

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**LABOUR RELATIONS
AMENDMENT BILL**

[B 16—2012]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 16A—2012]

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AMENDMENTS AGREED TO

LABOUR RELATIONS AMENDMENT BILL
[B 16—2012]

NEW CLAUSE

1. That the following be a new clause to be inserted before clause 1:

Amendment of section 3 of Act 66 of 1995

1. Section 1 of the principal Act is hereby amended by the substitution in section (1) for paragraph (a) of the following paragraph:

“(a) to give effect to and regulate the fundamental rights conferred by [section 27] section 23 of the Constitution of the Republic of South Africa, 1996;”.

CLAUSE 1

1. On page 2, in line 10, to omit “engaged” and to substitute “employed”.
2. On page 3, from line 27, to omit subsection (8D) and to substitute:

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2013, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.”; and

CLAUSE 3

1. On page 4, in line 46, to omit “engaged” and to substitute “employed”.

CLAUSE 6

Clause rejected.

CLAUSE 8

1. On page 6, from line 2, to omit the following:

—
 (a) by the substitution for subsection (7) of the following subsection:

“(7) **[The]** Despite the provisions of subsection 64(1)(a)(iii) and (iv), the failure by a registered *trade union* or a registered *employers’ organisation* to comply with a provision in its constitution requiring it to conduct a ballot of those of its members in respect of whom it intends to call a *strike* or *lock-out* may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the *strike* or *lock-out*.”;

- (b) by the substitution for subsection (8) of the following subsection:

“(8) The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a *strike* or a *lock-out*, if that act is an offence or is a material breach of a picketing agreement established in terms of section 69(4) or a picketing rule established in terms of section 69(5).”; and

- (c)

CLAUSE 11

1. On page 7, in line 51, after “determinations” to insert “,” and to omit “and”.
2. On page 7, in line 51, after “agreements” to insert “, maintenance services agreements”.

CLAUSE 13

Clause rejected.

CLAUSE 14

1. On page 10, in line 51, to omit “mediation” and to substitute “conciliation”.

CLAUSE 17

1. On page 12, in line 4, to omit “an administrator” and to substitute:
a suitable person, who may be a Commissioner,
2. On page 12, in line 26, to omit “are a first charge against the assets” and to substitute “will be paid as an expense”.
3. On page 12, from line 28, to omit “of the administrator or any person referred to in subsection (1)” and to substitute “by the trade union, employers’ organisation or registrar”.

CLAUSE 20

Clause rejected.

CLAUSE 22

1. On page 13, in line 44, to omit “subsection” and to substitute “subsections”.
2. On page 13, in line 48, to omit “ ”.
3. On page 13, after line 48, to add the following subsection:

(6) Subsections (1), (4) and (5), as amended by the Labour Relations Amendment Act, 2013, takes effect on the date of commencement of the Labour Relations Amendment Act, 2013, and applies to an arbitration award issued after such commencement date.”.

CLAUSE 23

1. On page 13, from line 54, to omit paragraph (d) and to substitute the following paragraph:

“(d) made in the absence of any party, on good cause shown.”.

CLAUSE 24

1. On page 14, in line 22, to omit “ ”.
2. On page 14, after line 22, to add the following subsection:

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2013 and subsection (9) applies to an arbitration award issued after such commencement date.”.

CLAUSE 25

1. On page 14, in line 29, to omit “four times”.

CLAUSE 26

1. On page 14, in line 44, to omit “at the request” and to substitute “with the consent”.
2. On page 14, in line 45, to omit “if there is no request” and to substitute “in the absence of consent”.
3. On page 14, in line 55, to omit “(3)” and to substitute “(1)”.

CLAUSE 27

Clause rejected.

CLAUSE 28

Clause rejected.

CLAUSE 31

1. On page 16, from line 47, to omit the following:

-
- (a) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words:
“the following persons, to be appointed for a period of three years by the *Minister [of Justice]* acting on the advice of *NEDLAC*—”; and
 - (b)

CLAUSE 34

Clause rejected.

CLAUSE 35

1. On page 17, in line 42, to omit “engaged under” and to substitute “employed in terms of”.
2. On page 17, in line 47, after “employee” to insert “in employment”.
3. On page 17, in line 47, to omit “contract of employment” and to substitute “basis”.

CLAUSE 38

Clause rejected.

CLAUSE 41

1. On page 20, in line 28, after “employees” to insert “, irrespective of the number of employees who are dismissed”.

CLAUSE 43

1. On page 21, in line 1, after “(4B)” to insert “(a)”.
2. On page 21, in line 2, to omit “it assigns” and to substitute “whose service is procured for or provided”.
3. On page 21, after line 4, to add the following paragraph:

(b) Paragraph *(a)* applies, three months after the commencement of the Labour Relations Amendment Act, 2013, to a person whose services were procured for or provided to a client by a temporary employment service in terms of subsection 198(1) prior to the commencement of the Labour Relations Act, 2013.
4. On page 21, in line 6, to omit “services” and to substitute “service”.
5. On page 21, in line 22, after “and” to insert “the fact that”.
6. On page 21, in line 22, after “service” to delete “that”.

CLAUSE 44

1. On page 21, in line 29, after “section” to insert “a”.
2. On page 21, in line 29, to omit “services” and to substitute “service”.
3. On page 21, in line 31, to omit “six” and to substitute “three”.
4. On page 21, in line 35, after “be” to insert “a”.
5. On page 21, in line 35, to omit “services” and to substitute “service”.
6. On page 21, in line 42, to omit “referred to in subsection (2)”.
7. On page 21, in line 44, after “performing” to insert “a”.
8. On page 21, in line 44, to omit “services” and to substitute “service”.

9. On page 21, in line 44, after “service” to insert “as contemplated in subsection (1)”.
10. On page 21, in line 45, after “;” to add “or”.
11. On page 21, from line 46, to omit paragraph (b) and to substitute the following paragraph:
 - (b) not performing such temporary service for the client is—
 - (i) deemed to be the *employee* of that client and the client is deemed to be the employer; and
 - (ii) subject to the provisions of section 198B, employed on an indefinite basis by the client.
12. On page 21, in line 49, to omit “assignment” and to substitute “service”.
13. On page 21, in line 49, after “client” to insert “, whether at the instance of the temporary employment service or the client,”.
14. On page 21, in line 50, after “(3)(b)” to insert “or because the *employee* exercised a right in terms of this Act,”.
15. On page 21, in line 55, to omit “At least three months prior to the coming into effect of this section, the”, and to substitute “The”.
16. On page 22, after line 8, to add the following subsection:

(9) Employees contemplated in this section, whose services were procured for or provided to a client by a temporary employment service in terms of section 198(1) before the commencement of the Labour Relations Amendment Act, 2013, acquire the rights contemplated in subsections (3), (4) and (5) with effect from three months after the commencement of the Labour Relations Amendment Act, 2013.
17. On page 22, in line 10, to omit “purposes” and to substitute “purpose”.
18. On page 22, in line 26, to omit “engaged” and to substitute “employed”.
19. On page 22, in line 26, to omit “that” and to substitute “which”.
20. On page 22, in line 28, to omit “engaged” and to substitute “employ”.
21. On page 22, in line 29, to omit “six” and to substitute “three”.
22. On page 22, in line 31, to omit “engaged” and to substitute “employed”.
23. On page 22, in line 38, to omit “engaged” and to substitute “employed”.
24. On page 22, in line 43, to omit “engaged” and to substitute “employed”.
25. On page 22, in line 45, to omit paragraph (e).
26. On page 22, in line 49, to omit “engaged” and to substitute “employed”.
27. On page 22, in line 50, to omit “engaged on” and to substitute “employed for the purpose of”.
28. On page 22, in line 52, to omit “engaged on” and to substitute “employed in”.
29. On page 23, in line 4, after “(8)” to insert “(a)”.
30. On page 23, in line 4, to omit “on” and to substitute “in terms of”.

31. On page 23, in line 4, to omit “six” and to substitute “three”.
32. On page 23, after line 7, to insert the following:

(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2013, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2013.

33. On page 23, in line 8, after “(9)” to omit “An” and to substitute the following:

As from the commencement of the Labour Relations Amendment Act, 2013, an

34. On page 23, in line 8, to omit “on” and to substitute “in terms of”.
35. On page 23, in line 11, after “(10)” to insert “(a)”.
36. On page 23, in line 11, to omit “engages” and to substitute “employs”.
37. On page 23, in line 11, to omit “on” and to substitute “in terms of”.
38. On page 23, after line 16, to insert the following paragraph:

(b) An employee employed in terms of a fixed-term contract, as contemplated in paragraph (a), before the commencement of the Labour Relations Amendment Act, 2013, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.

39. On page 23, in line 23, to omit “purposes” and to substitute “purpose”.
40. On page 23, in line 47, to omit “six” and to substitute “three”.
41. On page 23, in line 49 after “employee,” to insert the following:

irrespective of when the part-time employee was employed,

42. On page 23, in line 57, after “(4)” to omit “An” and to substitute the following:

After the commencement of the Labour Relations Amendment Act, 2013, an

43. On page 24, from line 18, to omit paragraph (d) and to substitute:

(d) any other criteria of a similar nature, and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).”.

44. On page 24, after line 19, to add the following subsections:

(3) A party to a dispute contemplated in subsection (1) may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned.

(4) The party that refers a dispute must satisfy the Commission or the bargaining council that a copy of the referral has been served on every party to the dispute.

(5) If the dispute remains unresolved after conciliation, a party to the dispute may refer it to the Commission or to the bargaining council for arbitration within 90 days.

(6) The Commission or the bargaining council may at any time, permit a party that shows good cause to, refer a dispute after the relevant time limit set out in subsection (3) or (5).”.

CLAUSE 48

1. On page 25, in line 17, after “by” to insert “electronic mail,”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of long title of Act 66 of 1995

1. The long title of the principal Act is hereby amended by the substitution for “section 27” of “section 23”.

CLAUSE 50

1. On page 25, in line 32, after “50.” to insert “(1)”.
2. On page 25, in line 32, after “2012” to insert:
and comes into operation on a date fixed by the President by proclamation in the Government *Gazette*.
3. On page 25, after line 32, to add the following subsection:
(2) Notwithstanding subsection (1), the coming into operation of section 198(4F) is suspended until the date when the applicable legislation contemplated in section 198(4F) enters into force.

LONG TITLE

1. Long Title rejected.
2. That the following be a new Long Title:

LONG TITLE

To amend the Labour Relations Act, 1995, so as to facilitate the granting of organisational rights to trade unions that are sufficiently representative; to strengthen the status of picketing rules and agreements; to amend the operation, functions and composition of the essential services committee and to provide for minimum service determinations; to provide for the Labour Court to order that a suitable person be appointed to administer a trade union or employers’ organisation; to enable judges of the Labour Court to serve as a judge on the Labour Appeal Court; to further regulate enquiries by arbitrators; to provide greater protection for workers placed in temporary employment services; to regulate the employment of fixed term contracts and part-time employees earning below the earnings threshold determined by the Minister; to further specify the liability for employer’s obligations; and to substitute certain definitions; and to provide for matters connected therewith.