

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.
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LABOUR RELATIONS AMENDMENT BILL, 2024

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

LONG TITLE TO BE INSERTED

Amendment of section 26 of Act 66 of 1995

1. Section 26 of the Labour Relations Act, 1995 (hereinafter referred to as the "principal Act"), is hereby amended—

(a) by the substitution for subsection (15) of the following subsection:

“(15) The representative *trade union* must conduct a secret ballot as contemplated by section 95(9) of the *employees* covered by the closed shop agreement to determine whether the agreement should be terminated if-

- (a) one third of the *employees* covered by the agreement sign a petition calling for the termination of the agreement; and
- (b) three years have elapsed since the date on which the agreement commenced or the last ballot was conducted in terms of this section.”

(b) by the insertion after subsection (15) of the following subsection:

“(15A) If the representative *trade union* fails to conduct the secret ballot by the date contemplated in subsection (15)(b), the closed shop lapses on that date.”

Amendment of section 32 of Act 66 of 1995

2. Section 32 of the principal Act is hereby amended by the insertion of the following subsections after subsection (11) –

(12) Despite the provisions of this section, a *collective agreement* concluded in a *bargaining council* regulating terms and conditions of employment does not bind –

- (a) an employer of a new business that employs less than 50 employees; and
 - (b) that employer's employees.
- (13) For the purposes of this section, a new business is one that has been in operation for less than two years but excludes –
- (a) a new employer contemplated in section 197(1);
 - (b) a business formed by the division or dissolution of any existing business.

Amendment of section 32A of Act 66 of 1995

3. Section 32A of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Subject to subsection (3), the *Minister* may renew a funding agreement for up to **[12] 36** 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; and
 - (c) the *Minister* is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level.”

Amendment of section 53 of Act 66 of 1995

4. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following paragraph:

- “(1) Every council must, in accordance with a financial reporting standard prescribed in regulations issued under the Companies Act 2008 (Act No. 71 of 2008 [to the standards of generally accepted accounting practice, principles and procedures]—
- (a) keep **[books and]** records of its income, expenditure, assets and liabilities; and
 - (b) within six months after the end of each financial year, prepare financial statements, including at least—
 - (i) a statement of income and expenditure for the previous financial year; and

- (ii) a balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.”

Amendment of section 65 of Act 66 of 1995

5. Section 65 of the principal Act is hereby amended by the substitution for subsection (1) paragraph (d) of the following paragraph:

- “(d) that person is engaged in –
- (i) a[n] designated essential service unless notice of a strike has been given in compliance with section 72(5);
 - (iA) an agreed or determined minimum service in terms of section 72;
or
 - (ii) a maintenance service.”

Amendment of section 69 of Act 66 of 1995

6. Section 69 of the principal Act is hereby amended—

- (a) by the substitution for subsection (15) 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 and, in the case of a strike contemplated by section 189A(7), the facilitator appointed in terms of section 189A(3) or (4).”

- (b) by the addition after subsection (15) of the following subsection:

“(16) This section applies with the changes required by the context to—

- (a) a strike or lockout in respect of an issue referred to in section 65(2)(a); or
- (b) a strike that complies with the provisions of section 189A(7) or (8).”

Amendment of section 70 of Act 66 of 1995

7. Section 70 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Minister*, after consulting *NEDLAC*, must establish an essential services committee **[under the auspices of]** which is to be supported administratively by the Commission in accordance with the provisions of

this Act. The essential services committee acts independently when exercising its powers and performing its functions.”

Amendment of section 71 of Act 66 of 1995

8. Section 71 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) A panel appointed by the essential service committee may vary or cancel the designation of the whole or part of a service as an essential service **[or any determination of a minimum service or ratification of a minimum service agreement]**, by following the provisions set out in sub-sections (1) to (8), read with the changes required by the context.”

Amendment of section 72 of Act 66 of 1995

9. Section 72 of the principal Act is hereby amended—

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

“(2)(a) If the parties fail to conclude a *collective agreement* providing for the maintenance of minimum services or if a *collective agreement* is not ratified, a panel appointed by the essential services committee may determine the minimum services that are required to be maintained in an essential service.

(b) If there is no *trade union* representing the majority of *employees* covered by the determination, the panel may, after consulting any *trade unions* or *employee representatives* and the employer, determine the minimum services that are required to be maintained in an essential service.”

(b) by the substitution for subsection (3) of the following subsection:

“(3) If a panel appointed by the essential services committee ratifies a *collective agreement* that provides for the **[maintenance]** provision of minimum services in a service designated as an essential service or if it determines such a minimum service which is binding on the employer and the *employees* involved in that service [-

(a)]the agreed or determined minimum services are to be regarded as an essential service in respect of the employer and its *employees*[-; and

(b) **the provisions of section 74 do not apply].”**

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

“(4) A minimum service determination –

- (a) is valid until varied or **[revoked]** cancelled by the essential services committee; and
 - (b) may not be varied or **[revoked]** cancelled for a period of 12 months after it has been made.”
- (d) by the substitution for subsection (5) of the following subsection:
 - “(5) **[Despite subsections (3) and (4), s]** Section 74 does not apply [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 one or more *trade unions* that represent the majority of *employees* employed in the designated essential service have given notice of the intention to strike in accordance with section 64(1) provided that the *employees* in the designated minimum service are precluded from participating in the *strike* [voted in a ballot in favour of this].”
- (e) by the deletion of subsection (6):
 - “**[Subsection (5) does not apply to a *dispute* in respect of which a notice of a *strike* or *lock-out* has been issued prior to the holding of the ballot.]**”
- (f) by the substitution for subsection (8) of the following paragraph:
 - “(8) Any party to negotiations concerning a minimum services agreement may, subject to any applicable **[collective]** agreement, refer a dispute arising from those negotiations to the *Commission* or a *bargaining council* having jurisdiction for conciliation and, if an agreement is not concluded, to the essential services committee for determination.”
- (g) by the insertion after subsection (9) of the following subsection:
 - “(10) A panel contemplated in subsection (3) may, after consultation with the affected parties, vary, rescind or cancel a ratified or determined minimum service.”

Amendment of section 74 of Act 66 of 1995

- 10.** Section 74 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Subject to section **[73(1)]** 72(5), any party to a *dispute* **[that is precluded from participating in a strike or a lock-out because that party is engaged]** in an essential service may refer the dispute in writing to –”

Amendment of section 77 of Act 66 of 1995

11. Section 77 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

“(1)(e) the notice in terms of paragraph (d) was served on NEDLAC within twenty-four months of the date on which the process of consideration in terms of paragraph (c) was concluded.”

Amendment of section 95 of Act 66 of 1995

12. Section 95 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) For the purposes of subsection (5) and section 26(15), 'ballot' includes any system of voting by members that is recorded and in secret.”

Amendment of section 98 of Act 66 of 1995

13. Section 98 of the principal Act is hereby amended by the substitution for subsection (1) of the following paragraph:

- “(1) Every registered trade union and every registered employers' organisation must, in accordance with a financial reporting standard prescribed under the Companies Act 2008 (Act No. 71 of 2008 [to the standards of generally accepted accounting practice, principles and procedures]—
- (a) keep **[books and]** records of its income, expenditure, assets and liabilities; and
 - (b) within six months after the end of each financial year, prepare financial statements, including at least—
 - (i) a statement of income and expenditure for the previous financial year; and
 - (ii) balance sheet showing its assets, liabilities and financial position as at the end of the previous financial year.”

Amendment of section 99 of Act 66 of 1995

14. Section 99 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) the ballot papers or any documentary or electronic record of the ballot in such form as may be prescribed for a period of three years from the date of every ballot.”

Amendment of section 106 of Act 66 of 1995

15. Section 106 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) The *Minister*, after consultation with *NEDLAC*, may by notice in the *Government Gazette* publish guidelines to be applied by the registrar when exercising the powers in terms of sub-section (2A) to cancel the registration of a *trade union* or *employers’ organisation*.”

Amendment of section 107 of Act 66 of 1995

16. Section 107 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:

“(1A) The *registrar* must maintain a register of federations of *trade unions* and federation of *employers’ organisations* that have complied with the provisions of subsection (1).”

- (b) by the addition after subsection (3) of the following subsections:

“(4) The *registrar* may remove the name of a federation of *trade unions* or *employers’ organisations* from the appropriate register if the *registrar* has issued a written notice requiring the federation of *trade union* or *employers’ organisation* to comply with sub-section (1) within a period of 90 days of the notice and the federation of *trade unions* or *employers’ organisation* has, despite the notice, not complied with those sections.

(5) The registrar may not act in terms of subsection (4) unless the *registrar* has published a notice in the *Government Gazette* at least 60 days prior to such action —

(a) giving notice of the *registrar’s* intention to remove the name of the federation of *trade unions* or federation of *employers’ organisations* from the register; and

(b) inviting the federation of *trade unions* or federation of *employers’ organisations* and any other interested parties to make written representations as to why its name should not be removed from the register.

(6) When a federation of *trade unions* or federation of *employers’ organisation’s* name is removed from the appropriate register, all the rights it enjoyed as a result of being listed in that register will end.”

Amendment of section 112 of Act 66 of 1995

17. Section 112 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection –

“(4) Any unexpended balance of the money of the Commission at the end of any financial year must be carried forward as a credit for the next succeeding financial year.”

Amendment of section 115 of Act 66 of 1995

18. Section 115 of the principal Act is hereby amended—

- (a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

“(1) The Commission must –

- (a) attempt to resolve, through conciliation, any dispute referred to it in terms of **[this Act]** any employment law;
- (b) if a dispute has been referred to it remains unresolved after conciliation, arbitrate the dispute if –
 - (i) **[this Act]** any employment law requires arbitration and any party to the dispute has requested that the dispute be resolved through arbitration; or
 - (ii) all the parties to a *dispute* in respect of which the Labour Court has jurisdiction consent to arbitration under the auspices of the Commission;”

- (b) by the addition in subsection (2) after paragraph (bA) of the following paragraph:

“(bB) if requested, provide assistance to an employee earning less than the threshold prescribed by the Minister under section 6 (3) of the Basic Conditions of Employment Act to enforce any award in favour of that employee in respect of arbitration proceedings in terms of any employment law, including but not limited to instructing and paying the fees of a sheriff as contemplated in the Sheriffs Act, 1986 (Act No 90 of 1986), provided that the employee remains responsible in law for the enforcement of the award;

- (c) by the substitution for subsection (2) of paragraph (cA)(iv) of the following paragraph:

“(cA)(iv) determining the amount of any fee the Commission may charge under section 147 or the Commission, a council or an accredited agency may charge under section 188A, and regulating the payment of such a fee in detail;”

- (d) by the addition in subsection (2A) after paragraph (m) of the following paragraphs:

“(n) the application of section 191(5A) to the categories of *disputes* specified in the rules;

(o) the practice and procedure in connection with the facilitation of a *dispute* in terms of section 189A of this Act, including the initiation, form, content and use of facilitation;

(p) the referral, determination and enforcement of compliance orders and claims in terms of the National Minimum Wage Act and any other employment law in terms of Chapter 10 of the Basic Conditions of Employment Act, including the payment by employers of security and fines;

(q) any matter in connection with the enforcement of awards;

(r) all other matters incidental to the functions of the Commission.”

- (e) by the addition after subsection (2A) of the following subsection:

“(2B) The Commission may make rules dealing with any matter referred to in subsection (2A) in respect of inquiries by an arbitrator in terms of section 188A.

- (f) by the substitution for subsection (3) of the following subsection:

“(3) The Commission may provide *employees, employers, registered trade unions, registered employers’ organisations, federations of trade unions, federations of employers’ organisations or councils* with

advice or training relating to the primary objects of *this Act* or any other *employment law*, including but not limited to—

- (a) establishing and supporting collective bargaining structures;
- (b) designing, establishing and electing *workplace forums* and creating deadlock-breaking mechanisms;
- (c) the functioning of *workplace forums*;
- (d) preventing and resolving *disputes* and *employees' grievances*;
 - (dA) addressing conflict in the workplace and promoting positive workplace relations;
- (e) disciplinary procedures;
- (f) procedures in relation to *dismissals*;
- (g) the process of restructuring the *workplace*;
- (h) affirmative action and equal opportunity programmes; **[and]**
- (i) the prevention and elimination of workplace discrimination and **[sexual]** harassment;
- (j) the provision of collective bargaining support functions;
- (k) the promotion of job creation and employment security;
- (l) the promotion of decent work; and
- (m) the publication of training and guidance materials."

Amendment of section 117 of Act 66 of 1995

- 19.** Section 117 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The governing body may **[remove a commissioner from office]** terminate a commissioner’s contract for—

- (a) serious misconduct;
- (b) incapacity; or
- (c) a material violation of the Commissioner’s code of conduct.”

Amendment of section 125 of Act 66 of 1995

- 20.** Section 125 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The governing body may delegate in writing any of its functions, other than the functions listed below, to any member of the governing body, the *director*, a commissioner, or any committee established by the *Commission*. The functions that the governing body may not delegate are—

- (a) appointing the *director*;
- (b) appointing commissioners, or **[removing a commissioner from office]** terminating a commissioner’s contract;
- (c) depositing or investing surplus money;
- (d) accrediting *councils* or private agencies, or amending, withdrawing or renewing their accreditation; or
- (e) subsidising accredited *councils* or accredited agencies.”

Amendment of section 126 of Act 66 of 1995

- 21.** Section 126 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In this section and section 209A, “the Commission” **[means]** includes

- (a) the governing body;
- (b) a member of the governing body;
- (c) the *director*;

- (d) a commissioner;
- (e) a staff member of the *Commission*;
- (f) a member of any committee established by the governing body;
and
- (g) any person with whom the governing body has contracted or appointed **[to do work for, or in association with,]** to perform**[s]** a function of **[,]** the Commission.”

Amendment of section 127 of Act 66 of 1995

22. Section 127 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) 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 –
- (a) resolving disputes through conciliation, if any employment law requires conciliation, and
 - (b) arbitrating disputes that remain unresolved after conciliation if **[this Act]** any employment law requires arbitration.”

Addition of section 140A of Act 66 of 1995

23. Section 140A of the principal Act is hereby added after section 140—

“140A Special provisions related to postponement of arbitrations

If a commissioner finds that a request for the postponement of a hearing was frivolous or vexatious, or could reasonably have been avoided, the commissioner may order the responsible party to pay to the CCMA a fee, as prescribed in the CCMA Rules or Tariff of Fees.”

Amendment of section 143 of Act 66 of 1995

24. Section 143 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money **[must]** may be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate’s Court or the Labour Court.”

Amendment of section 153 of Act 66 of 1995

25. Section 153 of the principal Act is hereby amended by the substitution for subsection (2) in paragraph (a) of the following paragraph:

“(a) must be judges of the **[Supreme Court]** High Court or the Labour Court;
and”

Amendment of section 156 of Act 66 of 1995

26. Section 156 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Labour Court has jurisdiction **[in all the provinces of]**
throughout the Republic.”

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

“(2) The **[Minister of Justice, acting on the advice of NEDLAC,**
must determine the seat] seats of the Labour Court are in
Johannesburg, Cape Town, Durban and Port Elizabeth and such
further areas as the Minister of Justice, on the advice of NEDLAC,
may determine.”

Amendment of section 159 of Act 66 of 1995

27. Section 159 of the principal Act is hereby amended by the insertion in subsection (3) after paragraph (a) of the following paragraph:

“(aA) the performance of dispute resolution functions by judges taking into
account the objects of the Act and the principles of labour justice;”

Amendment of section 160 of Act 66 of 1995

28. Section 160 of the principal Act is hereby amended by the substitution for words before paragraph (a) of subsection (2) and paragraph (a) of the following:

“(2) Despite subsection (1), the Labour Court may exclude the members of the general public, or specific persons, or categories of persons from the proceedings in any case where a court of a provincial division of the **[Supreme]** High Court could have done so.”

Amendment of section 162 of Act 66 of 1995

29. Section 162 of the principal Act is hereby amended by the substitution for the words before paragraph (a) of subsection (2) and paragraph (a) of the following:

“(2) When deciding whether or not to order the payment of costs in any
matter, the Labour Court may take into account, among other factors –

- (a) whether the matter referred to the Court ought to have been referred to arbitration in terms of **[this Act]** an employment law and, if so, the extra costs incurred in referring the matter to the Court; and”

Amendment of section 167 of Act 66 of 1995

30. Section 167 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Other than the Constitutional Court, the Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court **[in respect of the matters within its exclusive jurisdiction]**.”

Amendment of section 169 of Act 66 of 1995

31. Section 169 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister of Justice, after consultation with the Judge President of the Labour Appeal Court, may appoint one or more judges of the High Court or the Labour Court to serve as acting judges of the Labour Appeal Court.”

Amendment of section 170 of Act 66 of 1995

32. Section 170 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

- “(3A)(a) The Judge President, Deputy Judge President and a judge of the Labour Appeal Court shall respectively be accorded the same remuneration, allowances and other conditions of employment as the President, Deputy President and a judge of the Supreme Court of Appeal.
- (b) An acting judge of the Labour Appeal Court shall be accorded the same remuneration, allowances and other conditions of employment as a judge of the Labour Appeal Court, for the period of their appointment.”

Amendment of section 179 of Act 66 of 1995

33. Section 179 of the principal Act is hereby amended by the substitution for words before paragraph (a) of subsection (2) and paragraph (a) of the following:

- “(2) When deciding whether or not to order the payment of costs in any matter, the Labour Appeal Court may take into account, amongst other factors –
- (a) whether the matter referred to the Court should have been referred to arbitration in terms of **[this Act]** an employment law

and, if so, the extra costs incurred in referring the matter to the Court; and”

Amendment of section 186 of Act 66 of 1995

34. Section 186 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Unfair labour practice” means any unfair act or omission that arises between an employer and an *employee* involving—

- [(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding *disputes* about dismissals for a reason relating to probation) or training of an *employee* or relating to the provision of benefits to an *employee*;**
- (b)** the unfair suspension of an *employee* or any other unfair disciplinary action short of dismissal in respect of an *employee*;
- [(c) a failure or refusal by an employer to reinstate or re-employ a former *employee* in terms of any agreement;]** and
- (d)** an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the *employee* having made a protected disclosure defined in that Act.”

Amendment of section 188 of Act 66 of 1995

35. Section 188 of the principal Act is hereby amended—

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

“(2) Subject to subsection (3), [A]any person considering whether or not the reason for *dismissal* is a fair reason or whether or not the *dismissal* was effected in accordance with a fair procedure must take into account any relevant *code of good practice* issued in terms of this Act.”

by the addition after subsection (2) of the following subsections:

“(3) Subject to any applicable collective agreement, a fair procedure for the purpose of subsection (2) is one in which the employee has been given an adequate and reasonable opportunity to respond to the reason for *dismissal*.”

(4) This section does not apply to a new employee –

- (a) during the first three months of employment; or
- (b) if it is a longer period, a period of probation that is specified in a contract of employment and is both reasonable and operationally justifiable.

Amendment of section 188A of Act 66 of 1995

36. Section 188A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) An employer may, with the consent of the *employee*, which may be given in a contract of employment or in accordance with a collective agreement, request a *council*, an accredited agency or the Commission to appoint an arbitrator to conduct an inquiry into allegations about the conduct or capacity of **[that] an employee.**”

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

“(2) The request must comply with any applicable provision in a collective agreement or contract of employment and must be in the *prescribed* form.”

(c) by the substitution for subsection (3) of the following subsection:

“(3) The *council*, accredited agency or the Commission must appoint an arbitrator on receipt of [-

(a)] payment by the employer of the *prescribed* fee[; and

(b) the employee’s written consent to the inquiry.]”

(d) by the deletion of subsection (4):

“[(4)(a) An employee may only consent to an inquiry in terms of this section after the employee has been advised of the allegation referred to in subsection (1).

(b) Despite any other provision in this Act, an employee earning more than the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act at the time, may agree in a contract of employment to the holding of an inquiry in terms of this section.]”

(e) by the insertion after subsection (12) of the following subsection:

“(13) The *council*, accredited agency or the *Commission* must appoint an arbitrator on receipt of a request by the *employee* or employer,

as contemplated by subsection 11 and on receipt of payment by the employer of the prescribed fee which must be made within seven days of the request in terms of subsection 11.”

Amendment of section 189A of Act 66 of 1995

37. Section 189A of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

“(6) The [**Minister, after consulting NEDLAC and the**] *Commission* may make [**regulations**] rules relating to –

- (a) the time period, and the variation of time periods, for facilitation;
- (b) the powers and duties of facilitators;
- (c) the circumstances in which the Commission may charge a fee for appointing a facilitator and the amount of the fee; and
- (d) any other matter necessary for the conduct of facilitations.”

(b) by the addition after subsection (6) of the following subsection:

“(6A) A rule made in terms of subsection (6) must be published in accordance with section 115 (6).”

(c) by the substitution for subsection (7) of the following subsection:

“(7) If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of section 189(3) –

- (a) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the Basic Conditions of Employment Act; and
- (b) a registered trade union or the employees who have received notice of termination may either-
 - (i) give notice of a strike in terms of section 64 (1) (b) or (d); or

(iii) refer a *dispute* concerning [**whether there is a fair reason for**] the fairness of the dismissal to the Labour Court in terms of section 191[(11)] read with the changes required by the context, except that the trade union or employees are not required to refer the dismissal to conciliation in terms of section 191(1).

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

“(8) If a facilitator is not appointed—

- (a) a party may not refer a *dispute* to a *council* or the Commission unless a period of 30 days has lapsed from the date on which notice was given in terms of section 189(3); and
- (b) once the periods mentioned in section 64(1)(a) have elapsed—
 - (i) the employer may give notice to terminate the contracts of employment in accordance with section 37(1) of the *Basic Conditions of Employment Act*; and
 - (ii) a registered *trade union* or the *employees* who have received notice of termination may—
 - (aa) give notice of a *strike* in terms of section 64(1)(b) or (d); or
 - (bb) refer a *dispute* concerning **[whether there is a fair reason for]** the fairness of the dismissal to conciliation, and if it not settled, to the Labour Court in terms of section 191[(11)].”

(e) by the substitution for subsection (10) of the following subsection –

“(10) (a) A consulting party may not—

- (i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning the fairness of **[whether there is a fair reason for]** that dismissal to the Labour Court;
- (ii) refer a dispute about the fairness of **[whether there is a fair reason for]** a dismissal to the Labour Court, if it has given notice of a strike in terms of this section in respect of that dismissal.

(b) If a trade union gives notice of a strike in terms of this section—

- (i) no member of that trade union, and no employee to whom a collective agreement concluded by that trade union dealing with consultation or facilitation in respect of dismissals by reason of the employers’ operational

requirements has been extended in terms of section 23 (1) (d), may refer a dispute concerning the fairness of the [whether there is a fair reason for] dismissal to the Labour Court;

- (ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.”
- (f) by the deletion of subsections (13) to (18) -
 - “(13) If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an urgent application for an order—
 - (a) compelling the employer to comply with a fair procedure;
 - (b) interdicting or restraining the employer from dismissing an *employee* prior to complying with a fair procedure;
 - (c) directing the employer to reinstate an *employee* until it has complied with a fair procedure[;
 - (d) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.”
 - (14) Subject to this section, the Labour Court may in proceedings brought in terms of subsection (13) make any appropriate order referred to in section 158(1)(a).
 - (15) An award of compensation made to an *employee* in terms of subsection (14) must comply with section 194.
 - (16) The Labour Court may not make an order in respect of any matter concerning the disclosure of information in terms of section 189 (4) that has been the subject of an arbitration award in terms of section 16.
 - (17)
 - (a) An application in terms of subsection (13) must be brought not later than 30 days after the employer has given notice to terminate the employee’s services or, if notice is not given, the date on which the employees are dismissed.
 - (b) The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph (a).

(18) **The Labour Court may not adjudicate a *dispute* about the procedural fairness of a *dismissal* based on the employer's *operational requirements* in any *dispute* referred to it in terms of section 191(5)(b)(ii).]**

(g) by the insertion in subsection 20 after the definition of “employer” of the following definition –

““fairness of a dismissal” means the fairness of a dismissal contemplated in section 188 and includes compliance with this section.”

Amendment of section 191 of Act 66 of 1995

38. Section 191 of the principal Act is hereby amended—

(a) by the insertion in subsection (5) after paragraph (iv) of the following paragraph:

“(v) the employee has referred a dispute to the *Commission* in terms of section 10(6)(aA) of the Employment Equity Act and the *dismissal* dispute, whether in terms of section 187 or section 188, can be determined jointly with that dispute.”

(b) by the substitution for subsection (5A) paragraph (d) of the following paragraph:

“(c) any other dispute contemplated in subsection (5)(a) or specified in the rules of the *Commission* in terms of 115(2A) in respect of which no party has objected to the matter being dealt with terms of the subsection.”

(c) by the addition after subsection (11) of the following subsections:

“(11A) An individual *employee* who is dismissed for a reason contemplated in section 187(d), (e) or (f) may elect to refer the dispute either to arbitration or to the Labour Court.

“(11B) If, in the course of an arbitration referred to the *Commission* in terms of section 191(5)(a), it becomes apparent that the dispute concerns a matter dealt with in section 187(d), (e) or (f), the *Commission* or a commissioner may proceed, despite their being no referral in terms of subsection 11A, to determine the dispute after taking into account –

(a) the complexity of the questions of law and fact raised in the matter, the public interest, and speedy dispute resolution; and

(b) the submissions of the parties.”

(11C) Subsections 11A and 11B do not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of *Basic Conditions of Employment Act*.

Amendment of section 193 of Act 66 of 1995

39. Section 193 of the principal Act is hereby amended

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

“(2A) Subsection 1 (a) and (b) and subsection (2) do not apply to an employee who earns more than an amount prescribed by the Minister in terms of section 208B, unless the *dismissal* was automatically unfair.”

Amendment of section 194 of Act 66 of 1995

40. Section 194 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The compensation awarded to an *employee* whose *dismissal* is found to be unfair ... must be just and equitable in all the circumstances but may not be more than the equivalent of 12 months’ *remuneration* calculated at the employee’s rate of *remuneration* on the date of *dismissal*, to a maximum of the amount prescribed by the Minister in terms of section 208B.”

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

“(4) The compensation awarded to an *employee* in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months *remuneration*, to a maximum of the amount prescribed by the Minister in terms of section 208B, provided that the prescribed amount is not applicable in the case of an unfair labour practice contemplated by section 186(2)(d).”

Amendment of section 195 of Act 66 of 1995

41. Section 195 of the principal Act is hereby amended by the substitution of the following subsection:

“Subject to section 196, [A] an order or award of compensation made in terms of this Chapter is in addition to, and not a substitute for, any other amount to which the employee is entitled in terms of any law, collective agreement or contract of employment.”

Amendment of section 196 of Act 66 of 1995

42. Section 196 of the principal Act is hereby amended by the insertion of the following subsection:

“196 Prevention of duplication of claims

- (1) An employee who has referred a dispute about the fairness of a dismissal in terms of this Chapter may not also bring a claim, arising from the same facts, in respect of the lawfulness of that dismissal.
- (2) An employee who has brought a claim about the lawfulness of a dismissal may not also refer a dispute, arising from the same facts, in respect of the fairness of that dismissal in terms of this Chapter.”

Addition of section 208B of Act 66 of 1995

43. Section 208B of the principal Act is hereby inserted after section 208A—

“208B Determination of amount for purposes of section 193 and 194

For the purposes of prescribing the amount contemplated in sections 193 and 194, the Minister must annually publish a notice in the Gazette increasing or decreasing that amount in accordance with the Consumer Price Index published by Statistics South Africa in March of that year which notice must take effect from 1 May of that year.”

Addition of section 209A of Act 66 of 1995

44. Section 209A of the principal Act is hereby inserted after section 209—

“209A Limitation of liability

- (1) No person is liable for any damage or loss caused by the exercise of, or failure to exercise, any power or function under any employment law, unless such exercise or failure is unlawful, grossly negligent or in bad faith.
- (2) This section applies to -
 - (a) the Commission and any other entity established under an employment law for the purpose of performing statutory functions;
 - (b) any person appointed or employed to exercise a power or perform a function under any employment law;
 - (c) any person or entity required to exercise a power or perform a function under any employment law.”

Amendment of section 213 of Act 66 of 1995

45. Section 213 of the principal Act is hereby amended—

- (a) by the substitution of the definition of “dispute” for the following paragraph:

“**“dispute”** includes an alleged dispute in terms of any *employment law*.”

- (b) by the addition after the definition of “dispute” of the following paragraph:

“**“dispute about the interpretation or application”** in respect of this Act, any other employment law, constitution, collective agreement, settlement agreement or determination includes a dispute concerning whether there has been compliance with the Act, employment law, constitution, agreement or determination;”

- (c) by the substitution of the definition of “employment law” for the following paragraph:

“**“employment law”** includes this Act, any other Act the administration of which has been assigned to the *Minister*, and any of the following Acts:

- (a) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);
- (b) the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) the Employment Equity Act, 1998 (Act No. 55 of 1998);
- (d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- (f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);
- (g) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (h) the Employment Services Act, 2014 (Act No. 4 of 2014);
- (i) the National Minimum Wage Act, 2018 (Act No.9 of 2018).”

Amendment of Schedule 7 of Act 66 of 1995

46. Schedule 7 of the principal Act is hereby amended—

- (a) by the insertion of the following heading after item 32:

**“TRANSITIONAL PROVISIONS ARISING OUT OF THE APPLICATION
OF THE LABOUR RELATIONS AMENDMENT ACT, 2025”**

(b) by the insertion of the following item after item 32:

(33) For the purposes of this Schedule, the “Amendment Act” means the Labour Relations Amendment Act, 2025.

“(34) Amendment of unfair labour practice definition

(1) Notwithstanding the repeal of section 186(2)(a), an unfair act or omission that arises between an employee and an employer contemplated in sub-item (2) that involves unfair conduct relating to promotion remains in force for a year after this Act comes into force in order to permit those employers and trade unions to conclude collective agreements to regulate promotion and the resolution of disputes concerning promotion.

(2) The employers to whom sub-item (1) applies are:

(a) employers within the public service, as contemplated in section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

(b) employers within local government;

(c) employers covered by the Employment of Educators Act, 1998 (Act No. 76 of 1998); and

(d) the South African Police Service.

(3) Any dispute that arises during the period referred to in sub-item (1) must be dealt with as if section 186(2)(a) has not been repealed.”

(35) Application of amendments to Labour Court proceedings

Any provision in the Amendment Act relating to the powers of the Labour Court applies to matters referred to the Labour Court after the commencement date.

(36) Application of amendments to Commission proceedings

Any provision in the Amendment Act relating to the powers of the Commission applies to matters referred to the Commission after the commencement date.

(37) Income threshold for purposes of sections 193 and 194

The Minister must issue a notice which takes effect on the same date as the applicable provisions in the Amendment Act, setting the amount applicable to sections 193 and 194 contemplated in terms of section 208A at R1,800,000 per annum, adjusted on an annualised basis for the change in the Consumer Price Index for the period from 30 April 2025 until the date that the provision comes into effect.”

Addition of Schedule 11 of Act 66 of 1995

47. Schedule 11 of the principal Act is hereby added—

“SCHEDULE 11

EXTENSION OF FREEDOM OF ASSOCIATION, ORGANISATIONAL RIGHTS AND COLLECTIVE BARGAINING

1. Definition of employee

For the purposes of this Schedule –

“employee” means an individual, other than an employee as defined in section 213 of the Act, who works personally for a person that is not a client or customer of any profession, business or undertaking carried on by the individual;

“employer” means any person or entity for whom an employee works;

2. Presumption

(1) For the purposes of this Schedule, an individual is an employee unless the employer demonstrates that the following factors are satisfied:

- (a) the person is not subject to the control and direction of the employer in connection with the performance of the work or provision of the services;
- (b) the person is not part of the organisation of the employer; and
- (c) the person does not perform work for or provide services to customers or clients on behalf of the employer under terms set by the employer.

3. Freedom of Association

Chapter II applies to employees and their employers.

4. Collective Bargaining

- (1) Subject to this item, Chapter III applies to employees and their employers.
- (2) If a trade union seeks to exercise the rights conferred by Part A in respect of those employees, those employees must be taken into account for determining representativeness for the purposes of that Part. For the sake of clarity, if a trade union elects not to exercise those rights in respect of those employees, those employees are not taken into account in determining representativeness.
- (3) If a collective agreement contemplated in section 23, 25 or 26 is intended to bind employees contemplated in this Schedule, those employees must be taken into account for the purpose of determining a majority required by that section.
- (4) For the purpose of determining the representativeness of the parties to a bargaining or a statutory council in terms of section 49(1), the Registrar may

only take into account employees contemplated in this Schedule, if the scope of the constitution of the council includes those employees.

- (5) For the purpose of determining the representativeness of the parties to a collective agreement in terms of 49(2), the Registrar may only take into account employees contemplated in this Schedule, if the scope of the collective agreement includes those employees.

5. Strikes and lockouts

- (1) Chapter IV applies to employees and employers contemplated in this Schedule.
- (2) A termination of the services of an employee for the reasons contemplated in section 187(1)(a) to (c) constitutes a dismissal for the purposes of those provisions.

6. Trade unions and employers' organisations

- (1) A constitution of a trade union may provide for employees contemplated in this Schedule to qualify for membership in terms of section 95(5)(b).
- (2) A constitution of an employers' organisation may provide for employers contemplated in this Schedule to qualify for membership in terms of section 95(5)(b).

7. Dispute resolution

For the purposes of a dispute arising from the application of this Schedule, any relevant provision in the Act relating to dispute resolution applies with the necessary changes required by context."