

NOVEMBER 2013

# NEWSLETTER

WISHING ALL MEMBERS A FESTIVE AND  
PEACEFULL YEAR END AND PROSPEROUS 2014



## A GDP WEBSITE IS LAUNCHED!!!!

THE WEBSITE IS AN INITIAL FRAMEWORK WHICH CAN BE EXPANDED AND  
ADAPTED AS DIFFERENT NEEDS ARISE!

A BIG THANK YOU TO LINDI BAILIFF,  
AND TESSA KASSEL, WHO INTRODUCED US TO LINDI, TO DESIGN THE WEBSITE.  
TESSA KASSEL, HEIN SILLANDS AND NORMAN SEABER ALL GAVE INPUT.

## POINTS TO PONDER AS WE REFLECT ON 2013

### Amendments to the LRA

The amendments to the LRA were adopted by Parliament on 20 August 2013. We may anticipate such will be signed into law before the year end recess of Parliament and implementation during the first 6 months of 2014. Some important changes include;

- Amendments to Section 198 of the LRA and addition of Sections 198A, B, C and D. These provide new protection for Temporary Service Employees (Labour Brokers) Temporary Employees and Fixed Term Employees earning less than the Annual Earnings Threshold which is currently R193805.00 stipulated in the BCEA. [See explanation Sect 198 amendments](#)
- Dispute Resolution Reviews in the Labour Court Section 145(7) (8). An Arbitration Award is only suspended pending review on the lodging of security in the amount of 24 months remuneration equivalent for the employee in cases where reinstatement was awarded and in cases of compensation awards the equivalent of the compensation award.

- Retrenchment Section 189A. This provides that a party may request an extension to the already onerous time frame for consultation and such may not be unreasonably refused if such is required to ensure meaningful consultation.
- Section 69 Picketing, this provides for Picketing Rules to be made binding on third parties such as Landlords of employees.

### **The Labour landscape after Marikana**

- The increasing incidence of Unions competing at Company level
- Industry based collective bargaining particularly at Bargaining Council level being perceived as out of touch with employee's aspirations and frustrations at plant, factory, and shop floor operations.
- Ineffectiveness of the Labour Court to meaningfully interdict unprotected Strike Action through interdicts.
- The inability or lack of resolve to control and limit the escalation of violence during Strike Action by Government or Police intervention.

Comment by Norman Seaber

Management will in 2014 need to revise their Management Policies and Strategies to cope with increasing demands from Unionised and non-Unionised employees at operational levels. This will stem from employees dissatisfaction with Union Structures, Union inter rivalry and negative Economic and Political perceptions being fuelled by increasing and wide media coverage, of grass root dissatisfaction.

For these reasons Management will have to draw closer to their employees in the following ways

- Open up communication on subject matters previously considered as only Management relevant or confined to the boardroom.
- Invest in non-basic skills training covering business economics, competition, productivity, inter personal relationships and team building as only some examples
- Remain neutral in respect of Inter Union Rivalry and stick to consistent rules, in communication, consultation, and negotiation. (Minority Unions may in terms of the amended LRA apply for full recognition)
- Practice consistency in discipline
- Attend to grievances openly and speedily
- Eradicate "Nepotism in Policies and Decision Making
- Where possible become involved in community projects and involve employees

In conclusion what I foresee is companies slowly restructuring to a flatter organisational framework to enhance communication and limit adverse distortion of communication, which is inevitable through multi-tiered and excessively hierarchical structures.

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### **Gross Negligence vs Ordinary Negligence (extracted from a submission from Piet Landsberg)**

"The carelessness or mere failure which constitutes ordinary negligence, changes in gross negligence to an indifference to, and a blatant violation of a workplace duty.

Gross negligence can be described as a conscious and voluntary disregard of the need to use reasonable care, which has or is likely to cause foreseeable grave injury or harm to persons, property or both. It is conduct that is extreme when compared to ordinary negligence. Gross negligence also focuses on the magnitude of the risks involved such that, if more than ordinary care is not taken, a serious mishap is likely to occur.

Our courts are also less tolerant of employees who possess or claim to possess special skills and who because of their position and experience/ qualifications can be expected to be aware of the performance standard set by the employer.

Where the degree of professional skill which is required is on a very high level, and the potential consequences of the smallest departure from that high standard are so serious, then one failure to perform in accordance with those standards is enough to justify dismissal. See *Somyo v Ross Poultry Breeders (Pty) Ltd.* (1997) 7 BLLR 862 (LAC).

Ordinary negligence and gross negligence accordingly differ in degree of consciousness or inattention; and both differ from "wilful misconduct", which is conduct that is reasonable calculated to cause damage or injury."

### **Two Cautionary Points (BCEA)**

- 1 Annual leave accrued and not taken cannot simply be made forfeit, there is an onus on the employer to ensure annual leave is taken within 6 months of falling due, but even in the event that such is not taken it still remains accrued and payable on an employee's termination.
- 2 An employee cannot be disciplined for choosing to disclose his/her remuneration to other employees but an employee may not disclose the remuneration of any other employee to others. Section 78(1)(b) of the BCEA states "every employee has the right to discuss his/her conditions of employment with his/her fellow employees or any other person".

Issued by the Executive Committee: Norman Seaber, Tessa Kassel, Herman Breedt and Piet Landsberg

