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South Africa
Labour Relations Act, 1995
Labour Relations Amendment Act, 2018

Act 8 of 2018

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Assented to on 23 November 2018

Commenced on 1 January 2019 by Proclamation R1377 of 2018

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GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate omissions from existing enactments.

_ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Labour Relations Act, 1995, so as to provide criteria for the *Minister* before the *Minister* is compelled to extend the *collective agreement* as contemplated in the Act; to provide for the renewal and extension of funding agreements; to provide for picketing by *collective agreement* or by determination by the *Commission* in terms of picketing regulations; to provide for the classification of a ratified or determined minimum service; to extend the meaning of ballot to include any voting by members that is recorded in secret; to provide for the independence of the *registrar* and the deputy *registrar*; to provide for an advisory arbitration panel; to provide for an advisory arbitration award; to provide for transitional provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

1. Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998, section 5 of Act 12 of 2002 and section 4 of Act 6 of 2014

(1) Section 32 of the Labour Relations Act, 1995 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) **[Within 60 days of receiving the request]** Subject to subsection (2A), the Minister must extend the collective agreement, as requested, by publishing a notice in the Government Gazette, within 60 days of receiving the request, declaring that, from a specified date and for a specified period, the collective agreement will be binding on the non-parties specified in the notice.";

(b) by the insertion after subsection (2) of the following subsection:

"(2A) If the registrar determines that the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council for the purposes of subsection (5)(a), the Minister must publish the notice contemplated in subsection (2) within 90 days of the request."

(c) by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs respectively:

"(b)(i) the registrar, in terms of section 49(4A)(a), has determined that the majority of all employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council; or

[(c)](ii) the registrar, in terms of [section 49\(4A\)\(a\)](#), has determined that the members of the employers' organisations that are parties to the bargaining council will, upon the extension of the collective agreement, be found to employ the majority of all the employees who fall within the scope of the collective agreement";

(d) by the insertion after subsection (3A) of the following subsection:

"(3B) The Minister may make regulations on the procedures and criteria that a bargaining council must take into consideration when developing the criteria for the purposes of [section 32\(3\)\(dA\), \(e\) and \(f\)](#).";

(e) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) the registrar has, in terms of [section 49\(4A\)\(b\)](#), determined that the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council";

(f) by the substitution for subsection (5A) of the following subsection:

"(5A) When determining whether the parties to the bargaining council are sufficiently representative for the purposes of subsection (5)(a), the **[Minister]** registrar may take into account the composition of the workforce in the sector, including the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term contracts, part-time employees or employees in other categories of non-standard employment.";

(g) by the substitution in subsection (6)(a) for the words preceding subparagraph (i) of the following words:

"After a notice has been published in terms of subsection (2) or (2A), the Minister, at the request of the bargaining council, may publish a further notice in the Government Gazette-"; and

(h) by the deletion in subsection (6) of paragraph (b).

2. Insertion of [section 32A](#) in Act 66 of 1995

The following section is hereby inserted in the principal Act after section 32:

"Renewal and extension of funding agreements

32A. (1) For the purposes of this section-

(a) a 'funding agreement' means a collective agreement concluded in a bargaining council, including a provision in such an agreement to fund-

(i) the operational and administrative activities of the bargaining council itself;

(ii) a dispute resolution fund referred to in [section 28\(1\)\(e\)](#);

(iii) a training and education scheme contemplated in [section 28\(1\)\(f\)](#); or

(iv) a pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members, as contemplated in [section 28\(1\)\(g\)](#);

(b) the 'renewal of a funding agreement' means an agreement that is-

(i) binding on the parties to the agreement; and

(ii) deemed to be an extension of the agreement to non-parties in terms of [section 32\(2\)](#).

(2) Subject to subsection (3), and where the Minister is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level, the Minister may renew a funding agreement for up to 12 months at the request of any of the parties to a bargaining council if-

(a) the funding agreement has expired; or

(b) the parties have failed to conclude a collective agreement to renew or replace the funding agreement before 90 days of its expiry.

(3) The Minister must, before making a decision under subsection (2)-

(a) publish a notice in the Government Gazette calling for public comment on the request within a period stipulated in the notice; and

(b) consider the comments received.

(4) Any review of the Minister's decision under subsection (2) must be determined by the Labour Court and any such decision remains in force until-

(a) set aside by the Labour Court; or

(b) if the decision is taken on appeal, set aside by the Labour Appeal Court or the Constitutional Court, as the case may be."

3. Amendment of section 49 of Act 66 of 1995, as amended by section 11 of Act 12 of 2002 and section 5 of Act 6 of 2014

Section 49 of the principal Act is hereby amended-

(a) by the substitution for subsection (4) of the following subsection:

"(4) A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the council for the [year] two years following the determination for any purpose in terms of *this Act*, including a decision by the *Minister* in terms of sections 32(3)(b), [, 32(3)(c)] and 32(5)."; and

(b) by the insertion after subsection (4) of the following subsection:

"(4A) A determination made by the registrar in terms of-

(a) section 32(3)(b) is sufficient proof that the members of the employer organisations that are party to the bargaining council, upon extension of the collective agreement, employ the majority of the employees who fall within the scope of that agreement; and

(b) section 32(5)(a) is sufficient proof that the parties to the collective agreement are sufficiently representative within the registered scope of the bargaining council."

4. Amendment of section 69 of Act 66 of 1995, as amended by section 20 of Act 42 of 1996 and section 9 of Act 6 of 2014

(1) Section 69 of the principal Act is hereby amended—

(a) by the substitution for subsections (4), (5) and (6) of the following subsections respectively:

"(4) **[If requested to do so by the registered trade union or the employer]** Unless there is a collective agreement binding on the trade union that regulates picketing, the [Commission] commissioner conciliating the dispute must attempt to secure an agreement between the parties to the dispute on rules that should apply to any picket in relation to that strike or lock-out before the expiry of the period contemplated in section 64(1)(a)(ii).

(5) If there is no *collective agreement* or no agreement is reached in terms of subsection (4), the **[Commission] commissioner conciliating the dispute** must **[establish] determine** picketing rules, in accordance with any default picketing rules prescribed by the Commission under section 208 or published in any code of good practice, and in doing so must take account of-

(a) the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised; [and]

(b) any relevant code of good practice; and

(c) any representations made by the parties to the dispute attending the conciliation meeting.

(6) The rules **[established] determined** by the **[Commission] commissioner conciliating the dispute** may

provide for picketing by *employees*-

(a) in a place contemplated in **[section 69(2)(a)]** *subsection (2)(a)* which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the **[Commission]** commissioner conciliating the *dispute* before the rules are **[established]** determined; or

(b) on their employer's premises if the **[Commission]** commissioner conciliating the *dispute* is satisfied that the employer's permission has been unreasonably withheld.";

(b) by the insertion after subsection (6) of the following subsections:

"(6A) The commissioner conciliating the *dispute* must determine the picketing rules contemplated in subsection (5) at the same time as issuing any certificate contemplated in section 64(1)(a).

(6B) The Commission may determine picketing rules under subsections (5) and (6) on a direct application from a registered *trade union* and on an urgent basis if-

(a) it has referred a *dispute* about a unilateral change to terms and conditions of employment in accordance with section 64(4) and the employer has not complied with section 64(5); or

(b) the employer has given notice of an intention to commence or has commenced an unprotected *lockout*.

(6C) No picket in support of a protected *strike* or in opposition to a *lockout* may take place unless picketing rules-

(a) are agreed to in-

(i) a *collective agreement* binding on the *trade union*;

(ii) an agreement contemplated in subsection (4); or

(b) have been determined in terms of subsection (5).";

(c) by the substitution in subsection (8) for paragraphs (c) and (d) of the following paragraphs respectively:

"(c) an alleged material breach of a *collective agreement* or an agreement **[concluded]** contemplated in **[terms of]** subsection (4); or

(d) an alleged material breach of a picketing rule **[established]** determined in terms of subsection (5).";

(d) by the substitution for subsection (12) of the following subsection:

"(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may, in addition to any relief contemplated in section 68(1), grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include an order-

(a)[an order] directing any party, including a person contemplated in subsection (6) (a), to comply with a picketing agreement or rule; [or]

(b)[an order] varying the terms of a picketing agreement or rule ; or

(c) suspending a picket at one or more of the locations designated in the *collective agreement*, agreed rules contemplated in subsection (4) or rules determined by the *Commission*."; and

(e) by the addition of the following subsection:

"(15) For the purposes of this section, 'commissioner conciliating the *dispute*' includes a person appointed by a *bargaining council* to conciliate the *dispute*.".

5. Amendment of section 70F of Act 66 of 1995, as amended by section 11 of Act 6 of 2014

Section 70F of the principal Act is hereby amended by the deletion of subsection (2).

6. Amendment of section 72 of Act 66 of 1995, as amended by section 13 of Act 6 of 2014

Section 72 of the principal Act is hereby amended-

(a) by the substitution for subsection (5) of the following subsection:

"(5) Despite subsections (3) and (4), [section 74](#) applies to a designated essential service in respect of which the *essential services* committee has ratified a minimum services agreement or has made a determination of minimum services if the majority of employees employed in the essential services voted in a ballot in favour of this."; and

(b) by the addition of the following subsection:

"(9) For the purposes of this section, a 'ratified minimum service' or 'determined minimum service' means the minimum number of employees in a designated essential service who may not strike in order to ensure that the life, personal safety or health of the whole or part of the population is not endangered."

7. Amendment of section 75 of Act 66 of 1995, as amended by section 22 of Act 42 of 1996

Section 75 of the principal Act is hereby amended by the addition of the following subsection:

"(8) A panel appointed by the essential services committee may in the prescribed manner vary or cancel the designation of the whole or part of a maintenance service on its own accord or on application by the employer or a registered trade union with members affected by the designation of a maintenance service."

8. Amendment of section 95 of Act 66 of 1995, as amended by section 18 of Act 12 of 2002

Section 95 of the principal Act is hereby amended-

(a) by the substitution for subsection (8) of the following subsection:

"(8) The Minister, **[in]** after consultation with NEDLAC, may by notice in the Government Gazette publish guidelines to be applied by the registrar in determining whether an applicant is a genuine trade union or a genuine employers' organisation and guidelines for the system of voting as contemplated in subsection (9)."; and

(b) by the addition of the following subsection:

"(9) For the purpose of subsection (5), 'ballot' includes any system of voting by members that is recorded and in secret."

9. Amendment of section 99 of Act 66 of 1995

Section 99 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs respectively:

"(b) the attendance register, minutes or any other prescribed record of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and

(c) the ballot papers or any documentary or electronic record of the ballot for a period of three years from the date of every ballot."

10. Amendment of section 100 of Act 66 of 1995

Section 100 of the principal Act is hereby amended by the deletion of the word "and" at the end of paragraph (d), the insertion of the word "and" at the end of paragraph (e), and the addition of the following paragraph:

"(f) the records referred to in [section 99](#)."

11. Amendment of section 108 of Act 66 of 1995

Section 108 of the principal Act is hereby amended by the addition of the following subsections:

"(4) The registrar and the deputy registrars are independent and, subject only to the Constitution and the law, they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(5) No person or organ of state may interfere with the functioning of the registrar."

12. Amendment of section 116 of Act 66 of 1995

Section 116 of the principal Act is hereby amended by the addition of the following subsections:

"(4) The governing body may appoint any of its members to act as chairperson whenever-

(a) the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to perform the functions of the chairperson; or

(b) the office of the chairperson is vacant.

(5) An acting chairperson is competent to exercise and perform any of the powers of the chairperson."

13. Amendment of section 127 of Act 66 of 1995, as amended by section 33 of Act 42 of 1996 and section 23 of Act 12 of 2002

Section 127 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Any council or private agency may apply to the governing body in the prescribed form for accreditation and for accreditation of the persons to perform any of the following functions-"

14. Amendment of section 128 of Act 66 of 1995

Section 128 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) (i) An accredited council may confer on any person who is accredited by the governing body and appointed by [it] the council to resolve a dispute, the powers of a commissioner in terms of section 142, read with the changes required by the context.

(ii) For this purpose, any reference in that section to the director must be read as a reference to the secretary of the bargaining council.

(b) An accredited private agency may confer on any person who is accredited by the governing body and appointed by [it] the agency to resolve a dispute, the powers of a commissioner in terms of section 142(i)(a) to (e), (2) and (7) to (9), read with the changes required by the context."

15. Substitution of section 130 of Act 66 of 1995

The following section is hereby substituted for section 130 of the principal Act:

"Withdrawal of accreditation

130. If an accredited council, [or] accredited agency or a person accredited by the governing body fails to comply to a material extent with the terms of its accreditation, the governing body may withdraw its accreditation after having given reasonable notice of the withdrawal to that council, [or] accredited agency or the accredited person."

16. Amendment of section 135 of Act 66 of 1995, as amended by section 36 of Act 42 of

1996, section 8 of Act 127 of 1998 and section 26 of Act 12 of 2002

Section 135 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections respectively:

"(2A) If an extension of the 30-day period referred to in subsection (2) is necessary to ensure a meaningful conciliation process, the commissioner or a party may apply to the *director* in accordance with any rules made in terms of section 115(2A) for an extension of the period, which may not exceed five days.

(2B) The *director* may only extend the period referred to in subsection (2A) if the *director* is satisfied that-

(a) an extension is necessary to ensure a meaningful conciliation process;

(b) the refusal to agree to the extension is unreasonable; and

(c) there are reasonable prospects of reaching an agreement.

(2C) Subsections (2A) and (2B) do not apply to instances where the State is the employer. "

17. Insertion of sections 150A, 150B, 150C and 150D in Act 66 of 1995

The following sections are hereby inserted in the principal Act after section 150:

"Advisory arbitration panel in public interest

150A. (1) The *director* may appoint an advisory arbitration panel (referred to in sections 150A to 150D as the 'panel') in the public interest to make an advisory arbitration award (referred to in sections 150 A to 150 D as the 'award') in order to facilitate a *dispute*-

(a) on the *director's* own accord or on application of one of the parties to the dispute;

(b) after consultation in the *prescribed* manner with the parties to the *dispute*; and

(c) in the *prescribed* manner setting out the panel's terms of reference as provided for in section 150C(1).

(2) The *director* must establish an advisory arbitration panel contemplated in subsection (1) to facilitate a resolution of the *dispute* at any time after a commissioner has issued a certificate of unresolved *dispute* under section 135(5)(a) or a notice of the commencement of the *strike* or *lockout* contemplated in section 64(1)(b), (c) and (d), whichever is the earlier-

(a) subject to subsection (3)-

(i) if directed to do so by the *Minister*; or

(ii) on application by a party to the *dispute*;

(b) if ordered to do so by the Labour Court in terms of subsection (4); or

(c) by agreement of the parties.

(3) The *director* may only appoint the panel in terms of subsection (2) (a) if the *director* has reasonable grounds to believe that any one or more of the following circumstances exists:

(a) The *strike* or *lockout* is no longer functional to collective bargaining in that it has continued for a protracted period of time and no resolution of the *dispute* appears to be imminent;

(b) there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the *strike* or *lockout* through the threat or use of violence or the threat of or damage to property; or

(c) the *strike* or *lockout* causes or has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for the normal social and economic functioning of the community or society.

(4) The Labour Court may only make an order requiring the *director* to appoint the panel in terms of subsection (2)(b)-

(a) on application made by a person or association of persons that will be materially affected by any one or more of the circumstances contemplated in subsection (3)(b) and (c); and

(b) if the Court considers that there are reasonable grounds that any one or more of the circumstances contemplated in subsection (3)(b) and (c) exist.

(5) A person may not apply to any court of law to stay or review the establishment or proceedings of an advisory arbitration panel until the panel has issued its award.

Composition of advisory arbitration panel

150B. (1) The panel contemplated in [section 150A](#)(1) must consist of-

(a) a senior commissioner as the chairperson of the panel; and

(b) subject to subsection (2)-

(i) an assessor appointed by the employer party to the *dispute*; and

(ii) an assessor appointed by the *trade union* party to the dispute.

(2) If the employer or *trade union* party to the *dispute* fails or refuses to appoint an assessor within the *prescribed* time period, the *director* must appoint an assessor from the relevant list of assessors determined in terms of subsection (3).

(3) *NEDLAC* must, in the *prescribed* manner, provide the *director* with two lists of assessors which shall consist of-

(a) the employer list of assessors which must be determined by organised business as defined in section 1 of the [National Economic Development and Labour Advisory Act, 1994 \(Act No. 35 of 1994\)](#) ; and

(b) the *trade union* list of assessors which must be determined by organised labour as defined in section 1 of the Act referred to in paragraph (a).

(4) If the employer or *trade union* party to the *dispute* fails or refuses to participate in the proceedings of the panel established in terms of [section 150A](#), the *director* must appoint a person with the requisite expertise to represent the interests of that party in the proceedings.

(5) The chairperson of the panel, after consultation with the assessors appointed in terms of this section, may-

(a) conduct the arbitration in a manner that the chairperson considers appropriate in order to make an advisory award fairly and quickly but must deal with the substantial merits of the *dispute* with minimal legal formalities;

(b) exercise the powers of a commissioner under [section 142](#);

(c) order the disclosure of all relevant information-

(i) subject to [section 16](#)(5), (10), (11), (12) and (13); and

(ii) only if that information is necessary in order to make the factual finding and recommendations contemplated in [section 150C](#)(1)(a) and (b).

(6) The panel must conduct its proceedings and issue an award within seven days of the arbitration hearing or any reasonable period extended by the *director* as the case may be, taking into account the urgency of a resolution of the *dispute* arising from the circumstances contemplated in [section 150A](#)(3)(a) to (c).

(7) The appointment of the panel does not interrupt or suspend the right to *strike* or the recourse to *lockout* in accordance with Chapter IV.

Advisory arbitration award

150C. (1) An award must be in the *prescribed* form and include-

(a) a report on factual findings;

(b) recommendations for the resolution of the *dispute*;

- (c) motivation for why the recommendations ought to be accepted by the parties; and
- (d) the seven-day period within which the parties to the *dispute* must either indicate acceptance or rejection of the award.
- (2) If the chairperson is not able to secure consensus of both assessors in respect of the award contemplated in subsection (1), the chairperson must issue the award on behalf of the panel.
- (3) The chairperson must serve the advisory arbitration award on the parties to the *dispute* to allow them to consider the award and consult and take such measures as may be necessary to ensure that the award is not made publicly available before the *Minister* has published the award in terms of subsection (7).
- (4) A party to the *dispute* may apply to the chairperson in the *prescribed* form for an extension of the time period in subsection (1)(d) for no more than five days.
- (5) (a) The parties to the *dispute* may indicate their acceptance or rejection of the award within the period contemplated in subsection (1)(d).
- (b) If a party to the *dispute* fails to indicate either its acceptance or rejection of the award within the period contemplated in subsection (1)(d), the party is deemed to have accepted the award.
- (c) If a party rejects the award, it must motivate its rejection in the *prescribed* manner.
- (6) An employers' organisation or *trade union* party to a *dispute* must, in accordance with its constitution, consult with its members before rejecting an award in terms of subsection (5)(a).
- (7) The *Minister* must, within four days of the award being issued, publish the award in the *prescribed* manner for public dissemination.
- (8) Nothing in this section may be construed to prevent any party to the *dispute* to request the panel to reconvene in order to seek an explanation of the award or to mediate a settlement of the *dispute* based on the award or a variation of the award.

Effect of advisory arbitration award

- 150D.** (1) An advisory arbitration award is only binding on a party and its members to the *dispute* if-
- (a) one or more of the-
- (i) *trade unions* party to the *dispute* has accepted or deemed to have accepted the award in terms of [section 150C\(5\)\(b\)](#) or subsection (2); or
- (ii) employer organisations party to the *dispute* has accepted or is deemed to have accepted the award in terms of [section 150C\(5\)\(b\)](#); or
- (b) it is binding in terms of subsection (3) or [150C\(5\)\(b\)](#).
- (2) Subject to subsection (3), the binding nature of an advisory arbitration award is determined in accordance with [section 23](#) as if the award is a *collective agreement* for the purposes of that section.
- (3) If the parties to the *dispute* are parties to a *bargaining council*-
- (a) the binding nature of an award is determined in accordance with [section 31](#) as if the award is a *collective agreement* for the purposes of that section;
- (b) the *bargaining council* may, subject to paragraph (c), apply to the *Minister* to have the award extended in accordance with [section 32](#) as if the award is a *collective agreement* for the purposes of that section, to persons who-
- (i) are not members of the parties to the *council*; or
- (ii) have rejected the award in terms of [section 150C\(5\)\(c\)](#);
- (c) the *Minister* may extend the advisory arbitration award in accordance with [section 32](#) as if the award is a *collective agreement* for the purposes of that section if the parties have been deemed to have accepted the award

in terms of [section 150C\(5\)\(b\)](#)."

18. Amendment of section 208A of Act 66 of 1995

Section 208A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The *Minister*, in writing, may delegate to the Director-General or any other officer of the Department of Labour any power, function or duty conferred or imposed upon the *Minister* in terms of *this Act*, except the powers, functions and duties contemplated in [section 32](#) (but excluding **[subsection]** [subsections \(5\)\(c\)](#) and (6)) and sections [44](#), [207](#) and [208](#)."

19. Transitional provisions

- (1) The *registrar* must, within 180 days of the commencement of *this Act*, in respect of registered *trade unions* and *employers' organisations* that do not provide for a recorded and secret ballot in their constitutions-
 - (a) consult with the national office bearers of those unions or *employers' organisations* on the most appropriate means to amend the constitution to comply with [section 95](#); and
 - (b) issue a directive to those unions and *employers' organisations* as to the period within which the amendment to their constitution is to be effected, in compliance with the procedures set out in the amended constitution.
- (2) Until a registered *trade union* or employers' organisation complies with the directive made in terms of subsection (1)(b) and the requirements of [section 95\(5\)\(p\)](#) and (q) of the Act, the *trade union* or employer organisation, before engaging in a *strike* or *lockout*, must conduct a secret ballot of members.

20. Short title and commencement

This Act is called the Labour Relations Amendment Act, 2018, and comes into effect on a date published by the President in the *Gazette*.