



# LABOUR LAW NEWS CONFERENCE

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Focus Rooms, Modderfontein, Johannesburg  
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**2025**

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*The Nedlac Law Reform Process*

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## The Process:

- Apr 2022 to Oct 2024.
- Final Report – Feb 2025.
- The parties: organised labour, organised business and government.
- My brief - to facilitate the negotiations at NEDLAC through the establishment of a Labour Law Reform Task Team with representatives from each of these constituencies.
- Each constituency made brief proposals.
- Workplan, and grouping of proposals into 3 main categories which anticipated –
  - easy consensus seeking matters;
  - some contestation with the possibility of consensus; and
  - the contested issues.



- Pursuant to the discussions, further proposals were added along the way.
- During the course of the discussions, the contested issues were parked with the view for further discussion and a trade off between proposals to attempt to reach consensus.
- A WIP report was updated as the discussions progressed, and from time to time matters were referred to a technical team for advice or opinions, and at appropriate times, proposals were sent to the drafting team to draft proposed amendments, for further consideration by the Task Team.

## **The Nature of the Proposals**

- 4 broad themes:
  - Matters related to the efficiencies of the Labour Court, the Essential Services Committee and the CCMA.



- Individual employment law – higher paid employees; duplication of processes; the informality of disciplinary processes; the test for procedural fairness and limits of compensation.
- Measures linked to the economic crisis; resuscitating employment and the sustainability of small businesses.
- Measures aimed at alleviating the bottlenecks;
- Changes in the labour market and the nature of the work, as well as the increasing growth of unprotected workers.
- Overlapping of themes.



## 4 Amendment Bills

- Presentation of 4 Amendment Bills –
  - Labour Relations Amendment Bill, 2024
  - Basic Conditions Amendment Bill, 2024
  - Employment Equity Amendment Bill, 2024
  - National Minimum Wage Amendment Bill, 2024



## Efficiencies

### LC and LAC:

- JPs proposals
- Most proposals accepted, except for institutional separation of the courts and the appointment of a separate JP and DJP for the LC + LAC respectively.

### Essential Services Committee

- The ESC's proposals were aimed at –
  - clarifying its independence from the CCMA + improving the regulation of disputes and promoting the conclusion of minimum services agreements.
- The CCMA's proposals were aimed at clarifying its powers, enforcement mechanisms, in the main.



# Individual Employment Law

## Higher paid employees

- Higher paid employees –
  - Linked to overwhelmingly number, length of such disputes and cost to public resources; the impact on CCMA infrastructure and resources and the ability of such employees to negotiate their own terms and conditions.
  - Only a public sector issue or a private sector one?
  - Definition of higher paid employee?



- Proposal –
  - Amendments to s 193 of the LRA – new s (2A): s 193(1)(a) and (b) are not applicable to higher paid employees.
  - Employees earning more than R1,8 million per annum, that is ‘total compensation’ (to be adjusted annually in line with CPI) –
    - no dismissal protection (only limited or capped compensation for unfair OR dismissal and unfair labour practices);
    - reinstatement only for automatically unfair dismissals + for whistleblowers.





## Qualifying period for new entrants to the labour market

- Government proposed – a new section 188(2) – providing for a 6 month qualifying period, during which the protections afforded to new employees against unfair dismissal will be limited to claims involving automatically unfair dismissal or unfair discrimination.
- Business – 12 month period.
- Government + labour – 3 months.



## Test for procedural fairness in dismissals

- Government proposed –
  - a new section 188(3) to provide for a less formal approach to procedural fairness - whether the employee had an **adequate and reasonable** opportunity to respond to the reason for the dismissal (other than OR dismissals);
    - the same approach is adopted in the draft Code of Good Practice on Dismissal - less formalistic and a more balanced opportunity to be heard;
  - a new section 188(4) to exclude the requirements of a procedure in relation to new employees during the 1<sup>st</sup> 3 months of employment or the probationary period.
- Govt + Business.



## Limits on compensation

- Amendment to s 194(1) and (4) of the LRA –
  - cap of 12 months to a maximum of the amount prescribed by the Minister in terms of section 208B for dismissals and ULPs [excluding s 186(2)(d)];
  - new section 208B – Minister to publish a notice of setting the amount and then either increasing or decreasing that amount with reference to CPI;
    - indirect consequence that higher paid employees might pursue common law remedies in the High Court or the Labour Court alleviating pressure on the CCMA and BCs.



## Prevention of duplication of claims

- New section 196 of the LRA – which requires an employee to make a choice between unlawful or unfair dismissal claims – to avoid forum shopping and duplication of claims;
  - given the jurisprudence in *McKenzie* (SCA), *Vorster* (SCA); *Fedlife* (SCA); *Buthelezi* (LAC) .. and 77(3) of the BCEA.

## Avoidance of the duplication of procedures

- Amendment to section 188A [and deletion of 118A(3)(b)] to promote the use of inquiries by arbitrators without employee consent;
- Government + Business.



## **Revising the ULP definition**

- Government proposed the deletion of sections 186(2)(a) and (c) – to exclude disputes relating to –
  - promotion, demotion, probation (excluding disputes about dismissals during or at the end of probation); training or benefits;
  - a failure to re-employ in terms of any agreement.

## **Non-standard employment**

- Despite the provisions of sections 198A – D, Labour was of the view that the rise of non-standard employment and the effective decline in employment security and lack of access to statutory benefits rendered this class even more vulnerable (especially with reference to the pandemic).



- Labour proposed –
  - the expansion of the definition of ‘employee’ ....
- The debates raised various complex issues, including –
  - the need to consult with such workers .... In light of the consultation with those involved in the Arts;
  - whether benefits during the pandemic could be facilitated through the UIF or another organ and the consequent costs thereof;
  - the financial costs, including the formula for contributions to the UIF by such workers and their ‘employers’.



## Small business

- Definition of 'new business' –
  - in operation for less than 2 years but excludes:
    - a new employer contemplated in s 197(1);
    - a business formed by the division or dissolution of any existing business.
- Amendment to s 32 of the LRA – **CA regulating terms and conditions** of employment will not bind a new business that employs less than 50 employees.



## Extension of Collective Bargaining Rights

- Extension of freedom of association, organisational rights and collective bargaining – Schedule 11
  - for this purpose, the extension of the definition of –
    - employee to include non-standard workers for this purpose (clause 1) and exclusion of independent contractors (clause 2);
    - employer to include the relevant employers (clause 1);
    - any disputes relating to this aspect will be dealt with in terms of the dispute resolution procedures of the LRA.





- This schedule requires consequential amendments to the constitution -
  - of a trade union to deal with the nature of its employee or worker membership;
  - of an employer's organisation.

### **Extended definition of 'employee' for purposes of sectoral determinations**

- The extended definition of 'employee' - to allow the Minister to extend the application of sectoral determinations to non-standard workers.
- Amendment to s 3 of the BCEA.



## Retrenchments

- Amendment of section 189A(6) and insertion of (6A) to enable the CCMA, rather than the Minister, to make rules relating to facilitations.
- Amendments to sub-sections (7)(b)(ii) and (8)(ii)(bb) to allow for referrals to the LC after facilitation, without conciliation.
- Amendment of s 189A(13) – to allow for challenges to both the procedure and reasons for dismissals after the conclusion of the process.
- Two weeks per annum severance pay or 1?



## ‘On-Call’ Workers

- New s 9B of the BCEA - to deal with employees who are obliged to hold themselves available for work, but are not guaranteed work by their employer.
- The new section is aimed at achieving certainty for such employees in relation to
  - - the guaranteed and maximum hours of work for each period in respect of which the employee must be available;
    - the notice period to the employee to report for work;
  - the notice period of any cancellation of work, all which must be reasonable in the circumstances;
  - aspects of remuneration.



## Other pertinent matters – not discussed, or discussed peripherally

- Consolidation of the regulation of all workplace discrimination disputes given the split (and duplication of such claims) in the LRA (automatically unfair dismissals) and EEA (discrimination disputes).
- Peripheral discussion about the 'backlogs' at the LC, incidental to the proposals made by the JP.

