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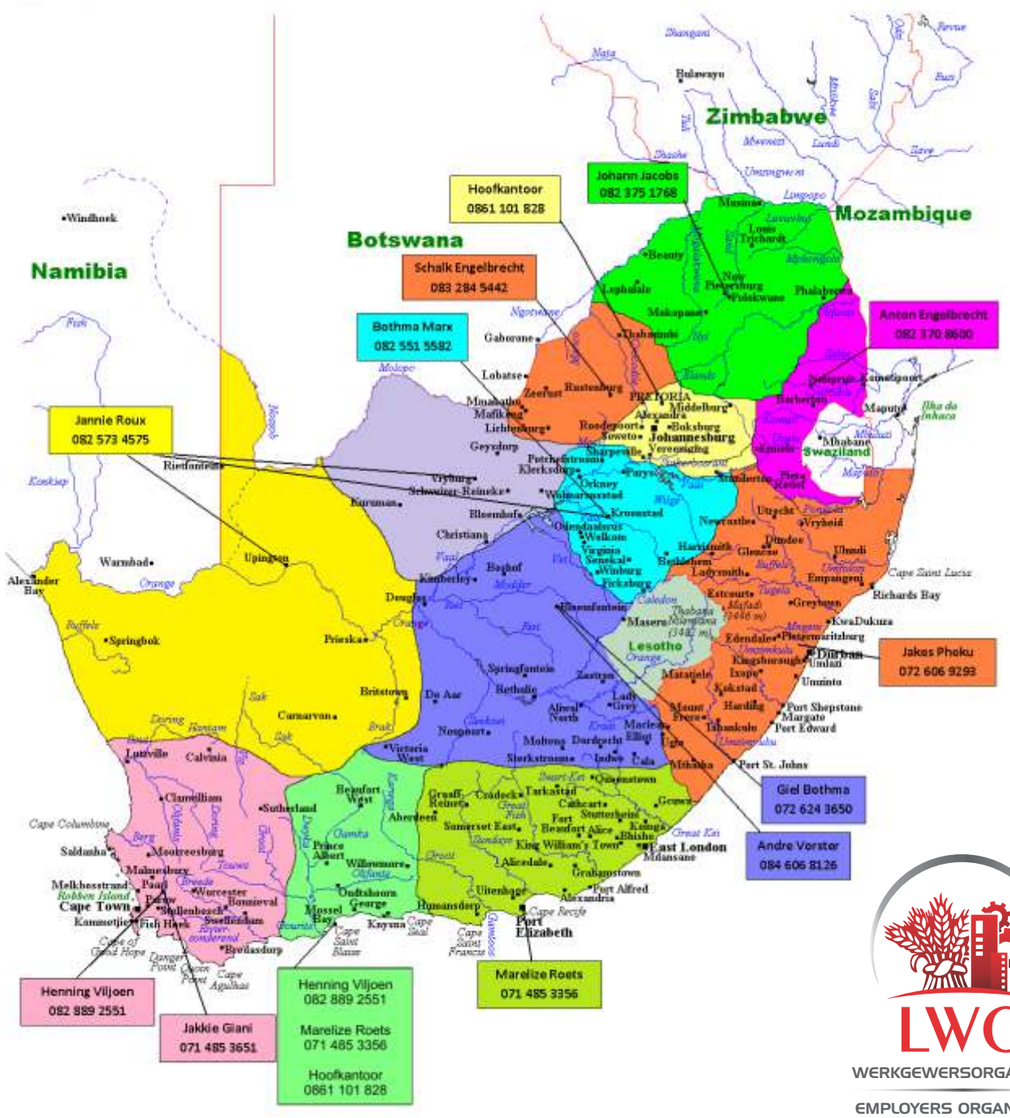

LWO
WERKGEWERSORGANISASIE
EMPLOYERS ORGANISATION

24 Jaar/Years 1990-2014
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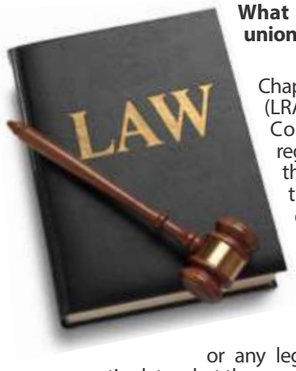
Nuusbrief van die LWO Werkgewersorganisasie | Newsletter of the LWO Employers Organisation

Relax, it is just a union!

By Morné Venter

There is a trade union on your doorstep, now what? A trade union is not necessarily a bad thing for both employees and employers. For employees it can also include benefits such as funeral plans, legal assistance and representation as well as educational programs. One can therefore see why employees might consider becoming part of a trade union. For employers a trade union can facilitate negotiations, be used as a tool to communicate with their employees and assist in explaining the law and requirements to their employees. Furthermore it can also assist in the control of its members during industrial strike action and in some cases even prevent industrial strike action. Fear of the unknown is one of the main reasons some employers are intimidated by trade unions and therefore obstruct their rights.



What does the law say about trade unions and their rights?

Chapter iii of the Labour Relations Act (LRA), Part A, Section 11 – 22 explains Collective Bargaining. Section 12 regulates the trade unions' access to the workplace. It is important to note that the below mentioned rights are only applicable to trade unions that are sufficiently representative of employees in the workplace.

What does sufficiently representative mean? The LRA, or any legislation for that matter, does not stipulate what the percentage representation must be for it to be sufficient, but in previous CCMA and Labour Court matters the courts have decided that in the range of 30% is sufficient representation.

Section 12 of the LRA: Trade union access to the workplace

① Any office-bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members, or communicate with members, or otherwise serve members' interests.
② A representative trade union is entitled to hold meetings with employees outside their working hours at the employer's premises.
③ The members of a representative trade union are entitled to vote at the employer's premises in any election or ballot contemplated in that trade union's constitution.
④ The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

What should you as an employer do? Firstly, it is of utmost importance to determine if a trade union is a registered trade union. This can be done by asking for the trade union's registration certificate or by contacting the Department of Labour. The employer must also ensure that the trade union can represent its employees, therefore ensure that the trade union's scope of application covers the employer's activities.

According to the LRA, the trade union must request to consult with the employer, after which a meeting must be held within 30 days, otherwise the trade union can refer the matter to the CCMA. During such a meeting the employer will verify the trade union membership application forms and ensure that the employees signed the forms and agreed to the deductions.

It is also in the employer's best interest to sign a Recognition Agreement. This agreement will stipulate the agreed upon terms and conditions whereby the trade union is permitted and allowed to operate in the workplace.

Are employees allowed to join a trade union? According to the Labour Relations Act, chapter ii Section (4)(1) states that every employee has the right to – b) join a trade union, subject to the Constitution. Just as the employer can join an employer's organisation, as you did when you joined the LWO.

The above mentioned is the standing rule but the opposite also applies. No employee may be forced, discriminated against, or be victimised if they choose not to participate in trade union activities.

When a trade union comes knocking, rather call the LWO and we will gladly assist you. Contact us at 0861 101 828.

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 regsdienste, asook verwante dienste op die gebied van Arbeidsreg.

Die LWO is 'n nie-winsgewende ledeorganisase 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 regsdienste, 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.

Employment tax incentive

By Mariëtte Redelinghuys

The Employment Tax Incentive Bill, Bill 46 of 2013 came into effect on 1 January 2014. It is of the utmost importance that all employers are aware of this Act and what it entails.

What is the purpose of the Act?

Unemployment under the youth in South Africa is on the rise and has a negative influence on the economy of the country. The Employment Tax Incentive Act was therefore proposed and brought in place to encourage creation of employment under the youth of South Africa, to ensure that the youth and matriculates also receive opportunities to enter the job market and obtain skills.

What does the incentive entail?

The Employment Tax Incentive is an incentive mainly aimed at encouraging employers to hire young and inexperienced job seekers. It will reduce the cost to employers of hiring youth through a *cost-sharing mechanism* funded with the support of government.

The South African Revenue Service states that this incentive will complement existing government programs with similar objectives.

When will Employers qualify?

- If the employer is registered for employees' tax (PAYE);
- If the employer is not in the national, provincial or local sphere of government;
- If the employer is not a public entity listed in Schedule 2 or 3 of the Public Finance Management Act (other than those public entities designated by the Minister of Finance by Notice in the Gazette);
- If the employer is not a municipal entity;
- If the employer is not disqualified by the Minister of Finance due to displacement of an employee or by not meeting such conditions as may be prescribed by the Minister in the regulation. (Take note that displacement for the purposes of the Act is when an employee was automatically unfairly dismissed or when an employer ends the services of an employee to replace that person with another employee of a lower age, only to qualify for the incentive.)

Employees will qualify if he or she:

- has a valid South African ID;
- is 18 to 29 years old (please note that the age limit is not applicable if the employee renders services inside a special economic zone (SEZ) to an employer that is operating inside the SEZ, or if the employee is employed by an employer that operates in an industry designated by the Minister of Finance;
- is not a domestic worker;
- is not a "connected person" to the employer;
- was employed by the employer or an associated person to the employer on or after **1 October 2013**; and
- is not an employee in respect of whom an employer is disqualified to receive the employment tax incentive ETI (i.e. the employee is paid below the minimum wage applicable to that employer, or paid a wage below R2 000 per month if a minimum wage is not applicable).

Please note that an employer can hire as many qualifying employees as he/she wishes since there is no limit set in the Act.

The incentive or subsidy works as follows according to SARS:

The employer will calculate and claim the incentive on a monthly basis, by:

- identifying all qualifying employees in respect of that month;
- determining the applicable employment period for each qualifying employee;
- determining each employee's "monthly remuneration";
- completing the EMP201 form, which was amended to include a field for claiming the employment tax incentive;
- calculating the amount of the incentive per qualifying employee as per the below table.

In determining the first or the second 12-month period, only the months in which the employee was a qualifying employee are taken into account. For example, the employee may be a qualifying employee in the first three months but not a qualifying employee in the fourth and the fifth months. If the employee is a qualifying employee in the sixth month, the sixth month is month number four as far as the 12-month period is concerned. **SARS states that** for the next biannual reconciliation submission process in 2014, the EMP501 and IRP5 will also be updated with the necessary fields.

The incentive is scheduled to end on **31 December 2016**, however the effectiveness thereof will be reviewed and the incentive may continue thereafter.

Please contact the LWO at 0861 101 828 or info@lwo.co.za for any assistance in this matter.

Monthly Remuneration	Employment Tax Incentive per month during the first 12 months of employment of the qualifying employee	Employment Tax Incentive per month during the next 12 months of employment of the qualifying employee
R0 - R2 000	50% of Monthly Remuneration	25% of Monthly Remuneration
R2 001 - R4 000	R1 000	R500
R4 001 - R6 000	Formula: R1 000 - (0.5 x (Monthly Remuneration - R4 000))	Formula: R500 - (0.5 x (Monthly Remuneration - R4 000))

Is 'n formele dissiplinêre verhoor regtig nodig?

Deur Elmari Lemmer

Die Wet op Arbeidsverhoudinge van 1995 maak uitdruklik voorsiening daarvoor dat 'n beskuldigde werknemer die reg het om gehoor te word. Die verdere regte van die werknemer word dan ook baie duidelik gestipuleer in die Goeie Praktykskode: Ontslag in Skedule 8.

Maar die vraag op meeste werkgewers se lippe is dan wat is die regte van 'n werknemer? Die regte word soos volg omskryf:

- die reg om gehoor te word is die belangrikste reg in die opsig;
- om deeglik ingelig te word waarvan hy/sy aangekla word;
- om 'n redelike tyd gegun te word om voor te berei vir die verhoor.

Die Goeie Praktykskode: Ontslag in Skedule 8 stipuleer nie dat die dissiplinêre proses formeel of informeel moet wees nie, maar duisende werkgewers verloor jaarliks sake by die KVBA en Bedingingsrade omdat hulle nie gehoor gee aan die werknemer se regte soos hierbo genoem tydens 'n informele dissiplinêre verhoor nie.

Werkgewers wat sake voortspruitend uit onbillike ontslag wil vermy moet verseker dat hulle aan die prosedurele regte van die werknemer gehoor gee en dit dan natuurlik ook kan bewys tydens 'n KVBA of Bedingingsraad saak.

Hoe gaan ek as werkgewer te werk om te verseker dat ek die proses reg volg en aan die regte van die werknemer gehoor gee asook onbillike ontslag uitsprake in die proses vermy?

① Die werknemer moet skriftelike kennis van die verhoor ontvang en die werknemer moet ook teken vir ontvangs van die dokumentasie. Indien die werknemer weier om die dokumentasie te teken, moet die werkgewer saam met 'n getuie deur die dokumentasie gaan en verseker dat die werknemer dit verstaan. Sou die werknemer dan nogsteeds weier kan die werkgewer sowel as die getuie die dokumentasie onderteken en 'n nota maak dat die werknemer weier om die dokumente te teken.

② Dit is belangrik dat die kennisgewing die oortredings / insidente volledig omskryf sodat die werknemer weet waarvan hy/sy aangekla word en daar geen verwarring kan ontstaan nie. Dus is dit belangrik om ook die datum en tyd van die insident(e) op die kennisgewing aan te dui.

③ Die werknemer moet dan ook 'n redelike tyd gegun word om voor te berei vir die verhoor. Die LWO se beleid van 'n redelike tyd stipuleer dat die werknemer ten minste 'n 48 uur kennis kry om voor te berei vir die verhoor, dit sluit naweke en publieke vakansiedae uit.

④ Die werknemer moet die geleentheid gegun word om sy/haar saak te stel. Dit is dan natuurlik die hoofrede hoekom 'n dissiplinêre verhoor uiters belangrik is. Die werknemer kan ook met die hulp van 'n verteenwoordiger, getuies en deur getuies en/of bewyse te kruisondervra, sy/haar saak stel.

⑤ Die werknemer het dan ook die reg om regverdig beoordeel te word.

As ons gaan kyk na alles wat genoem is asook die regte van die werknemer en die risiko's vir die werkgewer, is dit definitief beter om eerder 'n formele dissiplinêre verhoor te hou en sodoende te verseker dat onbillike ontslag uitsprake nie by die KVBA of Bedingingsraad teen die werkgewer gegee word nie.

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

Kennis by diensbeëindiging

Deur Jan Swanepoel

Baie werkgewers vra wat die vereistes is kragtes die Wet op Basiese Diensvoorwaardes (Wet 75 van 1997, soos gewysig) wat verband hou met kennis by diensbeëindiging en wat die werkgewer se regte is in die verband.

Die Wet op Basiese Diensvoorwaardes (Artikel 37) bepaal dat die volgende kennis gegee moet word by die beëindiging van 'n dienskontrak:

- een week, indien die werknemer ses maande of minder in diens was;
- twee weke, indien die werknemer langer as ses maande werk maar minder as een jaar in diens was;
- vier weke, indien die werknemer 'n jaar of langer in diens was.

Die Wet maak voorsiening dat die kennisperiodes verleng mag word deur middel van 'n skriftelike ooreenkoms, maar dit mag nie minder voordelig wees as die periodes wat deur die Wet voorgeskryf word nie. Die werkgewer het ook die diskresie om te besluit of die werknemer sy/haar kennisperiode moet werk al dan nie. Indien die werkgewer besluit dat die werknemer nie sy/haar kennisperiode hoef te werk nie, is die werknemer steeds geregtig op betaling vir daardie periode.

Wat staan die werkgewer te doen indien die werknemer weier om sy/haar kennisperiode te werk?

Die werkgewer het die reg om 'n siviele saak teen 'n werknemer aan hange te maak om die werkgewer se skade te verhaal wanneer 'n werknemer weier om kennis te werk. Maar dit is 'n baie duur en tydsame proses.

Daar is wel 'n eenvoudiger manier om die situasie te oorkom. Die LWO adviseer ons lede om 'n klousule in die dienskontrakte in te sluit wat die werkgewer die reg gee om die geld af te trek indien 'n werknemer nie die voorgeskrewe kennisperiodes werk nie. Dit is belangrik om te onthou dat aftrekkings nie gemaak mag word behalwe as daar 'n ooreenkoms is wat voorsiening maak daarvoor nie. Dus is dit noodsaaklik om die klousule in u dienskontrakte te vervat.

Kontak die LWO by 0861 101 828 om u hierin by te staan.