

Bedanking met 24 uur kennis?

Deur Eric Schoeman

'n Bedanking in eenvoudige terme beteken dat 'n werknemer 'n vrywillige, eensydige besluit neem om die diens van die werkgever te verlaat. Daar is dus geen toestemming nodig wat van die werkgever verkry moet word om te bedank nie.



Artikel 37 van die Wet op Basiese Diensvoorwaardes ("WBDV") bepaal dat 'n bedanking skriftelik ingedien moet word en dat daar minimum kennisperiodes is wat gewerk moet word voordat diens beëindig kan word. Hierdie kennisperiodes geld vir beide die werkgever en die werknemer.

Die tydperk wat die werknemer in diens was bepaal die kennisperiodes

wat vereis word by bedanking. Volgens die WBDV is die volgende kennisperiodes van toepassing waar 'n werknemer in diens was vir:

- ses maande of minder, word een week kennisgewing vereis;
- meer as ses maande, maar minder as 'n jaar, word twee weke kennisgewing vereis; en
- een jaar of meer, word vier weke kennisgewing vereis.

Let daarop dat hierdie kennisperiodes kan wissel afhange van industrie spesifieke wetgewing van toepassing op jou besigheid - kontak die LWO vir bevestiging of daar 'n sektorale vasstelling en/of bedingingsraadooreenkoms van toepassing is op jou besigheid en industrie.

Hierdie kennisperiodes mag verkort word of van afstand gedoen word indien beide die werkgever en werknemer so daarop ooreenkom. Enige ooreenkoms moet skriftelik bevestig word om moontlike toekomstige dispute te vermy en die werkgever te beskerm.

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 lede-organisasie sonder winsbejag 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 uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste bedien word.

Who is the LWO?

The LWO was established during 1990 as an employers' organisation in order to assist employers with legal services within the field of labour law.

The LWO is a non-profit members' organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure to assist members effectively on a national basis.

The purpose/goal of the LWO

The LWO aims to be the employers' organisation of excellence for employers based on the professional manner in which members of the LWO is served with labour law services.

Daar word geen voorsiening gemaak in enige arbeidswetgewing vir 24 uur kennisperiodes nie. Indien 'n werknemer 24 uur per maand of meer vir 'n werkgever werk en geen kontraktuele bepalinge op ooreengekom is tussen die werkgever en die werknemer nie, sal die bepalinge van Artikel 37 van die WBDV van toepassing wees.

Indien 'n werknemer dus nie die vereiste kennisperiode werk nie, kan die werkgever 'n siviele eis vir skadevergoeding teen die werknemer instel indien enige skade bewys kan word. Laasgemelde kan verhoed word deur 'n indiensnemingskontrak in plek te hê wat 'n proaktiewe klousule bevat wat voorsiening maak vir die aftrekking van 'n bedrag skade sou die werknemer nie gehoor gee aan die bepalinge van die kennisperiode nie.

Kontak die LWO Werkgewersorganisasie vir bystand wanneer enige diensverhouding tot 'n einde kom ten einde te verseker dat jou regte as werkgever beskerm word. Kontak ons 24/7 regsadvies hulplyn vir bystand by 086 110 1828 of stuur 'n e-pos na info@lwo.co.za.

DID YOU KNOW... the LWO can assist any employer in any industry to comply with labour law.

The LWO's members range across *all* business industries and are highly satisfied with our services.



The Employment Equity Act applies to all employers, but “designated employers” (who meet the minimum requirements) have additional responsibilities. Make sure you know what is expected of you and that you comply with this act. **The LWO can assist employers to comply with these requirements - contact us at 086 110 1828 for a quotation.**

Are you a “designated employer”?

A “designated employer” is any employer with **50 or more employees, OR an annual turnover of:**

- Agriculture _____ R6 million
- Mining and Quarrying _____ R22.5 million
- Manufacturing _____ R30 million
- Electricity, Gas and Water _____ R30 million
- Construction _____ R15 million
- Retail, Motor trade and Repair services _____ R45 million
- Wholesale trade, Commercial agents and Allied trades _____ R75 million
- Catering, Accommodation and other Trade _____ R15 million
- Transport, Storage and Communications _____ R30 million
- Finance and Business services _____ R30 million
- Community, Special and Personal services _____ R15 million

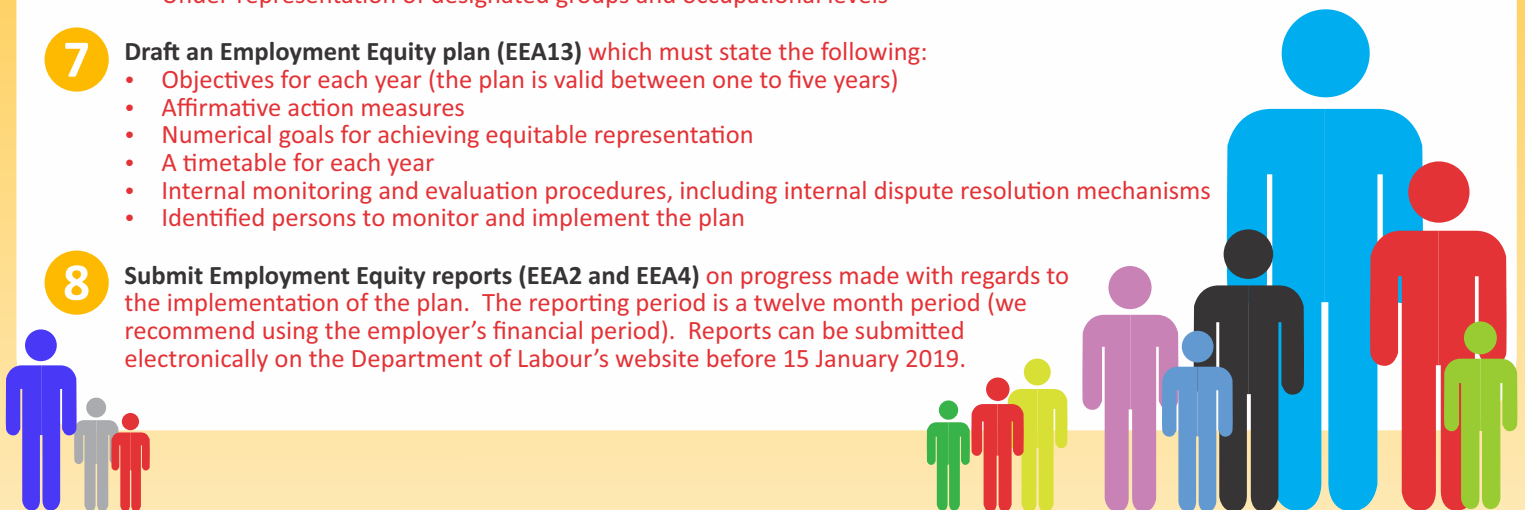
The Employment Equity Act aims to eliminate unfair discrimination in the workplace by promoting equal opportunities and fair treatment.



What is expected of a “designated employer”?

“Designated employers” have additional obligations and must take care to ensure the following is in place:

- 1** **Appoint a Senior Employment Equity Manager** to develop, monitor and implement the Employment Equity Plan (see step 7 below). This appointment must be a permanent employee and report directly to the CEO of the business.
- 2** **Collect information** - each employee must complete the EEA1 form confirming the employee’s race, gender, nationality and any disabilities where applicable.
- 3** **Create employment equity awareness with regards to all employees** – all employees should be made aware of and informed with regards to the objectives, content and application of the EEA, its regulations and Code of good practice.
- 4** **Establish an Employment Equity Committee** to hold regular consultations with regards to compliance with the EEA. This committee must be representative of both designated and non-designated employees and all occupational levels. Trade unions in the workplace must also be involved and form part of consultations.
- 5** **Hold regular (at least quarterly) consultations** to discuss the conducting of an analysis, development of a plan and submitting of the reports to the Department of Labour. These consultations must be structured and recorded via agendas, attendance registers and minutes of meetings held.
- 6** **Draft an analysis (EEA12)** which must include the following:
 - Policies and procedures to address the under-representation of designated groups and a lack of diversity in the workplace
 - Practices and factors to promote employment equity
 - Under-representation of designated groups and occupational levels
- 7** **Draft an Employment Equity plan (EEA13)** which must state the following:
 - Objectives for each year (the plan is valid between one to five years)
 - Affirmative action measures
 - Numerical goals for achieving equitable representation
 - A timetable for each year
 - Internal monitoring and evaluation procedures, including internal dispute resolution mechanisms
 - Identified persons to monitor and implement the plan
- 8** **Submit Employment Equity reports (EEA2 and EEA4)** on progress made with regards to the implementation of the plan. The reporting period is a twelve month period (we recommend using the employer’s financial period). Reports can be submitted electronically on the Department of Labour’s website before 15 January 2019.



Take note: Should a “designated employer” fail to comply with these requirements, a fine of up to **R2.7 million or 10% of the employer’s annual turnover (whichever is the greatest)** can be imposed.

Arbeidsmakelaars - wie het die laaste sê?

Deur Christo Bester

Artikel 198A (3)(b) van die Wet op Arbeidsverhoudinge ("WAV") bepaal dat 'n werknemer wat minder verdien as die verdienstedrempel (tans R205 433 per jaar) en wat deur 'n tydelike indiensnemingsdiens ("TES") (arbeidsmakelaars) gekontrakteer word vir meer as drie maande aan 'n kliënt, geag word in diens van daardie kliënt te wees.

Die Konstitusionele Hof besluit

Die Konstitusionele Hof moes besluit of 'n dubbele indiensnemingsverhouding waarin die werknemer in diens is van beide die TES en die kliënt bestaan en of daar slegs 'n enkele indiensnemingsverhouding tussen die werknemer en die kliënt bestaan vir sover die WAV van toepassing is.

Die Konstitusionele Hof het bevind dat artikel 198A (3)(b) van die WAV in eenvoudige, duidelike taal geskryf is en dat dit duidelik onderskei tussen werknemers wat by die TES werksaam is vir werklike tydelike werk, en diegene wat geag word in diens van die kliënt te wees na die verval van die drie maande tydperk.

Die Konstitusionele Hof het dus bevind dat die TES die werkgever van 'n werknemer vir die eerste drie maande is en daarna word die kliënt die enigste werkgever van die werknemer vir die doeleindes van die WAV.

Die Konstitusionele Hof het bevind dat die uitsluitlike werkgever-interpretasie nie 'n oordrag van indiensneming tot gevolg het nie, maar eerder 'n verandering in die statutêre



toewysing van verantwoordelikheid as 'n werkgever bewerkstellig; binne die drieledige verhouding tussen die TES, die kliënt en die werknemer.

Wat is die rol van die TES na drie maande?

Die verhouding tussen die TES, kliënt en werknemer is dus 'n drieledige verhouding wat tot gevolg het dat die funksies van die werkgevers verdeel word teen 'n fooi.

Die TES se primêre verantwoordelikhede is om die menslike hulpbronne-komponent van indiensneming te bestuur, terwyl die dag-tot-dag bestuur, werksomstandighede, werk toewysings en prestasie-assessering gewoonlik deur die kliënt uitgevoer word.

Dit beteken dat waar 'n werknemer ingevolge die WAV verligting van sy werkgever verlang (byvoorbeeld verligting vir 'n beweerde onbillike ontslag), moet sodanige verligting slegs teen die kliënt as werkgever aangevra word.

Waar die werknemer verligting verlang ingevolge (i) 'n kollektiewe ooreenkoms, (ii) 'n bindende arbitrasietoekenning wat bepalings en voorwaardes van indiensneming reguleer, (iii) die Wet op Basiese Diensvoorwaardes ("WBDV") of (iv) 'n sektorale vasstelling, kan sulke verligting teen die kliënt en die TES gesamentlik en afsonderlik, gevra word mits daar nog 'n kontrak en/of verhouding tussen die TES en die kliënt bestaan.

Alhoewel die uitspraak nie gunstig is vir TES (arbeidsmakelaars) nie, maak dit hulle nie oortollig nie en sal 'n TES steeds voort-bestaan in die werksomgewing so lank as wat kliënte vir kommersiële redes steeds van hulle dienste gebruik kan maak. Die Konstitusionele Hof se uitspraak maak die wyse waarop 'n TES 'n bydrae kan lewer net 'n meer ingewikkelde oorweging.

Kontak die LWO wanneer jy oorweeg om van 'n arbeidsmakelaar gebruik te maak ten einde te verseker dat jy nie onkant betrap word nie. Kontak ons by 086 110 1828.

Enforcement of CCMA settlement agreements/awards

By Adv Michelle Smuts

Settlement agreements are frequently regarded as an easy way out by the employer when dealing with a CCMA matter.

With the CCMA aiming to settle 70% of all cases, it should not influence the employer to settle each and every dispute. Especially when the correct procedure was in fact followed as sometimes these settlements could be more costly than planned.

Is a settlement agreement or arbitration award enforceable?

The Labour Relations Act provides that an arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ (warrant of execution) has been issued. With the process being simplified, it is only that much easier to enforce an unpaid arbitration award.

Interest is applicable...

If an arbitration award orders a party to pay a sum of money, the amount earns interest from the date of the award at the same rate as the rate prescribed in terms of the Prescribed Rate of Interest Act, unless the award provides otherwise.

What could happen if I do not act in terms of the settlement or award?

Once you have received your settlement agreement or arbitration award a date would have been agreed upon or given by when the payment or performance needs to take place. Should the employer fail to meet the deadline for the payment or performance he/she might be at risk of having the Sheriff knocking at their door.

Once an award is certified, it can be executed upon delivery to the Sheriff. There is no need to approach the Labour Court for a writ to be issued first.

Where the payment of an amount of money was agreed upon in a settlement agreement or an arbitration award was made in respect thereof,

the Sheriff may enforce the execution by attaching movable property of the employer and selling it for the amount that is owed to the employee.

Where there was an order for performance, the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court.

Accordingly, it is always the safest option to ensure that proceedings are attended to in a fair manner to avoid any unnecessary CCMA claims as well as any sheriffs who would be enforcing the agreements and awards thereof.

As a registered employers' organisation with the Department of Labour, the LWO can represent our members at the CCMA - contact us at 086 110 1828 for assistance.



Kontak die LWO/Contact the LWO

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Regsadviseur

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Klaas Venter

Pieter Breytenbach

Ansofie van der Walt

Daniel van der Vyver

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Mariëtte Redelinghuys

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