

Fixed term contracts

By Elmar Lemmer

The long awaited amendments made to the Labour Relations Act (LRA) came into effect on 1 January 2015, giving employers the chance to implement and comply with the amendments until 31 March 2015. One of the significant amendments includes regulations regarding the usage of fixed term contracts by employers.

The amendment introduces new provisions regarding the duration and status of fixed term contracts, relating to employees earning below the earnings threshold - currently set at R205 433,30 per annum. From 1 April 2015, employees employed on a fixed term basis for longer than three months will be deemed to be permanent employees of the employer, unless the longer fixed term period is justifiable.

The employer may still engage employees below the earnings threshold on a fixed term contract, but must take note of the limitations set regarding the period of engagement. This period may only exceed three months if the nature of the employee's work is of a limited or definite duration, or if the employer is able to demonstrate any other justifiable reason for providing the employee with a fixed term contract.

The onus of proof rests on the employer to justify the reason for contracting on a fixed term basis and that these terms were agreed upon between the parties. In the absence of a justifiable reason, the employee can be deemed to be a permanent employee of the employer.

What will be considered to be a justifiable reason for employing an employee on a fixed term contract for longer than three months?

The LRA lists the following justifiable reasons to employ an employee on a fixed term contract for longer than three months:

- replacement of another employee who is temporarily absent;
- temporary increase in work volume (expected duration up to 12 months);
- student or graduate internships;
- project work;
- non-citizens that have been granted a work permit for a defined period;
- seasonal work;
- public works or job creation schemes;

- positions funded by external sources for a limited period;
- after retirement age was reached; or
- any other justifiable reason.

Please contact the LWO at 0861 101 828 for advice and/or assistance when contracting on a fixed term basis.



Vakbondregte binne die werksplek

Deur Jan Swanepoel

Wanneer vakbonde aanspraak maak op regte binne die werksplek, kan dit 'n ongemaklike situasie skep vir werkgewers wat onseker is rakende hul eie regte en dié van die vakbond, asook hoe hierdie regte geregleer word.

Die Wet op Arbeidsverhoudinge (WAV) erken vakbonde se regte en reguleer ook die volgende regte:

- ① Toegang tot die werksplek (om werknemers toe te spreek en na hul belange om te sien - enige besoek moet voor die tyd met die werkgewer gereël word en die WAV bepaal dat besoeke op 'n redelike tyd gehou moet word);
- ② Aftrekking van vakbondregistrasiefoeie;
- ③ Vakbondverteenvoordiging in die werksplek (die vakbond kan werknemers verkies om as verteenwoordigers binne die werksplek op te tree);
- ④ Verlof vir vakbondaktiwiteite (redelike betaalde tyd af vir verteenwoordigers om vakbondaktiwiteite by te woon - die wet bepaal nie hoeveel betaalde of onbetaalde dae toegestaan moet word nie en moet dit dus deur die partye ooreengekom word);
- ⑤ Openbaarmaking van informasie (relevante inligting beskikbaar stel vir die vakbond om hul pligte uit te voer).



in die werksplek wil uitoefen. Die vakbond moet ook 'n kopie van sy registrasiesertifikaat, asook lidmaatskap aansoekvorms as bewys van hoeveel werknemers die vakbond verteenwoordig, hierby aanheg. Die wet stipuleer dat die werkgewer dan binne 30 dae hierna met die vakbond moet konsulteer om 'n kollektiewe ooreenkoms te sluit wat die vakbond se regte sal bevestig en reguleer.

Daar word onderskeid getref tussen vakbonde met voldoende en meerderheid verteenwoordiging binne die werksplek. Voldoende verteenwoordiging word in die praktyk asook regspraak as 30% aanvaar en meerderheid verteenwoordiging as 50% + 1. Hierdie onderskeid het 'n effek op watter regte die vakbond geregtig is. 'n Vakbond met voldoende verteenwoordiging in die werksplek is slegs geregtig op die eerste twee regte soos hierbo uiteengesit, terwyl 'n vakbond met meerderheid verteenwoordiging binne die werksplek geregtig is op al vyf regte.

Die wetswysigings wat op 1 Januarie 2015 in werking getree het stipuleer dat 'n kommissaris van die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA) by magte is om regte wat gewoonlik net aan 'n meerderheid verteenwoordigende vakbond toegestaan word, nou ook aan 'n voldoende verteenwoordigende vakbond toe te staan.

Kontak die LWO by 0861 101 828 vir meer inligting en/of bystand wanneer daar 'n vakbond in u werksplek is.

LWO: New Microsoft Dynamics CRM operating system

The LWO aims to be the preferred employers organisation for employers on a national basis, based on the professional and effective services delivered to members. In an effort to continuously better our services, a new operating system was recently implemented. Herewith an extract from a press release by AccTech Systems.

Tertius Zitzke, CEO of AccTech Systems, says: "AccTech believes that South Africa's labour laws can protect and serve the rights of all employees, but that employers' rights should also be respected

and both parties should be fairly treated. By helping to keep the system free from abuse and ensuring fair treatment, AccTech believes that LWO provides a valuable service to the people of South Africa."

Pieter Breytenbach, CEO of LWO, says: "We have a broad base of field representatives who engage with employers around South Africa. These individuals need to be able to access client information and log their engagement details. This was being done manually and meant that a lot of valuable information

was lost. By moving to a cloud-based CRM solution, all data is captured in real-time back to a central system, from where it can be analysed and reported on.

LWO implemented **Microsoft Dynamics CRM**, integrated to **Microsoft Office 365**, hosted at **Enterprise Cloud**, due to the minimal reliance on expensive hardware as well as the ability to easily empower the regional and field-based staff.

Microsoft Dynamics CRM's integration to Microsoft Outlook 365 enabled staff in rural areas without Internet connectivity to capture their notes offline and then synchronise back to Microsoft Dynamics CRM once they reach connectivity again.

Zitzke adds: "By implementing

Microsoft Dynamics CRM, LWO is now able to expand its marketing efforts to bring more employers under its reach. It also understands its existing clients better, and because it can now perform trend analysis on the kinds of problems being experienced by employers, it can create packages which better suit the needs of individual industries or regions."

The efficient case management process which is constructed in Dynamics CRM allows the legal representatives to access all key information prior to attendance at the CCMA/disciplinary hearing, and it also ensures the co-ordination of these legal representatives is much easier, leading to a better legal service being provided to the employers of South Africa.

Does the commissioner have the final say in CCMA matters?

By Marelize Roets

Employers often ask whether they have any remedies at their disposal if the employer is dissatisfied with an arbitration award made by a commissioner. The Commission for Conciliation, Mediation and Arbitration (CCMA) rules do not make provision for appeal proceedings. Parties may however apply for the rescission of an arbitration award or the aggrieved party may lodge a review application. Review applications could prove to be a costly exercise as these matters may only be challenged in the Labour Court.

When lodging a review application, the applicant must be able to prove that:

- the commissioner committed misconduct in the making of an award; or
- the commissioner committed a gross irregularity in making the award; or
- the award exceeded the commissioner's powers; or
- that the award was improperly obtained.



It might be more difficult in certain instances to determine whether the requirements for a review proceeding have been satisfied. Our courts were recently tasked with determining if an arbitration award can be taken on review if the commissioner failed to provide proper reasons for his finding. It was held in The Workforce Group v CCMA & Others (unreported case number JR30688/11 decided on 27 February 2015) that one cannot draw the conclusion that

the commissioner failed to apply his mind to the material facts of a matter based solely on the conciseness of an arbitration award. The court identified the material facts of the matter and came to the conclusion that the commissioner failed to apply his mind to all material issues.

Commissioners are in a position of trust and therefore commissioners must tread carefully when they consider material facts relating to the matter. There is a tremendous responsibility resting on the shoulders of commissioners as the commissioners must identify all material facts relevant to a matter and then reach a reasonable finding. Employers should however keep in mind that an unreasonable arbitration award may be challenged if the necessary requirements for review proceedings can be identified.

Please contact the LWO at 0861 101 828 for advice and/or assistance when you are dissatisfied with an arbitration award made by a commissioner.

Oortydbetaling vir bestuurders

Deur Crystal McLauchlin

Kan daar van 'n bestuurder vereis word om sonder bykomende betaling oortyd te werk, wat werk op Sondae en openbare vakansiedae insluit?

Die Wet op Basiese Diensvoorwaardes sluit senior werknemers, asook werknemers wat meer as die voorgeskrewe inkomste drempel, soos van tyd tot tyd deur die Minister van Arbeid vasgestel (tans R205 433,30 per jaar) uit ten opsigte van oortydbetaling. Hulle kan dus nie op oortydbetaling aanspraak maak tensy dit so ooreengekom word in hul dienskontrak nie. In gevalle waar die bepaling van 'n dienskontrak wat meer gunstige voorwaardes bevat as wat die wet stipuleer, sal die mees gunstigste voorwaardes geld.

Die wet omskryf 'n senior werknemer as "iemand wat die gesag het om werknemers aan te stel, te dissiplineer en te ontslaan, en om die werkgewer intern en ekstern te verteenwoordig".

Die werksure en betaalvoorwaardes te opsigte van senior werknemers, moet dus tussen die werkgewer en die werknemer by die aanvang van diens onderhandel en gestipuleer word in die dienskontrak om enige verwarring te voorkom. Werksure mag egter nie so oormatig wees dat dit die senior werknemers se gesondheid, behoefte aan rus en 'n redelike gesinslewe benadeel nie.

Werknemers wat minder as die inkomste drempel verdien kan tot 45 ure per week werk en mag nie meer as 10 ure oortyd per week werk nie. Hierdie werknemers is ook geregtig op oortydbetaling en ekstra betaling vir werk op Sondae, openbare vakansiedae en nagwerk.

Kontak die LWO vir meer inligting by 0861 101 828.

