

## **COMMENT ON THE LABOUR RELATIONS AMENDMENT BILL AND THE BASIC CONDITIONS OF EMPLOYMENT BILL - JUNE 2012**

The SA Board for People Practices is the Human Resources (HR) professional body and is also the ETQA for HR learning provision. The HR profession is at the heart of the management of people at work in South Africa and is thus well placed to offer constructive input to the development of policy in in labour relations and regulation of conditions of employment. Our comments are based upon the enormous practical experience of our registered professionals in working with the labour laws of this country.

### **SABPP Principles as a basis for evaluating the amendments**

The SABPP, through its Labour Market Committee, has adopted a set of principles to guide decisions on the SABPP positions and programmes. These principles are set out below to illustrate the basis from which the SABPP is submitting these comments:

- Society and social institutions are complex, organic open systems. The implication of this is that simple solutions to problems or issues are not adequate responses.
- National development should be measured in more than economic terms – social indicators and individual well-being must also be considered.
- Substantially more transformation will be required in the South African economy and society to deliver progress for all South Africans.
- Society contains many competing interest groups. The history of modern South Africa has shown that the inclusive, consultative approach best informs decisions which yield the most sustainable outcomes.
- HR practitioners work at the interface of people, work and society and frequently face the challenge of reconciling competing interests. Professional leadership from the SABPP must deliver practical, down to earth approaches to assist HR practitioners in their work.
- Labour market policy should be influenced by sound research which balances the needs of different stakeholders.



## COMMENTS

### *General comments*

The SABPP believes that regulation in the labour market can only set the conditions within which employers and employees conduct their relationship. The actual relationship depends more on the behaviour of the parties as well as on the behaviour of related third parties such as trade unions.

The influence that good management practices can have on employee relations illustrates that employers need to move beyond a compliance mentality. Compliance is a minimum requirement, but good, productive relationships require more than that.

### *Labour Relations Amendment Bill.*

1. Section 198. The SABPP supports the intention of the Department of Labour to extend better protection to vulnerable workers. In general, we believe that the detailed proposals of this section are reasonable and fair, and accord with good HR practice. We refer here to an attached Position Paper issued by the SABPP in April 2012 on Contingent Workforces and Decent Work.
2. The SABPP is concerned to ensure that industrial disputes are managed peacefully by all parties. It is important, in a labour relations environment which is predicated on a pluralistic approach to the rights of all parties, that no one party acquires rights which are disproportionate to those of other parties.

#### 2.1. Section 21. Organisational rights to minority unions

We have seen in the past few months, the consequences of having a “majority takes all” approach, with major unrest in the platinum industry. We think that the approach taken in the proposed amendments could help to prevent such a situation from occurring.

#### 2.2. Section 32. Exemption procedures for bargaining council agreements.

The proposed amendments are supported, but we remain concerned at the apparent lack of use of exemption procedures, or their apparent inability to exempt employers who for genuine financial reasons cannot meet the collective agreement provisions. The widely publicised problems in the Newcastle textile industry seem to represent a failure of the exemptions process.

We would argue that maybe the era of centralised bargaining is passing, as the needs of the economy change. But if centralised bargaining is to continue, then





flexibility in the economy will be supported through effective exemption procedures.

We call for some substantial research into the effectiveness of exemption procedures.

### 2.3. Section 64. Strike/lock-out ballots

We support the introduction of a requirement for a ballot before industrial action. However, we doubt the efficacy of the proposals because, since there is no requirement for a secret ballot, such ballot could be conducted in an open meeting, at which intimidation could easily occur, possibly fuelling violence.

We recognise that trade unions and employer organisations do not want to have prescriptive requirements for any such ballots, but if such a ballot is to serve its intended purpose, it should be secret. We now have institutions such as the IEC which could conduct such ballots for organisations, so the legislation would not need to be highly prescriptive in this regard.

### 2.4. Section 67. Picketing.

We support the proposal that breach of picketing rules could give rise to a civil claim, but we would comment that, unfortunately, many collective agreements do not contain picketing agreements and thus the peaceful conduct of strikes and lock-outs is compromised.

### 2.5. Section 70. Essential Services Committee

We support the proposals concerning this Committee. The vexed question of what is or should be an essential service has not been dealt with up to now and it is very important, particularly in the conduct of industrial action in the public sector and in State Owned Enterprises.

## 3. Section 187. Dismissals for operational requirements after negotiations.

This proposal gives us some concern in the context of promoting a work environment responsive to changes in the employer's demand, supply or technology environment. Sometimes changes to working conditions are simply inevitable. Consultations with employee representatives are important to work out a mutually acceptable solution to the problem, but if, for whatever reason, employee representatives refuse to engage constructively on the issue, and this leads to a deadlock, some other dispute resolution mechanism seems to be preferable to an





offensive lock-out, which is the only remedy available to the employer under the proposal.

4. Section 188. We support the proposal to exclude access to the CCMA for senior employees as it will improve the use of the CCMA resources by removing complex cases to other dispute resolving channels.

### *Basic Conditions of Employment Amendment Bill*

1. Section 32(5). Whilst the SABPP supports the Department in its efforts to ensure that non-permanent workers are not exploited, the proposal as set out – benefits of similar or equal value for people on fixed term contracts - could be clarified by adding that cash may be substituted for benefits. The motivation for this is that as it stands, the section could be read that, for example, a pension benefit must be provided in some form to fixed term contractors. This is generally difficult to administer and is not cost-effective from a benefit delivery point of view. However, we must also argue that employers should extend benefits such as life insurance or medical cover to protect the employee against adverse events which may arise during his or her fixed term employment.
2. Sections 68 to 73. We support the provisions which aim to tighten up on non-compliant employers.

## **CONCLUSION**

The SABPP is supportive of most of the Department of Labour proposals indicated in the amendments. Comments submitted here are intended in the spirit of constructive criticism. We look forward to working together with the Department in appropriate areas to realise the vision of robust but peaceful labour relations and all South Africans working productively in decent conditions to grow our economy.

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