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Contents

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR

NOTICE 3801 OF 2026

LABOUR LAW AMENDMENT BILL, 20025

I, Nomakhosazana Meth, Minister of Employment and Labour, hereby publish the Labour Law Amendment Bill, 2025, accompanied by the Memorandum of Objects on the Labour Law Amendment Bill, 2025, for public comment. The Bill amends the Basic Conditions of Employment Act, 1997 (BCEA), the Employment Equity Act, 1998 (EEA) and the National Minimum Wage Act, 2018 (NMWA). The full text of the Bill is attached hereto and available on the Department of Employment and Labour website at www.labour.gov.za.

Comments should be addressed to the email: Hlukani.Mabunda@labour.gove.za or Kopano.Kgatlhanye@labour.gov.za

- Comments should reach the Department of Employment and Labour not later than 30 days from the date of publication of this notice. Comments received after the closing date may not be considered.

- This publication is for public consultation purposes and precedes the formal introduction of the Bill to Parliament, where further public participation will occur.

NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26 FEBRUARY 2026

REPUBLIC OF SOUTH AFRICA

EMPLOYMENT LAWS AMENDMENT BILL, 2025

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. ……..of …….. 2025)

(The English text is the official text of the Bill)

(MINISTER OF EMPLOYMENT AND LABOUR)

[B — 2025]

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GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Basic Conditions of Employment Act, 1997 so as to substitute and insert certain definitions; to permit sectoral determinations to apply to a broader category of employees; to provide minimum conditions of employment applicable to employees who are required to be available for work; to provide for parental leave in a manner consistent with the Constitution; to specify the severance pay that employees are entitled to and clarify the forum for resolving disputes about severance pay; to further specify procedures for the recovery of unpaid contributions to benefit funds; to further specify the powers of the Commission for Conciliation, Mediation and Arbitration to enforce compliance orders; to clarify the powers of bargaining councils to arbitrate disputes concerning basic conditions of employment; to empower the Minister to make regulations concerning the use of fines by the Commission for Conciliation, Mediation and Arbitration; to amend the Employment Equity Act, 1998, so as to substitute a definition of employment law; to enable employees to refer any claim concerning unfair harassment to the Commission for Conciliation,

Mediation and Arbitration; to specify the capacity of bargaining councils to resolve disputes arising under the Act; to amend the Unemployment Insurance Act, 2001 to provide for payment of parental leave benefits by the Unemployment Insurance Fund in a manner consistent with the Basic Conditions of Employment Act and the Constitution; to amend the National Minimum Wage Act, 2018 so as to clarify that deferred payments made to employees are not taken into account when calculating compliance with the national minimum wage; to alter the composition of the National Minimum Wage Commission; to require that representatives on the Commission have appropriate knowledge, skills, and experience to fulfil their duties; to remove the requirement that the President must determine the date for the Commission must submit its report to the Minister; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 75 of 1997 as amended by section 1 of Act 11 of 2002, section 26 of Act 68 of 2002, section 40(1) of Act 65 of 2002, section 25 of Act 52 of 2003, section 1 of Act 20 of 2013, section 53 of Act 11 of 2013, section 1 of Act 7 of 2018 and section 1 of Act 10 of 2018.

1. Section 1 of the Basic Conditions of Employment Act, 1997 is hereby amended by the substitution for the definition of "employment law" of the following definition:

"**"employment law"** includes this Act, any other Act the administration of which

has been assigned to the Minister, and any of the following Acts:

(a) The Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

(b) the Employment Services Act, 2014 (Act No. 4 of 2014);

(c) the Employment Equity Act, 1998 (Act No. 55 of 1998);

(d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

(f) the National Minimum Wage Act, 2018 (Act No. 9 of 2018);

(g) the Skills Development Act, 1998 (Act No. 97 of 1998); and

(h) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002)."

Insertion of section 9B in Act 75 of 1997

2. The following section is hereby inserted into the Basic Conditions of Employment, 1997 after section 9A:

"**Employees required to be available for work**

9B. (1) This section applies to an employee who is required to—

(a) work only when the employer makes work available to the employee; and

(b) be available to accept work that the employer makes available.

(2) An employer must specify in the employee's written particulars of employment—

(a) the maximum hours of work for that period;

(b) the period which the employee must be available to work;

(c) the notice period to the employee to report for work; and

(d) the notice period of any cancellation of work.

(3) The notice period referred to in paragraphs *(c)* and *(d)* of subsection (2) must be reasonable and must be determined having regard to all relevant factors, including—

(a) the nature of the employer's business;

(b) the employer's ability to control or foresee the circumstances that may give rise to the notice for the employee to report for work or for cancellation of work;

(c) the effect of the cancellation on the employee.

(4) If an employer fails to give the employee the requisite notice of cancellation of work contemplated in subsection (2)*(d)*, the employer must remunerate the employee for the hours of the cancelled work.

(5) An employer may not require an employee to work if the employer fails to—

(a) comply with subsection (2); or

(b) provide the employee with the requisite notice to work.

(6) An employer may not prevent, prohibit or restrict an employee who has fulfilled the obligations to be available for work to that employer from working for another person unless—

(a) the employer has genuine operational reasons for doing so; and

(b) the reasons are stated in the employee's written particulars of employment.

(7) For the purposes of subsection (6)*(a)*, a genuine operational reason includes—

(a) protecting the employer's commercially sensitive information, intellectual property rights and commercial reputation; or

(b) preventing a conflict of interests that cannot be managed in another way.

(8) Despite section 22 (2), an employee contemplated in this section is entitled to an amount of paid sick leave equal to one day's paid sick leave for every 26 days worked.

(9) An employer must treat employees contemplated in this section on the whole not less favourably than those of its employees to whom this section does not apply and who perform the same or similar work, unless there is a justifiable reason for different treatment.

(10) A dispute arising from the interpretation or application of this section must be determined in accordance with the provisions of section 198D of the Labour Relations Act, 1995, read with the changes required by the context.

(11) This section does not apply to employers who employ less than ten employees."

Substitution of section 25, 25A and 25B and repeal of 25C of Act 75 of 1997 as amended by section 2 of Act 10 of 2018

3. Section 25 of the principal Act is hereby amended by—

(a) the substitution for sections 25, 25A and 25B of the following sections:

"**25. Right to parental leave**

(1) An employee is entitled to parental leave if the employee is–

(a) the parent of a newborn child;

(b) the adoptive parent of a child who is six years of age or less;

(c) a commissioning parent of a child born as a result of a surrogate motherhood agreement

(2) An employee, is entitled to at least four consecutive months' parental leave if the employee is –

(a) a single parent; or

(b) the only employed party in a parental relationship.

(3) If both parties to a parental relationship are employed, they are collectively entitled in the aggregate to four months and ten days' parental leave to be taken in accordance with this section, section 25A and section 25B.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a still-born child is entitled to parental leave for six weeks after the miscarriage or still-birth, whether or not the employee had commenced parental leave at the time of the miscarriage or still-birth.

(5) An employee, excluding a female employee who gives birth to a child, is not entitled to take parental leave more than once in any twelve-month period.

(6) The Minister must determine the benefits to be paid in respect of parental leave in terms of the Unemployment Insurance Act, 2001 (Act No 63 of 2001).

(7) The Minister must prescribe, in accordance with section 86(1) of the Act, regulations specifying forms that employees may use –

(a) to give notice of the commencement of parental leave and the employee's return to work in terms of section 25A;

(b) to record any agreement concerning the apportionment of parental leave in terms of section 25B.

(8) For purposes of this section, section 25A and section 25B –

(a) an employee is deemed to be a single parent if they are the only person who has assumed parental rights and responsibilities over the child as contemplated in the Children's Act, 2005 (Act No. 38 of 2005);

(b) an employee is deemed to be a party to a parental relationship if the employee has assumed parental rights and responsibilities over the child as contemplated in the Children's Act, 2005 (Act No. 38 of 2005); and

(c) unless the context indicates otherwise -

(i) **'commissioning parent'** has the meaning assigned to it in section 1of the Children's Act, 2005 (Act 38 of 2005); and

(ii) **'surrogate motherhood agreement'** has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005).

25A Commencement of parental leave and notice of leave and return to work

(1) A female employee who is expecting the birth of a child may commence parental leave—

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(2) No female employee who has given birth to a child may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(3) If subsection (1) does not apply, an employee may commence parental leave on or after—

(a) the day that the employee's child is born; or

(b) in the case of adoptive parents -

(i) when the child is adopted; or

(ii) if a competent court has ordered that the child is placed in the care of the prospective adoptive parents, pending the finalisation of an adoption order in respect of that child.

(4) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

(a) commence parental leave; and

(b) return to work after parental leave.

(5) Notification in terms of subsection (5) must be given—

(a) at least four weeks before the employee intends to commence parental leave; or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) If employees in a parental relationship who have different employers are claiming parental leave, each employee must –

(a) give notice to their employer in terms of subsection (4); and

(b) submit to their employer any agreement concerning parental leave concluded in terms of section 25B.

(6) Unless otherwise agreed by an employer, an employee must take parental leave within four months of the commencement of parental leave contemplated in sub-section (3).

25B Exercise of right to parental leave if two parents are employees

(1) If both parents are employees and they choose to exercise their right to parental leave, they must conclude and submit to their employers an agreement together with the notice required by section 25A(5).

(2) The parental leave in terms of an agreement contemplated in terms of sub-section (1) may be taken by them in such manner as they may agree, including concurrently or consecutively, or partly concurrently and partly consecutively, provided that neither employee is entitled to more than four months' leave.

(3) If an agreement contemplated by sub-section (1) cannot be concluded, an employee who has given birth to a child must elect to take –

(a) four months' parental leave, in which case the other parent is entitled to take 10 days' parental leave; or

(b) less than four months' parental leave, in which case the other parent is entitled to take that portion of the parental leave contemplated by sub-section 25(3) that the mother of the child is not taking.

(4) If the parties to a parental relationship who are entitled to parental leave as a result of an adoption or surrogate motherhood agreement cannot agree on the manner in which parental leave is to be shared, the leave must be apportioned between the parents in such a way that each parent's parental leave is as close as possible to half of the leave contemplated by section 25 (3)."

(b) by the repeal of sub-section 25C.

Amendment of section 41 of Act 75 of 1997 as amended by section 9 of Act 11 of 2002

4. Section 41 of the Basic Conditions of Employment, 1997 is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements or whose contract of employment terminates or is terminated in terms of section 38 of the Insolvency Act, 1936 (Act No. 24 of 1936) severance pay equal to at least **[one]** two week's remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35."; and

(b) by the substitution for subsection (6) of the following subsection:

"(6) If there is a dispute only about the entitlement to severance pay **[in terms of this section]**, the employee may refer the dispute in writing to—

(*a*) a council, if the parties to the dispute fall within the registered scope of that council; or

(*b*) the CCMA, if no council has jurisdiction.".

Insertion of section 50A in Act 75 of 1997

5. The following section is hereby inserted into Act No. 75 of 1997, before section 51:

"**50A Definitions**

(1) Notwithstanding the definition of employee, for purposes of Chapter 8--

(a) **"employee"** also means any individual who performs work or provides services for another person and who is not conducting an independent trade, profession or business in which the person receiving the work or services is a client or customer.

(b) **"employer"** includes any person or entity for whom an employee works.

(2) For the purposes of sub-section (1), an individual is an employee contemplated by sub-para *(1a)* unless the employer demonstrates that the following factors are satisfied:

(a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;

(b) the person is not part of the organisation of the employer; and

(c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.".

Substitution of section 62A of Act 75 of 1997 as inserted by section 9 of Act 7 of 2018

6. The following section is hereby substituted for section 62A of Act No. 75 of 1997:

"**Definitions**

62A For the purposes of Chapter 10, including Schedule 2, an employee includes a worker as defined in section 1 of the National Minimum Wage

Act, 2018, and an employee as defined in section 50A of this Act."

Insertion of section 62B in Act 75 of 1997

7. The following section is hereby inserted into Act No. 75 of 1997 after section 62A:

"**Employer's failure to pay contribution to benefit fund**

"**62B.** An employer's failure to pay a contribution to a benefit fund on behalf of an employee in terms of section 34A of this Act must be treated on the same basis as the failure by an employer to pay any amount owing to an employee in terms of this Act, except that in any compliance order, court order or arbitration award the employer must be directed to make the outstanding payment to the benefit fund concerned.".

Insertion of section 65A in Act 75 of 1997

8. The following section is hereby inserted into Act No. 75 of 1997, after section 65:

"**65A Participation in inspections by trade union representative**

(1) A labour inspector conducting an inspection in terms of this Chapter must, upon arrival at the workplace, take immediate steps to ensure that they are accompanied during the inspection by at least one trade union representative.

(2) A trade union representative identified in terms of this section is entitled to –

(a) participate in all consultations with inspectors at the workplace; and

(b) accompany inspectors on all inspections in the workplace.

(3) The performance of functions in terms of this section by a trade union representative must be considered for all purposes to be the performance of a function of a trade union representative, as contemplated by section 14 of the Labour Relations Act."

Amendment of section 69 of Act 75 of 1997 as amended by section 14 of Act 11 of 2002, section 10 of Act 20 of 2013 and section 13 of Act 10 of 2018.

9. Section 69 of Act No. 75 of 1997 is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

"(5) *(a)* An employer must comply with the compliance order within the time period stated in the order, unless the employer refers a dispute concerning the compliance order to the CCMA within that period.

(b) If the employer refers a dispute to the CCMA as contemplated in paragraph *(a)*, the employer must provide security to the satisfaction of the CCMA equivalent to the amount that the employer is required to pay in terms of the compliance order."; and

(b) by the insertion after subsection (5) of the following subsection:

"(5A) The CCMA may, on good cause shown by the employer, permit the employer to refer a dispute contemplated in subsection (5) to it after the relevant time period stated in the

order has expired.".

Amendment of section 73 of Act 75 of 1997 as amended by section 16 of Act 11 of 2002, section 13 of Act 20 of 2013 and section 15 of Act 10 of 2018

10. Section 73 of the Basic Conditions of Employment, 1997 is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The CCMA may issue an arbitration award **[in terms of]** contemplated in subsection (1) requiring the employer to comply with the compliance order, if it is satisfied that—

(*a*) the compliance order was served on the employer; and

(*b*) the employer has not referred a dispute in terms of section 69 (5).";

and

(b) by the addition after subsection (2) of the following subsection:

(3) The CCMA may, in respect of a compliance order which is the subject of a dispute that the employer has referred to the CCMA as contemplated in section 69(5),—

(a) issue an award that confirms, varies or sets aside the compliance order; and

(b) as part of the award referred to in paragraph *(a)*, order the employer to pay a fine, as contemplated in section 76A or Schedule Two, within a time period specified in the award.".

Amendment of section 73A of Act 75 of 1997 as inserted by section 7 of Act 7 of

2018

11. Section 73A of the Basic Conditions of Employment, 1997 is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the bargaining council with jurisdiction or, if there is no council, to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) The bargaining council or CCMA must **[appoint a Commissioner in terms of section 135 of the Labour Relations Act, to]** attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1)."; and

(c) by the substitution for subsection (5) of the following subsection:

"(5) The bargaining council or CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved **[in terms of section 135(5)]**.".

Amendment of section 74 of Act 75 of 1997 as amended by section 17 of Act 11 of 2002, section 14 of Act 20 of 2013 and section 17 of Act 10 of 2018.

12. Section 74 of the Basic Conditions of Employment, 1997 is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) If an employee institutes proceedings **[for unfair dismissal]** in respect of any claim under an employment law, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act or the National Minimum Wage Act, 2018."; and

(b) by the deletion of subsection (3).

Amendment of section 76A of Act 75 of 1997 as inserted by section 20 of Act 10 of 2018

13. Section 76A of the Basic Conditions of Employment, 1997 is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) **[Subject to section 76, a]** A fine that may be imposed in any proceedings in terms of section 73 and 73A on an employer who paid an employee less than the national minimum wage, is an amount that is the greater of—

(*a*) twice the value of the underpayment; or

(*b*) twice the employee's monthly wage.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) For second or further non-compliances, a fine that may be imposed in any proceedings in terms of section 73 or 73A on an employer who paid an employee less than the national minimum wage is an amount that is the greater of—

(*a*) thrice the value of the underpayment; or

(*b*) thrice the employee's monthly wage."; and

(c) by the addition after subsection (4) of the following subsection:

"(5) Upon receipt of payment from an employer in respect of a fine imposed on such an employer in terms of subsection (1) or (2), the Department or the CCMA must immediately remit the payment to the employee.".

Insertion of section 77B in Act 75 of 1997

14. The following section is hereby inserted into the Basic Conditions of Employment, 1997 after section 77A:

"**Powers of Labour Court, CCMA and bargaining council in respect of failure to pay contributions to funds falling under Pension Funds Act**

77B (1) This section applies to any failure by an employer to pay a contribution to a pension or provident fund on behalf of an employee in terms of any law, collective agreement or contract of employment.

(2) The Labour Court, CCMA or bargaining council to which a dispute concerning any failure by an employer to pay a contribution to a pension or provident fund as contemplated in subsection (1) is referred must, in respect of any amount found to be outstanding, make an order or award, as the case may be—

(a) directing the payment of the outstanding amount to the fund on behalf of the employee within a period specified, and on such other terms as may be specified, in the order

or award;

(b) despite the provisions of section 75 of this Act, directing the employer to pay interest on the outstanding amount at the interest rate prescribed in terms of section 13A of the Pension Funds Act, 1956 (Act No.24 of 1956).

(3) The Labour Court, CCMA or bargaining council may not exercise jurisdiction if the Pension Funds Adjudicator appointed in terms of section 30C of the Pension Funds Act, 1956 has issued a determination in terms of section 30M of the Pension Funds Act, 1956 or any other tribunal or court of law having jurisdiction has made a ruling on the matter.".

Amendment of section 86 of Act 75 of 1997

15. Section 86 of Basic Conditions of Employment, 1997 is hereby amended by the addition after subsection (2) of the following subsection:

"(3) The Minister may make regulations specifying the purposes for which the CCMA may use fines paid by employers in terms of Schedule 2.".

Amendment of Schedule 3 to Act 75 of 1997

16. The following item is inserted into Schedule 3 to the Basic Conditions of Employment, 1997:

"**12 Applications of Basic Conditions of Employment Act, 2025**

(1) For the purposes of this item, "Act" means the Basic Conditions of

Employment Act, 2025.

(2) The entitlement to severance pay equal to two week's remuneration only applies to a completed year of service with that employer which commenced after the commencement of this Act.

(3) A provision in this Act relating to the powers of the Department, the Director-General, the CCMA, a bargaining council and the Labour Court applies irrespective of whether the dispute was referred before the commencement date of this Act."

Amendment of section 1 of Act 55 of 1998, as amended by section 40 of Act 65 of 2002, section 26 of Act 68 of 2002, section 1 of Act 47 of 2013 and section 1 of Act 4 of 2022.

17. Section 1 of the Employment Equity Act, 1998 is hereby amended by –

(b) the insertion before the definition of the "Basic Conditions of Employment Act" of the following definition:

"bargaining council" means a bargaining council contemplated in section 213 of the Labour Relations Act;"

(c) the substitution of the definition of "employment law" for the following definition:

"**'employment law'** means any provision of this Act of any of the following Acts—

(a) The Unemployment Insurance Act, 2001 (Act 63 of 2001);

(b) the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

(c) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);

(d) the Labour Relations Act, 1995 (Act 66 of 1995);

(e) the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);

(f) the Skills Development Act, 1998 (Act 97 of 1998);

(g) the Employment Services Act, 2014 (Act 4 of 2014);

(h) the National Minimum Wage Act, 2018 (Act 9 of 2018);

(i) any other Act, whose administration has been transferred to the Minister;"

Amendment of section 10 of Act 55 of 1998, as amended by section 5 Act 47 of 2013.

18. Section 10 of Employment Equity Act, 1998 is hereby amended by the substitution in subsection (6) for subparagraph (i) of paragraph (aA) of the following subparagraph:

"(i) the employee alleges unfair discrimination on the grounds of **[sexual]** harassment; or"

Insertion of section 10A of Act 55 of 1998

19. The following section is hereby after section 10 of Employment Equity Act, 1998:

"**10A** Nothing in this Act prevents the referral of a dispute in terms of this Part to a bargaining council –

(a) in terms of a collective agreement binding on the parties to the dispute; or

(b) if the council has been accredited under section 127 of the Labour Relations Act for conciliation or arbitration in respect of such a dispute."

Amendment of section 53 of Act 55 of 1998, as amended by section 20 of Act 47 of 2013 and section 12 of Act 4 of 2022.

20. Section 53 of Employment Equity Act, 1998 is hereby amended by the addition after subsection (6) of the following subsection:

"(7) A certificate issued by the Minister in terms of subsection (2) constitutes proof that the employer has complied with the requirements for achieving employment equity specified in any other law."

Amendment of section 12 of Act 63 of 2001, as amended by section 4 of Act 2 of 2003, section 4 of Act 10 of 2016 and section 8 of Act 10 of 2018.

21. Section 12 of Act 63 of 2001 is hereby amended as follows:

(a) by the substitution for sub-section 3(c) of the following sub-section:

"For the purposes of Part D, **[maternity]** parental benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a)."

(b) by the deletion of sub-section 3(d).

Amendment of sections 24 to 29C of Act 63 of 2001, as amended by section 8 of

Act 32 of 2003, sections 9 and 10 of Act 10 of 2016 and sections 12 to 14 of Act 10 of 2018.

22. Sections 24 to 29C of the principal Act are hereby repealed and replaced by the following sections—

"Part D: Parental benefits

24. Parental benefits

(1) Subject to the provisions of this Part, a contributor is entitled to receive parental benefits in respect of the following events –

(a) if a contributor is pregnant;

(b) if a contributor is in a parental relationship with a person who gives birth to a child, irrespective of whether the mother is a contributor;

(c) if either one or two contributors adopt, or are the prospective adoptive parents of, a child of less than six years of age; or

(d) if either one or two contributors are commissioning parents of a child born as a result of a surrogate motherhood agreement.

(2) Parental benefits may be paid to a contributor-

(a) if the contributor is a single parent or only one of the parents is a contributor, for a period of 17.32 weeks; or

(b) if two contributors are entitled to parental benefits, a period of 17.32 weeks plus 10 days, shared between the two parents in accordance with the provisions of this Part; provided that neither parent may receive benefits for more than 17.32 weeks.

(3) When taking into account any payment for parental leave paid to a parent in terms of any other law, collective agreement or contract of employment, the parental benefit received by a contributor may not exceed the remuneration the contributor would have received if the contributor had not been on parental leave.

(4) A contributor contemplated by subsection (1) (b)–(d) may only claim parental benefits –

(a) in respect of a period that the contributor was not working in order to care for the child; and

(b) once in respect of any period of twelve months.

(5) A contributor is not entitled to parental benefits in respect of any period after the birth or adoption of a child, unless they have assumed parental rights and responsibilities over the child as contemplated in the Children's Act, 2005 (Act No. 38 of 2005).

(6) A contributor is not entitled to parental benefits unless they were in employment for at least thirteen weeks before the date of the application for parental leave.

(7) A contributor must apply for parental benefits in accordance with the provisions of this Part and any prescribed requirements.

25. Provisions applicable to parental benefits for maternity

(1) A contributor who is pregnant and gives birth to a child is entitled to the parental benefits for maternity for any period of pregnancy or delivery and the period thereafter.

(2) A contributor who has a miscarriage during the third trimester or bears a stillborn child is entitled to the full parental leave benefit of 17.32 weeks.

26. Conditions applicable to parental benefits for a parent other than the mother

(1) Subject to the provisions of this Part, a contributor who is in a parental relationship with a person who gives birth to a child is entitled to the following period of parental leave after the birth of the child –

(a) if the mother of the child is not a contributor, 17.32 weeks; or

(b) if the mother of the child is a contributor, 10 days and, in addition thereto, any portion of the mother's entitlement to parental leave that she has agreed to transfer to the other parent in terms of an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act.

27. Conditions applicable to parental benefits for adoption

(1) A contributor is entitled to parental benefits for the adoption of a child below the age of six if the child has been –

(a) adopted in terms of the Children's Act, 2005 (Act No. 38 of 2005); or

(b) placed in the care of a prospective adoptive parent by a competent court pending the finalisation of an adoption order in respect of that child.

(2) If two contributors who are adoptive, or prospective adoptive, parents are claiming parental benefits in terms of this section, they are entitled to –

(a) the parental leave provided for in an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act; or

(b) if no agreement has been concluded, to share the entitlement to parental leave in terms of section 24(2)(b) as close to equally as is possible.

28. Conditions applicable to parental benefits as a result of commissioning

(1) A contributor shall be entitled to parental benefits as a result of commissioning if the child has been born as a result of a surrogate motherhood agreement.

(2) If two contributors who are commissioning parents are claiming parental benefits in terms of this section, they are entitled to –

(a) the parental leave provided for in an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act; or

(b) if no agreement has been concluded, to share the entitlement to parental leave in terms of section 24(2)(b) as close to equally as is possible.

(3) For purposes of this Part, unless the context otherwise indicates –

(a) **'commissioning parent'** has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005); and

(b) **'surrogate motherhood agreement'** has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005).

29. Application for parental benefits and payment

(1) An application for parental benefits must be made in the prescribed form and manner either electronically, at an employment office or at any other prescribed place.

(2) An application for parental benefits

(a) may be made either before or after the childbirth, or the date of adoption, as the case may be; and

(b) must be made within twelve months of such date.

(3) A copy of any agreement concerning parental leave in terms of section 26B of the Basic Conditions of Employment Act, 1997 must be submitted in the prescribed manner together with any application for parental leave by either parent.

(4) A claims officer must investigate the application and may, if necessary, request further information.

(5) If the application complies with the provisions of this Chapter, the claims officer must-

(a) approve the application;

(b) determine the amount of the benefits and the period for which they are to be paid;

(c) stipulate how the benefits are to be paid.

(6) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing or electronically that the application is defective and of the reasons why it is defective.

(7) The Commissioner must pay parental benefits to a contributor electronically or at the employment office or other prescribed place at which the application was made, or determined by the applicant."

Amendment of section 4 of Act 9 of 2018

23. Section 4 of the National Minimum Wage Act, 2018 is hereby amended by the substitution for subsections (4) and (5) of the following subsections:

"(4) **[Every]** Subject to section 5, every worker is entitled to payment of a wage in an amount no less than the national minimum wage.

(5) **[Every]** Subject to section 5, every employer must pay wages to its workers that is no less than the national minimum wage.".

Amendment of section 5 of Act 9 of 2018

24. Section 5 of National Minimum Wage Act, 2018 is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"Despite any contract or law to the contrary, the calculation of a wage for the purpose of this Act is the amount payable in money as contemplated in section 32(1)*(c)* of the Basic Conditions of Employment Act for ordinary hours of work excluding –";

(b) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a **[sectorial]** sectoral determination; and"

(c) by the deletion in subsection (1) of the word "and" at the end of paragraph(c); and

(d) by the insertion after that paragraph of the following paragraph:

"*(cA)* deferred payment; and".

Amendment of section 6 of Act 9 of 2018

25. Section 6 of National Minimum Wage Act, 2018 is hereby amended by the deletion of subsection (3).

Amendment of section 9 of Act 9 of 2018

26. Section 9 of National Minimum Wage Act, 2018 is hereby amended—

(a) by the deletion in subsection (1) of paragraph *(c)*; and

(b) by the addition after subsection (2) of the following subsection:

"(3) A party that nominates persons in terms of subsection (1)*(b)* and *(d)* must demonstrate to the Minister that such persons have the appropriate knowledge, skills and experience to perform the functions of a member of the Commission.".

Short title and commencement

27. This Act is called the Employment Laws Amendment Act, 2025, and comes into effect on a date to be fixed by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS ON EMPLOYMENT LAWS AMENDMENT BILL, 2025

1. OBJECTS OF THE BILL

In preparation for the publication of the Labour Relations Amendment Bill, 2025 as well as amendments to the Basic Conditions of Employment Act (Act No. 75 of 1997) ("BCEA"), and changes to other labour legislation, the Department of Employment and Labour ("the Department") and the representatives of Organised Business and Labour undertook a labour law review and have engaged in extensive consultations over a period of 28 months in NEDLAC.

Following the decision of the High Court in *Van Wyk and Others v Minister of Employment and Labour*[1], the consultations were expanded to include the parental leave provisions in the BCEA and the parental benefit provisions in the Unemployment Insurance Act (Act No. 63 of 2001) ("UIA"). These consultations continued after the subsequent decision of the Constitutional Court in *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others*[2] *("Van Wyk and Others").*

The proposed amendments to the BCEA, the Employment Equity Act (Act No. 55 of 1998) ("EEA"), the UIA and the National Minimum Wage Act (Act No. 9 of 2018) ("NMWA") are combined into a single Employment Laws Amendment Bill. The proposed amendments to these Acts can be grouped under the following themes:

(a) changes in the labour market and the nature of work;

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[1] *Van Wyk and Others v Minister of Employment and Labour* (2022-017842) [2023] ZAGPJHC 1213; [2024] 1 BLLR 93 (GJ); (2024) 45 ILJ 194 (GJ); 2024 (1) SA 545 (GJ) (25 October 2023).

[2] *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others* (CCT 308/23) [2025] ZACC 20; [2025] 12 BLLR 1213 (CC) (3 October 2025).

(b) establishing protection appropriate to the changing nature of work and an increasingly large group of unprotected workers;

(c) remedying identified bottlenecks in existing dispute resolution and adjudication systems;

(d) reducing levels of disputes and simplifying dispute procedures by employer Bargaining Councils to resolve certain additional disputes.

(e) removing duplication of functions to ensure that employers do not have to report and be assessed on employment equity by different government departments.

(f) amending the law on parental leave for employees and the parental benefits that a contributor to the Unemployment Insurance Fund is entitled to following the Constitutional Court's judgment in *Van Wyk and Others*.

2. DISCUSSION OF THE BILL

Proposed amendments to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)

Clause 1

Clause 1 of the Bill proposes to amend section 1 of Act No. 75 of 1997 by amending the definition of "employment law" to reflect legislative changes.

Clause 2

Clause 2 of the Bill proposes to amend proposes to amend Act No. 75 of 1997 by inserting a new section 9B. The provisions in this section apply to employees who earn below the threshold set in terms of section 6(3) and who are required to –

(a) work only when their employer makes work available to them;

(b) accept work that the employer makes available.

This category of employment contracts is referred to by many names, including: "on call contracts", "zero hours contracts", "min-max contracts", "flexitime contracts" and "if and when contracts".

The basis for the "on-call" relationship is an agreement under which the employer calls the worker when work is available and thus a flexible number of hours is worked. These workers are often vulnerable to abuse. There is frequently little job and income security, unpredictable and irregular working hours – in some cases, these workers may have no work at all for periods and no specific guarantee of work – and low wages and benefits.

In many cases, these contracts allow employers to escape their obligations relating to fair dismissals, including for operational requirements, as they simply do not call the workers in to do work. On-call workers are often called in at the last minute and are not given sufficient time to make proper arrangements for their families and households. Workers who cannot answer the call to work, even of short notice, may be disciplined or, easier still, just not called up again or as much.

The proposed amendments seek to provide appropriate protection that balances the need of employers to have flexibility where there is a variable demand for work but at the same time ensure greater protection for this category of "on call" workers. In the case of employees who fall within this category, the employer is required to specify in the employee's written particulars of work –

(a) their guaranteed hours of work in each period;

(b) their maximum hours of work;

(c) when they must be available to work; and

(d) the notice period that they are entitled to for purposes of reporting for work and in respect of the cancellation of work.

Additional protections are that the period of notice for reporting for work or for the cancellation of work must be reasonable in the light of a range of factors including the nature of the employer's business, its ability to control circumstances leading to the availability or otherwise of work, the nature of the employee's work and the effect of the cancellation on the employee. The employer is required to remunerate employees for cancelled work, if they fail to give the requisite notice of cancellation.

Clause 3

Clause 3 of the Bill proposes to amend Act No. 75 of 1997 by substituting revised sections 25, 25A and 25B for the current sections 25, 25A, 25B and 25C of the BCEA as follows –

(a) The Clause contains the proposed new sections 25, 25A and 25B regulating the taking of parental leave by employees. These proposals flow from the Constitutional Court's recent decision in *van Wyk and others* which held that certain provisions of the BCEA and the UIA regulating parental leave are unconstitutional.

(b) The BCEA currently provides employees with the following entitlements to maternity and parental leave –

(i) 4 months' maternity leave on the birth of a child (section 25);

(ii) 10 weeks' parental leave for one parent on the adoption of a child under two (section 25B);

(iii) 10 weeks' parental leave for one parent in the case of a child born as a result of a commissioning agreement (section 25C); and

(iv) 10 days' parental leave for a second parent in these three circumstances (section 25A).

(c) The BCEA does not regulate pay for maternity or parental leave and the UIA provides for the payment of benefits to employees during these periods of leave.

(d) The Constitutional Court ruled that certain provisions of the BCEA are unconstitutional –

(i) Sections 25, 25A, 25B and 25C dealing with maternity and parental leave are invalid and inconsistent with the Constitution as they unfairly discriminate between different classes of parents as to the length of parental leave.

(ii) Sections 25B(1) of the BCEA is invalid and unconstitutional to the extent that it limits parental leave to parents in respect of adoptive children below two years of age. (However, the Court does not express a view as to what a reasonable cap on the age of an adopted child whose adoptive parents would qualify for parental leave is).

(iii) The corresponding sections (24, 26A, 27, 27(1)(c) and 29A) of the UIA regulating the payment of parental benefits from the Fund are likewise declared unconstitutional.

(iv) These declarations of constitutional invalidity are suspended for 36 months to allow Parliament to remedy the constitutional defects. The Minister of Employment and Labour will be required to furnish a report to the Registrar of the Constitutional Court six months before the expiry of the 36-month suspension (i.e. 2 April 2028) as to whether remedial amendments to the BCEA and UIA have been brought into operation and, if not, when it is expected that this will be done.

(e) Pending Parliament enacting remedial legislation, the Constitutional Court

has "read into" sections 25, 25B and 25C changes which will allow parents to claim parental leave under the BCEA with immediate effect. However, the Constitutional Court has not ruled on a similar interim arrangement for the provisions of the UIA, as the Court was uncertain as to the financial implications of such an amendment.

(f) In summary, the effect of the interim regime created by the Court's "reading in" of provisions are –

(i) an employee who becomes a parent is entitled to four months' parental leave if they are a single parent or the only parent who is an employee covered by the BCEA. Significantly, this includes the employed father of a child in a situation in which the mother is either self-employed or not employed;

(ii) if both parents are employees, they are entitled to divide between them four months and ten days as parental leave. In other words, the current maternity leave of four months and the parental leave of 10 days are combined into a single divisible period of parental leave which two parents who are employees may agree to share;

(iii) these provisions apply to the birth of a child, the adoption of a child under two and the birth of a child through a commissioning agreement; and

(iv) if parents who are both employees cannot reach an agreement on the division of parental leave, the Constitutional Court proposes that parental leave should be shared equally.

(g) Clause 3 of the Bill contains proposals for the regulating parental leave in a manner that is consistent with the Constitutional Court's decision in *van Wyk and Others*. These proposals call for the repeal of the current sections 25, 25A, 25B and 25C of the BCEA and the enactment of new sections 25, 25A and 25B.

(h) The proposed section 25 establishes the right of parents of newborn children, adopted children and children born through surrogate motherhood agreements to claim parental leave. These entitlements are consistent with the Constitutional Court's approach –

(i) four months, if one employee is claiming parental leave.

(ii) four months plus 10 days, if two employees are claiming their entitlement, provided neither parent may take more than four months.

(iii) it is further proposed that the right to claim parental leave in the event of an adoption should be extended to apply to children of up to six years of age.

(i) The proposed section 25A regulates the requirement to give notice of intention to take parental leave. The requirement to give prior notice in writing of at least four weeks, unless this is not practicable, is retained. However, a new provision is inserted requiring that when two employees are claiming parental leave, each of the employees must give notice in terms of the section to their employer.

(j) The proposed section 25B contains provisions to regulate the taking of parental leave if both parents are employees. They may conclude an agreement to be submitted to their employers, together with the notice required under section 25A, specifying how the parental leave is to be shared. If the parents cannot reach such an agreement, parental leave is to be shared in the following manner –

(i) in the case of maternity, the mother will be entitled to claim up to the full period of four months' parental leave and the other parent will be entitled to ten days plus any portion that the mother elects not to utilise.

(ii) in the case of adoption or birth in terms of a surrogacy motherhood agreement, the parental leave is to be shared in a manner as close to equally as is possible.

Clause 4

Clause 4 of the Bill proposes to amend section 41 of Act No. 75 of 1997 –

(a) by amending subsection (2) to provide that any employee who is dismissed for reasons based on the employer's operational requirements or whose contract of employment is terminated in terms of section 38 of the Insolvency Act, 1936 is entitled to severance pay equal to two weeks' remuneration for each year of continuous service with the employer. This increases the level of statutory severance pay from one week to two weeks. This amendment must be read in conjunction with item 13 of Schedule three which provides that the entitlement to one week's severance pay only applies to a completed year of service which commenced after the commencement of the Amendment Act;

(b) providing that any dispute about severance pay may be referred to the CCMA for arbitration, whether the dispute arises out of a statute, collective agreement or contract of employment. This applies to disputes that only concern a claim for severance pay in which procedural or substantive fairness is not challenged. This clarifies the issue of jurisdiction of the CCMA in the light of inconsistent decisions on this topic by the Labour Court and the High Court. This will avoid a duplication of claims where an employee's entitlement to severance pay may arise in part from statute and in part from a collective agreement or contract of employment.

Clause 5

Clause 5 of the Bill proposes to amend Act No. 75 of 1997 by inserting a new section 50A before section 51. Section 50A provides a broadened definition of the terms "employee" and "employer" specifically for those provisions falling under Chapter 8.

Clause 6

Clause 6 of the Bill proposes to amend section 62A of Act No. 75 of 1997 so as to make the definition of "employee" introduced by section 50A applicable also to those provisions in Chapter 10 of Act No. 75 of 1997.

Clause 7

Clause 7 of the Bill proposes to amend Act No. 75 of 1997 to insert a new section 62B after section 62A to clarify the manner in which failure by an employer to pay the employer's contributions to a benefit fund can be dealt with in enforcement proceedings under the Act. This amendment must read in conjunction with the proposed section 77B.

Clause 8

Clause 8 of the Bill proposes to amend Act No. 75 of 1997 to insert a new section 65A after section 65 allowing recognised trade union representatives to accompany labour inspectors on workplace inspections, conducted in terms of Chapter 10 of the BCEA. The right of employee health and safety representatives to accompany inspectors on inspections is already entrenched in both the Occupational Health and Safety Act, 1993 and the Mine Health and Safety Act, 1996. The extension of this approach to inspections conducted under the BCEA will promote compliance with statutory employment standards.

Clause 9

Clause 9 of the Bill proposes to amend section 69 of Act No. 75 of 1997 by further regulating the procedure in terms of which an employer may refer a dispute objecting to a compliance order issued by a labour inspector to the CCMA.
The amendment provides –

(a) for the CCMA to condone on good cause a referral of such a dispute outside the 30-day referral;

(b) that the referral by an employer of a dispute objecting to a compliance order does not suspend the operation of the compliance order, unless the

employer provides security to the satisfaction of the CCMA equivalent to the amount the employer is required to pay in terms of compliance order;

(c) subsection (7) provides that the Director-General of the Department of Employment and Labour may apply for a compliance order that has not been complied with be made an arbitration award. This provision is presently in section 73(1).

Clause 10

Clause 10 of the Bill proposes to amend section 73 of Act No. 75 of 1997 and, in order to clarify the process for the adjudication of compliance orders issues by labour inspectors, by –

(a) providing that the CCMA must appoint a Commissioner to arbitrate any dispute concerning –

(i) an objection by an employer to a compliance order issued by a labour inspector;

(ii) an application by the Department of Employment and Labour to have a compliance order which has not been complied with made into an arbitration award.

(b) providing that an arbitrator conducting an arbitration over a compliance order may issue an award –

(i) confirming, amending or setting aside the compliance order; and

(ii) if the compliance order requires the employer to pay a fine, directing payment of the fine within a period specified in the award.

Clause 11

Clause 11 of the Bill proposes to amend section 73A of Act No. 75 of 1997 to clarify in subsection (1) that a dispute concerning compliance with the national

minimum wage or any collective agreement of a bargaining council or an employee's contract of employment may be referred to a bargaining council. This amendment has been introduced because certain bargaining councils are refusing to exercise jurisdiction in respect of this category of disputes.

Subsections (4) and (5) are amended to clarify that a bargaining council may, in the same manner as the CCMA, resolve disputes contemplated by this section through conciliation and, if this does not resolve the dispute, arbitration.

Clause 12

Clause 12 of the Bill proposes to amend section 74 of Act No. 75 of 1997 to promote the consolidation of disputes in arbitration or Labour Court proceedings. Subsections (2) and (3) are amended to permit disputes in terms of the BCEA or the NMWA to be adjudicated jointly with claims under any employment law.

Clause 13

Clause 13 of the Bill proposes to amend subsections (1) and (2) of section 76A of Act No. 75 of 1997 to clarify the process for the payment of fines by employers in terms of a compliance order issued in terms of section 73 or as a result of an arbitration award in terms of section 73A.

Subsection (5) is inserted to provide that where a fine is paid to the Department in terms of section 73 or to the CCMA in terms of section 73A as a result of a failure to pay the national minimum wage, the Department or CCMA must pay the fine to the employee.

Clause 14

Clause 14 of the Bill proposes to insert section 77B which will regulate the powers of the Labour Court, CCMA and bargaining councils when dealing with complaints concerning an employer's failure to pay contributions to a benefit fund regulated by the Pension Funds Act, 1956. Presently, employees are entitled to bring claims when an employer fails to pay contributions to such a fund, if the fund is established by a collective agreement or the employee's membership

flows from their contract of employment. Where such a claim is adjudicated, the judge or arbitrator may direct the employer –

(a) to make payments to the fund on behalf of the employee within a specified period;

(b) to pay interest at the rate prescribed in terms of section 13A of the Pension Funds Act.

To prevent duplication of legal proceedings, the Labour Court, CCMA or bargaining council may not exercise jurisdiction in such a claim if there has been a determination by the Pension Funds Adjudicator or any other tribunal or court of law having jurisdiction.

Clause 15

Clause 15 of the Bill proposes to amend section 86 of Act No. 75 of 1997 by inserting subsection (3) to empower the Minister to make regulations concerning the purposes for which fines paid by employers for breaches of the Act may be used by the CCMA.

Clause 16

Clause 16 of the Bill proposes to amend Schedule 3 by including certain transitional provisions necessary for the implementation of the Amendment Act and to avoid disputes. These provisions are –

(a) the statutory entitlement to severance pay of two weeks per completed year of service introduced by the amendment of section 41(6) only applies to completed years of service commenced after the Amendment Act comes into effect;

(b) all provisions in the Amendment Act concerning the powers of the Department, the Director-General, the CCMA, bargaining councils and the Labour Court apply with immediate effect.

Proposed amendments to the Employment Equity Act, 1998 (Act No. 55 of 1998)

Clause 17

Clause 17 of the Bill proposes to amend section 1 of Act No. 55 of 1998 by inserting a definition of "bargaining council" and by substituting the definition of "employment law" to reflect legislative changes.

Clause 18

Clause 18 proposes to amend section 10(6) of Act No. 55 of 1998 to provide that an employee may refer any claim concerning unfair discrimination on the grounds of harassment to the CCMA for arbitration, if the dispute has not been resolved through conciliation. Currently, this entitlement only applies to cases involving sexual harassment. This limitation has led to technical objections and the splitting of claims as employees often claim harassment on more than one ground and a claim of sexual harassment may often overlap with other prohibited grounds, in particular harassment on grounds of gender.

Clause 19

Clause 19 proposes to insert a new section 10A into Act No. 55 of 1998 to clarify the circumstances in which disputes under the EEA may be referred to a bargaining council. The amendment specifies that such a dispute may referred to a bargaining council if this is provided for in a collective agreement or where the bargaining council has been accredited to perform this function by the CCMA.

Clause 20

Clause 20 proposes to add a new subsection (5) to section 53 of Act No. 55 of 1998 to clarify that if the employer has been issued with the Certificate of Compliance under the Act, that certificate should constitute that the employer has complied with the requirements for achieving employment equity specified in any other law. As a result, the employer should not be assessed multiple times for employment equity under different legislation.

Proposed amendments to the Unemployment Insurance Act, 2001 (Act No. 63 of 2001)

Clause 21

Clause 21 of the Bill proposes to amend section 3 of Act No. 63 of 2001 to change the reference in sub-section 3(c) from "maternity" benefits to "parental" benefits in accordance with the proposed amendments to the BCEA, as well as to delete sub-section 3(d).

Clause 22

Clause 22 of the Bill proposes that sections 24, 25, 26, 26A, 26B, 26C, 27, 28, 29, 29A, 29B and 29C of Act No. 63 of 2001 are to be repealed and replaced by redrafted sections 24 to 29. The proposed amendments to the UIA introduce provisions regulating the payment of parental benefits to employees who are contributors to the Unemployment Insurance Fund in a manner that is consistent with the amendments proposed to the BCEA in clause 3 of the Amendment Bill.

Proposed amendments to the National Minimum Wage Act, 2018 (Act No. 9 of 2018)

Clauses 23 and 24

Clauses 23 and 24 of the Bill proposes to amend sections 4 and 5 of Act No. 9 of 2018 to clarify that when calculating whether there is compliance with the minimum wage, deferred payments made to employees are not taken into account. This is consistent with the purpose of the NMWA which is to provide for the minimum take-home pay that employees are entitled to receive. This amendment achieves this purpose by clarifying the relationship between the NMWA and the provisions in the BCEA regulating the payment of remuneration and by specifying that deferred payments do not form part of the employee's wage for purposes of compliance with the national minimum wage. The necessity for this amendment emerges from a Labour Appeal Court decision[3] that has raised the prospect of the purpose of the NMWA being undermined in this

[3] *Quantum Foods (Pty) Ltd v Commissioner Jacobs and others* [2024] 1 BLLR 32 (LAC).

manner and employees receiving take-home pay below the national minimum wage.

Clause 25

Clause 25 of the Bill proposes to amend section 6 of Act No. 9 of 2018 by deleting subsection (3).

Clause 26

Clause 26 of the Bill proposes to amend section 9 of Act No. 9 of 2018 –

(a) to limit the composition of the National Minimum Wage Commission to a chairperson appointed by the Minister, representatives of Organised Business and Organised Labour and three independent experts. Representatives of the NEDLAC Community constituency will no longer have representation. This proposed amendment is consistent with various ILO Conventions dealing with the structure of tripartite institutions and with international best practice. This will promote more effective deliberation over the development of recommendations to the Minister on adjustments to the national minimum wage and other functions of the Commission such as proposing the making, and amending, of sectoral determinations;

(b) a further amendment which requires Organised Business and Organised Labour to ensure that the persons that they propose for membership of the Commission have appropriate knowledge, skills and experience to perform the functions of a member of the Commission will also promote this purpose.

Clause 27

Clause 27 provides for the short title and commencement of the Bill.

3. CONSULTATION

NEDLAC was consulted. The National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), provides for the objects, powers and functions of NEDLAC. NEDLAC must consider all proposed labour legislation

before it is introduced in Parliament and must also consider significant changes to the social and economic policy before it is implemented and introduced in Parliament. An extensive consultation process took place between April 2002 and November 2024, the details of which are recorded in the NEDLAC Report. Subsequent consultations on the implications of the Constitutional Court judgment in *van Wyk and Others* took place in November 2025.

4. FINANCIAL IMPLICATIONS

The amendments that deal with changes to dispute resolution and the functioning of the Department and CCMA are not estimated to lead to increased operating costs for either the Department or CCMA and an increase in their baseline budget.

5. PARLIAMENTARY PROCEDURE

The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

DEPARTMENT OF EMPLOYMENT AND LABOUR

LABOUR RELATIONS AMENDMENT BILL, 2025

I, Nomakhosazana Meth, Minister of Employment and Labour, hereby publish the Labour Relations Amendment Bill, 2025, accompanied by the Memorandum of Objects on the Labour Relations Amendment Bill, 2025, for public comment. The Bill amends the Labour Relations Act of 1995. The full text of the Bill is attached hereto and available on the Department of Employment and Labour website at www.labour.gov.za.

Comments should be addressed to the email: Hlukani.Mabunda@labour.gove.za or Kopano.Kgatlhanye@labour.gov.za

- Comments should reach the Department of Employment and Labour not later than 30 days from the date of publication of this notice. Comments received after the closing date may not be considered.

- This publication is for public consultation purposes and precedes the formal introduction of the Bill to Parliament, where further public participation will occur.

NOMAKHOSAZANA METH, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26 FEBRUARY 2026

REPUBLIC OF SOUTH AFRICA

LABOUR RELATIONS AMENDMENT BILL, 2025

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. ……..of …….. 2025)
(The English text is the official text of the Bill)

(MINISTER OF EMPLOYMENT AND LABOUR)

[B — 2025]

180725nb

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
_____	Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Labour Relations Act, 1995, so as to further regulate ballots for closed shop agreements; to limit the application of bargaining council agreements to certain new businesses; to regulate the extension of funding agreements for bargaining councils; to specify the financial reporting standards for trade unions, employers' organisations and bargaining councils; to amend the functioning of the essential services committee and the resolution of disputes in essential services; to specify the duration of notices concerning socio-economic protest action; to permit the Minister to regulate the retention of ballot records; to provide for guidelines for the registrar of labour relations in respect of cancelling the registration of trade unions or employers' organisations; to introduce reporting requirements for federations of trade unions and employers' organisation; to amend the functions and rule-making powers of the Commission for Conciliation, Mediation and Arbitration; to amend the powers and functions of the Labour Court and the Labour Appeal Court; to further specify the requirements of a fair procedure in case of dismissals for misconduct or incapacity; to amend the procedure for holding of inquiries by arbitrators; to amend the process of facilitation for large-scale operational

requirements dismissals; to permit the Commission for Conciliation, Mediation and Arbitration to arbitrate certain disputes about discrimination; to limit the remedies available to employees earning above an earning threshold in unfair dismissal and unfair labour practice claims and to empower the Minister to set a threshold; to prevent the duplication of claims; to provide for a limitation of liability of the Commission for Conciliation, Mediation and Arbitration and other entities performing statutory functions under employment laws; to insert and amend certain definitions in order to clarify expressions in the Act; to provide for the extension of provisions concerning freedom of association and collective bargaining to a broader category of employees; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: —

Amendment of section 26 of Act 66 of 1995

1. Section 26 of the Labour Relations Act, 1995 (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution for subsection (15) of the following subsection:

"(15) The representative *trade union* must conduct a secret ballot of the *employees* covered by the closed shop agreement to determine whether the agreement should be terminated if–

(a) one third of the *employees* covered by the agreement sign a petition calling for the termination of the agreement; and

(b) three years have elapsed since the date on which the agreement commenced or the last ballot was conducted in terms of this section."; and

(b) by the insertion after subsection (15) of the following subsection:

"(15A) If the representative *trade union* fails to conduct the secret ballot by the date contemplated in subsection (15)*(b)*, the closed shop lapses on that date.".

Amendment of section 32 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998, Act 12 of 2002, Act 6 of 2014 and Act 8 of 2018

2. Section 32 of the principal Act is hereby amended by the insertion of the following subsections after subsection (11):

"(12) Despite the provisions of this section, a *collective agreement* concluded in a *bargaining council* regulating terms and conditions of employment does not bind–

(a) an employer of a new business that employs less than 50 *employees*; and

(b) that employer's *employees*.

(13) For the purposes of this section, a new business is one that has been in operation for less than two years but excludes–

(a) a new employer contemplated in section 197(1)*(b)*; and

(b) a business formed by the division or dissolution of any existing business.".

Amendment of section 32A of Act 66 of 1995 as amended by Act 8 of 2018

3. Section 32A of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"(2) Subject to subsection (3), and where the *Minister* is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level, the *Minister* may renew a funding agreement for up to **[12]** 36 months at the request of any of the parties to a *bargaining council* if–".

Amendment of section 53 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 12 of 2002

4. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every *council* must, **[to the standards of generally accepted accounting practice, principles and procedures]** in accordance with financial reporting standards determined by the Minister by notice in the *Gazette*—

(a) keep **[books and]** records of its income, expenditure, assets and liabilities; and

(b) within six months after the end of each financial year, prepare financial statements, including at least—

(i) a statement of income and expenditure for the previous financial year; and

(ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.".

Amendment of section 65 of Act 66 of 1995 as amended by Act 6 of 2014

5. Section 65 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(d)* of the following paragraph:

"*(d)* that person is engaged in–

(i) an *essential service* unless notice of a *strike* has been given in compliance with section 72(5);

(iA) an agreed or determined minimum service in terms of section 72; or

(ii) a maintenance service.".

Amendment of section 69 of Act 66 of 1995 as amended by Act 42 of 1996, Act 6 of 2014, Act 8 of 2018

6. Section 69 of the principal Act is hereby amended by the substitution for subsection (15) of the following subsection:

"(15) For the purposes of this section, "commissioner conciliating the dispute" includes a person appointed by a *bargaining council* to conciliate the *dispute* and, in the case of a *strike* contemplated by section 189A (7), the facilitator appointed in terms of section 189A (3) or (4).".

Amendment of section 70 of Act 66 of 1995 as amended by Act 127 of 1998 and Act 6 of 2024

7. Section 70 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The *Minister,* after consulting *NEDLAC*, must establish an essential services committee **[under the auspices of]** which is to be supported administratively by the *Commission* in accordance with the provisions of *this Act* and the essential services committee acts independently when exercising its powers and performing its functions.".

Amendment of section 71 of Act 66 of 1995 as amended by Act 6 of 2014

8. Section 71 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

"(9) A panel appointed by the essential services committee may vary or cancel the designation of the whole or part of a service as an *essential service* **[or any determination of a minimum service or ratification of a minimum service agreement]**, by following the provisions set out in sub-sections (1) to (8), read with the changes required by the context.".

Amendment of section 72 of Act 66 of 1995 as amended by Act 6 of 2014 and Act 8 of 2018

9. Section 72 of the principal Act is hereby amended:

(a) by the substitution for subsection (2) of the following subsection:

"(2) *(a)* If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee

may determine the minimum services that are required to be maintained in an essential service.

(b) If there is no *trade union* representing the majority of *employees* covered by the determination, the panel may, after consulting any *trade unions* or *employee* representatives and the employer, determine the minimum services that are required to be maintained in an essential service.";

(b) by the substitution for subsection (3) of the following subsection:

"(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the **[maintenance]** provision of minimum services in a service designated as an *essential service* or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service **[-**

(a) **]**, the agreed or determined minimum services are to be regarded as an *essential service* in respect of the employer and its *employees* **[; and**

(b) **the provisions of section 74 do not apply]**.";

(c) by the substitution for subsection (4) of the following subsection:

"(4) A minimum service determination–

(a) is valid until varied or **[revoked]** cancelled by the essential services committee; and

(b) may not be varied or **[revoked]** cancelled for a period of 12 months after it has been made.";

(d) by the substitution for subsection (5) of the following subsection:

"(5) **[Despite subsections (3) and (4), section 74 applies]** Section 74 does not apply to a designated essential service in respect of which the essential services committee has ratified a minimum services agreement or has made a determination of minimum services if one or more *trade unions* that represent the majority of *employees* employed in the designated essential services **[voted in a ballot in favour of this]** have given notice of the intention to *strike* in accordance with section 64(1): Provided that the *employees* in the designated minimum service who are precluded from participating in the *strike* retain their right to have their dispute resolved in terms of section 74.";

(e) by the deletion of subsection (6);

(f) by the substitution for subsection (8) of the following paragraph:

"(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable **[collective]** agreement, refer a dispute arising from those negotiations to the *Commission* or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination."; and

(g) by the insertion after subsection (9) of the following subsection:

"(10) A panel contemplated in subsection (3) may, subject to subsection 4*(b)*, after consultation with the affected parties, vary, rescind or cancel a ratified or determined minimum service.".

Amendment of section 74 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 6 of 2014

10. Section 74 of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

"(1) Subject to section **[73(1)]** 72(5), any party to a *dispute* **[that is precluded from participating in a strike or a lock-out because that party is engaged]** in an essential service may refer the dispute in writing to–".

Amendment of section 77 of Act 66 of 1995

11. Section 77 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph after paragraph *(d)*:

"*(e)* the notice in terms of paragraph *(d)* was served on NEDLAC within 24 months of the date on which the process of consideration in terms of paragraph *(c)* was concluded.".

Amendment of section 98 of Act 66 of 1995

12. Section 98 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every registered *trade union* and every registered *employers' organisation* must, **[to the standards of generally accepted accounting practice, principles and procedures]** in accordance with financial reporting standards determined by the Minister by notice in the *Gazette*—

(a) keep **[books and]** records of its income, expenditure, assets and liabilities; and

(b) within six months after the end of each financial year, prepare financial statements, including at least—

(i) a statement of income and expenditure for the previous financial year; and

(ii) balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.".

Amendment of section 99 of Act 66 of 1995 as amended by Act 8 of 2018

13. Section 99 of the principal Act is hereby amended by the substitution for paragraph *(c)* of the following paragraph:

"*(c)* the ballot papers or any documentary or electronic record of the ballot in such form as may be *prescribed* for a period of three years from the date of every ballot.".

Amendment of section 106 of Act 66 of 1995 as amended by Act 12 of 2002

14. Section 106 of the principal Act is hereby amended by the addition of the following subsection after subsection (3):

"(4) The *Minister*, after consultation with *NEDLAC*, may by notice in the *Gazette* publish guidelines to be applied by the *registrar* when exercising the powers in terms of sub-section (2A) to cancel the registration of a *trade union* or *employers' organisation*.".

Amendment of section 107 of Act 66 of 1995

15. Section 107 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

"(1A) The *registrar* must maintain a register of federations of *trade unions* and federations of *employers' organisations* that have complied with the provisions of subsection (1).";

and

(b) by the addition after subsection (3) of the following subsections:

"(4) The *registrar* must remove the name of a federation of *trade unions* or *employers' organisations* from the appropriate register if the *registrar* has issued a written notice requiring the federation of *trade union* or *employers' organisation* to comply with subsection (1) within a period of 90 days of the notice and the federation of *trade unions* or *employers' organisation* has, despite the notice, not complied with that subsection.

(5) The *registrar* may not act in terms of subsection (4) unless the *registrar* has published a notice in the *Gazette* at least 60 days prior to such action—

(a) giving notice of the *registrar's* intention to remove the name of the federation of *trade unions* or federation of *employers' organisations* from the register; and

(b) inviting the federation of *trade unions* or federation of *employers' organisations* and any other interested parties to make written representations as to why its name should not be removed from the register.

(6) When a federation of *trade unions* or federation of *employers' organisation's* name is removed from the appropriate register, all the rights it enjoyed as a result of being listed in that register will end.".

Amendment of section 115 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998, Act 12 of 2002 and Act 6 of 2014

16. Section 115 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the following paragraphs, respectively:

"*(a)* attempt to resolve, through conciliation, any *dispute* referred to it in terms of **[this Act]** any *employment law*;

(b) if a *dispute* that has been referred to it remains unresolved after conciliation, arbitrate the *dispute* if–

(i) **[this Act]** the *employment law* requires arbitration and any party to the *dispute* has requested that the *dispute* be resolved through arbitration; or

(ii) all the parties to a *dispute* in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the *Commission*;";

(b) by the addition in subsection (2) after paragraph *(bA)* of the following paragraph:

"(*b*B) if requested, provide assistance to an *employee* earning less than the threshold *prescribed* by the *Minister* under section 6 (3) of the *Basic Conditions of Employment Act* to enforce any award in favour of that *employee* in respect of arbitration proceedings in terms of any *employment law*, including but not limited to instructing, and paying the fees of, a sheriff as contemplated in the Sheriffs Act, 1986 (Act No. 90 of 1986), provided that the *employee* remains responsible in law for the enforcement of the award;";

(c) by the deletion in subsection (2A) of the expression "and" at the end of paragraph *(l)* and the insertion after paragraph *(l)* of the following paragraphs:

"(*lA*) the practice and procedure in connection with the facilitation of a *dispute* in terms of section 189A, including the initiation, form, content and use of facilitation to the extent that these matters are not included in the regulations contemplated in section 189A (5) and (6);

(lB) the referral, determination and enforcement of claims for violations of the National Minimum Wage Act, 2018 (Act No.9 of 2018) or any other employment law in terms of Chapter 10 of the *Basic Conditions of Employment Act*, including the payment by employers of security and fines;

(lC) any matter in connection with the enforcement of awards; and";

(d) by the addition after subsection (2A) of the following subsection:

"(2B) The *Commission* may make rules regarding inquiries by an arbitrator in terms of section 188A"; and

(e) by the substitution for subsection (3) of the following subsection:

"(3) The *Commission* may provide *employees,* employers, registered *trade unions,* registered *employers' organisations,* federations of *trade unions,* federations of *employers' organisations* or *councils* with advice or training relating to the primary objects of *this Act* or any other *employment law*, including but not limited to—

(a) establishing and supporting collective bargaining structures;

(b) designing, establishing and electing *workplace forums* and creating deadlock-breaking mechanisms;

(c) the functioning of *workplace forums*;

(d) preventing and resolving *disputes* and *employees'* grievances;

(*d*A) addressing conflict in the *workplace* and promoting positive workplace relations;

(e) disciplinary procedures;

(f) procedures in relation to *dismissals*;

(g) the process of restructuring the *workplace*;

(h) affirmative action and equal opportunity programmes; **[and]**

(i) the prevention and elimination of discrimination and sexual and other forms of harassment in the *workplace*;

(j) the provision of collective bargaining support functions;

(k) the promotion of job creation and employment security;

(l) the promotion of decent work; and

(m) the publication of training and guidance materials.".

Amendment of section 117 of Act 66 of 1995

17. Section 117 of the principal Act is hereby amended by the substitution in subsection (7) for the words preceding paragraph *(a)* of the following words:

"(7) The governing body may **[remove a commissioner from office]** terminate a commissioner's contract for—".

Amendment of section 125 of Act 66 of 1995

18. Section 125 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

"*(b)* appointing commissioners, or **[removing a commissioner from office]** terminating a commissioner's contract;".

Amendment of section 126 of Act 66 of 1995

19. Section 126 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) In this section, "the Commission" **means**

(a) the governing body;

(b) a member of the governing body;

(c) the *director*;

(d) a commissioner;

(e) a staff member of the *Commission*;

(f) a member of any committee established by the governing body; and

(g) any person with whom the governing body has contracted or appointed to **[do work for, or in association with whom it performs]** perform a function of **[,]** the Commission.".

Amendment of section 127 of Act 66 of 1995 as amended by Act 42 of 1996, Act 12 of 2002 and Act 8 of 2018

20. Section 127 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any *council* or private agency may apply to the governing body in the *prescribed* form for accreditation and for accreditation of the persons to perform any of the following functions **[–]**:

(a) **[resolving]** Resolving *disputes* through conciliation, if any *employment law* requires conciliation; and

(b) arbitrating *disputes* that remain unresolved after conciliation, if **[this Act]** any *employment law* requires arbitration.".

Insertion of section 140A in Act 66 of 1995

21. The following section is hereby inserted after section 140 of the principal Act:

"**Special provisions related to postponement of arbitrations**

140A. If a commissioner finds that a request for the postponement of a hearing was frivolous or vexatious, or could reasonably have been avoided, the commissioner may charge the responsible party a postponement fee.".

Amendment of section 143 of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

22. Section 143 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Despite subsection (1), a party enforcing or executing an arbitration award in terms of which another party is required to pay an amount of money may enforce or execute that award as if it were an order of either the Magistrate's Court or the Labour Court.".

Amendment of section 150C of Act 66 of 1995 as amended by Act 8 of 2018

23. Section 150C of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) An employers' organisation or *trade union* party to a *dispute* must, in accordance with its constitution, **[consult]** hold a secret ballot with its members before rejecting an award in terms of subsection (5)*(a)*.".

Amendment of section 153 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 127 of 1998

24. Section 153 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* must be judges of the **[Supreme Court]** High Court or the Labour Court; and".

Amendment of section 156 of Act 66 of 1995

25. Section 156 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Labour Court has jurisdiction **[in all the provinces of]** throughout the Republic."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) The **[Minister of Justice, acting on the advice of *NEDLAC*, must determine the seat]** seats of the Labour Court are in Johannesburg, Cape Town, Durban and Gqeberha and such further areas as the Minister of Justice, on the advice of NEDLAC, may determine."

Amendment of section 159 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998 and Act 6 of 2014

26. Section 159 of the principal Act is hereby amended by the insertion in subsection (3) after paragraph *(a)* of the following paragraph:

"(*a*A) after consultation with the Minister of Justice and Constitutional Development, the performance of dispute resolution functions by

judges taking into account the impartiality of judges, the interest of justice not limited to the likelihood of undue prejudice to a party, the objects of the Act, whether the dispute was subject to a dispute resolution process of a *council* or the *Commission* and the principles of labour justice;".

Amendment of section 160 of Act 66 of 1995

27. Section 160 of the principal Act is hereby amended by the substitution for subsection (2) of the following section:

"(2) Despite subsection (1), the Labour Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a court of a provincial division of the **[Supreme]** High Court could have done so.".

Amendment of section 162 of Act 66 of 1995

28. Section 162 of the principal Act is hereby amended by the substitution for subsection (2) *(a)* of the following subsection:

"(2) When deciding whether or not to order the payment of costs in any matter, the Labour Court may take into account, among other factors–

(a) whether the matter referred to the Court ought to have been referred to arbitration in terms of **[this Act]** an *employment law* and, if so, the extra costs incurred in referring the matter to the Court; and".

Amendment of section 167 of Act 66 of 1995 as amended by Act 127 of 1998

29. Section 167 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Except for matters that may be decided by the Constitutional Court, the Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court **[in respect of the matters within its exclusive jurisdiction]**.".

Amendment of section 169 of Act 66 of 1995 as amended by Act 42 of 1996 and Act 127 of 1998

30. Section 169 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the High Court or the Labour Court to serve as acting judges of the Labour Appeal Court.".

Amendment of section 170 of Act 66 of 1995 as amended by Act 42 of 1996, Act 127 of 1998 and Act 10 of 2013

31. Section 170 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

"(3A) *(a)* The Judge President, Deputy Judge President and a judge of the Labour Appeal Court must respectively be accorded the same remuneration, allowances and other conditions of employment as applicable to the President, Deputy President and a judge of the

Supreme Court of Appeal in terms of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and

(b) An acting judge of the Labour Appeal Court must be accorded the same remuneration, allowances and other conditions of employment as a judge of the Labour Appeal Court, for the period of their appointment.".

Amendment of section 179 of Act 66 of 1995

32. Section 179 of the principal Act is hereby amended by the substitution for subsection (2) *(a)* of the following subsection:

"(2) When deciding whether or not to order the payment of costs in any matter, the Labour Appeal Court may take into account, amongst other factors–

(a) whether the matter referred to the Court should have been referred to arbitration in terms of **[*this Act*]** an *employment law* and, if so, the extra costs incurred in referring the matter to the Court; and".

Amendment of section 188 of Act 66 of 1995

33. Section 188 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) **[Any]** Subject to subsection (3), any person considering whether or not the reason for *dismissal* is a fair reason or whether or not the *dismissal* was effected in accordance with a fair procedure

must take into account any relevant *code of good practice* issued in terms of *this Act.*"; and

(b) by the addition after subsection (2) of the following subsections:

"(3) Subject to any applicable collective agreement, a fair procedure under subsection (2) in respect of a *dismissal* contemplated in subsection (1)*(a)*(i) is one in which the employee has been given an adequate and reasonable opportunity to respond to the reason for *dismissal.*

(4) This section does not apply to a new employee–

(a) during the first three months of employment; or

(b) if it is a longer period, a period of probation that is specified in a contract of employment and is both reasonable and operationally justifiable.".

Amendment of section 188A of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

34. Section 188A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) An employer may, with the consent of the *employee,* which may be given in a contract of employment or in accordance with a collective agreement, request a *council*, an accredited agency or the *Commission* to appoint an arbitrator to conduct an inquiry into allegations about the conduct or capacity of that *employee.*";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The request must comply with any applicable provision in a collective agreement or contract of employment and be in the **[*prescribed*]** form issued by the Commission in terms of section 115 (2B).";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The *council*, accredited agency or the Commission must appoint an arbitrator on receipt of—

(a) payment by the employer of the *prescribed* fee; and

(b) where an *employee* did not consent in terms of subsection (1), the *employee's* written consent to the inquiry";

(d) by the deletion of subsection (4); and

(e) by the addition after subsection (12) of the following subsection:

"(13) The *council*, accredited agency or the *Commission* must appoint an arbitrator on receipt of a request by the *employee* or employer, as contemplated by subsection (11) and on receipt of payment by the employer of the *prescribed* fee which must be made within seven days of the request.".

Amendment of section 189A of Act 66 of 1995 as amended by Act 12 of 2002 and Act 6 of 2014

35. Section 189A of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following sub-section:

"If a facilitator is appointed in terms of subsection (3) or (4) the facilitation must be conducted in terms of any **[regulations]** rules made by the

Commission **[Minister]** under subsection (6) for the conduct of such facilitations."

(c) by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

"The **[*Minister*, after consulting *NEDLAC* and the]** *Commission* may make **[regulations]** rules relating to–";

(c) by the addition after subsection (6) of the following subsection:

"(6A) A rule made in terms of subsection (6) must be published in accordance with section 115 (6).";

(d) by the substitution in subsection (7)*(b)* for subparagraph (ii) of the following subparagraph:

"(ii) refer a *dispute* concerning **[whether there is a fair reason for]** the fairness of the *dismissal* to the Labour Court in terms of section 191**[(11)]**, except that the *trade union* or *employees* are not required to refer the dismissal to conciliation in terms of section 191(1).";

(e) by the substitution in subsection (8)*(b)*(ii) for item (bb) of the following item:

"*(bb)* refer a *dispute* concerning **[whether there is a fair reason for]** the fairness of the *dismissal* to conciliation by a *council* having jurisdiction or the *Commission*, and if it is not settled to the Labour Court, in terms of section 191**[(11)]**.";

(f) by the substitution for subsection (10) of the following subsection:

"(10) *(a)* A consulting party may not—

(i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning **[whether there is a fair reason for]** the fairness of that *dismissal* to the Labour Court;

(ii) refer a *dispute* about **[whether there is a fair reason for]** the fairness of a *dismissal* to the Labour Court, if it has given notice of a strike in terms of this section in respect of that *dismissal.*

(b) If a *trade union* gives notice of a strike in terms of this section—

(i) no member of that *trade union*, and no *employee* to whom a collective agreement concluded by that *trade union* dealing with consultation or facilitation in respect of *dismissals* by reason of the employers' *operational requirements* has been extended in terms of section 23 (1) *(d)*, may refer a dispute concerning **[whether there is a fair reason for]** the fairness of the *dismissal* to the Labour Court;

(ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.";

(g) by the deletion of subsections (13) to (18); and

(h) by the insertion in subsection 20 after the definition of 'employer' of the following definition:

"**'fairness of a dismissal'** means the fairness of a dismissal contemplated in section 188 and includes compliance with this section.".

Amendment of section 191 of Act 66 of 1995 as amended by Act 127 of 1998, Act 12 of 2002 and Act 6 of 2014

36. Section 191 of the principal Act is hereby amended—

(a) by the deletion in subsection (5)*(a)* of the "or" at the end of subparagraph (iii) and the insertion after subparagraph (iv) of the following subparagraph:

"(v) the employee has referred a *dispute* to the *Commission* in terms of section 10(6)*(aA)* of the Employment Equity Act, 1998 (Act 55 of 1998) and the *dismissal dispute*, whether in terms of section 187 or section 188, can be determined jointly with that dispute; or";

(b) by the substitution in subsection (5A) for paragraph *(c)* of the following paragraph:

"*(c)* any other *dispute* contemplated in subsection (5)*(a)* or specified in section 115(1)*(a)* and *(b)* in respect of which no party has objected to the matter being dealt with terms of the subsection."; and

(c) by the insertion of the following subsections after subsection (11):

"(11A) An *employee* who is dismissed for a reason contemplated in section 187*(d)*, *(e)* or *(f)* may elect to refer the dispute either to arbitration or to the Labour Court.

(11B) If, in the course of an arbitration referred to the *Commission* in terms of subsection (5)*(a)*, it becomes apparent that the *dispute* concerns a matter dealt with in section 187*(d)*, *(e)* or *(f)*, the *Commission* or a commissioner may proceed, despite there being no referral in terms of subsection (11A), to determine the dispute after taking into account–

(a) the complexity of the questions of law and fact raised in the matter;

(b) the public interest;

(c) speedy dispute resolution; and

(d) the submissions of the parties.

(11C) Subsections (11A) and (11B) do not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of *Basic Conditions of Employment Act*.".

Amendment of section 193 of Act 66 of 1995 as amended by Act 12 of 2002

37. Section 193 of the principal Act is hereby amended by the insertion of the following subsection after subsection (2):

"(2A) Subsection (1) *(a)* and *(b)* and subsection (2) do not apply to an *employee* who earns more than an amount that may be *prescribed* by the Minister by notice in the *Gazette*, unless the *dismissal* was automatically unfair.".

Amendment of section 194 of Act 66 of 1995 as amended by Act 12 of 2002

38. Section 194 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair either because the employer did not prove that the reason for *dismissal* was a fair reason relating to the employee's conduct or capacity or the employer's *operational requirements* or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' *remuneration* calculated at the *employee's* rate of *remuneration* on the date of *dismissal*, to a maximum of an amount that may be *prescribed* by the Minister by notice in the *Gazette*."; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) The compensation awarded to an *employee* in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months *remuneration*, to a maximum of an amount that may be *prescribed* by the Minister by notice in the *Gazette*, provided that the *prescribed* amount is not applicable in the case of an unfair labour practice contemplated by section 186(2)*(d)*.".

Substitution of section 195 of Act 66 of 1995

39. Section 195 of the principal Act is hereby substituted for the following section:

"**[An]** Subject to section 196, an order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to

which the *employee* is entitled in terms of any law, collective agreement or contract of employment.".

Insertion of section 196 in Act 66 of 1995

40. The following section is hereby inserted after section 196 of the principal Act:

"**Prevention of duplication of claims**

196. (1) An *employee* who has referred a *dispute* about the fairness of a dismissal in terms of this Chapter may not also bring a claim, arising from the same facts, in respect of the unlawfulness of that dismissal.

(2) An employee who has brought a claim about the unlawfulness of a dismissal may not also refer a *dispute*, arising from the same facts, in respect of the fairness of that dismissal in terms of this Chapter.".

Insertion of section 208B in Act 66 of 1995

41. The following section is hereby inserted after section 208A of the principal Act:

"**Determination of amount for purposes of section 193 and 194**

The Minister must adjust the amounts contemplated in sections 193 and 194, by annually publishing a notice in the *Gazette* increasing or decreasing those amounts in accordance with the Consumer Price Index published by Statistics South Africa in March of that year, which notice must take effect from 1 May of that year.".

Insertion of section 209A in Act 66 of 1995

42. The following section is hereby inserted in the principal Act after section 209:

"**Limitation of liability**

209A (1) No person exercising a power or performing a function under an *employment law* that gives effect to *this Act*, is liable for any damage or loss caused by the exercise or performance of, or failure to exercise or perform, that power or function, unless such exercise or failure is unlawful, grossly negligent or in bad faith.

(2) This section applies to—

(a) any person appointed or employed to exercise a power or perform a function under any *employment law* that gives effect to *this Act*; and

(b) any person or entity required to exercise a power or perform a function under any *employment law* to give effect to *this Act*.".

Amendment of section 213 of Act 66 of 1995

43. Section 213 of the principal Act is hereby amended—

(a) by the insertion of the following definition after the definition of "auditor":

' **'ballot'** includes any system of voting by members that is recorded;";

(b) by the substitution for the definition of "dispute" of the following definition:

"**'dispute'** includes an alleged *dispute* in terms of any *employment law*;";

(c) by the insertion after the definition of "dispute" of the following definition:

"**'dispute about or arising from the interpretation or application'** in respect of *this Act*, any other *employment law*, constitution of a *trade*

union, *employer's organisation* or federation, settlement or *collective agreement* or determination includes a *dispute* concerning whether there has been compliance with *this Act*, *employment law*, constitution of a *trade union*, *employer's organisation* or federation, settlement or *collective agreement* or determination and a claim arising from such non-compliance;"; and

(d) by the substitution for the definition of "employment law" of the following definition:

"'**employment law'** includes this Act, any other Act the administration of which has been assigned to the *Minister*, and any of the following Acts:

(a) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

(b) the Skills Development Act, 1998 (Act No. 97 of 1998);

(c) the Employment Equity Act, 1998 (Act No. 55 of 1998);

(d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); **[and]**

(f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

(g) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

(h) the Employment Services Act, 2014 (Act No. 4 of 2014); and

(i) the National Minimum Wage Act, 2018 (Act No.9 of 2018).".

Amendment of Schedule 7 of Act 66 of 1995

44. Schedule 7 of the principal Act is hereby amended by the addition of the following part after item 32:

"*Part I*

Transitional provisions arising out of the application of the Labour Relations Amendment Act, 2025

Definitions

33. For the purposes of this part, "Amendment Act" means the Labour Relations Amendment Act, 2025.

Application of amendments to Commission proceedings

34. Any provision in the Amendment Act relating to the powers of the Commission applies to matters referred to the Commission after the commencement date.

Application of amendments to Labour Court proceedings

35. Any provision in the Amendment Act relating to the powers of the Labour Court applies to matters referred to the Labour Court after the commencement date.

Application of Facilitation Regulations

36. The Facilitation Regulations made by the Minister in terms of section 189 A (6) prior to the Amendment Act, remain in effect until such time as the rules made by the Commission in terms of that section come into effect.

Inquiry by an arbitrator

37. The form prescribed by the Minister in terms of section 188A(2) remains in effect until the CCMA has issued a form in terms of section 115 (2B).

Income threshold for purposes of sections 193 and 194

38. The Minister must issue a notice which takes effect on the same date as the applicable provisions in the Amendment Act, setting the amount applicable to sections 193 and 194 in terms of section 208A at R1,800,000 per annum, adjusted annually in terms of the Consumer Price Index for the period from 30 April 2025 until the date that the provision comes into effect.".

Deletion of Schedule 8 to Act 66 of 1995

45. Schedule 8 to the principal Act is hereby deleted.

Addition of Schedule 11 to Act 66 of 1995

46. The following Schedule is hereby added to the principal Act after Schedule 10:

"**SCHEDULE 11**

EXTENSION OF FREEDOM OF ASSOCIATION, ORGANISATIONAL RIGHTS AND COLLECTIVE BARGAINING

Definition of employee

1. For the purposes of this Schedule–

'employee' means an individual, other than an *employee* as defined in section 213 of the Act, who works for a person that is not a client or customer of any profession, business or undertaking carried on by the individual; and

'employer' means any person or entity for whom an employee works.

Presumption

2. For the purposes of this Schedule, an individual is an employee unless the employer demonstrates that the following factors are satisfied:

(a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;

(b) the person is not part of the organisation of the employer; and

(c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

Freedom of Association

3. Chapter II applies to employees and their employers.

Collective Bargaining

4. (1) Subject to this item, Chapter III applies to employees and their employers.

(2) If a *trade union* seeks to exercise the rights conferred by Part A of Chapter III in respect of employees, those employees must be taken into

account for determining representativeness for the purposes of that Part. For the sake of clarity, if a *trade union* elects not to exercise those rights in respect of those employees, those employees are not taken into account in determining representativeness.

(3) If a *collective agreement* contemplated in section 23, 25 or 26 is intended to bind employees contemplated in this Schedule, those employees must be taken into account for the purpose of determining a majority required by that section.

(4) For the purpose of determining the representativeness of the parties to a *bargaining* or a *statutory council* in terms of section 49(1), the *registrar* may only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees.

(5) For the purpose of determining the representativeness of the parties to a *collective agreement* in terms of 49(2), the *registrar* may only take into account employees contemplated in this Schedule, if the scope of the *collective agreement* includes those employees.

***Strikes* and *lock-outs* and extension of certain unfair dismissal protection**

5. (1) Chapter IV applies to employees and employers.

(2) A termination of the services of an employee for the reasons contemplated in section 187(1)*(a)* to *(c)* constitutes a dismissal for the purposes of those provisions.

Trade unions* and *employers' organisations

6. (1) A constitution of a *trade union* may provide for employees to qualify for

membership in terms of section 95(5)*(b)*.

(2) A constitution of an *employers' organisation* may provide for employers to qualify for membership in terms of section 95(5)*(b)*.

Dispute resolution

7. For the purposes of a *dispute* arising from the application of this Schedule, any relevant provision in the Act relating to *dispute* resolution applies with the necessary changes required by context."

Short title and commencement

46. This Act is called the Labour Relations Amendment Act, 2025, and comes into effect on the date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS ON LABOUR RELATIONS AMENDMENT BILL, 2025

1. OBJECTS OF THE BILL

In preparation for the publication of the Labour Relations Amendment Bill (the Bill), the Department of Employment and Labour (the Department), and the representatives of Organised Business and Labour undertook a labour law review and have engaged in extensive consultations over a period of more than two years commencing in April 2022 and concluding in November 2024 in the National Economic Development and Labour Council (NEDLAC). The proposed amendments to the Labour Relations Act, 1995 (Act No. 66 of 1995) (the Act), can be grouped under the following themes:

(a) Changes in the labour market and the nature of work;

(b) Identified bottlenecks in existing dispute resolution and adjudication systems;

(c) Broadening access to freedom of association and collective bargaining in response to an increasingly large group of unprotected workers;

(d) Rights and protection appropriate to the changing nature of work and an increasingly large group of unprotected workers;

(e) Reducing levels of disputes and simplifying dispute procedures; and

(f) Enabling economic growth and sustainability for small and new businesses.

2. DISCUSSION OF THE BILL

2.1 Clause 1

Clause 1 of the Bill proposes to amend section 26(15) of the Act to provide that a ballot conducted by a trade union of employees to decide whether to terminate or extend a closed shop agreement must be conducted as a secret ballot. The requirement to conduct a secret ballot is meant to address the issue of greater transparency among the actors in the workplace and ensure the legitimacy of trade union representation. Clause 1 further inserts a new subsection (15A) which provides that a closed shop agreement will lapse if the representative trade union fails to conduct a secret ballot concerning its extension within three years of either the agreement coming into effect or a previous ballot authorising the closed shop. This amendment is designed to ascertain whether the trade union still represents the majority of employees by compelling a trade union to conduct a secret ballot within the specified timeframe. The shift is critical to ensure that trade unions that are party to closed shop agreements continue to enjoy and represent the interests of the majority of employees.

2.2. Clause 2

Clause 2 of the Bill proposes to amend section 32 by inserting subsections (12) and (13), which provide that newly established employers, employing less than 50 employees, and their employees are not covered by terms and conditions of employment set in bargaining

council collective agreements for the first two years of their operation. A new employer, for the purposes of this provision, does not include a business created by a transfer of a business as a going concern in terms of section 197 of the Act or any other business formed by the division or dissolution of any existing business. During this period, new employers will be obliged to comply with all other provisions in the Act, the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) and the National Minimum Wage Act, 2018 (Act No.9 of 2018) as well as all other labour legislation.

2.3 Clause 3

Clause 3 of the Bill proposes to amend section 32A(2) of the Act to extend the period for which the Minister may renew bargaining council funding agreements from 12 months to 36 months. The Minister must consider the impact on collective bargaining at a sectoral level as a relevant factor when deciding whether to renew a funding agreement in terms of this provision.

The shift from 12 months to 36 months for extending agreements regulating social benefit funds, dispute levies and administrative levies was driven by practical challenges within the collective bargaining system. With a longer period of validity for agreements in place, these funds will have breathing space to continue to function in situations where parties fail to reach an agreement on terms and conditions of employment within the 12-month timeframe.

2.4 Clause 4

Clause 4 of the Bill proposes to amend section 53(1) of the Act to provide that bargaining councils and statutory councils may maintain their financial records in accordance with a financial reporting standard prescribed in terms of regulations issued under the Companies Act, 2008 (Act No. 71 of 2008). This will bring the accounting obligations on councils in line with contemporary best practice.

2.5 Clause 5

Clause 5 of the Bill proposes to amend section 65(1)(d) of the Act to clarify the circumstances in which employees within an essential service, in respect of which there is a minimum services or maintenance services agreement or determination, may embark upon strike action. This amendment must be read in conjunction with the proposed amendments to section 72(5) of the Act.

2.6 Clause 6

Clause 6 of the Bill proposes to amend section 69 of the Act by the substitution of subsection (15) in order to empower a facilitator appointed in terms of section 189A of the Act to determine picketing rules in the same manner as a Commissioner conducting a conciliation.

2.7 Clause 7

Clause 7 of the Bill proposes to amend section 70 of the Act to clarify–

(a) that the Commission for Conciliation, Mediation and Arbitration (CCMA), must provide administrative support to the essential services committee; and

(b) that the essential services committee acts independently when exercising its powers and performing its functions.

This amendment clarifies the legal status of the essential services committee when performing its functions and, in particular, its relationship with the CCMA.

2.8 Clause 8

Clause 7 of the Bill proposes to amend section 71 of the Act to provide that the powers and procedures applicable to the variation or cancellation of an essential service designation do not apply to determinations or ratifications of minimum service agreements, which are to be regulated in terms of proposed amendments to section 72.

2.9 Clause 9

Clause 9 of the Bill proposes to amend section 72 of the Act–

(a) by amending subsection (2) to empower a panel of the essential services committee to ratify minimum service determinations in workplaces where there is no majority trade union;

(b) by amending subsection (3) to clarify the language used in respect of the provision of minimum services and to provide that the provisions of section 74 relating to essential service disputes do not apply to services in which there is a minimum service agreement or determination;

(c) by amending subsection (4) to change the terminology from "revoke" to "cancelled";

(d) amending subsection (5) to enable trade unions to call protected strikes in accordance with the Act's procedures after the conclusion of the statutory conciliation process in essential services in respect of which there is a designated minimum service, provided that minimum service employees are not permitted to participate in the strike;

(e) to amend subsection (8) to create consistency with the amendment to subsection (2);

(f) to insert a new subsection (10) to empower a panel of the essential services committee to rescind or cancel minimum service agreements or determinations after due process.

2.10 Clause 10

Clause 10 of the Bill proposes to amend section 74 of the Act so as to clarify the procedure applicable to the referral of disputes in essential services to conciliation under the Act. This amendment must be read in

conjunction with the proposed amendments to sections 65(1)(d) and 72(5) of the Act.

2.11 Clause 11

Clause 11 of the Bill proposes to amend section 77 of the Act by inserting a new subsection (1)(e). This clarifies that a dispute referred to NEDLAC regarding a socio-economic rights issue remains valid for 24 months from the date the NEDLAC process considering the dispute is completed. There is presently no express time limit in the Act, which has given rise to uncertainty.

2.12 Clause 12

Clause 12 of the Bill proposes to amend section 98 of the Act to provide that registered trade unions and employers' organisations must maintain their financial records, in accordance with a financial reporting standard prescribed by the Minister.

2.13 Clause 13

Clause 13 of the Bill proposes to amend section 99(c) of the Act to empower the Minister to make regulations concerning the maintenance of records of ballots by trade unions and employers' organisations.

2.14 Clause 14

Clause 14 of the Bill proposes to amend section 106 of the Act by inserting a new subsection (4) empowering the Minister, after consultation with NEDLAC, to issue guidelines to be applied by the Registrar of Labour Relations (Registrar) when exercising powers in respect of the withdrawal of the registration of a trade union or employers' organisation.

2.15 Clause 15

Clause 15 of the Bill proposes to amend section 107 of the Act–

(a) by inserting subsection (1A) requiring the Registrar to maintain a register of administratively compliant federations of trade unions and employers' organisations; and

(b) by inserting subsections (4) – (6) which set out the procedure that the Registrar must follow if he or she is considering removing a federation of trade unions or employers' organisations from that register and the legal consequences of removal from the register.

2.16 Clause 16

Clause 16 of the Bill proposes to amend section 115 of the Act –

(a) by amending subsection (1) to clarify that the CCMA has the power to resolve disputes through conciliation and arbitration, where it is authorised to do so by any employment law;

(b) by inserting subsection (2)(bB) clarifying that the CCMA may assist low-paid workers to enforce arbitration awards, including instructing the Sheriffs of the Court and paying their fees;

(c) by inserting subsections (2A)(n) – (q) to expand the powers of the governing body of the CCMA to make rules to include the following matters:

(i) the facilitation of consultations concerning potential large-scale operational requirements dismissals in terms of section 189A;

(ii) the enforcement of claims in terms of the National Minimum Wage Act, 2018 and the Basic Conditions of Employment Act, 1997 by the CCMA in terms of Chapter 10 of the BCEA; and

(iii) any matter concerning the enforcement of arbitration awards; and

(d) by amending subsection (3) to expand the issues in respect of which the CCMA may provide advice or training to trade unions and employers' organisations to include promoting positive

workplace relations, the elimination of workplace discrimination and the promotion of job creation, employment security and decent work.

2.17 Clauses 17 and 18

Clauses 17 and 18 of the Bill respectively propose to amend sections 117(1) and 125(1) of the Act in order to clarify that the governing body of the CCMA has the power to terminate a Commissioner's contract and that this function may not be delegated. This amendment will enable the governing body to delegate functions in relation to the engagement of Commissioners other than their appointment or termination, such as the suspension of a Commissioner, to the Director or other officials of the CCMA, while decisions about appointment and termination remain the exclusive responsibility of the governing body.

2.18 Clause 19

Clause 19 of the Bill proposes to amend section 126 of the Act to clarify its meaning. Presently, it has the result that people who have contracted with or are working with the Commission have the same limitation of liability and disclosure of information as the Commission. The proposed amendment will restrict these limitations to the Commission and those performing official functions on its behalf.

2.19 Clause 20

Clause 20 of the Bill proposes to amend section 127(1) of the Act to enable bargaining councils, statutory councils and dispute resolution agencies to be accredited for conciliation and arbitration functions in terms of any employment law. Currently, accreditation is restricted to functions under the Act. This will enable, in particular, accreditation for disputes arising out of the Basic Conditions of Employment Act, 1997 and the Employment Equity Act, 1999 and will enable bargaining councils to assume functions currently performed by the CCMA.

2.20 Clause 21

Clause 21 of the Bill proposes to amend section 140A of the Act to empower a Commissioner to order a party who requests the postponement of an arbitration hearing to pay a prescribed fee if the request for postponement is frivolous, vexatious or could reasonably have been avoided by that party.

2.21 Clause 22

Clause 22 of the Bill proposes to amend section 143(5) to enable CCMA awards requiring the payment of a sum of money to be enforced as if they are orders of either the Magistrate's Court or the Labour Court. The effect of sections 143(1) and (3) is that arbitration awards that have been certified by the director of the CCMA may be enforced as if they are orders of the Labour Court in respect of which a writ has been issued.

Section 143 (5), however, provides that awards for payment of monies must be enforced or executed as if they were orders of the Magistrate's Court. The purpose of this amendment was to reduce the costs of enforcing awards by making the Magistrate's Court tariffs applicable, as CCMA awards are generally for relatively small sums of money for which the High Court tariff was considered to be inappropriate. This amendment has, however, been interpreted as requiring proceedings related to enforcement, such as interpleader processes, to be held in the Magistrate's Court even though the Magistrate's Court was not previously seized with the substantive dispute. The proposed amendment seeks to resolve this difficulty by allowing a party enforcing an award to recover a sum of money to elect to do so in either the Labour Court or the Magistrates' Court.

2.22. Clause 23

Clause 23 of the Bill proposes to amend section 150C to require trade unions and employers' organisations to hold a secret ballot before rejecting an advisory arbitration award in respect of a strike or lock-out that may be non-functional to collective bargaining or involve a violation of constitutional rights. The amendment is intended to replace the current requirement that trade unions must consult with their members over whether to accept an award or not. This amendment clarifies the required process and is consistent with other proposed amendments requiring secret ballots.

2.23 Clause 24

Clause 24 of the Bill proposes to amend section 153(2)(a) of the Act to provide that a judge of either the High Court or the Labour Court may be appointed to be the Judge President or Deputy Judge President of the Labour Court. Currently, this is restricted to High Court judges.

2.24 Clause 25

Clause 25 of the Bill proposes to amend section 156 of the Act–

(a) by clarifying in subsection (1) that the Labour Court has nationwide jurisdiction; and

(b) by specifying that the court has seats in Johannesburg, Cape Town, Durban and Gqeberha and in such other areas as the Minister of Justice, on the advice of NEDLAC, may determine.

2.25 Clause 26

Clause 26 of the Bill proposes to amend section 159(3) of the Act by empowering the Rules Board to make rules for the Labour Court dealing with the performance of dispute resolution functions by judges. This is intended to enable the performance of dispute resolution functions by judges in a manner that upholds the integrity and impartiality of the judiciary. This will require careful consideration of whether the dispute has already been subjected to existing dispute resolution mechanisms, such as those provided by a bargaining council or the CCMA, or it is a

matter that can be referred directly to the Labour Court without prior conciliation. By doing so, the provision seeks to promote conciliation of disputes while avoiding duplication of processes and preserving the role of specialised labour institutions.

2.26 Clause 27

Clause 27 of the Bill proposes to amend section 160 of the Act by replacing the reference to the "Supreme Court" with the "High Court".

2.27 Clause 28

Clause 28 of the Bill proposes to amend section 162 of the Act by clarifying that the Labour Court may take any relevant factor into account when making an order of costs.

2.28 Clause 29

Clause 29 of the Bill proposes to amend section 167(2) of the Act to clarify that, subject to the jurisdiction of the Constitutional Court, the Labour Appeal Court is the final Court of Appeal in respect of all matters heard by it. Currently, this status is limited to matters within the exclusive jurisdiction of the Labour Court.

2.29 Clause 30

Clause 30 of the Bill proposes to amend section 169(2) of the Act to specify that judges of both the High Court and Labour Court may be

appointed as acting judges of the Labour Appeal Court. Currently, this is restricted to High Court judges. This has had the effect of restricting the career path of Labour Court judges as they are unable to act as Labour Appeal Court judges prior to applying for such a position.

2.30 Clause 31

Clause 31 of the Bill proposes to insert section 170(3A) of the Act to provide that the remuneration, allowances and other conditions of employment of the President, Deputy President and other judges, including acting judges, of the Labour Appeal Court are the same as those provided for the equivalent positions within the Supreme Court of Appeal.

2.31 Clause 32

Clause 32 of the Bill proposes to amend section 179(2) of the Act to clarify that the Labour Appeal Court may take any relevant factor into account when making an order of costs.

2.32 Clause 33

Clause 33 of the Bill proposes to amend section 188 of the Act by the addition of subsections (2) – (4), which provide as follows:

(a) subsections (2) and (3) provide that a fair procedure concerning a dismissal for conduct or incapacity is one in which the

employee has had a reasonable opportunity to respond to the reason for dismissal; and

(b) providing the protections in section 188 in respect of unfair dismissal do not apply to new employees during their first three months of employment or during a longer period of probation, provided for in a contract of employment which is reasonable and operationally justifiable.

2.33 Clause 34

Clause 34 of the Bill proposes to amend section 188A of the Act by–

(a) the substitution of subsection (1) and deletion of subsection (4), to enable any employer and employee to agree in a contract of employment to the engagement of a CCMA, bargaining council or accredited agency arbitrator to conduct an enquiry into allegations relating to the employee's conduct or capacity should the need arise. This amendment seeks to reduce the number of disputes that are referred to the CCMA by increasing the use of inquiries by an arbitrator which have the same legal status as arbitrations; and

(b) inserting subsection (13) in order to provide that where a request for an inquiry by an arbitrator is made by an employer or an employee in respect of an employee alleging an occupational

detriment in terms of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), the employer must pay the prescribed fee within seven days of the request.

2.34 Clause 35

Clause 35 of the Bill proposes to amend section 189A of the Act, which provides for facilitation in the case of large-scale retrenchments by–

(a) amending section 189A(5) and (6) and inserting subsection (6A) to enable the CCMA to make rules relating to facilitations held in terms of the section, rather than for the Minister to make regulations, which is the current position;

(b) amending subsection (7)(b)(ii) to clarify that unfair dismissal disputes concerning a retrenchment dismissal falling under section 189A may be referred to the Labour Court after the conclusion of a facilitation process, without a further referral for conciliation;

(c) amending subsection (8)(b)(ii)(aa) to clarify that unfair dismissal disputes concerning operational requirements dismissals falling under section 189A in which a facilitator is not appointed may not be referred to the Labour Court without a referral for conciliation to a council or the Commission in terms of section 191; and

(d) amending subsections (7) and (10), repealing subsections (13) to (18) and inserting a new definition for the term "unfair dismissal" in subsection (20). These amendments return the law to the position that prevailed before the introduction of section 189A in terms of which a challenge to all aspects of the fairness of retrenchment dismissal could be made after the dismissal. As a result, if a facilitation process in terms of section 189A is followed by dismissals, the relevant trade unions or employees will be able to refer a dispute about the procedural or substantive fairness of those dismissals to the Labour Court in terms of section 191. The procedure contained in subsections (13) to (18) which sets out a process for challenges to procedural fairness during the facilitation process has proved to be extremely complex in practice and gave rise to numerous interpretative difficulties, reflected in a number of Constitutional Court decisions.[1]

2.35 Clause 36

Clause 36 of the Bill proposes to amend section 191 of the Act by –

(a) the insertion of subsection (5)(a)(v) to enable the CCMA to hear a dismissal case jointly with an unfair discrimination referral under

[1] *Steenkamp and Others v Edcon Limited* (CCT29/18) [2019] ZACC 17; 2019 (7) BCLR 826 (CC); (2019) 40 ILJ 1731 (CC); [2019] 11 BLLR 1189 (CC); *Regenesys Management (Pty) Ltd t/a Regenesys v Ilunga and Others* (CCT 220/22) [2024] ZACC 8; 2024 (7) BCLR 901 (CC); [2024] 8 BLLR 777 (CC); (2024) 45 ILJ 1723 (CC).

the Employment Equity Act, 1998 (Act No. 55 of 1998) that is also within the jurisdiction of the CCMA;

(b) by the insertion of subsection (11) which allows an individual employee who is dismissed in circumstances amounting to an automatically unfair dismissal concerning the exercise of a right conferred by the Act, the employee's pregnancy or unfair discrimination on election to refer the dispute to the CCMA for arbitration. It further enables the CCMA to hear such a matter, if it emerges in the course of an arbitration, that the dismissal occurred on such a ground. These provisions only apply to employees earning below the threshold set by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act, 1997.

2.36 Clause 37

Clause 37 of the Bill proposes to amend section 193 of the Act by inserting subsection (2A) which has the effect that high-paid employees, earning above an amount prescribed by the Minister in terms of section 208A, will only be entitled to seek reinstatement as a remedy for dismissal if their dismissal constitutes an automatically unfair dismissal.

The restriction on remedies for high-paid employees is consistent with Article 12 of the International Labour Organisation Convention on Termination of Employment, 1982 (158 of 1982), which allows for the

differentiation in the treatment of higher-paid employees, recognising that such employees may not be entitled to the same remedies (such as reinstatement or reemployment) as other employees, particularly if they are in higher managerial or confidential roles.

2.37 Clause 38

Clause 38 of the Bill proposes to amend section 194 of the Act by the substitution of subsections (1) and (4), in order to limit the extent of the earnings that will be taken into account in respect of determining the compensation that may be paid to employees in certain unfair dismissal and unfair labour practice cases. This is a policy choice aimed at setting a threshold for compensation taking into account economic vulnerability.

2.38 Clauses 39 and 40

Clauses 39 and 40 of the Bill respectively propose to amend sections 195 and 196 of the Act by stipulating that an employee who is challenging a dismissal is required to exercise an election to make a claim based on the unfairness of the dismissal, as contemplated in the Act, or on the unlawfulness of the dismissal. This amendment seeks to prevent employees from bringing duplicate claims in respect of the same dismissal which is increasing the burden of disputes referred to the CCMA and the Labour Court.

2.39 Clause 41

Clause 41 of the Bill proposes to insert section 208B in the Act in order to establish the power for the Minister to prescribe a maximum level of earnings for the purposes of sections 193 and 194 of the Act. The Minister will be required to issue a notice annually taking effect on 1 May adjusting this amount in the light of the Consumer Price Index (CPI) published by Statistics South Africa. This section must be read in conjunction with a transitional provision in Schedule 7 which specifies that the threshold that is set when the Act commences and must take into account changes in the CPI on that date.

2.40 Clause 42

Clause 42 of the Bill proposes to insert section 209A in the Act to provide that a person who exercises a power or function under any employment law may only be held liable for any damage or loss caused by the exercise or failure to exercise such power or function if this was done in a manner that was unlawful, grossly negligent or in bad faith. This clause is consistent with limitations on liability for public officials contained in other legislation. The limitation applies to the CCMA, entities established under any employment law performing statutory functions such as inspectorates of the Department of Employment and Labour as well as persons appointed to perform statutory functions such as the sheriffs of the court, when exercising powers on behalf of the CCMA or the Labour Court.

2.41 Clause 43

Clause 43 of the Bill proposes to amend section 213 of the Act –

(a) to include a definition of the term "disputes about the interpretation or application". This amendment is introduced to prevent a situation in which disputes about the interpretation of legal rights and obligations may have to be dealt with separately from financial claims arising out of non-compliance, such as underpayments of remuneration or benefits. This definition applies to disputes about the Act or any other employment law, any trade union, employers' organisation or bargaining council constitution, any collective agreement, settlement agreement or other determination. This will provide parties who are seeking to enforce such rights with certainty as to the forum in which they must institute their claims and allow these matters to be resolved in a single process thus avoiding a duplication of actions;

(b) to revise the definition of "employment law" to reflect changes in legislation.

2.42 Clause 44

Clause 44 of the Bill proposes to amend Schedule 7 to the Act by the insertion of the following transitional provisions:

(a) Any provision in the Amendment Act relating to the powers of the Commission only applies to matters referred to the Commission after the commencement date;

(b) A provision in the Amendment Act relating to the powers of the Labour Court only applies to matters referred to the Labour Court after the commencement date;

(c) The Facilitation Regulations made in terms of section 189A(6) remain in effect until the Commission publishes rules dealing with facilitation;

(d) The form prescribed by the Minister in terms of section 188A(2) for the referral of a dispute to an inquiry by an arbitrator remains in effect until the CCMA has issued a form in terms of section 115 (2B);

(e) The amount contemplated in section 208A of the Act applicable to the remuneration of employees for purposes of sections 193(2A) and 194 (1) and (4) will be set at R1,800,000 per annum adjusted in line with changes in the CPI in the period between 30 April 2025 and the commencement of the Act.

2.43 Clause 45

Clause 44 of the Bill proposes to repeal Schedule 8 as an updated Code of Good Practice: Unfair Dismissal has been promulgated.

2.44 Clause 46

2.44.1 Clause 45 of the Bill proposes to add Schedule 11 to the Act. Schedule 11 specifies how workers who fall outside the current definition of "employee" in section 213 of the Act will be able to exercise the right of freedom of association by forming or joining trade unions, asserting the right to exercise organisational rights as provided for in the Act and engaging in collective bargaining and industrial action, in accordance with the relevant procedures in the Act.

2.44.2 The rationale for specifying an expanded definition of "employee" is that changes in the nature and organisation of work have resulted in an increasing proportion of the South African workforce falling outside the statutory definition of an employee with the result that they do not receive the protections of the Act or other labour legislation. The rise of a variety of forms of unprotected work has been recognised by the courts, and the Constitutional Court has described their position in the following terms:

> *"Fewer and fewer people are in formal employment; fewer of those in formal employment have union backing and protection. More and more people find themselves in the "twilight zone" of employment as supposed "independent contractors" in time-based employment*

subject to faceless multinational companies who may operate from a web presence."[2]

2.44.3 These categories of unprotected workers (who are now often referred to by the internationally used term of "dependent contractors") fall outside of labour legislation and accordingly are not able to exercise the fundamental labour rights established by section 23 of the Constitution which apply to all workers. This exclusion is subject to one exception: the National Minimum Wage Act, 2018 applies to "workers", a term which is significantly wider than the definition of "employee" which determines the ambit of the Act and other labour legislation. The Amendments introduced by Schedule 11 likewise provide appropriate access to rights for excluded workers, as described by the Constitutional Court in the above passage.

2.44.4 The continued exclusion of this broader category of workers from the provisions of the Act which regulate freedom of association and collective bargaining breaches the International Labour Organisation's (ILO) Freedom of Association and Protection of the Right to Organise Convention 87 of 1948 (Convention 87). This core international standard which South Africa ratified in 1996 and is binding on all members of the ILO guarantees the right to form trade unions, participate in collective bargaining and exercise the right to strike in accordance with statutory

[2] *Pretorius and Another v Transport Pension Fund and Another* (2018) 39 ILJ 1937 (CC), para [48].

procedures to all workers, irrespective of the form of the contract in terms of which they are engaged. To the extent that certain categories of workers are unable to exercise the right to form and join trade unions in South Africa, the country is vulnerable to the charge that it is not in compliance with Convention 87 and is accordingly in breach of its obligations as a member of the ILO.

2.44.5 Schedule 11 regulates the rights of individuals, who are not employees as defined in section 213 of the Act, to exercise rights of freedom of association and collective bargaining. Any natural person who works for a person that is not a client or customer of a profession, business or undertaking carried on by the that natural person will be regarded as an employee. Any person for whom such an employee works will be regarded as their employer. A natural person who works for an employer will be regarded as an employee unless their employer demonstrates that that person:

(a) is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;
(b) is not part of the employer's organisation; and
(c) does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

2.44.6 Natural persons who satisfy these criteria are entitled to exercise the rights contained in Chapter II (freedom of association), Chapter III (collective bargaining) and Chapter IV (the right to strike). For purposes of a dispute arising from the application of Schedule 11, any relevant provision in the Act relating to dispute resolution applies with the necessary changes required by context.

2.44.7 Existing trade unions will be entitled to alter their constitutions to enable them to recruit workers falling in this category. A constitution of a trade union may provide for employees contemplated in Schedule 11 to qualify for membership in terms of section 95(5)(b) of the Act. Likewise, a constitution of an employers' organisation may provide for employers contemplated in Schedule 11 to qualify for membership in terms of section 95(5)(b).

2.44.8 Where a trade union seeks to assert statutory rights on behalf of this category of employees, the unions' level of representation among effected employees becomes relevant. In particular, where a trade union seeks to acquire organisational rights on behalf of employees falling within the expanded definition, its level of representation among those employees must be taken into account for determining whether it meets the statutory thresholds to acquire the rights. Likewise, if a collective agreement contemplated in sections 23, 25 or 26 of the Act is

intended to bind employees contemplated in Schedule 11, the union's membership among those employees must be taken into account to determine the majority representation required by that section has been met.

2.44.9 For the purpose of determining the representativeness of the parties to a bargaining or statutory council in terms of section 49(1) of the Act, the Registrar may only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees. The same principle applies if the Registrar is seeking to determine the representativeness of the parties to a collective agreement in terms of section 49(2) of the Act.

2.44.10 Chapter IV, regulating strikes and lock-outs, applies to employees and employers contemplated in this Schedule. A termination of the services of an employee for the reasons contemplated in subsections 187(1)(a) to (c), which relate to participation in a protected strike, constitutes a dismissal for purposes of those provisions.

3. CONSULTATION

NEDLAC was consulted. The National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), provides for the objects, powers and

functions of NEDLAC. NEDLAC must consider all proposed labour legislation before it is introduced in Parliament and must also consider significant changes to the social and economic policy before it is implemented and introduced in Parliament. An extensive consultation process took place between April 2002 and November 2024, the details of which are recorded in the NEDLAC Report.

4. FINANCIAL IMPLICATIONS

There are no financial implications for the Department other than the changes to the remuneration of judges of the Labour Appeal Court that may impact the budget of the Department.

5. PARLIAMENTARY PROCEDURE

5.1 The Department of Labour and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.

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