st October and can be submitted online.
EEA Amendments cont.

4. Enforcement & Fines

- Amendments to a number of sections aim to promote more effective compliance and enforcement. For example, the issuing of a compliance order by an inspector may be done if a number of requirements have not been met by an employer.

- The assessment of compliance by the Department is also made less onerous and, where relevant, assessment of equitable representation will be in relation to occupational levels and not categories.
4. Enforcement & Fines cont.

- The current Schedule setting out fines for contraventions is replaced with a Schedule that introduces a percentage of turnover as the basis for fines.

- Fines will be calculated as a percentage of annual turnover, at 2% for first contraventions, escalating to a maximum of 10% for repeated contraventions.

- It is proposed that the failure to submit a statement of income differentials, as required by section 27, also become a contraventions that may result in a fine.
ES Bill, 2010

PROPOSED EMPLOYMENT SERVICES BILL, 2010
1. Background

- The Employment Services Bill seeks to provide a legal status for Employment Services after the transfer of the skills development functions to the Department of Higher Education & Training.
- The Bill also provides a legal status for the Sheltered Employment Factories and Productivity SA.
- The Bill repositions the Public Employment Services to play an important role in employment promotion and employment preservation and aims to assist employers and workers to adjust to changing labour market conditions.
Employment Services Bill cont.

2. Major provisions of Bill

2.1. Public Employment Services

2.2. Private Employment Agencies

2.3. Employment Services Board

2.4. Employment Growth and Productivity
Employment Services Bill cont.

2.1 Public Employment Services

- Establishes anew, a dedicated Public Employment Services to provide employment services interventions free of charge to work seekers and employers.
- The roles and functions will include:
  - Promotion of employment of youth and persons with disabilities
  - Recommendations for the employment of foreign workers
  - Employment Counseling and Information on employment and training opportunities
2.2 Private Employment Agencies

- Registration and licensing of any person or body who wants to operate as a private employment agency

- Prohibits charging of fees by private employment agencies

- Safeguarding of work seekers’ information and prohibits the abuse of such information

- Role of Registrar of Private Employment Agencies
2.3 Employment Services Board

- Appointed by Minister of Labour
- Tripartite plus experts
- Advisory in nature

2.4 Employment Growth and Productivity

- Establishment and functions of Productivity South Africa
Way Forward

- Closing date for comments on bills: 17th February 2011

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