

**INPUTS FROM CLSO  
ON PROPOSED AMENDMENT OF SECTIONS 193 & 194**

**Policy/Rationale for the proposed amendment**

- The reasoning for the clause as outlined in the explanatory memorandum of the Labour Relations Amendment Bill does not appear to be aligned with the impact or effect of the proposed amendments to sections 193 and 194.

**Power imbalance effect still present**

- When determining whether a limitation is justifiable one is required to look at the purpose of the limitation and among other considerations determine whether it is rational and the least restrictive means by which to cure the mischief legislatively.
- In the absence of clear policy underlying the proposed amendment, it is difficult to determine the rationality or the mischief which the clause seeks to address with any certainty
- Labour law as it currently stands is flexible enough to adapt to the context of every case if employers correctly manage their employees and as such there is already a less restrictive measure already in place if the reason set out in the original explanatory memorandum (namely incompatibility) is still to be taken as the rational.
- The proposed amendment to sections 193 and 194
  - has the risk of perpetuating unfair differentiation in the treatment between certain classes of employees without due justification;
  - is open to abuse by employers who can manipulate the remuneration requirement to get rid of employees (without due cause) without the fear of a reinstatement order being granted; and
  - does not unclog the CCMA

**Procedural obstacles**

- The memorandum tabled in the House requesting permission to effect additional changes to the LRA outside the scope of the Labour Relations Amendment Bill, resulted in approval being granted for technical amendments only.
- The proposed amendments to section 193 and 194 fall outside the scope of the Labour Relations Amendment Bill as tabled in Parliament. If the Committee wishes to consider the amendment, approval from the House would have to be obtained.
- The proposed amendment of sections 193 and 194 were not presented for public comment. This may pose a constitutional challenge, as Parliament is the forum that gives expression to the constitutional obligation of public participation.