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Nuusbrief van die LWO Werkgeversorganisasie

Newsletter of the LWO Employers Organisation

Is alle werkers geregtig op betaling vir oortyd?

Deur Louis Kluin

Hierdie is steeds 'n onderwerp wat hewige debatte ontlok, weens die verskille van mening oor die vraag of sekere groepe werknemers geregtig is op betaling vir oortyd gewerk, al dan nie. Om meer duidelikheid hieroor te kry, is dit belangrik om op die volgende wetgewing te let:

Artikel 6 (1) van die Wet op Basiese Diensvoorwaardes (WBDV) stel die volgende:

"Hierdie Hoofstuk, behalwe Artikel 7, is nie van toepassing nie op-

- senior bestuurswerknemers;
- werknemers in diens as verkoops personeel wat reis na die persele van klante en werke reël;
- werknemers wat minder as 24 uur 'n maand vir 'n werkgever werk".

Van verdere belang is Artikel 6 (3):

"Die Minister (van Arbeid) moet, op advies van die Kommissie (vir Diensvoorwaardes), 'n vasstelling* doen om die toepassing van hierdie Hoofstuk of enige bepaling daarvan op enige kategorie werknemers wat meer verdien as 'n bedrag in daardie vasstelling vermeld, uit te sluit".

Dit is baie belangrik om eerstens daarop te let dat die kruisverwysing (*), verwys na die "inkomste plafon" van werknemers wie se vergoeding (voor aftrekkings) bo daardie bedrag is soos gepubliseer in die Staatskoerant van tyd tot tyd, tans R183 008.00 per jaar en tweedens dat "senior bestuurswerknemers" gedefinieer word as: "n werknemer wat die gesag het om werknemers te huur, te dissipliner en te ontslaan, en om die werkgever intern en ekstern te verteenwoordig".

Werkgevers moet in gedagte hou dat indien hul diensoreenkoms met die werknemer bepaal dat die werknemer oortyd betaling sal ontvang, die werkgever dan verplig is om sodanige oortyd te betaal, aangesien die werkgever kontraktueel verbind is aan die ooreenkoms (waardeur die werknemer kontraktueel in 'n beter posisie geplaas word as wat die WBDV voorskryf). Die betaling van oortyd sal teen die normale tarief van een en 'n halwe keer die normale tarief betaalbaar wees.

Indien daar van 'n werknemer verwag word om oortyd diens te lewer op 'n Sondag en die ure is minder as dié van 'n normale skof en die oortyd betaling is minder as die betaling van 'n normale skof, is die werkgever verplig om 'n normale skof se loon te betaal [Artikel 16(2) WBDV].

Indien daar oortyd gewerk moet word, moet die werkgever die werknemer daartoe versoek. Die werkgever kan nie oortyd

Wie is die LWO?

Die LWO is gedurende 1990 as werkgeversorganisasie tot stand gebring, ten einde werkgevers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdiens, asook verwante dienste op die gebied van Arbeidsreg.

Die LWO is 'n nie-winsgewende ledeorganisasie en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

Die doel van die LWO

Die LWO het ten doel om die werkgeversorganisasie van voorkeur te wees vir werkgevers op 'n nasionale basis, gegrond op die professionele en effektiewe wyse waarop lede van die LWO met regsdiens, asook verwante dienste op die gebied van die Arbeidsreg, bedien word.

Who is the LWO?

The LWO was established during 1990 as an employers organisation in order for employers to be provided with legal services within the field of the Labour Law.

The LWO is a non-profitable members organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure through which members can be served effectively on a national basis.

The purpose/goal of the LWO

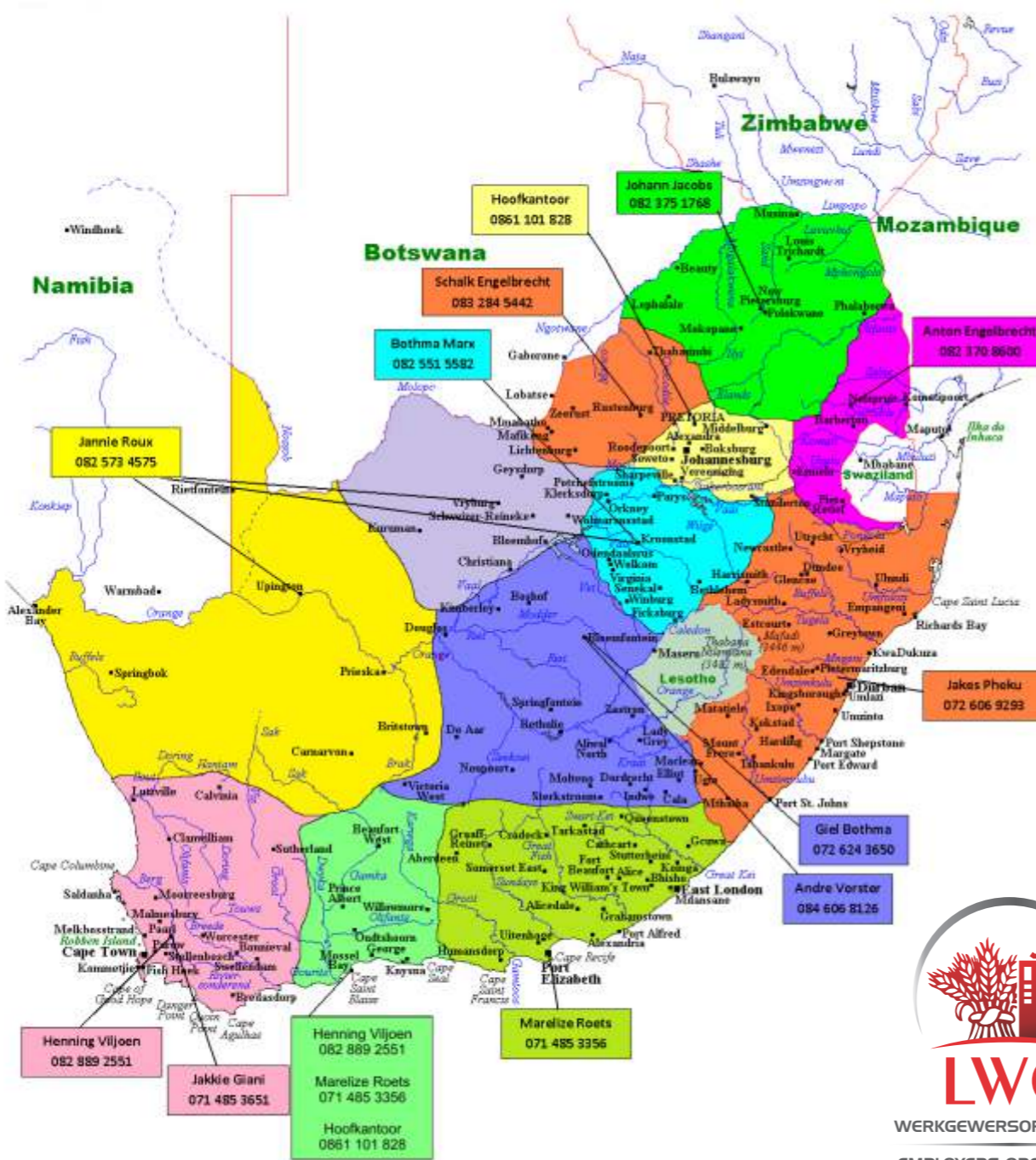
The LWO aims to be the employers organisation of choice for employers on a national basis, based on a professional and effective manner in which members of the LWO can be served with legal services as well as services related to the Labour Law.

afdwing nie, maar sou daar 'n klousule in die diensoreenkoms wees wat stipuleer dat daar van die werknemer verwag sou word om oortyd te werk, dan is dit wel afdwingbaar volgens Artikel 10 (1)(a).

NB: As u as werkgever se besigheid onder enige Bedingingsraad of Sektorale Vasstelling ressorteer, moet die bepalings ten opsigte van betaling van oortyd volgens daardie spesifieke Bedingingsraad of Sektorale Vasstelling ooreenkoms geskied.

Of u dus enige werknemer soos spesifiek hierbo na verwys, bv. 'n senior bestuurswerknemer, moet vergoed vir oortyd gewerk, is dus steeds 'n baie kontroversiële aspek. Die hoop is dat ons wetgewer hierdie onduidelikheid binnekort sal uitklaar, sodat daar regsekerheid vir werkgevers is.

Laat die LWO u adviseer as dit kom by indiensneming van werknemers soos hierin na verwys, om die mag van 'n dienskontrak tot u voordeel aan te wend. Ons kontaknommer: 0861 101-828.



Wat behels die oornam van 'n besigheid werklik?

Deur Margaux Pagel

Wanneer 'n persoon die besluit maak om 'n bestaande besigheid te koop, selfs al word slegs 'n gedeelte / persentasie van die besigheid gekoop, is daar vele aspekte wat die koper in gedagte sal moet hou. So ontstaan een van die mees algemene vrae: "Wat gebeur met die werknemers se dienskontrakte tydens, of na die koop? Moet die koper alle werknemers in diens hou en indien nie, moet skeidingspakkette aan hulle betaal word?"

Artikel 197 van die Wet op Arbeidsverhoudinge (WAV) vereis dat 'n nuwe werkgever (koper), wat 'n besigheid oorneem as 'n lopende saak, al die werknemers van die ou werkgever (verkoper), moet oorneem. Alle regte en verpligtinge van die besigheid word dus presies soos wat dit bestaan op 'n spesifieke ooreengekome tydstip, welke tydstip gewoonlik die datum van finale betaling van die koopprys is, oorgedra. Die werknemers se kontrakte mag dus nie beëindig word nie. Hul diensjare, voordele en selfs dissiplinêre waarskuwings aan hul uitgereik, bly presies so van toepassing.

Dit is dikwels so dat besighede juis verkoop word, of dat daar proporsioneel ingekoop word in 'n besigheid, juis met die doel om die besigheid se strukture op welke wyse ook al te wysig om aan te pas by operasionele behoeftes, wisselende markomstandighede, seisoenale skommelinge, ensovoorts. Hierdie noodsaak dikwels veranderinge aan

werknemers se terme en voorwaardes van diens en skep onvermydelik risiko vir beide die koper en die verkoper. Die rede waarom die verkoper ook risiko dra na die verkoping, is omrede ons wetgewer juis in hierdie gevalle werknemers beskerm deur daarstelling van arbeidsreg wetgewing, waarop daar nie hierin uitgebrei word nie, maar ons adviseurs sorgvuldig na u belange sal omsien as LWO lid in hierdie geval.

"Wat gebeur met die werknemers se dienskontrakte tydens, of na die koop?"



Artikel 187(1)(g) van die WAV verbied baie streng enige afdanking van enige werknemer se kontrak wat enigins verband hou met 'n oornam as 'n lopende saak. Sulke afdankings word as 'n "outomatiese onbillike ontslag" bestempel, wat beteken dat die afdankte werknemers tot en met 24 maande se besoldiging (ten tye van afdanking) as vergoeding kan eis, indien die werknemer die onbillikheid daarvan kan bewys.

Weens hierdie hewige sanksionering, soos deur ons wetgewer voorgeskryf, **word u aangeraai om die LWO Werkgeversorganisasie vroeg reeds te kontak (0861 101-828)**, selfs voor opstelling van enige verkoopsooreenkoms van ('n gedeelte van) u besigheid / die besigheid wat u wil koop, indien u ('n gedeelte van 'n) besigheid wil koop of verkoop, om kundige advies en bystand te bekom.

DEPARTMENT OF LABOUR INSPECTIONS - WHAT CAN YOU EXPECT?

By Therina Pretorius



It is necessary to know your rights when you are visited by inspectors of the Department of Labour. Without warrant or notice, at any reasonable time, such inspectors may enter any work place. Even if your business is run from your home, you are not excluded from a possible inspection. However, you have the right as employer to demand sufficient, valid proof from any inspector to prove that he/she is indeed an inspector from the Department of Labour.

Such inspectors are appointed in terms of the Basic Conditions of Employment Act, Act 75 of 1997 (as amended) to monitor and enforce various labour laws, including the:

- Basic Conditions of Employment Act, Act 75 of 1997;
- Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993;
- Employment Equity Act, Act 55 of 1998;
- Occupational Health and Safety Act; Act 85 of 1993; and
- Unemployment Insurance Act, Act 30 of 1996.

Functions of Labour Inspectors include:

- a) To advise employers and employees;
- b) To conduct inspections and to ensure compliance;
- c) Investigating complaints made;
- d) Endeavour to secure compliance with an employment law by securing an undertaking / issuing compliance orders; and
- e) Performing any other prescribed function to ensure legal compliance.

Most of the time, inspectors will inform the employers of a planned visit. They will normally send a fax with specific requirements which your business must adhere to, such as:

1. Are you registered with the Compensation Fund? The Inspector will request proof of registration, as well as proof of the last payment made.
2. Are you registered with the Unemployment Insurance Fund? Proof of registration and proof of last the payment made is requested.
3. Do you have a copy of the Occupational Health and Safety Act and the relevant Regulations on the premises and are the Act and the Regulations available to all employees?
4. Do you display the summary of the Basic Conditions of Employment Act?
5. Do you display the summary of the Employment Equity Act, if applicable?
6. Have you appointed a Health and Safety Representative and the committee members? This appointed person should have a letter of appointment and the Inspector will request the minutes of the previous meeting/s that were held.
7. Are you and your workers trained to recognise health and safety problems?
8. Do you have fully equipped first aid boxes on the

premises?

9. Are all electrical wires insulated and proper plugs used in your workplace?
10. Do you report injuries at work to the Department of Labour?
11. Do you have clean and hygienic toilets and washing facilities provided for male and females?
12. Do you have an attendance register at your workplace?
13. Do you have your Sectoral Determination / Bargaining Council Main Collective Agreement, if applicable, available for employees to peruse?
14. Do you pay at least the prescribed minimum wage to your sector/industry, if applicable?

Copies of signed employment contracts, pay slips, etc. may also be requested. Inspectors often ask to speak to employees, to ascertain mainly if they receive pay slips and whether what they receive is that which reflects on their pay slip.

Kindly be aware of salespersons alleging that they have been appointed by the Department of Labour to sell posters to employers. You are welcome to contact our office to establish which act/s should be available in your workplace.

Failure to comply with legislation usually results in a formal undertaking (BCEA 9 form) being issued, whereby employers are granted the opportunity to get specific less serious matters in order, whereafter the inspector will pay a second visit to ensure that outstanding matters have been tended to. Should the employer remain in non-compliance with any legal requirement, a fine will normally be issued, but it may also be that the employer is issued a subpoena to the Criminal Court where the penalty for not complying with any of the above mentioned Acts or Regulations may be imprisonment and / or a fine.

When a Labour Inspector pays you a visit, there is no need to panic. We will gladly assist you. We advise that you rather ensure that you are legally compliant in every aspect prior to inspections. Kindly call us at 0861 101-828.

What does the CCMA's Job Saving and Training Layoff Project entail? (Summarised from the Annual CCMA Report 2012)

By Morné Venter

"Initially started as the as the CCMA Retrenchment Support and Training Layoff Project, the Training Layoff Scheme (TLS) was contextualised within a broader, holistic approach towards addressing job insecurity, business distress, contributing to the employability of workers and parallel with these objectives, is the main function to save and promote the

anything in its quest for business health and job security.

The following are key aspects of the strategy:

- Business Recovery and partnership building;
- Determination and understanding of the economic relate;
- Enhancement of the section 189A retrenchment facilitation process; and
- Facilitation of access to survival and support mechanisms for retrenched workers.

This will work towards the CCMA's aim of meaningful discussions between the employer and the employee in cases where employers face the need to retrench or to restructure".

The LWO Employers Organisation will advise you on the progress of this Scheme, as well as the implications it has and responsibilities it places on employers, should your business face the operational need to retrench and / or restructure.

Kindly contact us for advice herein at 0861 101-828.



...business distress, contributing to the employability of workers and parallel with these objectives...

employment security strategy. This includes awareness raising, facilitation of dialogue and partnership formation.

The TLS is a NEDLAC (National Economic Development and Labour Council) initiative.

This initiative is part of the CCMA's Strategic Objective to "enrich the role of the CCMA in the labour market". The main focus in the workplace falls on conflict handling, building relations as well as focusing the discipline and the fairness of the discipline.

The TLS, which has included full integration of the original project into the CCMA's structures and budget, now forms part of the daily operations in its respective regions of operation. Where the TLS has been applied in the appropriate circumstances, there have been a number of success stories.

The development of the Job Saving Promotion of Employment Security Strategy requires continuous exploration of new and mechanisms through ongoing sharing of experiences and learnings, which also needs to be approved upon continuously. The overall objective of the strategy will do