



Mr Price Group Limited

Registration Number 1933/004418/06 · Incorporated in the Republic of South Africa

Upper Level, North Concourse, 65 Masabalala Yengwa Avenue, Durban, 4001
P. O. Box 912, Durban, 4000, South Africa. Tel: +27 31 310 8000, Fax: +27 31 304 3725

Date: 29 June 2012
To: Parliamentary Portfolio Committee on Labour
Attention: Mr Luvo Nxelewa
Per email: lnxelewa@parliament.gov.za

MR PRICE GROUP LTD SUBMISSIONS TO THE PARLIAMENTARY PORTFOLIO COMMITTEE ON LABOUR

This submission is made by the Mr Price Group Ltd (MRPG) in response to the call for comments to the Parliamentary Portfolio Committee on Labour (the “Committee”) on the Labour Relations Amendment Bill, 2012 and the Basic Conditions of Employment Amendment Bill, 2012 (the “Bills”). MRPG is a member of the Retailers Association and supports the submissions by the Retailers Association. MRPG would like to offer its further insights of the possible impacts of the Bills and hopes that these submissions will further assist the Committee during their deliberation of the Bills.

General

The policy objectives of the Bills are primarily aimed at preventing abusive practices perpetuated against vulnerable employees and the promotion and creation of employment and decent work, these objectives are sound. MRPG however has concerns that the impact of certain proposals in the Bills may result in unintended consequences that go beyond their policy objectives. MRPG has further concerns that the Bills will result in significant increases in the cost of employment, create uncertainty and may lead to increases in legal processes and disputes regarding the interpretation of the Bills. Set out below is a summary of the various areas of employment and employment law that the Bills are likely to impact.

Organisational rights

The LRA Bill proposes to extend majority union rights to minority trade unions and the BCEA Bill proposes to empower the Minister to set thresholds of representation at which a trade union automatically acquires certain minority rights. The policy objective is to promote organisation of nonstandard work however these provisions may go beyond this purpose and may possibly result in a proliferation of unions which would undermine collective bargaining.

Picketing rules

The LRA Bill proposes to make picketing rules binding on third parties who control access to the employer’s workplace if that person has been given an opportunity to participate in the proceedings. It is unclear how this proposal will improve the regulation of picketing, rather it is likely to exacerbate strike related violence and intimidation. This proposal is also silent on the manner in which *owner or person in control* of the employer’s premises should be notified of the right to make representations. This is especially complicated where an employer’s premises are owned or controlled by different persons, as is typically the case at MRPG. The proposal should be clarified to avoid uncertainty.

Review of arbitration awards and ruling

The LRA Bill proposes to reduce the number of review applications that are brought to frustrate compliance with arbitration awards and to speed up the finalisation of review applications. The Bill will oblige the Applicant to furnish security and to apply for a date for the matter to be heard within six months of delivery of the application. Whilst the proposal may serve to deter frivolous and vexatious litigation it may also deter litigation where parties have good prospects of success but cannot afford to pay security, this may have a detrimental effect on the development of labour jurisprudence. The amendments are also likely to lead to an increase in the number of condonation applications placing further strain on an already overloaded Court roll. The LRA Bill further proposes to prevent the Labour Court reviewing rulings made during conciliation or arbitration until the finalisation of the main dispute. This approach may result in a less efficient means of resolving labour disputes and Commissioners should retain their discretion to deal with labour disputes in the most expeditious manner.

Fixed term contracts

The LRA Bill proposes that an employer may only engage an employee on a fixed term contract for longer than 6 months if certain justifiable reasons exist and the employee must be treated on *the whole not less favourably than* comparable permanent employee. The proposal is likely to lead to a significant increase in the number of disputes before the CCMA regarding the definition of justifiable reasons and claims for equal treatment. The proposal further introduces a type of severance pay to be paid to employees engaged on a fixed term contract exceeding 24 months. It is unclear whether fixed term contracts for a *period exceeding 24 months* would include fixed term contracts of shorter periods which have been renewed beyond a 24 month period or whether this is only applicable to successive fixed term contracts. The proposal should be clarified to avoid uncertainty and unnecessary litigation.

Part time employees

Part-time workers play a critical role in ensuring that MRPG is able to maintain flexibility in its workforce due to long operating hours and peaks in trade. Part time employees are not vulnerable employees and enjoy legislative protection under section 11 of Sectoral Determination 9, Wholesale and Retail Sector ("SD9"). Part time employees are generally matriculates or first time job seekers who have little or no working experience who would otherwise not be able to access employment in the formal sector. This equal treatment provision will force MRPG to equalise benefit packages between full time and part time workers. This will result in an increase in costs and administrative complexities of effecting changes to benefit structures, payrolls and contracts, making MRPG less competitive and making employment less attractive. This may discourage MRPG from employing part time employees and may have a detrimental effect on job creation and first time job seekers accessing employment.

Increases on actual wages

The BCEA Bill proposes to introduce increases on actual rates of pay and not only minimum wages as provided for in the current BCEA. This may result in MRPG being forced to pay increases to higher earning employees it could not afford even if the employees consented to a lower increase. MRPG will also have difficulty in managing and incentivising performance and will be discouraged from paying above minimum wage. It would therefore be more appropriate for this section to apply to defined vulnerable employees only.

Compliance

The BCEA Bill proposes to remove compulsory undertakings and empowers inspectors to proceed immediately to issuing a compliance order, which may only be challenged in Labour Court. The Bill does not set out guidelines as to how an inspector should apply their discretion in this regard and this may lead to an abuse of power. Further it will be costly and impractical for compliance disputes that arise countrywide to be adjudicated upon by the Labour Courts. This is an inefficient use of the Labour Court's time and resources and will detrimentally affect the development of meaningful labour jurisprudence. Efforts to ensure compliance should rather be focused on improving the capabilities and quality of the inspectorate.

Conclusion

The Bills should be reviewed in line with the policy objectives of the Bill to ensure that all amendments further the objectives and do not create unintended complexity and uncertainty. It is also suggested that the Bills should include general transitional arrangements to allow MRPG and employers at large the opportunity to properly unpack the Bills once enacted so that they may make the necessary changes to employment within a realistic time period without running the risk of being non-compliant. MRPG appreciates the opportunity to make representations and hopes that the insights provided will be of assistance to the Committee

Yours faithfully

Mr Price Group Ltd

Non-Executive Directors: K Getz, M R Johnston, R M Motanyane-Welch, M J D Ruck, S E N Sebotsa, W J Swain, M Tembe,
Alternate Directors: N Abrams, T A Chiappini-Young, S A Ellis, Prof. L J Ring (USA)
Company Secretary: H E Grosvenor