



Retirement Fund Solutions



AMENDMENTS OF THE LABOUR ACT

Notes of a meeting of the Namibia Employers Federation (NEF) on the impact of the latest amendments of the Labour Act by Louis Theron, director support services.

The purpose of the amendments is said to be mainly to regulate the employment status of individuals placed by employment agencies.

The main concerns raised by employers were:

- The Act is again very vague on many issues and the consensus was that many disputes will first arise before clarity is obtained.
- In terms of the Act a “user enterprise” is now included under the definition of ‘employer’. Due to a lack of clarity within the Act, different opinions were expressed by advocate Ya Toivo who advised the Government, and by Pieter De Beer who advised the NEF. The grey areas relate to the placing of a security guard, cleaner and the use of sub-contractors in the building industry. Government (Ministry of Labour) argued that it was not the intention to include these services and that is not considered ‘labour hire’.
- In terms of the amendments the ‘user enterprise’ will be regarded the ‘employer’, should any dispute arises, and that employees placed by an employment agency must have the same rights as any other employee of the user enterprise.
- A user enterprise may not employ an employee placed, during a strike. The concern is that the Act does not specifically refer to a legal strike only.
- Section 128 A. An individual is deemed to be an employee of another person if any one of the following factors are present (bold text representing main areas of concern):
 - The manner in which the individual works is subject to the control and direction of that other person;
 - Working hours is controlled by the other person;
 - The individual’s work forms an integral part of the ‘user enterprise’;
 - **The individual has worked for the other person for an average of at least 20 hours a month over a 3 month period;**
 - **The individual is economically dependent on that person where he/she works or to whom he/she renders services;**
 - The individual is provided with tools of trade or equipment by that other person;
 - The individual only works for or renders services to that other person;
 - **Any other prescribed factor.**
- Section 128 C. In terms of this section an employee is presumed to be employed **indefinitely**, unless the employer can establish a justification for employment on a fixed term. This does not apply to ‘managerial staff’.
 - ‘Managerial staff’ is not defined in the Act and some employers argued that this is not a problem because all employees can be considered to be ‘managerial staff’.
 - Many employers from the agricultural, charcoal and retail industries raised concerns about seasonal or peak time workers in this regard.

The outcome

The employers elected an 8 man committee to clearly define the concerns. The committee was mandated to request extension from the Minister (the Act will come into force on 1 August 2012) and to provide proposals to the Minister on changes. This committee will provide feedback and a plan B for a scenario should the Minister not agree to above.

A thought not discussed but relevant to our business environment, in the light of section 128 A, is whether the administration staff of our company would now be deemed to be employed by the retirement funds we serve. (They are economically dependent on the fund, some only render services to one fund and spend more than an average of 20hours per month working for the fund??)

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