

General, Domestic and Professional Employers Organisation AGM  
2014 - Breakfast Seminar

Presented by Tessa Kassel

Amendments to the BCEA and LRA

The labour relations landscape after promulgation

A quick update for employers

# What legislation will affect Employers in 2014 / 2015?

BCEAA

LRAA

EEAA

Also take note of the:-

Draft EE Regulations GG10127

PROTECTION FROM HARASSMENT  
ACT

WOMEN EMPOWERMENT AND  
GENDER EQUALITY



# Newsflash items

The minimum threshold for earnings has been increased to **R205 433.30** per annum or R17 119.44 per month as at the 1<sup>st</sup> of July 2014

Your **EE Report** is due on the 1<sup>st</sup> October 2014 for manual submissions, there is a fine of up to R2 700 000 or 10% of your turnover if you fail to comply with the new regulations

The **Employment Equity Amendment Act 47 of 2013** came into effect on the 1<sup>st</sup> August 2014 – do you have an EEP and have you elected an EEC?

**649** new cases are referred to the CCMA every working day

Hlaudi Motsoeneng and **Pallo Jordan** – are you doing adequate background checks

Basic Conditions of Employment Act Amendments to take note of

“**Service**” now includes electronic mail (email and SMS) *Telex is deleted*

S33(A)(1)(b) - an employer must **NOT** require an employee or potential employee to purchase any goods, products or services from the employer or from any business or person nominated by the employer

CRIMINAL OFFENCE – up to 3 years

e.g. Uniforms / PPE / medical aids / provident fund / VW car

**BUT** – S33(A)(2) exceptions:-

can regulate this by including this in terms and conditions of employment

if there is a collective agreement (security industry uniforms)

may require employee to participate in a scheme (medical aid and provident)

**IF** financial benefit to the employee, price of goods is fair and reasonable, purchase is not prohibited by any statute

Criminal offence (up to 6 years) to require or permit **children** to perform work or provide services – S43 of the BCEAA

waitrons / newspaper routes / child headed households?

Also a criminal offence to:-

assist any person to require or permit a child to work in contravention of the Act,

discriminate against a person who refuses to permit a child to work or provide services in contravention of the Act

Farm labourers children / child headed household?

Evidence of age – ONUS?

Reasonable to believe and only **AFTER** investigation

## Section 55 – making of sectoral determinations

### HUGE CONCERN!!

Minimum wages – if fall into a sectoral determination, (collective agreement) those apply, if no determination applies, BCEA applies, right???

The minister may make a S.D. for one or more sector and area to provide for:-

the adjustment of minimum rates *[of remuneration]* or minimum increases, prohibition / regulation of sub-contracting,

the determination of sufficient representivity in a sector *[majority deleted]*

regardless of whether a trade union has sufficient representivity or not = S12 and S13  
automatic right, even 1 employee, in respect of **all** workplaces covered by the S.D. - currently only a BC agreement can include such a provision

(knee jerk to the AMCU issue?) / (*may* consider S21(8) of the LRA when making the S.D.)

farm worker a piece of land to generate additional income

Minister can issue an “umbrella” S.D. thereby allowing interference in **all** forms of collective bargaining (group, plant, ordinary bargaining)

## S74 – Consolidation of proceedings

If an employee institutes proceedings in the CCMA or the Labour Court, the arbitrator or judge hearing the matter has the broadened jurisdiction to also determine any claim for an amount that is owing to that employee i.t.o. the BCEA if such claim has **not prescribed**.

### Effect?

The employee may make part of his claim at the CCMA any amounts due at the time of termination (leave, overtime, notice, remuneration)

Claim will be for compensation plus statutory payments

This will assist to avoid a “splitting” of claims and will prevent an unnecessary duplication of proceedings for employers

# Labour Relations Act Amendments to S21 (8A to 8D)

**Most representative trade union** - exceeds 51%

S12 (TU access), 13 (deduct) , 14 (SS) , 15 (leave TU activity), 16 (disclosure)

Majority trade union 50% + 1 –

NUM at Amplats

S12, 13, 14, 15 and 16

Sufficiently represented – S12, 13, 15

+/- 33-35% of employees on payroll – determined by a **collective agreement**

Commish may grant OR i.t.o. S18 if  
All parties to the collective agreement  
Have been given an opportunity to  
participate in arbitration proceedings

Trade Union represents a **SIGNIFICANT**  
interest – substantial number of  
employees – S18 threshold does not  
apply – S12, 13, 15

Here, NUM cannot close the  
door on AMCU if AMCU only has  
30% and CA threshold = 40%

Commish can grant S14 and 16 rights to a  
union if **no** other union has been granted  
these rights

**Minority** union enjoys  
NO O.R. unless there is  
a S.D.

**NB!!** To determine  
representivity, your  
TES/FTC/Part time/casual  
staff may be included



Amendments to S21(a)(v) – Composition of the workforce in the *workplace* – taking into account the extent to which employees are assigned to work – includes TES e/ees, FTC e/ees, part timers and casuals (*should be read with S18 – threshold and recognition agreements*)

Your labour brokers' staff placed at your site (workplace) (or the workplace of one or more of the TES's clients) may be included in the numbers of e/ees to determine representivity by a TU – S21(12)

*S21(8) (C) – A Commish MAY in an arbitration grant S12, 13 or 15 to a TU or 2/more TU acting jointly (Can't strike on the certificate of outcome if Commish decides not to grant OR)*

**Suggestion:** Employer can say Y/N to the inclusion of TES staff before concluding recognition agreement

## S22 (5) – Binding effects of arbitration awards

It will be binding on:-

- the primary employer,

- the client of a TES for whom the employees covered by the award are assigned to work,

- any person OTHER than the employer who controls access to the premises, if that person has been given an opportunity to participate in the arbitration proceedings

e.g. security companies employees stationed at their client sites, the client cannot rely on the fact that the security company employees are a third party to deny a trade union access to the premises

ACSA a third party controls access to the workplace the award will be binding on ACSA to allow the third party security company's union access to the workplace

Other sections...

S69 – picketing [*And supporters*]

Binding on employers and landlords - 69 (6)(a) – in a place owned or controlled by a person other than the employer, if that *person has had an opportunity to make representations before rules are established* (Game Sandton City – Liberty Properties)

The Labour Court can grant an order under 69(12) (a) directing any party including a person as contemplated in SS(6)(a) to comply with a picketing rule or agreement

S111 (5) An appeal... against the Registrar's decision i.t.o. S106 does NOT suspend the operation of the Registrar's decision – will this be retrospective in effect???

**S115** – amended to clarify the powers of the CCMA to make rules regulating the rights of parties to be represented in proceedings before the CCMA, including the limitation of right to be represented

A Commish may order a representative attend training offered by the CCMA if the representative appears at the CCMA regularly, a sort of CCMA annexed accreditation process perhaps

**S143** – an arbitration award certified by the CCMA for compensation can be directly presented to the Deputy – Sheriff for execution if payment is not made within the stipulated time, removing the need for the employee to approach the Labour Court for a writ of execution – will only take effect on the date of commencement of the amendments

**S144** – Rescission

(d) ...Made in the absence of any party... or if *good cause is shown* – if you can prove it, bring an application

**S161** –representation before the LC by Labour Consultants as members of an EO under the guise of the entities listed in (1)(b) – (e) **(sorry Norman) any member has been deleted as a category**

May NOT charge a fee or receive any financial benefit for services rendered

# Dismissal – S186 and 187

Termination of employment... no need for a contract

FTC employees – less favourable terms or did not offer to retain employee

Transfer employees join new business on less favourable terms

187 (1)(c) Correction of the Fry's Metal anomaly

Deletion of *to compel the employee*

New wording... A refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer

Employers will now be forced to negotiate on matters of mutual interest which if unresolved may lead to a strike

Suggestion, quickly change terms and conditions of employment and address matters of mutual interest using S189 procedures before promulgation of the amendments because after promulgation will not be allowed to offer employees that have been dismissed re-employment because they refused to accept changes to working conditions

S188A – facilitate the use of CCMA senior Commish's to conduct pre-dismissal arbitrations

Need employees' consent

Must explain consequences of Pre-dismissal inquiry

Use for employees earning above the threshold

Going rate = R4688 per day

S188B – huge debate

Dismissal of senior employees on 3 months notice for a good reason, bad reason or no reason at all. Practiced in over 40 jurisdictions in the world.

Is it in or not?

I submit it is not in the 2013 amendments

No reason why you can't have a policy for these types of dismissals and get agreement from this kind of employee

# S198 A to D

**All** employees BELOW the threshold – R17 200

Employees are treated as employees (for the purposes of dismissal and payment) of the client if work at client site for more than 3 months

This Section does not apply to new and small businesses

- less than 10 employees

- less than 50 employees AND whose business has been in operation for less than 2 years

S198B – FTC employees earning under the threshold

Justification for >6 months

Linked to a specific project or is seasonal in nature

N3TC Waste management services – FTC for period of 2 years to pick up litter on the side of the road

Forms the foundations of the operations of the business = waste management

Is a genuine and specific project

Forms part of an official public works scheme or job creation scheme

Always follow Schedule 8 and make sure your TES does so too or make use of FTC that are justifiable



# Noteworthy cases

Simmers v Campbell Scientific Africa 2014

Sexual harassment

Skype evidence

Solidarity obo Wehncke v Surf4cars 2014

S187 (1) (c) AUD ...to compel the employee to accept a demand about any matter of mutual interest between the employer and employee

SAPS v Solidarity obo Renate Barnard awaiting CC judgment

Moloi v MacSteel VRN 2014

Resignation or dismissal

Ludick v Rural Maintenance 2014

Final word on accumulated annual leave

# Questions / discussion / comments



# Further workshops can be held for members offered by the GDP Exec Committee

The 26 new Employment Equity Amendments

Drafting your Employment Equity Plan

Employment Equity Committee duties and obligations

Trade Unions and strikes

Protection from Harassment Act

Employment Tax Incentive

Women Empowerment and Gender Equity

Equal pay for work of equal value