LEGISLATIVE UPDATE LABOUR LAW

11 AUGUST 2014

Brought to you by

BUSA
BUSINESS UNITY SOUTH AFRICA

INSIDE THIS REPORT

REPORT ON ALL BILLS AT PARLIAMENT

- Integrated Coastal Management Amendment Bill
- Development Bank of Southern Africa Amendment Bill
- Medicines & Related Substances Amendment Bill
- Legal Aid Bill
- Attorneys Amendment Bill
- Defence Amendment Bill
- Medical Innovation Bill

LABOUR BILLS UPDATE

- Labour Relations Amendment Bill
- Basic Conditions of Employment Amendment Bill
- Employment Equity Amendment Bill
- Employment Services Bill

FEATURE ARTICLE

THE NEW EMPLOYMENT EQUITY AMENDMENT - WHAT YOU NEED TO

Enquiries
Business Unity South Africa
Parliamentary Office
Email: BPO@BUSA.ORG.ZA
Tel: +27 (0)21 465 1633
Fax: +27 (0)21 461 5470
www.busa.org.za

This report was prepared for BUSA by *Leverage Info*

BILLS AT PARLIAMENT

The following page summarises the status of all legislation currently tabled in Parliament. For further details on any of the bills, including advice on participating in public hearings, contact -

BUSA parliamentary office
Dawn Williams
Office Manager
E: dawn.williams@bpo.org.za
T: 021 465 1633

BILL	COMMITTEE	KEY PROVISIONS	STATUS
Integrated Coastal Management Amendment Bill [B8F-2013]	With the National Assembly (NA)	The Bill concerns **property developments** along SA's coastline and includes provisions relating to **land reclaimed from the sea**. Once passed, the Act will require developers to obtain Ministerial approval, subject to parliamentary ratification, in order to reclaim land.	The Bill was revived on 22 July 2014, after lapsing prior to the 7 May general election. It has been revived at the point at which it lapsed, and requires only **final approval** to be granted by the National Assembly - after which it will be sent to the President for assent.
Development Bank of Southern Africa Amendment Bill [B2-2014]	Finance Standing Committee	DBSA may currently operate within the SADC region. The Bill seeks to extend DBSA's mandate to allow it to participate in large-scale infrastructure and **strategic projects on the African continen**t outside the SADC region.	Revived by Parliament on 18 June. Currently under **deliberation**.
Medicines & Related Substances Amendment Bill [B6-2014]	Health Portfolio Committee	The Bill creates a **new regulatory authority**: the South African Health Product Regulatory Authority - to oversee medicines, medical devices and food stuffs.	The Bill is still at the **initial stages** of being processed. Public hearings have yet to be held.
Legal Aid Bill [B8–2014]	[B8–2014]	The Bill seeks to **repeal and replace** the Legal Aid Act,1969. The Bill establishes a public body: Legal Aid South Africa - to dispense **legal aid at stage expense**.	The Bill was introduced on 22 July and is still in its **initial stages**; public hearings have yet to be scheduled.
Attorneys Amendment Bill [B9-2014]	Justice Portfolio Committee	The Bill primarily aims to terminate **law societies** existing in the former **Transkei, Bophuthatswana and Venda and Ciskei** states, and to incorporate them into mainstream law societies.	The Justice Portfolio Committee is currently **inviting comments** on the Bill. The deadline for written comments is 18 August.
Defence Amendment Bill [PMB 8-2013]	Defence Portfolio Committee	The Bill seeks to ensure that the **procurement of arms** is made subject to parliamentary oversight.	Private Members Bill introduced by DA MP David Maynier. The Committee has **yet to schedule** proceedings relating to the Bill.
Medical Innovation Bill [PMB 1-2014]	Health Portfolio Committee	Bill seeks to provide for **innovation** in medical treatment and to **legalise the use of cannabinoids** for medical purposes and beneficial commercial and industrial uses	Private Members Bill introduced by IFP MP Mario Oriani-Ambrosini. The Committee has **yet to schedule** proceedings relating to the Bill.

LABOUR LAW UPDATE

IN 2012 CABINET APPROVED FOUR LABOUR BILLS FOR SUBMISSION TO PARLIAMENT

- ➡ Labour Relations Amendment
- ➡ Basic Conditions of Employment Amendment
- ➡ Employment Equity Amendment
- ➡ Employment Services Bill

The amendments are the first major changes to South Africa's labour relations framework since the Labour Relations Act and Basic Conditions of Employment Act were enacted nearly 20 years ago.

The Bills were conceived to meet demands from organised labour for an end to casual work while simultaneously promoting permanent employment in terms of government's commitment towards job creation.

However at Nedlac and Parliament the bills faced strong criticism from Business. BUSA, its member organisations and individual companies pointed out that Bills would make it more difficult for first time jobseekers to enter the labour market, were likely to increase the cost of doing business and would generally worsen employment.

We have not received any direction from the department regarding its readiness for commencement of this Act

- Comment from the Presidency on the Employment Services Bill

The Bills have been approved by Parliament and are, in varying stages, close to becoming operational:

LABOUR RELATIONS AMENDMENT

Approved by Parliament earlier in the year. It is currently awaiting assent by the President.

THE BASIC CONDITIONS OF EMPLOYMENT AMENDMENT

Signed into law by the President in December 2013, with the stipulation that the amendment would become operational on a date to be announced by the President. At a recent briefing at Parliament, the Department of Labour indicated that the bill may become operational by September 2014.

EMPLOYMENT EQUITY AMENDMENT

Became operational on 1 August 2014. See our feature insert for details.

EMPLOYMENT SERVICES BILL

Like the BCEA, the Employment Services Bill has been signed into law but has not yet commenced. Sources in the Presidency have informed BUSA that the President is awaiting direction from the Department of Labour, which is in the process of preparing for implementation of the Amendment. To date, the Presidency had not received notice from the Department regarding its readiness for commencement of the Act.

Email dawn.williams@busa.org.za for copies of the bills as finalised by Parliament.

THE NEW **EMPLOYMENT EQUITY AMENDMENT**
WHAT YOU NEED TO KNOW

Contributed by BUSA affiliate and labour law expert
GRANT WILKINSON

The amendments to the Employment Equity Act have been the subject of much debate recently, with some criticism of the proposed amendment mechanism - despite many experts recognising the need for changes to the Act.

One of the main points of criticism has been the enforcement of national demographics, particularly at the higher occupational levels. A welcome feature of the Regulations is the return to regional demographics: South Africa's provinces are diverse with substantial differences between regional and national population profiles.

This article highlights the key changes to the Act that businesses should be aware of - and the possible impact on the private sector.

There is a definite need for stronger enforcement of the Employment Equity Act and penalties for non-compliance. The Employment Equity Commission's report indicates that top management is not representative of the country's demographic. More concerning is that training at senior management level is aimed at the same old demographic - which means that, unless there is a fundamental change, we will be having the same compliance conversation years from now.

Here are some of the pertinent issues raised by the Act and their impact on your business:

1. The amendment of section 42, which makes provision for a **labour inspection** when assessing a company's compliance with the Act. It is essential that businesses adhere to the points of compliance in this section.

2. The **lessening of enforcement requirements,** which would ensure an easier and quicker path to the Labour Court

3. The substantial **increase of fines** from R500 000 for first offences to R1 500 000 or 2% of turnover, depending on the nature of the breach. This amount escalates up to 10% of turnover at fourth offence. The concern with this point is linked to the discretion given to inspectors (see point 1). It may open the door to litigation and, unfortunately, the possibility of corruption.

4. The relatively **new concept of Equal Treatment** is also included in this legislation and is further reflected in the proposed Labour Relations Amendment Bill . The concept of "equal treatment" means that unless you have justification for differential treatment (not only on equal pay) on the grounds listed, you will be in breach of the Act.

It is essential that businesses properly grade their staff, have an objective remuneration policy and a performance management system which has objective measurements and reward of performance. Where there is a difference in salary, it must be strongly justified.

5. The **extension of grounds of discrimination** to include "any other arbitrary ground". In the past the grounds for discrimination were limited to issues such as age, race, gender, etc. Whilst this was not an exhaustive list, the extension prohibits unfair discrimination on any arbitrary ground.

   Together with the extended definition, the burden of proof in such cases has also changed with the onus now shifting to employers to prove that discrimination did not take place and, if it did, that it was fair. Where businesses differentiate between staff, they will need to have an objectively justifiable ground for doing so.

6. Other changes of interest include:

   - Psychometric tests are to be certified by the Health Professions Council of South Africa or a similar body.
   - Small businesses must now report on an annual basis rather than bi-annually. This could prove an administrative burden on SMEs. It is imperative that businesses meet the deadline for submission – it's best to start early and give yourself sufficient time to complete the forms.

It is vital to approach compliance with the Act as part of your business strategy - a "tick box" approach will never lead to full compliance. Ensure that your EE manager and committee receive the appropriate training, and screen consultants before engaging them on this topic. Most importantly, obtain a buy-in from top management all the way down. It is essential to have a full buy in from everybody, and align your transformation and overall business strategies in this regard.

GRANT WILKINSON
grant@globalbusiness.co.za

Grant is an Executive of Global Business Solutions and a practicing attorney, internationally accredited mediator, lecturer and facilitator.