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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF EMPLOYMENT AND LABOUR****NOTICE 3801 OF 2026****LABOUR LAW AMENDMENT BILL, 2025**

I, Nomakhosazana Meth, Minister of Employment and Labour, hereby publish the Labour Law Amendment Bill, 2025, accompanied by the Memorandum of Objects on the Labour Law Amendment Bill, 2025, for public comment. The Bill amends the Basic Conditions of Employment Act, 1997 (BCEA), the Employment Equity Act, 1998 (EEA) and the National Minimum Wage Act, 2018 (NMWA). The full text of the Bill is attached hereto and available on the Department of Employment and Labour website at [www.labour.gov.za](http://www.labour.gov.za).

Comments should be addressed to the email: [Hlukani.Mabunda@labour.gov.za](mailto:Hlukani.Mabunda@labour.gov.za) or [Kopano.Kgatlhanye@labour.gov.za](mailto:Kopano.Kgatlhanye@labour.gov.za)

- Comments should reach the Department of Employment and Labour not later than 30 days from the date of publication of this notice. Comments received after the closing date may not be considered.
- This publication is for public consultation purposes and precedes the formal introduction of the Bill to Parliament, where further public participation will occur.



**NOMAKHOSAZANA METH, MP  
MINISTER OF EMPLOYMENT AND LABOUR**

**DATE: 26 FEBRUARY 2026**

**REPUBLIC OF SOUTH AFRICA**

**EMPLOYMENT LAWS AMENDMENT BILL, 2025**

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Government Gazette No. ....of ..... 2025)*

*(The English text is the official text of the Bill)*

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**(MINISTER OF EMPLOYMENT AND LABOUR)**

**[B — 2025]**

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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.

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**BILL**

**To amend the Basic Conditions of Employment Act, 1997 so as to substitute and insert certain definitions; to permit sectoral determinations to apply to a broader category of employees; to provide minimum conditions of employment applicable to employees who are required to be available for work; to provide for parental leave in a manner consistent with the Constitution; to specify the severance pay that employees are entitled to and clarify the forum for resolving disputes about severance pay; to further specify procedures for the recovery of unpaid contributions to benefit funds; to further specify the powers of the Commission for Conciliation, Mediation and Arbitration to enforce compliance orders; to clarify the powers of bargaining councils to arbitrate disputes concerning basic conditions of employment; to empower the Minister to make regulations concerning the use of fines by the Commission for Conciliation, Mediation and Arbitration; to amend the Employment Equity Act, 1998, so as to substitute a definition of employment law; to enable employees to refer any claim concerning unfair harassment to the Commission for Conciliation,**

**Mediation and Arbitration; to specify the capacity of bargaining councils to resolve disputes arising under the Act; to amend the Unemployment Insurance Act, 2001 to provide for payment of parental leave benefits by the Unemployment Insurance Fund in a manner consistent with the Basic Conditions of Employment Act and the Constitution; to amend the National Minimum Wage Act, 2018 so as to clarify that deferred payments made to employees are not taken into account when calculating compliance with the national minimum wage; to alter the composition of the National Minimum Wage Commission; to require that representatives on the Commission have appropriate knowledge, skills, and experience to fulfil their duties; to remove the requirement that the President must determine the date for the Commission must submit its report to the Minister; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 75 of 1997 as amended by section 1 of Act 11 of 2002, section 26 of Act 68 of 2002, section 40(1) of Act 65 of 2002, section 25 of Act 52 of 2003, section 1 of Act 20 of 2013, section 53 of Act 11 of 2013, section 1 of Act 7 of 2018 and section 1 of Act 10 of 2018.**

1. Section 1 of the Basic Conditions of Employment Act, 1997 is hereby amended by the substitution for the definition of “employment law” of the following definition:

“**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 Employment Services Act, 2014 (Act No. 4 of 2014);
- (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 National Minimum Wage Act, 2018 (Act No. 9 of 2018);
- (g) the Skills Development Act, 1998 (Act No. 97 of 1998); and
- (h) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002).”

#### **Insertion of section 9B in Act 75 of 1997**

2. The following section is hereby inserted into the Basic Conditions of Employment, 1997 after section 9A:

#### **“Employees required to be available for work**

**9B.** (1) This section applies to an employee who is required to—

(a) work only when the employer makes work available to the employee; and

(b) be available to accept work that the employer makes available.

(2) An employer must specify in the employee’s written particulars of employment—

(a) the maximum hours of work for that period;

(b) the period which the employee must be available to work;

- (c) the notice period to the employee to report for work; and
- (d) the notice period of any cancellation of work.
- (3) The notice period referred to in paragraphs (c) and (d) of subsection (2) must be reasonable and must be determined having regard to all relevant factors, including—
- (a) the nature of the employer's business;
- (b) the employer's ability to control or foresee the circumstances that may give rise to the notice for the employee to report for work or for cancellation of work;
- (c) the effect of the cancellation on the employee.
- (4) If an employer fails to give the employee the requisite notice of cancellation of work contemplated in subsection (2)(d), the employer must remunerate the employee for the hours of the cancelled work.
- (5) An employer may not require an employee to work if the employer fails to—
- (a) comply with subsection (2); or
- (b) provide the employee with the requisite notice to work.
- (6) An employer may not prevent, prohibit or restrict an employee who has fulfilled the obligations to be available for work to that employer from working for another person unless—
- (a) the employer has genuine operational reasons for doing so; and
- (b) the reasons are stated in the employee's written particulars of employment.

- (7) For the purposes of subsection (6)(a), a genuine operational reason includes—
- (a) protecting the employer’s commercially sensitive information, intellectual property rights and commercial reputation; or
- (b) preventing a conflict of interests that cannot be managed in another way.
- (8) Despite section 22 (2), an employee contemplated in this section is entitled to an amount of paid sick leave equal to one day’s paid sick leave for every 26 days worked.
- (9) An employer must treat employees contemplated in this section on the whole not less favourably than those of its employees to whom this section does not apply and who perform the same or similar work, unless there is a justifiable reason for different treatment.
- (10) A dispute arising from the interpretation or application of this section must be determined in accordance with the provisions of section 198D of the Labour Relations Act, 1995, read with the changes required by the context.
- (11) This section does not apply to employers who employ less than ten employees.”

**Substitution of section 25, 25A and 25B and repeal of 25C of Act 75 of 1997 as amended by section 2 of Act 10 of 2018**

3. Section 25 of the principal Act is hereby amended by—

- (a) the substitution for sections 25, 25A and 25B of the following sections:

**“25. Right to parental leave**

- (1) An employee is entitled to parental leave if the employee is–

- (a) the parent of a newborn child;
- (b) the adoptive parent of a child who is six years of age or less;
- (c) a commissioning parent of a child born as a result of a surrogate motherhood agreement

- (2) An employee, is entitled to at least four consecutive months’ parental leave if the employee is –

- (a) a single parent; or
- (b) the only employed party in a parental relationship.

- (3) If both parties to a parental relationship are employed, they are collectively entitled in the aggregate to four months and ten days’ parental leave to be taken in accordance with this section, section 25A and section 25B.

- (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a still-born child is entitled to parental leave for six weeks after the miscarriage or still-birth, whether or not the employee had commenced parental leave at the time of the miscarriage or still-birth.

- (5) An employee, excluding a female employee who gives birth to a child, is not entitled to take parental leave more than once in any twelve-month period.
- (6) The Minister must determine the benefits to be paid in respect of parental leave in terms of the Unemployment Insurance Act, 2001 (Act No 63 of 2001).
- (7) The Minister must prescribe, in accordance with section 86(1) of the Act, regulations specifying forms that employees may use –
- (a) to give notice of the commencement of parental leave and the employee’s return to work in terms of section 25A;
- (b) to record any agreement concerning the apportionment of parental leave in terms of section 25B.
- (8) For purposes of this section, section 25A and section 25B –
- (a) an employee is deemed to be a single parent if they are the only person who has assumed parental rights and responsibilities over the child as contemplated in the Children’s Act, 2005 (Act No. 38 of 2005);
- (b) an employee is deemed to be a party to a parental relationship if the employee has assumed parental rights and responsibilities over the child as contemplated in the Children’s Act, 2005 (Act No. 38 of 2005); and
- (c) unless the context indicates otherwise –
- (i)** ‘commissioning parent’ has the meaning assigned to it in section 1 of the Children’s Act, 2005 (Act 38 of 2005); and

- (ii) 'surrogate motherhood agreement' has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005).

**25A Commencement of parental leave and notice of leave and return to work**

(1) A female employee who is expecting the birth of a child may commence parental leave—

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(2) No female employee who has given birth to a child may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(3) If subsection (1) does not apply, an employee may commence parental leave on or after—

(a) the day that the employee's child is born; or

(b) in the case of adoptive parents -

(i) when the child is adopted; or

(ii) if a competent court has ordered that the child is placed in the care of the prospective adoptive parents, pending the finalisation of an adoption order in respect of that child.

(4) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

(a) commence parental leave; and

(b) return to work after parental leave.

(5) Notification in terms of subsection (5) must be given—

(a) at least four weeks before the employee intends to commence parental leave; or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) If employees in a parental relationship who have different employers are claiming parental leave, each employee must –

(a) give notice to their employer in terms of subsection (4); and

(b) submit to their employer any agreement concerning parental leave concluded in terms of section 25B.

(6) Unless otherwise agreed by an employer, an employee must take parental leave within four months of the commencement of parental leave contemplated in sub-section (3).

**25B Exercise of right to parental leave if two parents are employees**

(1) If both parents are employees and they choose to exercise their right to parental leave, they must conclude and submit to their employers an agreement together with the notice required by section 25A(5).

(2) The parental leave in terms of an agreement contemplated in terms of sub-section (1) may be taken by them in such manner as they may agree, including concurrently or consecutively, or partly concurrently and partly consecutively, provided that neither employee is entitled to more than four months' leave.

(3) If an agreement contemplated by sub-section (1) cannot be concluded, an employee who has given birth to a child must elect to take –

(a) four months' parental leave, in which case the other parent is entitled to take 10 days' parental leave; or

(b) less than four months' parental leave, in which case the other parent is entitled to take that portion of the parental leave contemplated by sub-section 25(3) that the mother of the child is not taking.

(4) If the parties to a parental relationship who are entitled to parental leave as a result of an adoption or surrogate motherhood agreement cannot agree on the manner in which parental leave is to be shared, the leave must be apportioned between the parents in such a way that each parent's parental leave is as close as possible to half of the leave contemplated by section 25 (3)."

(b) by the repeal of sub-section 25C.

**Amendment of section 41 of Act 75 of 1997 as amended by section 9 of Act 11 of 2002**

4. Section 41 of the Basic Conditions of Employment, 1997 is hereby amended—

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

“(2) An employer must pay an employee who is dismissed for reasons based on the employer’s operational requirements or whose contract of employment terminates or is terminated in terms of section 38 of the Insolvency Act, 1936 (Act No. 24 of 1936) severance pay equal to at least **[one]** two week’s remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.”; and

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

“(6) If there is a dispute only about the entitlement to severance pay **[in terms of this section]**, the employee may refer the dispute in writing to—

(a) a council, if the parties to the dispute fall within the registered scope of that council; or

(b) the CCMA, if no council has jurisdiction.”.

**Insertion of section 50A in Act 75 of 1997**

5. The following section is hereby inserted into Act No. 75 of 1997, before section 51:

**“50A Definitions**

- (1) Notwithstanding the definition of employee, for purposes of Chapter 8--
- (a) “employee” also means any individual who performs work or provides services for another person and who is not conducting an independent trade, profession or business in which the person receiving the work or services is a client or customer.
- (b) “employer” includes any person or entity for whom an employee works.
- (2) For the purposes of sub-section (1), an individual is an employee contemplated by sub-para (1a) 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.”.

**Substitution of section 62A of Act 75 of 1997 as inserted by section 9 of Act 7 of 2018**

6. The following section is hereby substituted for section 62A of Act No. 75 of 1997:

**“Definitions**

**62A** For the purposes of Chapter 10, including Schedule 2, an employee includes a worker as defined in section 1 of the National Minimum Wage

Act, 2018, and an employee as defined in section 50A of this Act."

#### **Insertion of section 62B in Act 75 of 1997**

7. The following section is hereby inserted into Act No. 75 of 1997 after section 62A:

##### **"Employer's failure to pay contribution to benefit fund**

**"62B. An employer's failure to pay a contribution to a benefit fund on behalf of an employee in terms of section 34A of this Act must be treated on the same basis as the failure by an employer to pay any amount owing to an employee in terms of this Act, except that in any compliance order, court order or arbitration award the employer must be directed to make the outstanding payment to the benefit fund concerned."**

#### **Insertion of section 65A in Act 75 of 1997**

8. The following section is hereby inserted into Act No. 75 of 1997, after section 65:

##### **"65A Participation in inspections by trade union representative**

- (1) A labour inspector conducting an inspection in terms of this Chapter must, upon arrival at the workplace, take immediate steps to ensure that they are accompanied during the inspection by at least one trade union representative.
- (2) A trade union representative identified in terms of this section is entitled to –

- (a) participate in all consultations with inspectors at the workplace; and
  - (b) accompany inspectors on all inspections in the workplace.
- (3) The performance of functions in terms of this section by a trade union representative must be considered for all purposes to be the performance of a function of a trade union representative, as contemplated by section 14 of the Labour Relations Act.”

**Amendment of section 69 of Act 75 of 1997 as amended by section 14 of Act 11 of 2002, section 10 of Act 20 of 2013 and section 13 of Act 10 of 2018.**

9. Section 69 of Act No. 75 of 1997 is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection:
  - “(5) (a) An employer must comply with the compliance order within the time period stated in the order, unless the employer refers a dispute concerning the compliance order to the CCMA within that period.
  - (b) If the employer refers a dispute to the CCMA as contemplated in paragraph (a), the employer must provide security to the satisfaction of the CCMA equivalent to the amount that the employer is required to pay in terms of the compliance order.”; and
- (b) by the insertion after subsection (5) of the following subsection:
  - “(5A) The CCMA may, on good cause shown by the employer, permit the employer to refer a dispute contemplated in subsection (5) to it after the relevant time period stated in the

order has expired."

**Amendment of section 73 of Act 75 of 1997 as amended by section 16 of Act 11 of 2002, section 13 of Act 20 of 2013 and section 15 of Act 10 of 2018**

10. Section 73 of the Basic Conditions of Employment, 1997 is hereby amended—

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

"(2) The CCMA may issue an arbitration award **[in terms of]** contemplated in subsection (1) requiring the employer to comply with the compliance order, if it is satisfied that—

- (a) the compliance order was served on the employer; and
- (b) the employer has not referred a dispute in terms of section 69 (5)."; and

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

(3) The CCMA may, in respect of a compliance order which is the subject of a dispute that the employer has referred to the CCMA as contemplated in section 69(5),—

- (a) issue an award that confirms, varies or sets aside the compliance order; and
- (b) as part of the award referred to in paragraph (a), order the employer to pay a fine, as contemplated in section 76A or Schedule Two, within a time period specified in the award."

**Amendment of section 73A of Act 75 of 1997 as inserted by section 7 of Act 7 of**

**2018**

**11.** Section 73A of the Basic Conditions of Employment, 1997 is hereby amended—

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

“(1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the bargaining council with jurisdiction or, if there is no council, to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.”;

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

“(4) The bargaining council or CCMA must **[appoint a Commissioner in terms of section 135 of the Labour Relations Act, to]** attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).”; and

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

“(5) The bargaining council or CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved **[in terms of section 135(5)]**.”.

**Amendment of section 74 of Act 75 of 1997 as amended by section 17 of Act 11 of 2002, section 14 of Act 20 of 2013 and section 17 of Act 10 of 2018.**

**12.** Section 74 of the Basic Conditions of Employment, 1997 is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
- “(2) If an employee institutes proceedings **[for unfair dismissal]** in respect of any claim under an employment law, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act or the National Minimum Wage Act, 2018.”; and
- (b) by the deletion of subsection (3).

**Amendment of section 76A of Act 75 of 1997 as inserted by section 20 of Act 10 of 2018**

**13. Section 76A of the Basic Conditions of Employment, 1997 is hereby amended—**

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) **[Subject to section 76, a]** A fine that may be imposed in any proceedings in terms of section 73 and 73A on an employer who paid an employee less than the national minimum wage, is an amount that is the greater of—
- (a) twice the value of the underpayment; or
- (b) twice the employee’s monthly wage.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) For second or further non-compliances, a fine that may be imposed in any proceedings in terms of section 73 or 73A on an employer who paid an employee less than the national minimum wage is an amount that is the greater of—
- (a) thrice the value of the underpayment; or

- (b) thrice the employee's monthly wage."; and
- (c) by the addition after subsection (4) of the following subsection:
- "(5) Upon receipt of payment from an employer in respect of a fine imposed on such an employer in terms of subsection (1) or (2), the Department or the CCMA must immediately remit the payment to the employee."

#### **Insertion of section 77B in Act 75 of 1997**

14. The following section is hereby inserted into the Basic Conditions of Employment, 1997 after section 77A:

#### **"Powers of Labour Court, CCMA and bargaining council in respect of failure to pay contributions to funds falling under Pension Funds Act**

- 77B** (1) This section applies to any failure by an employer to pay a contribution to a pension or provident fund on behalf of an employee in terms of any law, collective agreement or contract of employment.
- (2) The Labour Court, CCMA or bargaining council to which a dispute concerning any failure by an employer to pay a contribution to a pension or provident fund as contemplated in subsection (1) is referred must, in respect of any amount found to be outstanding, make an order or award, as the case may be—
- (a) directing the payment of the outstanding amount to the fund on behalf of the employee within a period specified, and on such other terms as may be specified, in the order

or award;

(b) despite the provisions of section 75 of this Act, directing the employer to pay interest on the outstanding amount at the interest rate prescribed in terms of section 13A of the Pension Funds Act, 1956 (Act No.24 of 1956).

(3) The Labour Court, CCMA or bargaining council may not exercise jurisdiction if the Pension Funds Adjudicator appointed in terms of section 30C of the Pension Funds Act, 1956 has issued a determination in terms of section 30M of the Pension Funds Act, 1956 or any other tribunal or court of law having jurisdiction has made a ruling on the matter.”.

#### **Amendment of section 86 of Act 75 of 1997**

15. Section 86 of Basic Conditions of Employment, 1997 is hereby amended by the addition after subsection (2) of the following subsection:

“(3) The Minister may make regulations specifying the purposes for which the CCMA may use fines paid by employers in terms of Schedule 2.”.

#### **Amendment of Schedule 3 to Act 75 of 1997**

16. The following item is inserted into Schedule 3 to the Basic Conditions of Employment, 1997:

##### **“12 Applications of Basic Conditions of Employment Act, 2025**

(1) For the purposes of this item, “Act” means the Basic Conditions of

Employment Act, 2025.

- (2) The entitlement to severance pay equal to two week's remuneration only applies to a completed year of service with that employer which commenced after the commencement of this Act.
- (3) A provision in this Act relating to the powers of the Department, the Director-General, the CCMA, a bargaining council and the Labour Court applies irrespective of whether the dispute was referred before the commencement date of this Act."

**Amendment of section 1 of Act 55 of 1998, as amended by section 40 of Act 65 of 2002, section 26 of Act 68 of 2002, section 1 of Act 47 of 2013 and section 1 of Act 4 of 2022.**

17. Section 1 of the Employment Equity Act, 1998 is hereby amended by –

- (b) the insertion before the definition of the "Basic Conditions of Employment Act" of the following definition:

"bargaining council" means a bargaining council contemplated in section 213 of the Labour Relations Act;"

- (c) the substitution of the definition of "employment law" for the following definition:

"**employment law**" means any provision of this Act of any of the following Acts—

- (a) The Unemployment Insurance Act, 2001 (Act 63 of 2001);
- (b) the Occupational Health and Safety Act, 1993 (Act 85 of 1993);

- (c) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act 130 of 1993);
- (d) the Labour Relations Act, 1995 (Act 66 of 1995);
- (e) the Basic Conditions of Employment Act, 1997 (Act 75 of 1997);
- (f) the Skills Development Act, 1998 (Act 97 of 1998);
- (g) the Employment Services Act, 2014 (Act 4 of 2014);
- (h) the National Minimum Wage Act, 2018 (Act 9 of 2018);
- (i) any other Act, whose administration has been transferred to the Minister;”

**Amendment of section 10 of Act 55 of 1998, as amended by section 5 Act 47 of 2013.**

18. Section 10 of Employment Equity Act, 1998 is hereby amended by the substitution in subsection (6) for subparagraph (i) of paragraph (aA) of the following subparagraph:

“(i) the employee alleges unfair discrimination on the grounds of **[sexual]** harassment; or”

**Insertion of section 10A of Act 55 of 1998**

19. The following section is hereby after section 10 of Employment Equity Act, 1998:

**“10A Nothing in this Act prevents the referral of a dispute in terms of this Part to a bargaining council –**  
**(a) in terms of a collective agreement binding on the parties to the dispute; or**

- (b) if the council has been accredited under section 127 of the Labour Relations Act for conciliation or arbitration in respect of such a dispute.”

**Amendment of section 53 of Act 55 of 1998, as amended by section 20 of Act 47 of 2013 and section 12 of Act 4 of 2022.**

20. Section 53 of Employment Equity Act, 1998 is hereby amended by the addition after subsection (6) of the following subsection:

“(7) A certificate issued by the Minister in terms of subsection (2) constitutes proof that the employer has complied with the requirements for achieving employment equity specified in any other law.”

**Amendment of section 12 of Act 63 of 2001, as amended by section 4 of Act 2 of 2003, section 4 of Act 10 of 2016 and section 8 of Act 10 of 2018.**

21. Section 12 of Act 63 of 2001 is hereby amended as follows:

- (a) by the substitution for sub-section 3(c) of the following sub-section:

“For the purposes of Part D, **[maternity]** parental benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a).”

- (b) by the deletion of sub-section 3(d).

**Amendment of sections 24 to 29C of Act 63 of 2001, as amended by section 8 of**

**Act 32 of 2003, sections 9 and 10 of Act 10 of 2016 and sections 12 to 14 of Act 10 of 2018.**

22. Sections 24 to 29C of the principal Act are hereby repealed and replaced by the following sections—

**“Part D: Parental benefits**

**24. Parental benefits**

(1) Subject to the provisions of this Part, a contributor is entitled to receive parental benefits in respect of the following events –

- (a) if a contributor is pregnant;
- (b) if a contributor is in a parental relationship with a person who gives birth to a child, irrespective of whether the mother is a contributor;
- (c) if either one or two contributors adopt, or are the prospective adoptive parents of, a child of less than six years of age; or
- (d) if either one or two contributors are commissioning parents of a child born as a result of a surrogate motherhood agreement.

(2) Parental benefits may be paid to a contributor-

- (a) if the contributor is a single parent or only one of the parents is a contributor, for a period of 17.32 weeks; or
- (b) if two contributors are entitled to parental benefits, a period of 17.32 weeks plus 10 days, shared between the two parents in accordance with the provisions of this Part; provided that neither parent may receive benefits for more than 17.32 weeks.

- (3) When taking into account any payment for parental leave paid to a parent in terms of any other law, collective agreement or contract of employment, the parental benefit received by a contributor may not exceed the remuneration the contributor would have received if the contributor had not been on parental leave.
- (4) A contributor contemplated by subsection (1) (b)–(d) may only claim parental benefits –
- (a) in respect of a period that the contributor was not working in order to care for the child; and
- (b) once in respect of any period of twelve months.
- (5) A contributor is not entitled to parental benefits in respect of any period after the birth or adoption of a child, unless they have assumed parental rights and responsibilities over the child as contemplated in the Children’s Act, 2005 (Act No. 38 of 2005).
- (6) A contributor is not entitled to parental benefits unless they were in employment for at least thirteen weeks before the date of the application for parental leave.
- (7) A contributor must apply for parental benefits in accordance with the provisions of this Part and any prescribed requirements.

#### **25. Provisions applicable to parental benefits for maternity**

- (1) A contributor who is pregnant and gives birth to a child is entitled to the parental benefits for maternity for any period of pregnancy or delivery and the period thereafter.
- (2) A contributor who has a miscarriage during the third trimester or bears a stillborn child is entitled to the full parental leave benefit of 17.32 weeks.

**26. Conditions applicable to parental benefits for a parent other than the mother**

- (1) Subject to the provisions of this Part, a contributor who is in a parental relationship with a person who gives birth to a child is entitled to the following period of parental leave after the birth of the child –
- (a) if the mother of the child is not a contributor, 17.32 weeks; or
  - (b) if the mother of the child is a contributor, 10 days and, in addition thereto, any portion of the mother's entitlement to parental leave that she has agreed to transfer to the other parent in terms of an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act.

**27. Conditions applicable to parental benefits for adoption**

- (1) A contributor is entitled to parental benefits for the adoption of a child below the age of six if the child has been –
- (a) adopted in terms of the Children's Act, 2005 (Act No. 38 of 2005); or
  - (b) placed in the care of a prospective adoptive parent by a competent court pending the finalisation of an adoption order in respect of that child.
- (2) If two contributors who are adoptive, or prospective adoptive, parents are claiming parental benefits in terms of this section, they are entitled to –
- (a) the parental leave provided for in an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act; or
  - (b) if no agreement has been concluded, to share the entitlement to parental leave in terms of section 24(2)(b) as close to equally as is possible.

**28. Conditions applicable to parental benefits as a result of commissioning**

- (1) A contributor shall be entitled to parental benefits as a result of commissioning if the child has been born as a result of a surrogate motherhood agreement.
- (2) If two contributors who are commissioning parents are claiming parental benefits in terms of this section, they are entitled to –
  - (a) the parental leave provided for in an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act; or
  - (b) if no agreement has been concluded, to share the entitlement to parental leave in terms of section 24(2)(b) as close to equally as is possible.
- (3) For purposes of this Part, unless the context otherwise indicates –
  - (a) 'commissioning parent' has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005); and
  - (b) 'surrogate motherhood agreement' has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act 38 of 2005).

**29. Application for parental benefits and payment**

- (1) An application for parental benefits must be made in the prescribed form and manner either electronically, at an employment office or at any other prescribed place.
- (2) An application for parental benefits
  - (a) may be made either before or after the childbirth, or the date of adoption, as the case may be; and
  - (b) must be made within twelve months of such date.

- (3) A copy of any agreement concerning parental leave in terms of section 26B of the Basic Conditions of Employment Act, 1997 must be submitted in the prescribed manner together with any application for parental leave by either parent.
- (4) A claims officer must investigate the application and may, if necessary, request further information.
- (5) If the application complies with the provisions of this Chapter, the claims officer must-
- (a) approve the application;
  - (b) determine the amount of the benefits and the period for which they are to be paid;
  - (c) stipulate how the benefits are to be paid.
- (6) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing or electronically that the application is defective and of the reasons why it is defective.
- (7) The Commissioner must pay parental benefits to a contributor electronically or at the employment office or other prescribed place at which the application was made, or determined by the applicant.”

#### **Amendment of section 4 of Act 9 of 2018**

23. Section 4 of the National Minimum Wage Act, 2018 is hereby amended by the substitution for subsections (4) and (5) of the following subsections:

- “(4) **[Every]** Subject to section 5, every worker is entitled to payment of a wage in an amount no less than the national minimum wage.
- (5) **[Every]** Subject to section 5, every employer must pay wages to its workers that is no less than the national minimum wage.”.

#### **Amendment of section 5 of Act 9 of 2018**

**24.** Section 5 of National Minimum Wage Act, 2018 is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Despite any contract or law to the contrary, the calculation of a wage for the purpose of this Act is the amount payable in money as contemplated in section 32(1)(c) of the Basic Conditions of Employment Act for ordinary hours of work excluding —“;

- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a **[sectorial]** sectoral determination; and”

- (c) by the deletion in subsection (1) of the word “and” at the end of paragraph(c); and

- (d) by the insertion after that paragraph of the following paragraph:

“(cA) deferred payment; and”.

**Amendment of section 6 of Act 9 of 2018**

25. Section 6 of National Minimum Wage Act, 2018 is hereby amended by the deletion of subsection (3).

**Amendment of section 9 of Act 9 of 2018**

26. Section 9 of National Minimum Wage Act, 2018 is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (c); and  
(b) by the addition after subsection (2) of the following subsection:

“(3) A party that nominates persons in terms of subsection (1)(b) and (d) must demonstrate to the Minister that such persons have the appropriate knowledge, skills and experience to perform the functions of a member of the Commission.”.

**Short title and commencement**

27. This Act is called the Employment Laws Amendment Act, 2025, and comes into effect on a date to be fixed by the President by proclamation in the *Gazette*.

## MEMORANDUM OF OBJECTS ON EMPLOYMENT LAWS AMENDMENT BILL, 2025

### 1. OBJECTS OF THE BILL

In preparation for the publication of the Labour Relations Amendment Bill, 2025 as well as amendments to the Basic Conditions of Employment Act (Act No. 75 of 1997) (“BCEA”), and changes to other labour legislation, the Department of Employment and Labour (“the Department”) and the representatives of Organised Business and Labour undertook a labour law review and have engaged in extensive consultations over a period of 28 months in NEDLAC.

Following the decision of the High Court in *Van Wyk and Others v Minister of Employment and Labour*<sup>1</sup>, the consultations were expanded to include the parental leave provisions in the BCEA and the parental benefit provisions in the Unemployment Insurance Act (Act No. 63 of 2001) (“UIA”). These consultations continued after the subsequent decision of the Constitutional Court in *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others*<sup>2</sup> (“*Van Wyk and Others*”).

The proposed amendments to the BCEA, the Employment Equity Act (Act No. 55 of 1998) (“EEA”), the UIA and the National Minimum Wage Act (Act No. 9 of 2018) (“NMWA”) are combined into a single Employment Laws Amendment Bill. The proposed amendments to these Acts can be grouped under the following themes:

- (a) changes in the labour market and the nature of work;

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<sup>1</sup> *Van Wyk and Others v Minister of Employment and Labour* (2022-017842) [2023] ZAGPJHC 1213; [2024] 1 BLLR 93 (GJ); (2024) 45 ILJ 194 (GJ); 2024 (1) SA 545 (GJ) (25 October 2023).

<sup>2</sup> *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others* (CCT 308/23) [2025] ZACC 20; [2025] 12 BLLR 1213 (CC) (3 October 2025).

- (b) establishing protection appropriate to the changing nature of work and an increasingly large group of unprotected workers;
- (c) remedying identified bottlenecks in existing dispute resolution and adjudication systems;
- (d) reducing levels of disputes and simplifying dispute procedures by employer Bargaining Councils to resolve certain additional disputes.
- (e) removing duplication of functions to ensure that employers do not have to report and be assessed on employment equity by different government departments.
- (f) amending the law on parental leave for employees and the parental benefits that a contributor to the Unemployment Insurance Fund is entitled to following the Constitutional Court's judgment in *Van Wyk and Others*.

## 2. DISCUSSION OF THE BILL

### **Proposed amendments to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)**

#### **Clause 1**

Clause 1 of the Bill proposes to amend section 1 of Act No. 75 of 1997 by amending the definition of "employment law" to reflect legislative changes.

#### **Clause 2**

Clause 2 of the Bill proposes to amend Act No. 75 of 1997 by inserting a new section 9B. The provisions in this section apply to employees who earn below the threshold set in terms of section 6(3) and who are required to –

- (a) work only when their employer makes work available to them;

- (b) accept work that the employer makes available.

This category of employment contracts is referred to by many names, including: “on call contracts”, “zero hours contracts”, “min-max contracts”, “flexitime contracts” and “if and when contracts”.

The basis for the “on-call” relationship is an agreement under which the employer calls the worker when work is available and thus a flexible number of hours is worked. These workers are often vulnerable to abuse. There is frequently little job and income security, unpredictable and irregular working hours – in some cases, these workers may have no work at all for periods and no specific guarantee of work – and low wages and benefits.

In many cases, these contracts allow employers to escape their obligations relating to fair dismissals, including for operational requirements, as they simply do not call the workers in to do work. On-call workers are often called in at the last minute and are not given sufficient time to make proper arrangements for their families and households. Workers who cannot answer the call to work, even of short notice, may be disciplined or, easier still, just not called up again or as much.

The proposed amendments seek to provide appropriate protection that balances the need of employers to have flexibility where there is a variable demand for work but at the same time ensure greater protection for this category of “on call” workers. In the case of employees who fall within this category, the employer is required to specify in the employee’s written particulars of work –

- (a) their guaranteed hours of work in each period;
- (b) their maximum hours of work;
- (c) when they must be available to work; and

- (d) the notice period that they are entitled to for purposes of reporting for work and in respect of the cancellation of work.

Additional protections are that the period of notice for reporting for work or for the cancellation of work must be reasonable in the light of a range of factors including the nature of the employer's business, its ability to control circumstances leading to the availability or otherwise of work, the nature of the employee's work and the effect of the cancellation on the employee. The employer is required to remunerate employees for cancelled work, if they fail to give the requisite notice of cancellation.

### **Clause 3**

Clause 3 of the Bill proposes to amend Act No. 75 of 1997 by substituting revised sections 25, 25A and 25B for the current sections 25, 25A, 25B and 25C of the BCEA as follows –

- (a) The Clause contains the proposed new sections 25, 25A and 25B regulating the taking of parental leave by employees. These proposals flow from the Constitutional Court's recent decision in *van Wyk and others* which held that certain provisions of the BCEA and the UIA regulating parental leave are unconstitutional.
- (b) The BCEA currently provides employees with the following entitlements to maternity and parental leave –
  - (i) 4 months' maternity leave on the birth of a child (section 25);
  - (ii) 10 weeks' parental leave for one parent on the adoption of a child under two (section 25B);
  - (iii) 10 weeks' parental leave for one parent in the case of a child born as a result of a commissioning agreement (section 25C); and

- (iv) 10 days' parental leave for a second parent in these three circumstances (section 25A).
- (c) The BCEA does not regulate pay for maternity or parental leave and the UIA provides for the payment of benefits to employees during these periods of leave.
- (d) The Constitutional Court ruled that certain provisions of the BCEA are unconstitutional –
  - (i) Sections 25, 25A, 25B and 25C dealing with maternity and parental leave are invalid and inconsistent with the Constitution as they unfairly discriminate between different classes of parents as to the length of parental leave.
  - (ii) Sections 25B(1) of the BCEA is invalid and unconstitutional to the extent that it limits parental leave to parents in respect of adoptive children below two years of age. (However, the Court does not express a view as to what a reasonable cap on the age of an adopted child whose adoptive parents would qualify for parental leave is).
  - (iii) The corresponding sections (24, 26A, 27, 27(1)(c) and 29A) of the UIA regulating the payment of parental benefits from the Fund are likewise declared unconstitutional.
  - (iv) These declarations of constitutional invalidity are suspended for 36 months to allow Parliament to remedy the constitutional defects. The Minister of Employment and Labour will be required to furnish a report to the Registrar of the Constitutional Court six months before the expiry of the 36-month suspension (i.e. 2 April 2028) as to whether remedial amendments to the BCEA and UIA have been brought into operation and, if not, when it is expected that this will be done.
- (e) Pending Parliament enacting remedial legislation, the Constitutional Court

has “read into” sections 25, 25B and 25C changes which will allow parents to claim parental leave under the BCEA with immediate effect. However, the Constitutional Court has not ruled on a similar interim arrangement for the provisions of the UIA, as the Court was uncertain as to the financial implications of such an amendment.

- (f) In summary, the effect of the interim regime created by the Court’s “reading in” of provisions are –
- (i) an employee who becomes a parent is entitled to four months’ parental leave if they are a single parent or the only parent who is an employee covered by the BCEA. Significantly, this includes the employed father of a child in a situation in which the mother is either self-employed or not employed;
  - (ii) if both parents are employees, they are entitled to divide between them four months and ten days as parental leave. In other words, the current maternity leave of four months and the parental leave of 10 days are combined into a single divisible period of parental leave which two parents who are employees may agree to share;
  - (iii) these provisions apply to the birth of a child, the adoption of a child under two and the birth of a child through a commissioning agreement; and
  - (iv) if parents who are both employees cannot reach an agreement on the division of parental leave, the Constitutional Court proposes that parental leave should be shared equally.
- (g) Clause 3 of the Bill contains proposals for the regulating parental leave in a manner that is consistent with the Constitutional Court’s decision in *van Wyk and Others*. These proposals call for the repeal of the current sections 25, 25A, 25B and 25C of the BCEA and the enactment of new sections 25, 25A and 25B.

- (h) The proposed section 25 establishes the right of parents of newborn children, adopted children and children born through surrogate motherhood agreements to claim parental leave. These entitlements are consistent with the Constitutional Court's approach –
- (i) four months, if one employee is claiming parental leave.
  - (ii) four months plus 10 days, if two employees are claiming their entitlement, provided neither parent may take more than four months.
  - (iii) it is further proposed that the right to claim parental leave in the event of an adoption should be extended to apply to children of up to six years of age.
- (i) The proposed section 25A regulates the requirement to give notice of intention to take parental leave. The requirement to give prior notice in writing of at least four weeks, unless this is not practicable, is retained. However, a new provision is inserted requiring that when two employees are claiming parental leave, each of the employees must give notice in terms of the section to their employer.
- (j) The proposed section 25B contains provisions to regulate the taking of parental leave if both parents are employees. They may conclude an agreement to be submitted to their employers, together with the notice required under section 25A, specifying how the parental leave is to be shared. If the parents cannot reach such an agreement, parental leave is to be shared in the following manner –
- (i) in the case of maternity, the mother will be entitled to claim up to the full period of four months' parental leave and the other parent will be entitled to ten days plus any portion that the mother elects not to utilise.

- (ii) in the case of adoption or birth in terms of a surrogacy motherhood agreement, the parental leave is to be shared in a manner as close to equally as is possible.

#### **Clause 4**

Clause 4 of the Bill proposes to amend section 41 of Act No. 75 of 1997 –

- (a) by amending subsection (2) to provide that any employee who is dismissed for reasons based on the employer's operational requirements or whose contract of employment is terminated in terms of section 38 of the Insolvency Act, 1936 is entitled to severance pay equal to two weeks' remuneration for each year of continuous service with the employer. This increases the level of statutory severance pay from one week to two weeks. This amendment must be read in conjunction with item 13 of Schedule three which provides that the entitlement to one week's severance pay only applies to a completed year of service which commenced after the commencement of the Amendment Act;
- (b) providing that any dispute about severance pay may be referred to the CCMA for arbitration, whether the dispute arises out of a statute, collective agreement or contract of employment. This applies to disputes that only concern a claim for severance pay in which procedural or substantive fairness is not challenged. This clarifies the issue of jurisdiction of the CCMA in the light of inconsistent decisions on this topic by the Labour Court and the High Court. This will avoid a duplication of claims where an employee's entitlement to severance pay may arise in part from statute and in part from a collective agreement or contract of employment.

#### **Clause 5**

Clause 5 of the Bill proposes to amend Act No. 75 of 1997 by inserting a new section 50A before section 51. Section 50A provides a broadened definition of the terms "employee" and "employer" specifically for those provisions falling under Chapter 8.

**Clause 6**

Clause 6 of the Bill proposes to amend section 62A of Act No. 75 of 1997 so as to make the definition of “employee” introduced by section 50A applicable also to those provisions in Chapter 10 of Act No. 75 of 1997.

**Clause 7**

Clause 7 of the Bill proposes to amend Act No. 75 of 1997 to insert a new section 62B after section 62A to clarify the manner in which failure by an employer to pay the employer’s contributions to a benefit fund can be dealt with in enforcement proceedings under the Act. This amendment must read in conjunction with the proposed section 77B.

**Clause 8**

Clause 8 of the Bill proposes to amend Act No. 75 of 1997 to insert a new section 65A after section 65 allowing recognised trade union representatives to accompany labour inspectors on workplace inspections, conducted in terms of Chapter 10 of the BCEA. The right of employee health and safety representatives to accompany inspectors on inspections is already entrenched in both the Occupational Health and Safety Act, 1993 and the Mine Health and Safety Act, 1996. The extension of this approach to inspections conducted under the BCEA will promote compliance with statutory employment standards.

**Clause 9**

Clause 9 of the Bill proposes to amend section 69 of Act No. 75 of 1997 by further regulating the procedure in terms of which an employer may refer a dispute objecting to a compliance order issued by a labour inspector to the CCMA.

The amendment provides –

- (a) for the CCMA to condone on good cause a referral of such a dispute outside the 30-day referral;
- (b) that the referral by an employer of a dispute objecting to a compliance order does not suspend the operation of the compliance order, unless the

employer provides security to the satisfaction of the CCMA equivalent to the amount the employer is required to pay in terms of compliance order;

- (c) subsection (7) provides that the Director-General of the Department of Employment and Labour may apply for a compliance order that has not been complied with be made an arbitration award. This provision is presently in section 73(1).

#### **Clause 10**

Clause 10 of the Bill proposes to amend section 73 of Act No. 75 of 1997 and, in order to clarify the process for the adjudication of compliance orders issues by labour inspectors, by –

- (a) providing that the CCMA must appoint a Commissioner to arbitrate any dispute concerning –
  - (i) an objection by an employer to a compliance order issued by a labour inspector;
  - (ii) an application by the Department of Employment and Labour to have a compliance order which has not been complied with made into an arbitration award.
- (b) providing that an arbitrator conducting an arbitration over a compliance order may issue an award –
  - (i) confirming, amending or setting aside the compliance order; and
  - (ii) if the compliance order requires the employer to pay a fine, directing payment of the fine within a period specified in the award.

#### **Clause 11**

Clause 11 of the Bill proposes to amend section 73A of Act No. 75 of 1997 to clarify in subsection (1) that a dispute concerning compliance with the national

minimum wage or any collective agreement of a bargaining council or an employee's contract of employment may be referred to a bargaining council. This amendment has been introduced because certain bargaining councils are refusing to exercise jurisdiction in respect of this category of disputes.

Subsections (4) and (5) are amended to clarify that a bargaining council may, in the same manner as the CCMA, resolve disputes contemplated by this section through conciliation and, if this does not resolve the dispute, arbitration.

#### **Clause 12**

Clause 12 of the Bill proposes to amend section 74 of Act No. 75 of 1997 to promote the consolidation of disputes in arbitration or Labour Court proceedings. Subsections (2) and (3) are amended to permit disputes in terms of the BCEA or the NMWA to be adjudicated jointly with claims under any employment law.

#### **Clause 13**

Clause 13 of the Bill proposes to amend subsections (1) and (2) of section 76A of Act No. 75 of 1997 to clarify the process for the payment of fines by employers in terms of a compliance order issued in terms of section 73 or as a result of an arbitration award in terms of section 73A.

Subsection (5) is inserted to provide that where a fine is paid to the Department in terms of section 73 or to the CCMA in terms of section 73A as a result of a failure to pay the national minimum wage, the Department or CCMA must pay the fine to the employee.

#### **Clause 14**

Clause 14 of the Bill proposes to insert section 77B which will regulate the powers of the Labour Court, CCMA and bargaining councils when dealing with complaints concerning an employer's failure to pay contributions to a benefit fund regulated by the Pension Funds Act, 1956. Presently, employees are entitled to bring claims when an employer fails to pay contributions to such a fund, if the fund is established by a collective agreement or the employee's membership

flows from their contract of employment. Where such a claim is adjudicated, the judge or arbitrator may direct the employer –

- (a) to make payments to the fund on behalf of the employee within a specified period;
- (b) to pay interest at the rate prescribed in terms of section 13A of the Pension Funds Act.

To prevent duplication of legal proceedings, the Labour Court, CCMA or bargaining council may not exercise jurisdiction in such a claim if there has been a determination by the Pension Funds Adjudicator or any other tribunal or court of law having jurisdiction.

#### **Clause 15**

Clause 15 of the Bill proposes to amend section 86 of Act No. 75 of 1997 by inserting subsection (3) to empower the Minister to make regulations concerning the purposes for which fines paid by employers for breaches of the Act may be used by the CCMA.

#### **Clause 16**

Clause 16 of the Bill proposes to amend Schedule 3 by including certain transitional provisions necessary for the implementation of the Amendment Act and to avoid disputes. These provisions are –

- (a) the statutory entitlement to severance pay of two weeks per completed year of service introduced by the amendment of section 41(6) only applies to completed years of service commenced after the Amendment Act comes into effect;
- (b) all provisions in the Amendment Act concerning the powers of the Department, the Director-General, the CCMA, bargaining councils and the Labour Court apply with immediate effect.

**Proposed amendments to the Employment Equity Act, 1998 (Act No. 55 of 1998)****Clause 17**

Clause 17 of the Bill proposes to amend section 1 of Act No. 55 of 1998 by inserting a definition of “bargaining council” and by substituting the definition of “employment law” to reflect legislative changes.

**Clause 18**

Clause 18 proposes to amend section 10(6) of Act No. 55 of 1998 to provide that an employee may refer any claim concerning unfair discrimination on the grounds of harassment to the CCMA for arbitration, if the dispute has not been resolved through conciliation. Currently, this entitlement only applies to cases involving sexual harassment. This limitation has led to technical objections and the splitting of claims as employees often claim harassment on more than one ground and a claim of sexual harassment may often overlap with other prohibited grounds, in particular harassment on grounds of gender.

**Clause 19**

Clause 19 proposes to insert a new section 10A into Act No. 55 of 1998 to clarify the circumstances in which disputes under the EEA may be referred to a bargaining council. The amendment specifies that such a dispute may be referred to a bargaining council if this is provided for in a collective agreement or where the bargaining council has been accredited to perform this function by the CCMA.

**Clause 20**

Clause 20 proposes to add a new subsection (5) to section 53 of Act No. 55 of 1998 to clarify that if the employer has been issued with the Certificate of Compliance under the Act, that certificate should constitute that the employer has complied with the requirements for achieving employment equity specified in any other law. As a result, the employer should not be assessed multiple times for employment equity under different legislation.

**Proposed amendments to the Unemployment Insurance Act, 2001 (Act No. 63 of 2001)****Clause 21**

Clause 21 of the Bill proposes to amend section 3 of Act No. 63 of 2001 to change the reference in sub-section 3(c) from “maternity” benefits to “parental” benefits in accordance with the proposed amendments to the BCEA, as well as to delete sub-section 3(d).

**Clause 22**

Clause 22 of the Bill proposes that sections 24, 25, 26, 26A, 26B, 26C, 27, 28, 29, 29A, 29B and 29C of Act No. 63 of 2001 are to be repealed and replaced by redrafted sections 24 to 29. The proposed amendments to the UIA introduce provisions regulating the payment of parental benefits to employees who are contributors to the Unemployment Insurance Fund in a manner that is consistent with the amendments proposed to the BCEA in clause 3 of the Amendment Bill.

**Proposed amendments to the National Minimum Wage Act, 2018 (Act No. 9 of 2018)****Clauses 23 and 24**

Clauses 23 and 24 of the Bill proposes to amend sections 4 and 5 of Act No. 9 of 2018 to clarify that when calculating whether there is compliance with the minimum wage, deferred payments made to employees are not taken into account. This is consistent with the purpose of the NMWA which is to provide for the minimum take-home pay that employees are entitled to receive. This amendment achieves this purpose by clarifying the relationship between the NMWA and the provisions in the BCEA regulating the payment of remuneration and by specifying that deferred payments do not form part of the employee’s wage for purposes of compliance with the national minimum wage. The necessity for this amendment emerges from a Labour Appeal Court decision<sup>3</sup> that has raised the prospect of the purpose of the NMWA being undermined in this

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<sup>3</sup> *Quantum Foods (Pty) Ltd v Commissioner Jacobs and others* [2024] 1 BLLR 32 (LAC).

manner and employees receiving take-home pay below the national minimum wage.

#### **Clause 25**

Clause 25 of the Bill proposes to amend section 6 of Act No. 9 of 2018 by deleting subsection (3).

#### **Clause 26**

Clause 26 of the Bill proposes to amend section 9 of Act No. 9 of 2018 –

- (a) to limit the composition of the National Minimum Wage Commission to a chairperson appointed by the Minister, representatives of Organised Business and Organised Labour and three independent experts. Representatives of the NEDLAC Community constituency will no longer have representation. This proposed amendment is consistent with various ILO Conventions dealing with the structure of tripartite institutions and with international best practice. This will promote more effective deliberation over the development of recommendations to the Minister on adjustments to the national minimum wage and other functions of the Commission such as proposing the making, and amending, of sectoral determinations;
- (b) a further amendment which requires Organised Business and Organised Labour to ensure that the persons that they propose for membership of the Commission have appropriate knowledge, skills and experience to perform the functions of a member of the Commission will also promote this purpose.

#### **Clause 27**

Clause 27 provides for the short title and commencement of the Bill.

### **3. CONSULTATION**

NEDLAC was consulted. The National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), provides for the objects, powers and functions of NEDLAC. NEDLAC must consider all proposed labour legislation

before it is introduced in Parliament and must also consider significant changes to the social and economic policy before it is implemented and introduced in Parliament. An extensive consultation process took place between April 2002 and November 2024, the details of which are recorded in the NEDLAC Report. Subsequent consultations on the implications of the Constitutional Court judgment in *van Wyk and Others* took place in November 2025.

#### **4. FINANCIAL IMPLICATIONS**

The amendments that deal with changes to dispute resolution and the functioning of the Department and CCMA are not estimated to lead to increased operating costs for either the Department or CCMA and an increase in their baseline budget.

#### **5. PARLIAMENTARY PROCEDURE**

The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.