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Nuusbrief van die LWO Werkgeversorganisasie

Newsletter of the LWO Employers Organisation

Employment Equity - news for employers

By Marius Rieger

It is necessary for all employers to take serious note of news and realities of aspects concerning employment equity. Department of Labour's second annual Employment Equity ("EE") and Transformation Indaba was held on 09 April 2014 in Sandton, Johannesburg, during which the theme was: "Turning the new leaf against all odds" and Labour Minister Mildred Oliphant stated the following:

"The pace of transforming society and notably, the labour market is still 'stubbornly' slow. Unfair discrimination practices in the workplace have led to under-utilisation of the greater portion of the productive population of South Africa. This was happening while the country requires skills in certain critical areas in the economy, many graduates nonetheless are either underemployed or unemployed; among these, the majority are Black females and people with disabilities. It was the priority of government to deal with the inequalities left behind by the Apartheid legacy in order to bring about socio-economic freedom. The passing of the Employment Equity Act marked a turning point in our history as it is the first equality legislation to be passed by a democratically elected Parliament in 1998 to give effect to the Constitutional provisions relating to equality in South Africa. The majority of the workplaces are still 'Lilly White' at the top and often male over-represented with a few pockets of Black and women executives. Although the public sector has managed to transform, many employers in the private sector are still found to be wanting in terms of implementing employment equity, as it is 'business as usual' for many employers. It was important to emphasize that the draft Employment Equity regulations recently published for public comment, are in no way intended to disadvantage any of the designated groups, in particular the Coloured and Indian groups. Anyone who says so is telling a blue lie and even in an election period, lies should not and cannot be acceptable. In fact, contrary to what some parties have claimed, the regulations were introduced to enhance the implementation of the law given the high levels of non-compliance that the Department has observed over the 16 years of the enactment of this Act"

Commission for Employment Equity (CEE) Chairman Dr Loyiso Mbabane said: *"the shoot the messenger responses that have sometimes characterised some of the responses to the CEE Report are as regrettable as they are misdirected. The focus of the attention ought to be on the elimination of the on-going effects of our past racial, gender and disability discrimination. Transformation was not a number crunching game, but an initiative that requires true commitment to change and redress of the past. Quibbling over statistics would divert focus and lead to a loss of track of the mandate at hand"*

The Commission for Employment Equity, is a statutory body established in terms of section 28 of the Employment Equity Act to advise the Minister. The CEE is required to submit an annual report to the Minister of Labour on the implementation of employment equity in terms of Section 33 of the Act.

Wie is die LWO?

Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers 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 werkgewersorganisasie van voorkeur te wees vir werkgewers 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.

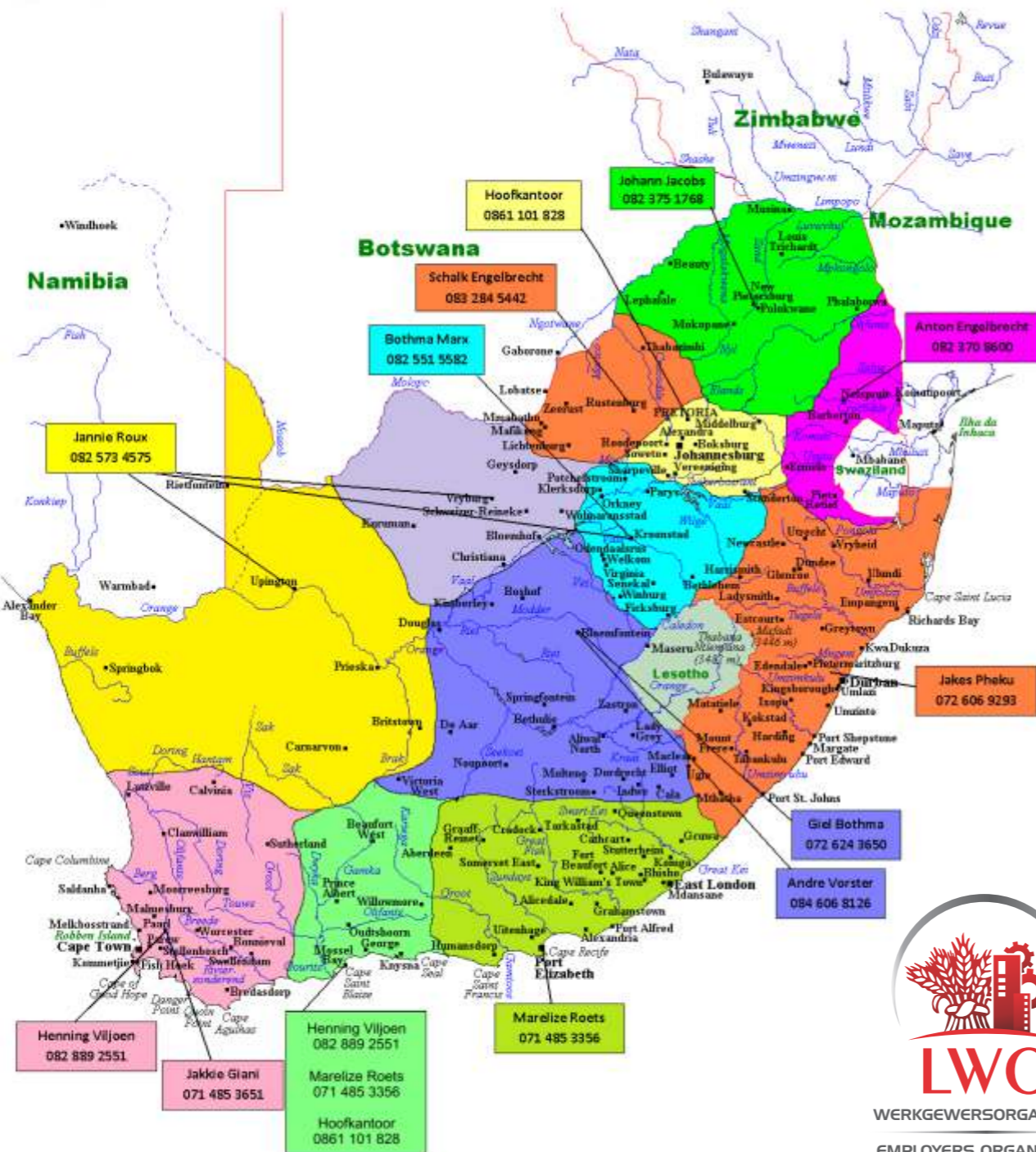
The purpose/goal of the LWO

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.

In 2013, a total of only 5102 reports were received and only 4984 reports were analysed, which amounts to 97.7% of these reports being included in the Analysis of the latest report.

Department of Labour's Acting Director General Boas Seruwe said: *"the public sector had made strides in transforming workplaces, while in the private sector it is still business as usual as the disappointing status quo prevails. Strengthening enforcement and increasing fines alone would not be sufficient. Transforming the workplaces required commitment and from now on it will be business unusual as the struggle to transformation unfolds"*

The LWO Employer Organisation hereby urges all employers to ensure that their EE reporting and plans are done. Compliance with the applicable legislation is of the utmost importance to minimise employers' risks of fines by the Department of Labour. Director General Boas Seruwe might have stated that enforcement and increasing fines alone would not be sufficient but we foresee that this will definitely be the first step in ensuring transformation in the workplace. **Contact the LWO at 0861 101 828 for assistance in this matter.**



Hoorsê-getuienis en wat dit behels

Deur Crystal McLauchlin

Wat presies is hoorsê-getuienis en wat behels dit?

Baie mense is onseker oor hierdie term en wat dit beteken. Hoorsê-getuienis is getuienis wat indirek aangebied word en waarvan die persoon nie persoonlike kennis het nie. 'n Goeie voorbeeld is as werknemer A vir die werkgewer vertel dat werknemer B steel en dat hy gesien het hoe werknemer B steel. Die werkgewer hou dan 'n dissiplinêre verhoor en kla vir werknemer A aan van steel. In die verhoor weier werknemer B om te kom getuig en die werkgewer getuig dan dat werknemer B hom kom vertel het van die insident. Hierdie sal dan klassifiseer as hoorsê-getuienis aangesien die werkgewer nie persoonlike kennis het van die insident nie en eenvoudig net die weergawe van werknemer B oortel. Nog voorbeelde van hoorsê-getuienis is verklaringe, verslae en klagtes ingedien deur kliënte.

Wat is die impak van hoorsê-getuienis?

Dit word algemeen aanvaar dat hoorsê-getuienis nie baie gewig dra nie en dus word dit in sommige gevalle glad nie eers toegelaat nie. Soos met alle regsreëls is daar wel uitsonderings waar hierdie tipe van getuienis wel toegelaat word. Hierdie uitsonderings is as volg:

- Die bepalings van wetgewing voorsien vir die toelating van hoorsê getuienis;
- Dat die party teen wie die hoorsê getuienis aangevoer word instem tot die toelating van die getuienis.

- Indien daar hoorsê-getuienis gelewer word moet die geloofwaardigheid van die persoon wat die gebeurtenis waargeneem het ook in ag geneem word. Daar kan selfs getuienis oor sy geloofwaardigheid gelewer word.
- Indien die KVBA / Hof van oordeel is dat die getuienis in belang van geregtigheid is en dus toegelaat moet word.

Aangesien hoorsê-getuienis baie onbetroubaar is, sal die kommissaris of voorsittende beampte elke saak op sy eie meriete oorweeg en self besluit of die getuienis toelaatbaar is al dan nie. **Vir meer inligting of advies, kontak gerus die LWO by 0861 101 828.**



Beroepsgesondheid en -veiligheidsdienste

Deur Dr. Burger Olivier

Dit is van kardinale belang dat werkgewers aan die Wet op Beroepsgesondheid en -veiligheid voldoen om hul risiko te beperk in dié verband, asook die gesondheid en veiligheid van werknemers in die werksplek te verseker. Dus sal werkgewers opleiding moet verskaf rakende seker toerusting asook verseker dat toerusting in stand gehou word. Werkgewers word aangemoedig om beleide en prosedures te implementeer en sorgvuldig na te volg om veiligheid in die werksplek te verseker.

Elke werksplek is 'n uitdagende omgewing waar werknemers blootgestel kan word aan verskeie potensiële veiligheids- en gesondheidsrisiko's wat veroorsaak kan word deur onder andere, die berging van diesel, versuiming om onderhoud aan masjinerie en voertuie te verseker, MSDS ("material safety data sheet") chemikalieë, dosering van lewende hawe, natuur- en weersomstandighede (soos byvoorbeeld brande, oorstromings, donderstorms, ens.), hoe stroomspanning, swaar vragte wat vervoer moet word en nog vele meer. Natuurlik kan die risiko van die werknemers ook toeneem in gevalle waar daar met ongeskoolde arbeid gewerk word.

Die beste manier om veiligheid in enige werksplek te verseker is om ses-maandelikse veiligheidsopleiding aan alle personeel te



risiko's, is kostes wat selde voor begroot word.

Voorkoming is altyd beter as genesing. Vir besigheidseienaars kan sorgvuldige vooraf sorg verliese en afwesigheid beperk en effektiwiteit verhoog. Werkgewers boet direk of indirek in met beserings aan diens wat dikwels te wyte is aan 'n gebrek aan vooraf sorg (tot 'n veilige werksomgewing).

Die LWO help deur middel van spesialies-kennis en -hulp, om risiko's vooraf te identifiseer, te evalueer en maatreëls te implementeer wat kostes bespaar, asook (noodlottige) beserings aan diens sover moontlik voorkom.

Die LWO se spesialieshulp in hierdie verband help op 'n pro-aktiewe wyse om situasies wat potensiële gevaar inhou te identifiseer en reg te stel om sodoende die werksplek te beveilig. Dit is die doel van hierdie wetgewing se administratiewe regulasies.

Ons nooi alle lede uit om met ons te skakel oor hoe die LWO waarde kan toevoeg tot u besigheid om produktiwiteit in u onderneming te verbeter en groter wins te verseker. **Kontak ons gerus by 0861 101 828.**

verskaf en gereeld met alle werknemers in gesprek te tree oor potensiële gevare en die risiko's daarvan asook voorkomende optredes. Voldoening aan die bogenoemde Wet is net een van vele vereistes waaraan besigheidseienaars moet voldoen.

Beperking van kostes/verliese is 'n baie groot faktor vir besigheidseienaars. 'n Besering aan diens, afwesigheid as gevolg daarvan, indiensneming van tydelike persone en gepaardgaande

The new minister and his deputy

By Morné Venter

Senzeni Zokwana is the newly appointed minister of Agriculture, Forestry and Fisheries and replaces Tina Joemat-Pettersson. Zokwana has a strong trade union background as former president of the National Union of Mineworkers (NUM) as well as one of the leaders of the South African Communist Party (SACP). Zokwana is a strong leader and this is reflected by the different positions he has held since 1984 when he was first elected as a shop steward.

Bheki Cele will act as Zokwana's deputy minister. Cele's predecessor was Dr. Pieter Mulder. Cele is best known for his position as the National Police Commissioner from 2009 until 2011. He is also famous for his outrageous hats, being outspoken and saying things like "shoot to kill" and "stomach in chest out". Cele is also of character to stand up for what he believes in.

Both being strong leaders, change in the labour market is inevitable



Bheki Cele



Senzeni Zokwana

which can possibly lead to an increase in trade union activities within the Agricultural Sector. We hereby would like to urge employers to act pro-actively and to contact the LWO so that we can assist you. A trade union can have a positive influence in the workplace when handled correctly. It can facilitate negotiations, be used as a tool to communicate with employees, assist in explaining legislation and requirements to employees as well as assist in controlling its members during a strike or even prevent strike action.

Positives one can take from the above appointments?

Zokwana is a strong leader, and he is willing to consult and discuss matters with all parties involved. 'General' Cele is passionate about his job and he always takes a firm stand in what he believes in. It is safe to say that there will be changes in the Agricultural Sector. Whether it is for the better or worse... only time will tell.

Contact the LWO at 0861 101 828 for advice and assistance.

Wat is die doel van die Con/Arb proses by die KVBA?

Deur Elmari Lemmer

Waarvoor staan Con/Arb en wat beteken dit vir my?

Con/Arb staan vir konsiliësie en arbitrasie en dit beteken dat die twee verskillende prosesse van konsiliësie asook arbitrasie saamgevoeg word op een dag. Wanneer 'n ooreenkoms nie tydens die konsiliësie proses bereik kan word nie, word daar dan direk oorgegaan na arbitrasie.

Wat gebeur tydens konsiliësie?

Konsiliësie is gewoonlik die eerste stap by die KVBA/Bedingingsraad. Tydens hierdie proses word daar gepoog om 'n ooreenkoms te bereik tussen die partye sonder om deur die arbitrasie proses te gaan en die partye se lot in die hande van die kommissaris te plaas. Met konsiliësie kan beide partye die uitkoms van die proses beheer. Die skikkingsooreenkoms wat tydens die proses bereik word is 'n volle en finale skikking en geen party kan die saak verder verwys na enige ander forum nie.

Wat is arbitrasie?

Arbitrasie is die tweede stap by die KVBA/Bedingingsraad en volg wanneer daar geen ooreenkoms tussen die partye bereik kon word nie. Die kommissaris reik dan 'n sertifikaat uit dat geen ooreenkoms tussen die partye bereik is nie en dat die proses moet oorgaan na arbitrasie. Arbitrasie is 'n formele proses op rekord waartydens beide partye getuienis moet lewer. Die kommissaris neem dan 'n finale besluit oor of die regte prosedure asook substantiewe redes tydens die proses teenwoordig was, asook watter partye onderskeidelik reg en verkeerd was. Die kommissaris se besluit is bindend vir beide partye.

Waar word die Con/Arb proses gebruik?

Soos verduidelik is Con/Arb die proses waar konsiliësie asook arbitrasie saamgevoeg is. Die proses is daargestel om die saaklading van die KVBA/Bedingingsraad te verlig en sake vinniger asook meer effektief af te handel.

Wat is die voordeel van die Con/Arb proses?

Die voordeel is om die dispuut binne een dag af te handel wat kostes bespaar vir beide partye.

Wat is die nadeel van die Con/Arb proses?

Die nadeel van die proses is dat partye reeds ten volle voorbereid moet wees vir arbitrasie sou die saak nie geskik kan word tydens konsiliësie nie. Alle getuies moet ook beskikbaar wees by die KVBA/Bedingingsraad.

Wat kan ek doen om die Con/Arb proses te skei?

Indien enige van die partye nie wil voortgaan met arbitrasie op dieselfde dag na konsiliësie nie, moet daar sewe dae voor die datum van die Con/Arb beswaar gemaak word teen die arbitrasie proses. Hierdie beswaar moet geliasseer word by die KVBA/Bedingingsraad en moet ook op die ander party beteken word.

Kontak die LWO by 0861 101 828 vir advies en bystand.

