

WORKPLACE STRATEGIES

People.Management

Proposed Labour Law Amendments – An Update

It has been eight months since the Minister of Labour announced proposals to dramatically change South Africa's labour legislation. See:

<http://www.workplacestrategies.co.za/pdf/Sweeping%20Labour%20Law%20Changes%20Afoot.pdf>

Uncertainty around legislative change inhibits an employer's ability to plan for future employment needs and practices and discourages investment and recruitment initiatives. So what has happened since the proposals were announced and what can we expect to happen in the future?

The Government's position

After announcing the proposed bills in December 2010, the Department of Labour undertook a series of public consultations at the commencement of 2011, with a view to allowing comment on the bills. The real work, however, commenced in March 2011 when the bills were tabled before the National Economic Development and Labour Council ("**Nedlac**"). Nedlac is the negotiating forum for business, labour and government and members include Business Unity SA and the Congress of South African Trade Unions ("**Cosatu**").

The Minister of Labour, Ms Mildred Oliphant, published a media briefing on 19 July 2011 commenting on the progress of the Nedlac negotiations. She suggested that Nedlac had agreed to discuss the proposed amendments under a number of themes "*in order to re-open discussion on the key issues that require legal amendments before proceeding with legal drafting*". The themes include:

- atypical work
- dispute resolution
- compliance and enforcement
- access to employment
- equity
- collective bargaining

The Minister further announced that "*there had been a meeting of minds on a number of issues*" and that new legal drafting has started on issues including fixed-term contracts, temporary employment agencies, part-time work and probation.

The Stakeholders' position

There can be no doubt that business representatives in Nedlac opposed the amendments and called for the withdrawal of the bills, relying heavily on independent reports that if accepted, the proposals would raise labour costs and cut, rather than increase, the number of available jobs.

In some respects business has been successful, particularly in relation to proposals to regulate temporary work (including intentions to ban labour brokering). Media reports suggest that Nedlac has agreed to “*step away*” from the amendments published by the Department of Labour and instead “*work on a fresh draft of an amendment to regulate temporary work*”. Such a step reportedly has the support of Cosatu, who have a desire to “*agree on issues*” before debating the legal drafting. Like Cosatu, Business Unity SA is also echoing comments made by the Minister, suggesting that they wish to “*approach the debate on the basis of agreed themes, which straddle all the bills*”.

In terms of proposed amendments to the Employment Equity Act (“**EEA**”), most debate since the publication of the bills centred on obligations for employment equity targets to reflect national, rather than regional, demographics. The Minister has claimed that the Nedlac parties are deadlocked on the proposed amendments, but a group of seven trade unions, including Solidarity, have released a statement calling on the government to withdraw all proposed amendments to the EEA. Solidarity has in fact gone further, stating that “*the responsible way forward would in our opinion be to retract the Bills in totality in order to have it reworked and re-assessed with the benefit of the input of all relevant stakeholders*”.

When will the process be finalised and what can we expect?

The Minister has suggested that there are further Nedlac meetings scheduled for July and August 2011. Her media briefing acknowledges the need for certainty about the new legal framework, but notes that while time is of the essence, it is important that “*the final product enjoys the support of business and organised labour*”. Current expectations are that Nedlac will publish new draft amendments in November 2011, with a view to those drafts being tabled in parliament in the first quarter of next year.

In terms of what we can expect come November 2011, the proposed amendments are likely to take a very different form than those put forward in December 2010. The biggest hint as to look of the new amendments comes from the Minister’s list of “*issues to be agreed*”, such as atypical work, dispute resolution, equity and collective bargaining. The legal drafting that results from agreement on these issues may well be unrecognisable when compared with December 2010 proposals.

Employers making use of labour-broking arrangements should continue to expect to have to alter those arrangements in the future, while there is uncertainty as to whether they will be required to justify the use of fixed-term employment contracts. The extent of amendments to employment equity obligations is also uncertain.

One point of certainty is that Nedlac representatives have called for improvements in the drafting of the proposed bills and for better alignment with existing legislation.

Workplace Strategies is a Cape Town-based consultancy with expertise in labour law interpretation and compliance. For more information see www.workplacestrategies.co.za or contact info@workplacestrategies.co.za.