

PC Labour
30 October
2013

**MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT SERVICES BILL,
2012**

1. BACKGROUND

1.1 The Employment Services Bill (the Bill) seeks to repeal all the employment services provisions contained in the Skills Development Act, 1998 (Act No.97 of 1998), as well as those provisions establishing Productivity South Africa. These provisions are incorporated into the Bill and strengthened in order to provide a re-invigorated legal basis for the provision of public employment services.

1.2 The Department of Labour (Department) conducted a review of its programmes to determine their effectiveness and to make appropriate adjustments, with the assistance of the International Labour Organisation (ILO). A comparative study was also conducted across Ministries of Labour / Labour and Social Affairs / Labour and Employment with similar characteristics and in countries having similar economic conditions with South Africa. The outcome of these discussions resulted in the Department prioritising the following three areas: Inspection and Enforcement Services, Labour Policy and Industrial Relations and Public Employment Services, inclusive of the Unemployment Insurance Fund and the Compensation Fund. All of these programmes are supported by the programme administration. The Bill seeks to allow for the re-organisation of public employment services in line with these priorities.

1.3 The Bill seeks to contribute to the government's objectives of "More jobs, decent work and sustainable livelihoods". The Bill repositions public employment

services to play a major role in employment promotion and employment preservation and will also assist employers and workers to adapt to changing labour market conditions.

1.4 The Bill seeks to, amongst other things, contribute towards—

- reducing unemployment and inequalities and poverty eradication;
- promoting and preserving employment;
- reducing work seeker reliance on the Unemployment Insurance Fund or Social Security grants, and reliance of rehabilitated workers injured on duty on the Compensation Fund;
- accelerating employment creation; and
- employment growth and productivity promotion.

1.5 The strategic objectives will be achieved through institutional arrangements that the Department will further establish to provide free services to citizens such as registration of job seekers, registering of placement opportunities, matching services, referral to training, and careers information. The private employment agencies will be entitled to charge employers for providing similar services, in accordance with regulations and ILO Conventions.

1.6 In addition, the Bill allows the Minister to issue regulations requiring employers to register vacancies in specified categories of work. The Bill further permits the Minister to introduce schemes to promote the employment of unemployed work seekers, to assist employees facing retrenchments to remain in

employment, and to promote the rehabilitation and re-entry into employment of employees injured on duty or who have contracted an occupational disease.

1.7 The Minister can also introduce regulations dealing with the employment of foreign nationals so as to protect the conditions of employment of South African citizen and permanent residents, in case of employment of foreign workers. The Department will collaborate with a number of players and bodies already functioning within employment services to achieve its objectives.

2. CLAUSE BY CLAUSE ANALYSIS

CHAPTER 1: DEFINITIONS, PURPOSE, INTERPRETATION AND ADMINISTRATION OF THE ACT

2.1 Clause 1

Provides for definitions.

2.2 Clause 2

Outlines the purposes of the Act and specifies the measures and institutional frameworks that will be used to achieve its purpose.

2.3 Clause 3

Provides for the interpretation of the Act to give effect to its purpose, the Constitution and applicable international treaties on employment services.

2.4 Clause 4

Provides for the administration of the Act by the Director-General and requires that the Department maintain adequately resourced labour centres to enable the public to access public employment services.

CHAPTER 2: PUBLIC EMPLOYMENT SERVICES**2.5 Clause 5**

Provides for the functions that the public employment services must provide free of charge. These functions include matching work seekers with available work opportunities, registering work seekers, registering job vacancies and other work opportunities, facilitating the placing of work seekers with employers or in other work opportunities, advising workers on access to social security benefits, providing specialized services to assist vulnerable work seekers including youth, new entrants into the labour market, disabled persons and members of rural communities, facilitating the exchange of information among labour market participants including employers and work seekers, careers counselling, assessment of work seekers to determine suitability and other related life skills necessary to secure employment.

2.6 Clause 6

Gives powers to the Minister to establish schemes to promote the employment of youth and other unemployed persons and to provide opportunities for self-employment.

2.7 **Clause 7**

Gives the Minister power to establish schemes to minimise retrenchments in Supported Employment Enterprises that are in economic distress. This may include providing for turn-around strategies, lay-offs, re-training and alternative employment opportunities.

2.8 **Clauses 8**

Protect the employment conditions and opportunities of South African citizens and permanent residents by prohibiting the employment of foreign nationals without a valid work permit issued in terms of the Immigration Act, 2002 (Act No. 13 of 2002). The Minister is empowered to make regulations setting out the procedures that employers must undertake before employing foreign nationals and, in appropriate cases, requiring the preparation of skills transfer plans for positions in which foreign nationals are engaged. Clause 8 also provides, in line with decisions of the Labour Court, that foreign nationals who are employed without the necessary visas are nevertheless entitled to enforce claims in terms of their contracts of employment or statutes such as the Basic Conditions of Employment Act, 1997 (Act No 75 of 1997).

2.9 **Clause 9**

Clause 9 prohibits an employer from requiring or permitting a foreign national to perform work for which such foreign national is not authorised to perform in terms of his or her work permit.

2.10 Clause 10

Enables the Minister to make regulations for the reporting and registration of existing or new vacancies by employers with the Public Employment Services. This provision is consistent with the current law in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

2.11 Clause 11

Provides for the type of statistical information that the Department may collect to inform the provision of employment service.

2.12 Clause 12

Provides for sources of funding that can be utilised to provide employment services in terms of the Bill. It further specifies the purposes for which these funds can be used, including the provision of subsidies to organisations providing work opportunities for vulnerable work seekers, and any other project that promotes the provision of public employment services.

CHAPTER 3: PRIVATE EMPLOYMENT AGENCIES**2.13 Clause 13**

Provides for the registration of private employment. The Minister, after consulting the Employment Services Board, may prescribe registration criteria which must differentiate between agencies that provide temporary employment services (labour

brokers) and the other functions of private employment agencies. Clause 13 also provides for the appointment of a registrar of private employment agencies and the registration procedure.

2.14 Clause 14

Prohibits private employment agencies from performing certain acts, including providing false information, performing functions for which they are not registered, falsifying documents or retaining the original documents of work seekers.

2.15 Clause 15

Prohibits private employment agencies from charging work seekers any fees for services rendered. However, the Minister may permit the charging of fees for specific categories of employees or for the provision of specialised services. The provision also prevents practices by which employers or agencies may seek to circumvent this prohibition or make deductions from employees' remuneration.

2.16 Clauses 16 and 17

Specify the information that private employment agencies are required to keep and safeguard the confidentiality of information relating to work seekers.

2.17 Clauses 18 and 19

Provide powers and conditions under which the registrar can cancel a private employment agency's registration and also provides for a review process in case of dissatisfaction with the registrar's decision.

CHAPTER 4: EMPLOYMENT SERVICES BOARD

2.18 Clauses 20 and 21

Provide for the establishment of the Employment Services Board and specify its composition. The Employment Services Board consists of an independent chairperson, representatives of the State and representatives of organised labour, organised business, and organisations of community and business development interests, nominated by National Economic, Development and Labour Council (NEDLAC).

2.19 Clause 22

Provides for the functions of the Employment Services Board, which are to advise the Minister on a range of issues relating to employment services, including work opportunities, registration and de-registration criteria for private employment agencies, and the development of guidelines and criteria to implement the Bill.

2.20 Clauses 23, 24 25, 27 and 28

These clauses provide for the Employment Services Board to adopt a constitution, disqualification from membership of Employment Services Board, resignation and removal from office of members of the Employment Services Board, administrative support that has to be provided by the Department to assist the Board to fulfill its functions, and the remuneration of Board members.

2.21 Clause 29

Clause 29 provides that the funds of the Board consist of monies defrayed from the budget vote of the Department and that the Director-General, as the accounting officer of the Department is responsible for these funds.

2.22 Clause 30

Clause 30 deals with the reporting obligation of the Board and provides that the Board must report to the Minister on its activities.

CHAPTER 5: PRODUCTIVITY SOUTH AFRICA**2.23 Clause 31 and 32**

Provide for the establishment anew, of Productivity South Africa, which was originally established under the Skills Development Act to promote employment, growth and productivity. The functions of Productivity South Africa are specified.

2.24 Clauses 33 and 34

Provide for the establishment and composition of the Board of Productivity South Africa and for the functions of Productivity South Africa, provide for the matters that the constitution of the Board of Productivity South Africa must address to govern its procedures and business, and provide for the remuneration of members of the Board.

2.25 Clause 35

This clause, among other things, deals with the appointment of a Chief Executive Officer who is the accounting officer of the Board of Productivity South Africa and who is responsible for the administration and the general management and control of the day-to-day functioning of Productivity South Africa.

2.26 Clause 36

Clause 36 seeks to empower the Minister to dissolve the Board of Productivity South Africa, the procedure for such dissolution and the appointment of an administrator.

2.27 Clauses 37 and 38

These clauses provide for the disqualification from membership of the Board of Productivity South Africa, resignation of and removal from office of members of the Board of Productivity South Africa.

2.28 Clauses 39 and 40

Clauses 39 and 40 provides for the remuneration of members of the Board of Productivity South Africa and financing of Productivity South Africa through state grants, self funding and donations.

2.29 Clauses 41

Clause 41 deals with the reporting obligation of the Board and provides that the Board must report to the Minister on its activities.

CHAPTER 6: PROMOTION OF SUPPORTED WORK FOR PERSONS WITH DISABILITIES

2.30 Clauses 42 to 47

Chapter 6 (clauses 42 to 47) provides for the promotion of employment for persons with disabilities through the establishment of the Supported Employment Services. The service factories which were established in 1948 are re-constituted as the Supported Employment Enterprises, which is to operate as a national government component in terms of section 7A of the Public Service Act 103 of 1994. Their mandate is expanded to facilitate on-the-job training for people with disabilities to promote their access to formal and self-employment. The factories are to be managed as viable and sustainable Supported Employment Enterprises that must adapt to changing needs of people with disabilities.

Chapter 6 also provides for the functions of the Supported Employment Services, appointment of the head of the Supported Employment Services, powers and functions of the head of Supported Employment Enterprises, staff of the Supported Employment Services and its finances.

CHAPTER 7: GENERAL PROVISIONS

2.31 Clause 48

Provides for the jurisdiction of the Labour Court in respect of matters (other than criminal prosecutions) arising from the Bill.

2.32 Clause 49

Provides for the monitoring and enforcement of the provisions of the Bill in accordance with Chapter 10 and Schedule II of the Basic Conditions of Employment Act and empowers the Labour Court to impose fines for certain breaches of the Act.

2.33 Clauses 50

Provides for offences and penalties for contravention of certain provisions of the Bill.

2.34 Clause 51

Provides procedures that the Minister must follow when delegating functions to the Director General.

2.35 Clause 52

Sets out the issues in respect of which the Minister may make regulations to achieve the purpose of the Act.

2.36 Clause 53

Provides for the repeal of laws and transitional provisions.

2.37 Clause 54

Provides for the short title and commencement.

3. SCHEDULES

3.1 SCHEDULE 1

This Schedule provides for repeal of certain sections of the Skills Development Act.

3.2 SCHEDULE 2

This schedule provides transitional provisions relating to the regulation of private employment agencies, Productivity South Africa and the Supported Employment Enterprises.

3.3 SCHEDULE 3

This schedule sets out the contraventions of the Bill in respect of which fines may be imposed by the Labour Court.

4. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

NEDLAC.

5. FINANCIAL IMPLICATIONS FOR STATE

Application has been made to increase the budget of the public employment services component of the Department over the MTEF period to accommodate the impact of the amendments on its operations.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedures set out in sections 74 or 76 of the Constitution apply.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.