Chapter 12

Impact of the act on particular employees

The Act aims to treat all employees the same. There are, however, some differences in the way the law might apply in certain sectors.

Small businesses

With fewer than 100 employees

The Act requires a workplace to have at least 100 employees before a workplace forum can be established. Workplaces with fewer employees than this cannot have workplace forums. However, nothing prevents a registered union from reaching a collective agreement with the employer to establish a body like a workplace forum.

With fewer than 10 employees

In such workplaces there is no automatic right of a majority union to trade union representatives (shop stewards). This can only be achieved by negotiation with the employer. However, employees in such a workplace still have the right to join unions. Unions may apply for access and meeting rights.

Also, even if an employer refuses to recognise a shop steward, the employees may still rely on that shop steward to represent them in the capacity of a co-worker.

Small businesses under councils

Councils are compelled to make provision in their constitutions for the representation of small and medium businesses.

The Act also requires councils to establish independent exemption committees to ensure that small businesses get a fair hearing in exemption applications from council agreements.

Each year councils must provide the registrar of labour relations with a report on small enterprises falling within their scope.

Retrenchments

Section 189A of the Act, dealing with large-scale retrenchments, does not apply to employers employing less than 50 employees. This means that workers in these businesses may not strike about impending retrenchments and do not have the right to request assistance from the CCMA to facilitate the retrenchment process. Refer to chapter 9 for more details.

Domestic workers

Domestic workers now have almost all of the same rights as other employees under the Act. The following exceptions are important to note:

No trade union access

Unless an employer of a domestic worker agrees, no trade union official or office-bearer can demand the right of access to the home of such an employer.

No right to disclosure of information

Unions of domestic workers have no right to disclosure of information from the employer (such as an employer's payslips), unlike in other workplaces where a union has majority membership. Of course, this does not prevent an employer of domestic workers from agreeing to disclose relevant information to the union.

Workers employed by temporary employment services

A business may not employ people to perform its work directly but may instead pay a temporary employment firm to provide it with people to do its work. These people are not employees of the business, but of the temporary employment firm. To ensure employees in this situation are not exploited by either the business or the employment agency, the Act makes both responsible for complying with an employer's duties to the employee. So employees of temporary employment services can make a claim either against the service itself or against the business where they perform their work.

Example:

Mrs Bruinders is employed as a typist by Top Temps CC. Top Temps sends Mrs Bruinders to perform typing work at a bank. Mrs Bruinders has a claim against Top Temps or the bank if Top Temps does not pay her salary.

Probationary employees

New employees may be employed on probation to enable the employer to assess their performance. The period of probation must be reasonable. During the period of probation employees must be given feedback and guidance arising out of the employer's assessment of their performance.

If an employee on probation is not meeting the required standard, the employer must give the employee an opportunity to make representations and may then extend the probationary period or dismiss the employee. A dispute concerning the extension of a probationary period or the dismissal of an employee on probation may be referred to the CCMA or a council for conciliation and thereafter arbitration. In deciding whether the dismissal of an employee on probation for poor performance is fair, the arbitrator may accept less compelling reasons for the dismissal than would be required if the person had not been on probation.