COX | YEATS
attorneys

21 Richefond Circle, Ridgeside Office Park,
Umhlanga Ridge, Durban l Dx 50, Durban
P O Box 913, Umhlanga Rocks, 4320
Tel: 031 536 8500 l **Fax:** 031 536 8088
Website: www.coxyeats.co.za

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CIRCULAR FROM THE LABOUR TEAM

As we enter 2014, and in an effort to keep our clients appraised of current developments within the industrial legal landscape, the Labour Team has undertaken to supply regular updates to clients, as and when there appears to be a need to do so.

Arising from developments at the tail-end of 2013, and at the onset of this new year, it is probably critical for employers making use of temporary staff, to pay attention to the following expected statutory amendments, under the Labour Relations Amendment Bill of 2013 (expected to be signed in to law this year):

- Staff earning below the ministerial threshold (currently R 193 805-00 per annum), appointed on fixed-term contracts for longer than three (3) months, will be *deemed* to be permanent, unless there is a *justifiable reason* for limited duration employment, as listed under Section 198 B.

- Temporary staff, appointed through a Temporary Employment Service (TES), will be deemed to be the employees of the TES client, should the duration of employment exceed 3 months, unless the appointment is as a substitute for a temporarily absent employee (Section 198 A).

- Typical to the construction industry, and flowing from Section 198 B, employers who employ fixed-term staff for a specific project (as a justifiable reason to exceed 3 months) will be liable for severance pay of 1 week's wages per annum, if the period of employment exceeds 24 months. Currently, under the BCEA, severance pay applies only upon termination of employment, for operational reasons.

- Under Section 198 B and C, although "*part-time employment*" is distinguished from "*fixed-term employment*", both categories require employers not to treat such staff less favourably, when compared to permanent staff, unless there is a justifiable reason for doing so. (It is interesting that probationary employment, which has no prescribed time-limits, as a species of temporary employment, is still retained under the amendments).

Commercially, the new Bill obliges responsible employers to:

- Carefully assess the extent to which their current staff complement potentially could result in *deemed* permanent employment;

- Perhaps take advantage of the more limited protection afforded to fixed-term staff under the current provisions of the LRA, by implementing non-renewals, where necessary. Under the current law, employees bear the onus of establishing the existence of a dismissal, by having to demonstrate a reasonable expectation of renewal, which the employer can still prove to be fair, on the grounds of misconduct, performance or operational requirements;

- Carefully revise and align the structure and content of their existing fixed-term contracts of employment, in accordance with the amendments;

- Restructure their temporary employment methods by implementing part-time employment contracts, where necessary, as opposed to fixed-term contracts (since Section 198 C now expressly recognises part-time employment).

Taking the above proactive approaches is in all probability the more prudent position for employers to take.

FURTHER ADVICE

Should you require advice or assistance on Employment Law matters, please contact: Chris Haralambous (031 - 536 8557 **charalambous@coxyeats.co.za**) or Jason Moodley (031 – 536 8535 **jmoodley@coxyeats.co.za**).