

Employment law update

August 2014

Amendments to the Basic Conditions of Employment Act

Amendments to the Basic Condition of Employment Act (“BCEA”) were published on 9 December 2013 and the President has yet to pronounce the date on which it will become law. Some of the proposed amendments include, but are not limited to, the extension of the scope of the prohibition and regulation of work performed by child labour; changing enforcement procedures to streamline the Department of Labour’s ability to enforce the BCEA against non-compliant employers and to access the Labour Court for this purpose and permitting the Minister of Labour to regulate a wider range of matters in sectoral determinations.

Increase in Earning Threshold in terms of the BCEA

With effect from 1 July 2014, the BCEA earning threshold was increased to include those employees earning in excess of R205 433.30 (two hundred and five thousand, four hundred and thirty three rand, thirty cents) per annum. Thus, employees earning above this increased threshold are not afforded the rights provided by section 9 (ordinary hours of work), 10 (overtime), 11 (compressed working week), 12 (averaging of hours of work), 14 (meal intervals), 15 (daily and weekly rest period), 16 (pay for work on Sundays), 17(2) (night work) and 18(3) (public holidays) of the BCEA.

Amendments to the Employment Equity Act

Amendments to the Employment Equity Act (“EEA”) were published on 16 January 2014 and came to effect on 1 August 2014. Two significant amendments relate to penalties and the prohibition of unfair discrimination.

The Amendment introduces a heavier sanction for non-compliance with the provisions of the EEA, linked in many instances to the annual turnover of the employer. By way of an example, a contravention of section 20, which regulates the preparation and implementation of employment equity plans, may attract a penalty, for a first offence, of

for a first offence, of the greater of R1 500 000.00 or 2% of the employer’s turnover. This in effect makes non-compliance with the EEA a potentially expensive exercise for an employer.

The Amendment further extends the scope of section 6(1) of the EEA by providing that discrimination is not only prohibited on a ground listed in that section, but also on any other ‘arbitrary ground’.

The Amendment further seeks to provide that a difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value which is directly or indirectly based on any one or more of the grounds in section 6(1) of the EEA, will amount to unfair discrimination, unless the employer can show the differences in earnings or other conditions of employment are in fact based on fair criteria, for example, experience, skill, and responsibility.

Amendments to the Labour Relations Act

The Labour Relations Amendment Bill was passed in 2013. As with the BCEA bill, the date on which it will become law is still to be pronounced by the President. It is anticipated that these amendments will become law within the very near future.

Consideration of ‘Interest Arbitration’

The South African government has raised its concern that it has limited capacity to intervene in strike action which has the capability of crippling the economy and forcing South Africa into a recession. Currently, the Labour Relations Act allows for mediation and arbitration but it is not binding – employers and unions have to agree to it. The Department of Labour is currently considering the introduction of ‘*interest arbitration*’ – where arbitrators make a binding ruling on parties if the settlement of the strike is in the broader public interest. Interest arbitration is used in a number of other jurisdictions, for example, Canada.

Pension Funds and Strike Action by Employees

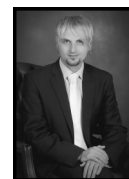
The Labour Relations Act permits employers to suspend the payment of salaries to striking employees during protected strikes.



It is significant to note however, that the Pension Funds Act does not provide for the suspension of pension fund contributions while employees are on strike and not being paid. If employers suspend the payments of pension fund contributions without any legitimate reason, the employers will be subject to penalty interest on late payments, while the directors may be held financially and criminally liable. Employers must therefore take heed that even though the law permits an employer to suspend the payment of salaries of striking employees, an employer will face serious consequences should it fail to pay striking employees pension fund contributions.

Prescribed Rate of Interest Act

As from 1 August 2014, the Prescribed Rate of Interest applicable in terms of section 1(1) of the Act will decrease from 15.5% to 9% per annum. Thus, as of 1 August 2014 interest running in respect of a judgment debt will be calculated at 9% per annum.



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