

SACHRA Breakfast Seminar

STRIKE Law and the LRA Amendments

16 November 2018



Our Employment law team



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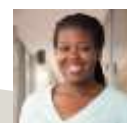
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Summary: Strike Law and the LRA Amendments Osborne Molatudi

Why the Amendments?

- In Summary, as a Response to:
 - Violent; and
 - Lengthy strikes

Strike Action

- Previous position
 - Sets out procedural and substantive limitations on the right to strike in South Africa, such as requiring the trade union to declare a dispute with the employment tribunal, conciliation of the dispute and providing prior notice of the strike.
- New position
 - Seeks to limit strike action in order to prevent violent strikes.
 - It makes provisions for the resolution of strike disputes through arbitration awards at the CCMA.
 - The Bill clarifies that strike ballots, undertaken by members of trade unions before a decision is made to strike, should be done by way of a secret ballot.

Strike Action conti...

- A Code of Good Practice for picketing rules has been introduced. Further, the Minister of Labour will also be allowed to extend collective bargaining agreements to allow for greater representation.
- The right is further limited in that employees may not strike where they agreed, in a collective bargaining agreement, that they will not strike on the issues covered in the agreement - e.g. wages for that year.
- Employees are bound by an agreement where they agreed to refer the issue in dispute to arbitration; and they may refer the issue in dispute to the Labour Court or employment tribunal for adjudication.

Strike Action conti...

- The LRA amendments allow for the extension of the conciliation period from 30 days to 35 and provide for the establishment of an advisory arbitration panel to resolve strikes.
- An advisory arbitration panel will be led by a senior commissioner of the Commission for Conciliation, Mediation and Arbitration (CCMA) and it will have the power to make resolutions to resolve the dispute and the strike.
- If unions do not indicate rejection of the proposed resolution then it becomes binding and the strike must end.
- An advisory arbitration panel can be established if the Minister of Labour or the Director of the CCMA deem it to be in the 'public interest' or if it is requested by any party to the dispute.

Strike Action conti...

- The criteria for ‘public interest’ is so wide, almost any strike could be subjected to advisory arbitration.
- Employers will in addition, have the right to request advisory arbitration which will obviously be in their interests to do.
- Trade unions can be interdicted throughout procedures.

Advisory Panel

- The advisory panel can be appointed upon application from either party, by the CCMA on its own accord, or pursuant to a Labour Court order or by the Minister.
- What would give rise to the appointment of an advisory panel?

Where the strike or lock-out:

- in the public interest
 - is no longer conducive to collective bargaining, i.e. it has continued for a protracted period of time with no end in sight;
 - brings about an imminent threat that constitutional rights may or are being violated or there is a threat of damage to property and/or violence
 - has the imminent potential to cause or exacerbate a national or local crisis affecting the conditions for normal social and economic functioning of the community or society.
- Who makes up the advisory award panel?
 - A senior commissioner who will be the chairperson, together with one assessor appointed by the employer party to the dispute and one assessor appointed by the trade union party to the dispute.

Advisory Panel continued

- What happens if one of the parties fails or refuses to participate in the advisory arbitration?
 - The director of the CCMA will then appoint a person with the requisite experience to represent the interests of that party during the proceedings.
- The powers of the advisory arbitration panel are?
 - The panel will have the same powers as a commissioner but must deal with the substantial merits of the dispute and can order the disclosure of relevant information, provided that information is necessary in order to make a factual finding.
 - If an advisory arbitration panel is appointed, the strike and lock-out will continue during this period.
- What would the advisory arbitration award seek to address? It would include a report on the findings, recommendations for the resolution of the dispute and a motivation as to why the recommendations ought to be accepted.
 - The advisory arbitration award is not immediately binding? An award is only binding on a party to the dispute if the parties have accepted or are deemed to have accepted the award.
 - A party will be deemed to have accepted the advisory arbitration award, if after 7 days a party to the dispute fails to indicate either its acceptance or rejection of the award.
 - If a party rejects the advisory arbitration award, it must provide a motivation for its rejection.
 - Once a party becomes bound by the advisory arbitration award it cannot strike or lock-out.