

What can South African Employers expect in 2012?

Employers are in for a tumultuous year in terms of changes to laws regulating the workplace. With proposed amendments to the *Labour Relations Act 1995*, the *Basic Conditions of Employment Act 1997*, the *Employment Equity Act 1998*, the likely introduction of the *Employment Services Act*, not to mentioned amendments to the Sectoral Education Training Authority (**SETA**) grant process and the introduction of the *Broad Based Black Economic Empowerment (BBBEE) Amendment Bill*, it promises to be a challenging year for employers and their efforts to keep pace with legislative change.

Changes to Labour Legislation

2012 is likely to bring about the most significant change to South African labour legislation in over a decade.

Much has been said and written about the amendments to the *Labour Relations Act 1995 (LRA)*, the *Basic Conditions of Employment Act 1997 (BCEA)*, the *Employment Equity Act 1998 (EEA)* and the introduction of the *Employment Services Act*.¹

The Minister of Labour, Ms Mildred Oliphant, suggested that negotiations on the draft amendments tabled before the National Economic Development and Labour Council (**NEDLAC**) would be complete by October 2011, with a view to the amended labour laws being enacted in May 2012. Unfortunately for the Minister, negotiations at NEDLAC, a forum compromised of business, labour and government, have not gone smoothly and the bills are yet to be finalised.

The delay finalising the legislative amendments is not good news for employers, as it inhibits their efforts at planning for future employment needs and practices and discourages investment and recruitment initiatives. Whilst the proposals are still in draft form, we expect that the amendments will include:

1. Restrictions on the use of fixed-term employees. Changes to the LRA will require an employer to be able to “justify” the use of fixed-term arrangements, while new provisions in the BCEA will require employers to ensure that fixed-term employees receive benefits of similar or equal value to benefits given to permanent employees. This may mean, for example, that fixed-term employees must receive medical aid and pension/provident fund contributions, if such benefits are afforded to permanent employees.
2. Changes to the EEA will require employers to ensure that employees performing the same or substantially the same work or work of equal value must have similar terms and conditions of employment, particularly from a remuneration perspective. If employers fail to comply with this obligation, they may face claims for unfair discrimination.

¹ see http://www.workplacestrategies.co.za/files/pdf/Sweeping_Labour_Law_Changes_Afoot.pdf and http://www.workplacestrategies.co.za/files/pdf/Proposed_Labour_Law_Amendments_-_An_Update.pdf

3. The practice of setting minimum wage rates by the publication of Sectoral Determinations (currently in existence in industries such as retail, hospitality, contract cleaning, civil engineering and domestic employees) is likely to be extended to other industries.
4. Amendments to the processes of the Commission for Conciliation, Mediation and Arbitration (**CCMA**), such as the greater use of the con/arb process as a means of resolving disputes.
5. Changes to the compliance provisions of the BCEA, such that non-compliant employers may be charged with a criminal offence, attracting terms of imprisonment.
6. For employers looking to recruit, there is likely to be further restrictions in their ability to hire foreign workers and employers will be obliged to notify the Department of Labour of a job vacancy within their organisation and the filling of that vacancy.

Current estimates suggest that negotiations will be finalised by March 2012 and tabled before Cabinet, with the expectation that they will have effect from the third-quarter of 2012.

SETA Grant System

Proposed changes to the SETA Grant Regulations will impact the efforts of employers seeking to recover a portion of their skills development levies. The suggested amendments may mean that only employers with more than 50 employees, and who have submitted a Workplace Skills Plan and Annual Training Report, will be eligible for a mandatory grant, which will be the equivalent of 40% of the total levies paid by that employer. Employers will also be able to apply for a discretionary grants and pivotal grants from their SETA. Discretionary grants must be in support of government policies such as the National Skills Development Strategy and the National Skills Accord, while pivotal grants are aimed at funding learnership programmes.

Broad Based Black Economic Empowerment (BBBEE) Amendment Bill

The BBBEE Amendment Bill was released in December 2011 and proposes radical changes to the black empowerment landscape.

Those changes may include:

1. BBBEE compliance has historically been voluntary, though incentives exist for employers to comply, particularly if they do business with the public sector. Amendments to the legislation may place obligations on some companies (such as those subject to a sector code or companies listed on the JSE) to report on their BBBEE status..
2. Companies may be investigated by a newly-formed BBBEE Commission, who will be empowered to investigate breaches of the Act and will no doubt focus on fronting practices.
3. Penalties for breaching the Act are likely to be increased. Any person found guilty of misrepresenting or attempting to misrepresent the BBBEE status of an enterprise will be

liable to a fine or to imprisonment not exceeding 10 years, or to both a fine and imprisonment, and in case of an enterprise, to a fine of 10% of that enterprise's annual turnover.

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.