

ALTERNATIVES TO THE PROPOSED NEW SECTION 188B

OPTION 2

Amendment of section 193 of Act 66 of 1995

Section 193 of the Principal Act is hereby amended by the substitution of subsection (2) with the following:

"(2) The Labour Court or the arbitrator must require the employer to reinstate or re-employ the *employee* unless –

(a) the *employee* does not wish to be reinstated or re-employed;

(b) the circumstances surrounding the *dismissal* are such that a continued employment relationship would be intolerable;

(c) it is not reasonably practicable for the employer to reinstate or re-employ the *employee*; [or]

(cA) the employee was a senior managerial employee in the organisation;

(cB) the employee's rate of remuneration on the date of dismissal was more than six times the amount prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act; or

(d) the *dismissal* is unfair only because the employer did not follow a fair procedure."

Amendment of section 194 of Act 66 of 1995

Section 194 of the Principal Act is hereby amended by the substitution of subsection (1) with the following:

"(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair either because the employer did not prove that the reason for *dismissal* was a fair reason relating to the employee's conduct or capacity or the employer's *operational requirements* or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, [but may] and must not be more than the equivalent of 12 months' remuneration calculated at the *employee's* rate of remuneration on the date of *dismissal*, provided that such amount does not exceed four times the annual rate of remuneration prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act."

OPTION 3

“Dismissal of employees earning above threshold

188B. (1) This section applies to an *employee*, whose—

- (a) level of skill or seniority in the organisation exceeds the level; and
- (b) remuneration as at the date of *dismissal* exceeds the amount,

determined by the Minister in accordance with subsection (4).

(2) The *dismissal* of an *employee* to whom this section applies must be given three months written notice, or be paid in lieu of such notice, or any longer period specified in the *employee's* contract of *employment*.

(3) If the *employee* is compensated or awarded compensation for unfair *dismissal*, the employee cannot be re-instated;

(4) The *Minister* must, in consultation with *NEDLAC* and by notice in the Government Gazette make a determination of the amount referred to in subsection (1) and must take into account the extent to which *employees*, by reason of their earnings level, level of skill or position, have sufficient bargaining power to ensure that adequate provision may be made in their contracts of *employment* for protection against unfair *dismissal*.

(5) If the dismissal of an *employee* is not automatically unfair, the compensation awarded to the *employee* must not exceed the—

- (a) equivalent of 12 months' remuneration calculated at the *employee's* rate of remuneration on the date of *dismissal*; and
- (b) maximum amount of four times the annual rate of *remuneration* prescribed by the *Minister* in terms of section 6(3) of the *Basic Conditions of Employment Act*.

(6) (a) After two years from the date of commencement of this section, this section will apply to contracts of *employment* concluded before the date of commencement of this section.

(b) An *employee* must be given the opportunity to renegotiate their contract of *employment* within two years from the date of commencement of this section”.