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Legal update

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Employment Services Act

The Employment Services Act came into effect on 9 August 2015 with the exception of section 13 which deals with the registration of private employment agencies.

The new Act aims to repeal all the employment services provisions contained in the Skills Development Act, to provide for a range of measures to promote employment and to regulate the employment of foreigners.

The Act makes provision for the following:

1. Comprehensive and integrated free public employment services.
2. Registration and regulation of private employment agencies.
3. Establishment of schemes to promote the employment of young job seekers and other vulnerable persons.
4. Schemes to assist employees of enterprises in distress to retain employment.
5. The establishment of the Employment Services Board.

The Purpose of the Act

The Act aims to establish productivity within South Africa by decreasing the levels of unemployment and also by giving training to unskilled workers. It further addresses the matter of the employment of migrants and foreign nationals. A secondary focus of the Act is that of providing for schemes to assist employees of enterprises in distress to retain employment rather than being retrenched.

Public Employment Service

One of the ways of achieving the aims mentioned above is by creating a Public Employment Service which will be established and managed by the state. This institution will then provide state assistance to unemployed job seekers.

The Public Employment Service will assist by registering job seekers and finding them suitable placement opportunities. They will also provide career information to job seekers.

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Employers in certain industries may be required to register vacancies with the Public Employment Service. Employers may also be required to interview any person recommended by the Public Employment Agency.

Foreign Nationals

One of the key topics that this Act touches on is the employment of foreign nationals. An individual who is not a South African citizen or does not have a permanent residence permit in terms of the Immigration Act is regarded as a foreign national.

According to the Act, foreign nationals employed in South Africa will be protected by fair labour practices and may only perform work as authorised in terms of their work permits. If an employer employs someone without a valid work permit, there would be consequences for that employer. The employee will be entitled to enforce any claim that he may have in terms of any statute or employment relationship against his employer or any person in terms of the law.

It is compulsory that every employer satisfy themselves that there are no South African citizens or permanent residents within the Republic with suitable skills to fill a vacancy before they recruit a foreign national. Once a foreign national is employed, the employer needs to prepare a skills transfer plan for that person in that specific position. An employer may not have a foreign national engage in work that is contrary to the terms of their work permit.

Private Employment Agencies – not effective yet

Another key topic which ties in with the Labour Relations Amendment Act is that of the Private Employment Agencies.

Private Employment Agencies are institutions that will provide certain services, such as registering job seekers, matching available work opportunities for job seekers and facilitating other employment opportunities.

Any person wishing to provide employment services must apply to the Registrar in the prescribed form and manner in order to be registered as a Private Employment Agency. The Registrar will be a designated official from the Department of Labour as chosen by the Minister of Labour. The Registrar must within 60 days of the application either issue the certificate of registration, if successful, or a letter with the reasons for the certificate not being granted. Very importantly, the registration certificate must specify whether or not the Private Employment Agency is permitted to perform functions of a Temporary Employment Service (TES).

As mentioned above, the provisions relating to this section has not yet come into effect. We will send out a further communication once this effective date is known.

Conclusion

This Act has been put in place to promote employment, growth and workplace productivity, while also improving the access to the labour market for job seekers. It will provide new opportunities and improve their chances and prospects of finding employment. Most importantly, it gives effect to the right to fair labour practices as entrenched in our Constitution.

We expect Regulations to be issued in the near future to serve as a guide for the purposes of implementing the Employment Services Act.

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