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THE PRESIDENCY

No. 629

18 August 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

Act No. 6 of 2014: Labour Relations Amendment Act, 2014



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(b) by the insertion after subsection (8) of the following subsections:

“(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered *trade union* that does not have as members the majority of *employees* employed by an employer in a *workplace*—

(a) the rights referred to in section 14, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 14 in that *workplace*.

(b) the rights referred to in section 16, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 16 in that *workplace*.

(8B) A right granted in terms of subsection (8A) lapses if the *trade union* concerned is no longer the most representative *trade union* in the *workplace*.

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered *trade union*, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a *collective agreement* in terms of section 18, if—

(a) all parties to the *collective agreement* have been given an opportunity to participate in the arbitration proceedings; and

(b) the *trade union*, or *trade unions* acting jointly, represent a significant interest, or a substantial number of *employees*, in the *workplace*.

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.”; and

(c) by the addition of the following subsection:

“(12) If a *trade union* seeks to exercise the rights conferred by Part A in respect of *employees* of a temporary employment service, it may seek to exercise those rights in a *workplace* of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a *workplace* of a client of the temporary employment service, any reference in Chapter III to the employer’s premises must be read as including the client’s premises.”.

Amendment of section 22 of Act 66 of 1995

3. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

“(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to—

(a) the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and

(b) any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.”.

Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998 and section 5 of Act 12 of 2002

4. Section 32 of the principal Act is hereby amended—
- (a) by the insertion in subsection (3) of the following paragraph after paragraph (d):
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 “(dA) the bargaining council has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the collective agreement and is able to decide an application for an exemption within 30 days;”;
 - (b) by the substitution in subsection (3)(e) for the words preceding subparagraph (i) of the following words:
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 “provision is made in the *collective agreement* for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—”;
 - (c) by the insertion after subsection (3) of the following subsection:
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 “(3A) No representative, office-bearer or official of a *trade union or employers’ organisation* party to the *bargaining council* may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3)(e).”;
 - (d) by the deletion in subsection (5) of the word “and” at the end of paragraph (a) and the addition of the following paragraphs:
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 “(c) the *Minister* has published a notice in the *Government Gazette* stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and
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 (d) the *Minister* has considered all comments received during the period referred to in paragraph (c);”;
 - (e) by the insertion after subsection (5) of the following subsection:
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 “(5A) When determining whether the parties to the *bargaining council* are sufficiently representative for the purposes of subsection (5)(a), the *Minister* may take into account the composition of the workforce in the sector, including the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment.”; and
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 - (f) by the addition of the following subsection:
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 “(11) A *bargaining council* that has a *collective agreement* extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3)(f).”.

Amendment of section 49 of Act 66 of 1995, as amended by section 11 of Act 12 of 2002

5. Section 49 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
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 “*A bargaining council*, having a *collective agreement* that has been extended by the *Minister* in terms of section 32, must inform the *registrar* annually, in writing, on a date to be determined by the *registrar* as to the information specified in subsection (3) and the number of employees who are—”;
 - (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
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 “*A bargaining council* other than one contemplated in subsection (2) must on request by the *registrar*, inform the *registrar* in writing within the period specified in the request as to the number of *employees* who are—”;
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(c) by the substitution for subsection (4) of the following subsection:

“(4) A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the *council* for the year following the determination for any purpose in terms of this Act, including a decision by the Minister in terms of sections 32(3)(b), 32(3)(c) and 32(5).”.

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Amendment of section 51 of Act 66 of 1995, as amended by section 11 of Act 42 of 1996 and section 12 of Act 12 of 2002

6. Section 51 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

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“(9) A *bargaining council* may, by *collective agreement*—

(a) establish procedures to resolve any *dispute* contemplated in this section;

(b) provide for payment of a dispute resolution levy; and

(c) provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115(2A)(l), which may not exceed the fee provided for in that section.”.

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Amendment of section 65 of Act 66 of 1995

7. Section 65 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

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“(c) the *issue in dispute* [is] is one that a party has the right to refer to arbitration or to the Labour Court in terms of *this Act* or any other employment law;”;

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

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“(b) any determination made in terms of [the *Wage Act*] Chapter Eight of the *Basic Conditions of Employment Act* and that regulates the *issue in dispute*, during the first year of that determination.”.

Amendment of section 67 of Act 66 of 1995

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8. Section 67 of the principal Act is hereby amended by the deletion of subsection (9).

Amendment of section 69 of Act 66 of 1995, as amended by section 20 of Act 42 of 1996

9. Section 69 of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

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“(6) The rules established by the Commission may provide for picketing by *employees*—

(a) in a place contemplated in section 69(2)(a) which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or

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(b) on their employer’s premises if the Commission is satisfied that the employer’s permission has been unreasonably withheld.”;

(b) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

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“Any party to a *dispute* about any of the following issues, including a person contemplated in subsection (6)(a), may refer the *dispute* in writing to the Commission—”; and

(c) by the addition of the following subsections:

“(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include—

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(a) an order directing any party, including a person contemplated in subsection (6)(a), to comply with a picketing agreement or rule; or

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- (b) an order varying the terms of a picketing agreement or rule;
- (13) The Labour Court may not grant an order in terms of subsection (12) unless—
 - (a) 48 hours' notice of an application seeking relief referred to in subsection (12)(a) or (b) has been given to the respondent; or
 - (b) 72 hours' notice of an application seeking relief referred to in subsection (12)(c) or (d) has been given to the respondent.
- (14) The Labour Court may permit a shorter period of notice than required by subsection (13) if the—
 - (a) applicant has given written notice to the respondent of its intention to apply for the order;
 - (b) respondent has been given a reasonable opportunity to be heard before a decision concerning the application is taken; and
 - (c) applicant has shown good cause why a period shorter than that contemplated by subsection (13) should be permitted.”.

Substitution of section 70 of Act 66 of 1995, as amended by section 5 of Act 127 of 1998

10. The following section is hereby substituted for section 70 of the principal Act:

“Essential services committee

70. *The Minister, after consulting NEDLAC, must establish an essential services committee under the auspices of the Commission in accordance with the provisions of this Act.”.*

Insertion of sections 70A, 70B, 70C, 70D, 70E and 70F in Act 66 of 1995

11. The following sections are hereby inserted in the principal Act after section 70:

“Composition of essential services committee

70A. (1) *The Minister must appoint to the essential services committee on terms that the Minister considers fit—*

- (a) a chairperson, who is independent from the constituencies contemplated in subsection (3) and who may be a senior commissioner;
- (b) a deputy chairperson, who must be a senior commissioner; and
- (c) six persons nominated in accordance with the provisions of subsections (3) and (4).

(2) *A member of the essential services committee—*

- (a) must be a citizen of South Africa, who is ordinarily resident in South Africa, or a permanent resident of South Africa;
- (b) must have suitable qualifications or experience in labour law, labour relations, commerce, public affairs, the administration of justice, industry or a sector of the economy;
- (c) must not be an unrehabilitated insolvent; and
- (d) must not be subject to an order of a competent court holding that person to be mentally unfit or disordered.

(3) *Organised business, labour and government at NEDLAC must each nominate to the Minister the names of two persons to be appointed to the essential services committee.*

(4) *The Minister must appoint the persons nominated by organised business, labour and government at NEDLAC if these persons meet the requirements set out in subsection (2).*

(5) *The Minister may fill any vacancy that arises in accordance with the provisions of this section.*

(6) *A member of the essential services committee may not represent any person before a panel of the essential services committee, but may be appointed by the trade union and employer parties to serve as an assessor in terms of section 70C.*

Powers and functions of essential services committee

70B. (1) The powers and functions of the essential services committee are to—

- (a) monitor the implementation and observance of essential services determinations, minimum services agreements, maintenance services agreements and determinations; 5
- (b) promote effective *dispute resolution* in essential services;
- (c) develop guidelines for the negotiation of minimum services agreements;
- (d) decide, on its own initiative or at the reasonable request of any interested party, whether to institute investigations as to whether or not the whole or a part of any service is an essential service; 10
- (e) manage its caseload; and
- (f) appoint the panels contemplated in section 70C to perform one or more of the functions set out in section 70D. 15

(2) At the request of a *bargaining council*, the essential services committee must establish a panel to perform any function in terms of section 70D(1).

(3) The essential services committee may request the Commission or any other appropriate person to conduct an investigation to assist the essential services committee in an investigation and to submit a report to it. 20

Appointment of panels

70C. (1) The essential services committee must, taking into account the nature and complexity of the issue, assign each matter before it to a panel consisting of either three or five persons, including the assessors referred to in subsections (3) and (4). 25

(2) A panel must be presided over by the chairperson or deputy chairperson of the essential services committee or by a senior commissioner referred to in subsection (3).

(3) The Commission must compile a list of suitably trained senior commissioners who may preside at panel hearings. 30

(4) If the essential services committee constitutes a three-member panel, it must either—

- (a) appoint two of its members to serve as *assessors*; or
- (b) invite the employer and *trade union* parties participating in the hearing to each nominate an assessor. 35

(5) If the essential services committee constitutes a five-member panel, it must—

- (a) appoint two of its members to serve as its assessors; and
- (b) invite the employer and *trade union* parties participating in the hearing to each nominate an assessor. 40

(6) If the essential services committee appoints assessors from its members to serve on a panel, it must appoint one who was nominated to the essential services committee by—

- (a) organised labour; and 45
- (b) organised business or government, depending on the sector concerned.

(7) A member of the essential services committee may be nominated to serve as an assessor in terms of subsections (4)(b) and (5)(b).

(8) The essential services committee may appoint an assessor if the *trade union* or employer parties participating in the hearing fail to nominate an assessor in terms of subsections (4)(b) and (5)(b) within the prescribed period. 50

(9) When appointing or nominating an assessor in terms of subsections (4) to (8), the essential services committee, and any party to a matter before it, must take into account the person's skills, experience, expertise and knowledge of the sector concerned. 55

Powers and functions of panel

- 70D.** (1) The powers and functions of a panel appointed by the essential services committee are to—
- (a) conduct investigations as to whether or not the whole or a part of any service is an essential service; 5
 - (b) determine whether or not to designate the whole or a part of that service as an essential service;
 - (c) determine *disputes* as to whether or not the whole or a part of any service falls within the scope of a designated essential service;
 - (d) determine whether or not the whole or a part of any service is a maintenance service; 10
 - (e) ratify a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service; and
 - (f) determine, in accordance with the provisions of *this Act*, the minimum services required to be maintained in the service that is designated as an essential service. 15
- (2) The presiding member of the panel must determine any question of procedure or law, including whether an issue is a question of procedure or law.
- (3) The chairperson of the essential services committee or any person contemplated in section 70C(2) presiding at a hearing may, sitting alone, make an order— 20
- (a) extending or reducing any period prescribed by the rules of the essential services committee; and
 - (b) condoning the late performance of an act contemplated by the rules of the essential services committee. 25
- (4) Subject to subsections (2) and (3), the decision or finding of the majority of the panel is the decision of the essential services committee.
- (5) The decision of a panel must be in writing and signed by the person referred to in section 70C(2), and include the reasons for that decision. 30
- (6) A panel appointed by the essential services committee may make any appropriate order relating to its functions.

Jurisdiction and administration of essential services committee

- 70E.** (1) The essential services committee has jurisdiction throughout the Republic. 35
- (2) The seat of the essential services committee is the Commission's head office.
- (3) The functions of the essential services committee, including the functions of the panels, may be performed at any place in the Republic.
- (4) The Commission must administer the essential services committee. 40
- (5) The *director* is the accounting officer of the essential services committee and must allocate adequate resources to the essential services committee in order for it to perform its functions.
- (6) The *director* may appoint staff to the essential services committee after consulting the essential services committee and the governing body, and the governing body must determine their remuneration and other terms and conditions of appointment. 45
- (7) The allowances of members of the essential services committee, assessors and persons appointed to investigate matters are determined by the Minister of Finance. 50
- (8) The essential services committee will be financed and provided with working capital from—
- (a) the monies that Parliament may appropriate to the Commission in terms of section 122; and
 - (b) grants, donations and bequests made to it. 55

Regulations for essential services committee

70F. (1) The Minister, after consulting the essential services committee, may make regulations concerning the—
(a) functioning of the essential services committee; and
(b) panels appointed by the essential services committee.
(2) The rules made by the Commission in terms of section 115 (2)(cA)(ii) remain in force until replaced by regulations made in terms of subsection (1).”

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Amendment of section 71 of Act 66 of 1995

12. Section 71 of the principal Act is hereby amended by the substitution for subsections (8) and (9) of the following subsections, respectively:

“(8) If the panel appointed by the essential services committee designates the whole or a part of a service as an *essential service*, the essential services committee must publish a notice to that effect in the *Government Gazette*.

(9) ~~[The]~~ A panel appointed by the essential services committee may vary or cancel the designation of the whole or a part of a service as an *essential service* or any determination of a minimum service or ratification of a minimum services agreement, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.”

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Substitution of section 72 of Act 66 of 1995

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13. The following section is hereby substituted for section 72 of the principal Act:

“Minimum services

72. (1) When making a determination in terms of section 71, a panel of the essential services committee may issue an order—

(a) directing the parties to negotiate a minimum services agreement as contemplated in this section within a period specified in the order;
(b) if an agreement is not negotiated within the specified period, permitting either party to refer the matter to conciliation at the Commission or a *bargaining council* having jurisdiction.

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(2) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.

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(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the maintenance of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service—

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(a) the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*; and
(b) the provisions of section 74 do not apply.

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(4) A minimum service determination—
(a) is valid until varied or revoked by the essential services committee; and
(b) may not be varied or revoked for a period of 12 months after it has been made.

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(5) Despite subsections (3) and (4), section 74 applies to a designated essential service in respect of which the essential services committee has made a determination of minimum services if the majority of *employees* employed in the essential services voted in a ballot in favour of this.

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(6) Subsection (5) does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.

(7) Despite subsection (4), a panel may vary a determination by ratifying a *collective agreement* concluded between or on behalf of one or more—

- (a) *trade unions* representing a majority of the *employees* covered by the determination; and
- (b) employers employing the majority of the *employees* covered by the determination.

(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable *collective agreement*, refer a *dispute* arising from those negotiations to the Commission or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.”.

Amendment of section 73 of Act 66 of 1995

14. Section 73 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Disputes about minimum services and about whether a service is an essential service”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Any party to a *dispute* about **[either]** one or more of the following issues may refer the *dispute* in writing to the essential services committee—”; and

(c) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) and the addition of the following paragraphs:

“(c) whether or not the employer and a registered *trade union* or *trade unions* representing *employees* in the *essential service* should conclude a *collective agreement* that provides for the maintenance of minimum services in that service; and

(d) the terms of such a *collective agreement*.”.

Amendment of section 74 of Act 66 of 1995, as amended by section 21 of Act 42 of 1996

15. Section 74 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**[Any]** Subject to section 73(1), any party to a *dispute* that is precluded from participating in a *strike* or a *lock-out* because that party is engaged in an *essential service* may refer the *dispute* in writing to—”.

Insertion of section 103A in Act 66 of 1995

16. The following section is hereby inserted in the principal Act after section 103:

“Appointment of administrator

103A. (1) The Labour Court may order that a suitable person, who may be a Commissioner, be appointed to administer a *trade union* or *employers’ organisation* on such conditions as the Court may determine if the—

- (a) Court is satisfied that it is just and equitable to do so; and
- (b) *trade union* or *employers’ organisation* has resolved that an administrator be appointed and has applied to the Court for an order to give effect to that resolution; or
- (c) *registrar* has applied to the Court to appoint an administrator.

- (2) Without limiting the generality of subsection (1)(a), it may be just and equitable to make an order in terms of subsection (1) if—
- (a) the *trade union* or *employers' organisation* fails materially to perform its functions; or
 - (b) there is serious mismanagement of the finances of the *trade union* or *employers' organisation*.
- (3) If there are any persons not represented before the Labour Court whose interests may be affected by an order in terms of subsection (1), the Court must consider their interests before deciding whether or not to grant the order.
- (4) (a) The registrar of the Labour Court must determine the administrator's fees.
- (b) The Labour Court, in chambers, may review the determination of the registrar of the Labour Court.
- (c) The administrator's fees will be paid as an expense of the *trade union* or *employers' organisation*.
- (5) The Labour Court may, on the application by the *trade union*, *employer's organisation* or *registrar*—
- (a) vary or amend any prior order made in terms of this section; or
 - (b) if it is satisfied that an administrator is no longer required, terminate the appointment of the administrator, on appropriate conditions.”.

Amendment of section 111 of Act 66 of 1995

17. Section 111 of the principal Act is hereby amended by the addition of the following subsection:

- “(5) An appeal in terms of this section against a decision by the registrar in terms of section 106 does not suspend the operation of the registrar's decision.”.

Amendment of section 115 of Act 66 of 1995, as amended by section 31 of Act 42 of 1996, section 6 of Act 127 of 1998 and section 22 of Act 12 of 2002

18. Section 115 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (c), the insertion of the word “and” at the end of paragraph (d) and the addition of the following paragraph:
“(e) at least every second year, review any rules made in terms of this section.”;
 - (b) by the insertion in subsection (2) after paragraph (b) of the following paragraph:
“(bA) if requested, provide assistance of an administrative nature to an employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act to serve any notice or document in respect of conciliation or arbitration proceedings in terms of this Act, provided that the employee remains responsible in law for any such service;”;
 - (c) by the deletion in subsection (2)(cA) of subparagraph (ii);
 - (d) by the substitution in subsection (2A) for paragraph (k) of the following paragraph:
“(k) the right of any [person or category of persons to represent any] party to be represented by any person or category of persons in any conciliation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;”;
 - (e) by the insertion in subsection (2A) of the following paragraph after paragraph (k):
“(kA) the consequences for any party to conciliation or arbitration proceedings for not attending those proceedings;”; and

- (f) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 5
“**[If asked, the]** The Commission may provide *employees*, employers, registered *trade unions*, registered *employers’ organisations*, federations of *trade unions*, federations of *employers’ organisations* or *councils* with advice or training relating to the primary objects of *this Act* or any other employment law, including but not limited to—”.

Amendment of section 138 of Act 66 of 1995, as amended by section 10 of Act 127 of 1998 and section 27 of Act 12 of 2002

19. Section 138 of the principal Act is hereby amended by the deletion in subsection (7) of paragraph (c). 10

Amendment of section 143 of Act 66 of 1995, as amended by section 32 of Act 12 of 2002

20. Section 143 of the principal Act is hereby amended— 15
- (a) by the substitution for subsection (1) of the following subsection: 15
“(1) An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued, unless it is an advisory arbitration award.”;
- (b) by the substitution for subsection (4) of the following subsection: 20
“(4) If a party fails to comply with an arbitration award certified in terms of subsection (3) that orders the performance of an act, other than the payment of an amount of money, any other party to the award may, without further order, enforce it by way of contempt proceedings instituted in the Labour Court.”; and 25
- (c) by the addition of the following subsections: 25
“(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate’s Court. 30
(6) Subsections (1), (4) and (5), as amended by the Labour Relations Amendment Act, 2014, takes effect on the date of commencement of the Labour Relations Amendment Act, 2014, and applies to an arbitration award issued after such commencement date.” 30

Amendment of section 144 of Act 66 of 1995, as substituted by section 33 of Act 12 of 2002 35

21. Section 144 of the principal Act is hereby amended by the deletion of the word “or” at the end of paragraph (b), the insertion of the word “or” at the end of paragraph (c) and the addition of the following paragraph: 40
“(d) made in the absence of any party, on good cause shown.” 40

Amendment of section 145 of Act 66 of 1995, as amended by section 34 of Act 12 of 2002 and section 36 of Act 12 of 2004

22. Section 145 of the principal Act is hereby amended by the addition of the following subsections: 45
“(5) Subject to the rules of the Labour Court, a party who brings an application under subsection (1) must apply for a date for the matter to be heard within six months of delivery of the application, and the Labour Court may, on good cause shown, condone a late application for a date for the matter to be heard. 45

(6) Judgment in an application brought under subsection (1) must be handed down as soon as reasonably possible.

(7) The institution of review proceedings does not suspend the operation of an arbitration award, unless the applicant furnishes security to the satisfaction of the Court in accordance with subsection (8).

(8) Unless the Labour Court directs otherwise, the security furnished as contemplated in subsection (7) must—

(a) in the case of an order of reinstatement or re-employment, be equivalent to 24 months' remuneration; or

(b) in the case of an order of compensation, be equivalent to the amount of compensation awarded.

(9) An application to set aside an arbitration award in terms of this section interrupts the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), in respect of that award.

(10) Subsections (5) to (8) apply to an application brought after the date of commencement of the Labour Relations Amendment Act, 2014 and subsection (9) applies to an arbitration award issued after such commencement date.”.

Amendment of section 147 of Act 66 of 1995, as amended by section 41 of Act 42 of 1996

23. Section 147 of the principal Act is hereby amended by insertion after subsection (6) of the following subsection:

“(6A) For the purpose of making a decision in terms of subsection (6), the Commission must appoint a commissioner to resolve the *dispute*—

(a) if an *employee* earning less than the threshold prescribed by the *Minister*, in terms of section 6(3) of the *Basic Conditions of Employment Act*, is required to pay any part of the cost of the private *dispute* resolution procedures; or

(b) if the person or body appointed to resolve the *dispute* is not independent of the employer.”.

Substitution of section 150 of Act 66 of 1995, as amended by section 35 of Act 12 of 2002

24. The following section is hereby substituted for section 150 of the principal Act:

“Commission may appoint commissioner to conciliate in public interest

150. (1) Despite any provision to the contrary in *this Act*, the *director* may appoint one or more commissioners who must attempt to resolve the *dispute* through conciliation, whether or not that *dispute* has been referred to the Commission or a *bargaining council*—

(a) with the consent of the parties; or

(b) in the absence of consent by the parties, if the *director* believes it is in the public interest to do so.

(2) Before appointing a commissioner in terms of this section, the *director* must consult—

(a) the parties to the *dispute*; and

(b) the secretary of a *bargaining council* with jurisdiction over the parties to the *dispute*.

(3) The *director* may appoint a commissioner who has already conciliated that *dispute*.

(4) In addition, to assist a commissioner appointed in terms of subsection (1), the *director* may appoint—

(a) one person from a list of at least five names submitted by the representatives of organised labour on the governing body of the Commission; and

(b) one person from a list of at least five names submitted by the representatives of organised business on the governing body of the Commission.

(5) Unless the parties to the *dispute* agree otherwise, the appointment of a commissioner in terms of this section does not affect any entitlement, of an *employee* to *strike* or an employer to *lock-out*, that the party to the dispute may have acquired in terms of Chapter IV.”

Amendment of section 157 of Act 66 of 1995, as amended by section 14 of Act 127 of 1998 5

25. Section 157 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Except as provided for in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved *dispute* if this Act or any employment law requires the *dispute* to be resolved through arbitration.” 10

Amendment of section 158 of Act 66 of 1995, as amended by section 44 of Act 42 of 1996 and section 36 of Act 12 of 2002

26. Section 158 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 15

“(b) order compliance with any provision of this Act or any employment law.”;

(b) by the insertion after subsection (1A) of the following subsection:

“(1B) The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings conducted under the auspices of the Commission or any *bargaining council* in terms of the provisions of this Act before the *issue in dispute* has been finally determined by the Commission or the *bargaining council*, as the case may be, except if the Labour Court is of the opinion that it is just and equitable to review the decision or ruling made before the *issue in dispute* has been finally determined.”; 20 25

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) **[with the consent of the parties and]** if it is expedient to do so, continue with the proceedings **[with the Court sitting as an arbitrator]**, in which case the Court may only make any order that a commissioner or arbitrator would have been entitled to make; Provided that in relation to the question of costs, the provisions of section 162(2)(a) are applicable.”; and 30 35

(d) by the addition of the following subsection:

“(5) A judgment of the Labour Court must be handed down as soon as reasonably possible.”

Amendment of section 159 of Act 66 of 1995, as amended by section 45 of Act 42 of 1996 and section 15 of Act 127 of 1998 40

27. Section 159 of the principal Act is hereby amended by the addition of the following subsection:

“(11) The Judge President must ensure that the Rules Board for Labour Courts meet at least once every two years to review the rules of the Labour Court.”

Amendment of section 161 of Act 66 of 1995, as amended by section 16 of Act 127 of 1998 and section 37 of Act 12 of 2002 45

28. Section 161 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) any **[member,]** *office-bearer* or *official* of that party’s registered *trade union* or registered *employers’ organisation*.”; and 50

- (b) by the addition of the following subsection, the existing section becoming subsection (1):

“(2) No person representing a party in proceedings before the Labour Court in a capacity contemplated in paragraphs (b) to (e) of subsection (1) may charge a fee or receive a financial benefit in consideration for agreeing to represent that party unless permitted to do so by order of the Labour Court.”.

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Amendment of section 168 of Act 66 of 1995, as amended by section 46 of Act 42 of 1996 and section 19 of Act 127 of 1998

29. Section 168 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) such number of other judges who are judges of the Labour Court or High Court, as may be required for the effective functioning of the Labour Appeal Court.”.

Amendment of section 186 of Act 66 of 1995, as amended by section 95 of Act 75 of 1997 and section 41 of Act 12 of 2002

30. Section 186 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) an employer has terminated [a contract of] employment with or without notice;

(b) an employee employed in terms of a fixed term contract of employment reasonably expected the employer—

- (i) to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee.”; and

- (b) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) an employee terminated [a contract of] employment with or without notice because the employer made continued employment intolerable for the employee[.]; or

(f) an employee terminated [a contract of] employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer.”.

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Amendment of section 187 of Act 66 of 1995

31. Section 187 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) [to compel the employee] a refusal by employees to accept a demand in respect of any matter of mutual interest between [the] them and their employer [and employee];”.

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Amendment of section 188A of Act 66 of 1995

32. Section 188A of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

“[Agreement for pre-dismissal arbitration] Inquiry by arbitrator”;

- (b) by the substitution for subsection (1) of the following subsection:

“(1) An employer may, with the consent of the employee or in accordance with a collective agreement, request a council, an accredited agency or the Commission to appoint an arbitrator to conduct an

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- [arbitration] inquiry** into allegations about the conduct or capacity of that *employee*.”;
- (c) by the substitution for subsection (4) of the following subsection: 5
“(4)(a) An *employee* may only consent to **[a pre-dismissal arbitration]** an inquiry in terms of this section after the *employee* has been advised of the allegation referred to in subsection (1) **[and in respect of a specific arbitration]**. 5
(b) Despite **[subparagraph (a),]** any other provision in *this Act*, an *employee* earning more than the amount determined by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act* at the 10
time, may **[consent]** agree in a contract of employment to the holding of **[a pre-dismissal arbitration in a contract of employment]** an inquiry in terms of this section.”; 10
- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 15
“In any **[arbitration] inquiry** in terms of this section a party to the *dispute* may appear in person or be represented only by—”;
- (e) by the substitution in subsection (5) for paragraphs (c) and (d) of the following paragraphs, respectively: 15
“(c) **[any member,]** an office bearer or official of that party’s registered 20
trade union or registered *employers’ organisation*; or
(d) a *legal practitioner*, on agreement between the parties or if permitted by the arbitrator in accordance with the rules regulating representation at an arbitration before the Commission.”;
- (f) by the substitution for subsection (6) of the following subsection: 25
“(6) Section 138, read with the changes required by the context, applies to any **[arbitration] inquiry** in terms of this section.”;
- (g) by the substitution in subsection (7) for paragraphs (a) and (b) of the following paragraphs, respectively: 25
“(a) the secretary of the *council*, if the **[arbitration] inquiry** is held 30
under the auspices of the *council*;
(b) the *director* of the accredited agency, if the **[arbitration] inquiry** is held under the auspices of an accredited agency.”;
- (h) by the substitution for subsections (8), (9) and (10) of the following subsections, respectively: 35
“(8) The ruling of the arbitrator in an inquiry has the same status as an arbitration award, and the provisions of sections 143 to 146 apply with the changes required by the context to any [award made by an arbitrator in terms of this section] such ruling. 35
(9) An arbitrator conducting an **[arbitration] inquiry** in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, **[direct] rule as to what action, if any, [should] may be taken against the employee.** 40
(10) (a) A private agency may only appoint an arbitrator to conduct an [arbitration] inquiry in terms of this section if it is accredited for [this purpose] arbitration by the Commission. 45
(b) A *council* may only appoint an arbitrator to conduct an [arbitration] inquiry in terms of this section in respect of which the employer or the employee is not a party to the council, if the council has been accredited for [this purpose] arbitration by the Commission.”; and 50
- (i) by the addition of the following subsections: 55
“(11) Despite subsection (1), if an *employee* alleges in good faith that the holding of an inquiry contravenes the Protected Disclosures Act, 2000 (Act No. 26 of 2000), that *employee* or the employer may require that an inquiry be conducted in terms of this section into allegations by the employer into the conduct or capacity of the *employee*. 55
(12) The holding of an inquiry by a arbitrator in terms of this section and the suspension of an *employee* on full pay pending the outcome of

such an inquiry do not constitute an occupational detriment as contemplated in the Protected Disclosures Act, 2000 (Act No. 26 of 2000).”.

Amendment of section 189A of Act 66 of 1995, as inserted by section 45 of Act 12 of 2002

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33. Section 189A of the principal Act is hereby amended—

(a) by the addition to subsection (2) of the following paragraph:

“(d) a consulting party may not unreasonably refuse to extend the period for consultation if such an extension is required to ensure meaningful consultation.”; and

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(b) by the deletion of subsection (19).

Amendment of section 190 of Act 66 of 1995

34. Section 190 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph:

“(d) if an employer terminates an *employee’s employment* on notice, the date of *dismissal* is the date on which the notice expires or, if it is an earlier date, the date on which the *employee* is paid all outstanding salary.”.

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Amendment of section 191 of Act 66 of 1995, as amended by section 25 of Act 127 of 1998 and section 46 of Act 12 of 2002

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35. Section 191 of the principal Act is hereby amended—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“If a *council* or a commissioner has certified that the *dispute* remains unresolved, or if 30 days or any further period as agreed between the parties have expired since the *council* or the Commission received the referral and the *dispute* remains unresolved—”; and

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(b) by the substitution for subsection (12) of the following subsection:

“(12) [If an] An *employee* who is dismissed by reason of the employer’s *operational requirements* [following a consultation procedure in terms of section 189 that applied to that employee only, the *employee*] may elect to refer the *dispute* either to arbitration or to the Labour Court if—

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(a) the employer followed a consultation procedure that applied to that *employee* only, irrespective of whether that procedure complied with section 189;

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(b) the employer’s *operational requirements* lead to the *dismissal* of that *employee* only; or

(c) the employer employs less than ten *employees*, irrespective of the number of *employees* who are dismissed.”.

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Substitution of heading to Chapter IX of Act 66 of 1995

36. The following heading is hereby substituted for the heading to Chapter IX of the principal Act:

“REGULATION OF NON-STANDARD EMPLOYMENT AND GENERAL PROVISIONS”.

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Amendment of section 198 of Act 66 of 1995

37. Section 198 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) who [render services to, or] perform work for [,] the client; and”;

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(b) by the substitution in subsection (4) for paragraph (d) of the following paragraph:

“(d) a sectoral determination made in terms of the [Wage] Basic Conditions of Employment Act.”; and

(c) by the insertion after subsection (4) of the following subsections:

“(4A) If the client of a temporary employment service is jointly and severally liable in terms of section 198(4) or is deemed to be the employer of an *employee* in terms of section 198A(3)(b)—

- (a) the *employee* may institute proceedings against either the temporary employment service or the client or both the temporary employment service and the client;
- (b) a labour inspector acting in terms of the *Basic Conditions of Employment Act* may secure and enforce compliance against the temporary employment service or the client as if it were the employer, or both; and
- (c) any order or award made against a temporary employment service or client in terms of this subsection may be enforced against either.

(4B) (a) A temporary employment service must provide an *employee* whose service is procured for or provided to a client with written particulars of *employment* that comply with section 29 of the *Basic Conditions of Employment Act*, when the *employee* commences *employment*.

(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, 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, 2014.

(4C) An *employee* may not be employed by a temporary employment service on terms and conditions of *employment* which are not permitted by *this Act*, any *employment law*, sectoral determination or *collective agreement* concluded in a *bargaining council* applicable to a client to whom the *employee* renders services.

(4D) The issue of whether an *employee* of a temporary employment service is covered by a *bargaining council* agreement or sectoral determination, must be determined by reference to the sector and area in which the client is engaged.

(4E) In any proceedings brought by an *employee*, the Labour Court or an arbitrator may—

- (a) determine whether a provision in an *employment* contract or a contract between a temporary employment service and a client complies with subsection (4C); and
- (b) make an appropriate order or award.

(4F) No person must perform the functions of a temporary employment service unless it is registered in terms of any applicable legislation, and the fact that a temporary employment service is not registered will not constitute a defence to any claim instituted in terms of this section or 198A.”.

Insertion of sections 198A to 198D in Act 66 of 1995

38. The following sections are hereby inserted in the principal Act after section 198:

“Application of section 198 to employees earning below earnings threshold

198A. (1) In this section, a ‘temporary service’ means work for a client by an *employee*—

- (a) for a period not exceeding three months;
- (b) as a substitute for an *employee* of the client who is temporarily absent; or
- (c) in a category of work and for any period of time which is determined to be a temporary service by a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8).

(2) This section does not apply to *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*.

(3) For the purposes of *this Act*, an *employee*—

- (a) performing a temporary service as contemplated in subsection (1) for the client is the *employee* of the temporary employment services in terms of section 198(2); or
- (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.

(4) The termination by the temporary employment services of an *employee's* service with a client, whether at the instance of the temporary employment service or the client, for the purpose of avoiding the operation of subsection (3)(b) or because the *employee* exercised a right in terms of *this Act*, is a *dismissal*.

(5) An *employee* deemed to be an *employee* of the client in terms of subsection (3)(b) must be treated on the whole not less favourably than an *employee* of the client performing the same or similar work, unless there is a justifiable reason for different treatment.

(6) The *Minister* must by notice in the *Government Gazette* invite representations from the public on which categories of work should be deemed to be temporary service by notice issued by the *Minister* in terms of subsection (1)(c).

(7) The *Minister* must consult with *NEDLAC* before publishing a notice or a provision in a sectoral determination contemplated in subsection (1)(c).

(8) If there is conflict between a *collective agreement* concluded in a *bargaining council*, a sectoral determination or a notice by the *Minister* contemplated in subsection (1)(c)—

- (a) the *collective agreement* takes precedence over a sectoral determination or notice; and
- (b) the notice takes precedence over the sectoral determination.

(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, 2014, acquire the rights contemplated in subsections (3), (4) and (5) with effect from three months after the commencement of the Labour Relations Amendment Act, 2014.

Fixed term contracts with employees earning below earnings threshold

198B. (1) For the purpose of this section, a 'fixed term contract' means a contract of employment that terminates on—

- (a) the occurrence of a specified event;
- (b) the completion of a specified task or project; or
- (c) a fixed date, other than an *employee's* normal or agreed retirement age, subject to subsection (3).

(2) This section does not apply to—

- (a) *employees* earning in excess of the threshold prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*;
- (b) an employer that employs less than 10 *employees*, or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—
 - (i) the employer conducts more than one business; or
 - (ii) the business was formed by the division or dissolution for any reason of an existing business; and

(c) an *employee* employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or *collective agreement*.

(3) An employer may employ an *employee* on a fixed term contract or successive fixed term contracts for longer than three months of *employment* only if—

- (a) the nature of the work for which the *employee* is employed is of a limited or definite duration; or
- (b) the employer can demonstrate any other justifiable reason for fixing the term of the contract.

(4) Without limiting the generality of subsection (3), the conclusion of a fixed term contract will be justified if the *employee*—

- (a) is replacing another *employee* who is temporarily absent from work;
- (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
- (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
- (d) is employed to work exclusively on a specific project that has a limited or defined duration;
- (e) is a non-citizen who has been granted a work permit for a defined period;
- (f) is employed to perform seasonal work;
- (g) is employed for the purpose of an official public works scheme or similar public job creation scheme;
- (h) is employed in a position which is funded by an external source for a limited period; or
- (i) has reached the normal or agreed retirement age applicable in the employer's business.

(5) *Employment* in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration.

(6) An offer to employ an *employee* on a fixed term contract or to renew or extend a fixed term contract, must—

- (a) be in writing; and
- (b) state the reasons contemplated in subsection (3)(a) or (b).

(7) If it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of the contract as contemplated in subsection (3) and that the term was agreed.

(8) (a) An *employee* employed in terms of a fixed term contract for longer than three months must not be treated less favourably than an *employee* employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.

(b) Paragraph (a) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to fixed term contracts of employment entered into before the commencement of the Labour Relations Amendment Act, 2014.

(9) As from the commencement of the Labour Relations Amendment Act, 2014, an employer must provide an *employee* employed in terms of a fixed term contract and an *employee* employed on a permanent basis with equal access to opportunities to apply for vacancies.

(10) (a) An employer who employs an *employee* in terms of a fixed term contract for a reason contemplated in subsection (4)(d) for a period exceeding 24 months must, subject to the terms of any applicable *collective agreement*, pay the *employee* on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with section 35 of the *Basic Conditions of Employment Act*.

(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, 2014, is entitled to the remuneration contemplated in paragraph (a) in respect of any period worked after the commencement of the said Act.

(11) An *employee* is not entitled to payment in terms of subsection (10) if, prior to the expiry of the fixed term contract, the employer offers the *employee* employment or procures employment for the *employee* with a different employer, which commences at the expiry of the contract and on the same or similar terms.

Part-time employment of employees earning below earnings threshold

198C. (1) For the purpose of this section—

- (a) a part-time *employee* is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who works less hours than a comparable full-time *employee*; and
- (b) a comparable full-time *employee*—
 - (i) is an *employee* who is remunerated wholly or partly by reference to the time that the *employee* works and who is identifiable as a full-time *employee* in terms of the custom and practice of the employer of that *employee*; and
 - (ii) does not include a full-time *employee* whose hours of work are temporarily reduced for *operational requirements* as a result of an agreement.

(2) This section does not apply—

- (a) to *employees* earning in excess of the threshold determined by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*;
- (b) to an employer that employs less than 10 *employees* or that employs less than 50 *employees* and whose business has been in operation for less than two years, unless—
 - (i) the employer conducts more than one business; or
 - (ii) the business was formed by the division or dissolution, for any reason, of an existing business;
- (c) to an *employee* who ordinarily works less than 24 hours a month for an employer; and
- (d) during an *employee's* first three months of continuous *employment* with an employer.

(3) Taking into account the working hours of a part-time *employee*, irrespective of when the part-time *employee* was employed, an employer must—

- (a) treat a part-time *employee* on the whole not less favourably than a comparable full-time *employee* doing the same or similar work, unless there is a justifiable reason for different treatment; and
- (b) provide a part-time *employee* with access to training and skills development on the whole not less favourable than the access applicable to a comparable full-time *employee*.

(4) Subsection (3) applies, three months after the commencement of the Labour Relations Amendment Act, 2014, to part-time employees employed before the commencement of the Labour Relations Amendment Act, 2014.

(5) After the commencement of the Labour Relations Amendment Act, 2014, an employer must provide a part-time *employee* with the same access to opportunities to apply for vacancies as it provides to full-time *employees*.

(6) For the purposes of identifying a comparable full-time *employee*, regard must be had to a full-time *employee* employed by the employer on the same type of *employment* relationship who performs the same or similar work—

- (a) in the same *workplace* as the part-time *employee*; or

- (b) if there is no comparable full-time *employee* who works in the same *workplace*, a comparable full-time *employee* employed by the employer in any other *workplace*.

General provisions applicable to sections 198A to 198C

198D. (1) Any *dispute* arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the Commission or a bargaining council with jurisdiction for conciliation and, if not resolved, to arbitration. 5

(2) For the purposes of sections 198A(5), 198B(8) and 198C(3)(a), a justifiable reason includes that the different treatment is a result of the application of a system that takes into account— 10

- (a) seniority, experience or length of service;
 - (b) merit;
 - (c) the quality or quantity of work performed; or
 - (d) any other criteria of a similar nature, 15
- and such reason is not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

(3) A party to a dispute contemplated in subsection (1), other than a dispute about a dismissal in terms of section 198A(4), may refer the dispute, in writing, to the Commission or to the bargaining council, within six months after the act or omission concerned. 20

(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. 25

(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).” 30

Amendment of section 200A of Act 66 of 1995, as amended by section 51 of Act 12 of 2002

39. Section 200A of the principal Act is hereby amended by the substitution for subsection (1) for the words preceding paragraph (a) of the following words: 35

“Until the contrary is proved, for the purposes of *this Act*, any *employment law* and section 98A of the Insolvency Act, 1936 (Act No. 24 of 1936), a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an *employee*, if any one or more of the following factors are present:”.

Insertion of section 200B in Act 66 of 1995 40

40. The following section is hereby inserted in the principal Act after section 200A:

“Liability for employer’s obligations

200B. (1) For the purposes of *this Act* and any other *employment law*, ‘employer’ includes one or more persons who carry on associated or related activity or business by or through an employer if the intent or effect of their doing so is or has been to directly or indirectly defeat the purposes of *this Act* or any other *employment law*. 45

(2) If more than one person is held to be the employer of an *employee* in terms of subsection (1), those persons are jointly and severally liable for any failure to comply with the obligations of an employer in terms of *this Act* or any other *employment law*.” 50

Amendment of section 203 of Act 66 of 1995, as amended by section 52 of Act 12 of 2002

41. Section 203 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

- “(2A) The *Minister* may issue a *code of good practice* by publishing it in the *Government Gazette* in accordance with the provisions of this section, if—
- (a) proposals relating to the *code of good practice* have been tabled and considered by *NEDLAC*; and
 - (b) *NEDLAC* has reported to the *Minister* that it has been unable to reach agreement on the matter.
- (2B) Subsection (2A) applies to the amendment or replacement of an existing *code of good practice*.”

Amendment of section 213 of Act 66 of 1995, as amended by sections 52 and 53 of Act 42 of 1996, section 54 of Act 12 of 2002 and section 43 of Act 30 of 2007

42. Section 213 of the principal Act is hereby amended—

- (a) by the insertion after the definition of “*collective agreement*” of the following definition:

“‘**Commission**’ mean the Commission for Conciliation, Mediation and Arbitration established by section 112;”;
- (b) by the substitution for paragraph (a) of the definition of “*employment law*” of the following paragraph:

“(a) the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No. 63 of 2001);”;
- (c) by the deletion in the definition of “*employment law*” of the word “and” at the end of paragraph (d) and the addition of the following paragraph:

“(f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);”;
- (d) by the substitution for the definition of “*serve*” of the following definition:

“‘**serve**’ means to send by electronic mail, registered post, telegram, telex, telefax or to deliver by hand, and—

 - (a) in respect of the Labour Courts, any other method of service specified in the rules of the Labour Court;
 - (b) in respect of the Commission, any other method of service specified in the Rules of the Commission;
 - (c) in respect of a *bargaining council*, any other method of service specified in a *collective agreement* concluded in the *bargaining council*.”.

Amendment of long title of Act 66 of 1995

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

Amendment of Schedule 7 to Act 66 of 1995

44. Item 27 of Part H of Schedule 7 to the principal Act is hereby amended by the substitution in item 27(1) for the words preceding paragraph (a) of the following words:

“Until such time as rules made by the Commission in terms of section [115(2A)(m)] 115(2A)(k) of the Act come into force—”.

Short title

45. (1) This Act is called the Labour Relations Amendment Act, 2014 and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.

(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.