

OVERVIEW OF THE LABOUR RELATIONS AMENDMENT ACT 8 OF 2018

INTRODUCTION AND PURPOSE

The amendments to the Labour Relations Act (LRA) include provisions to:

- extend the conciliation process of mutual interest disputes prior to industrial action;
- prohibit picketing unless picketing rules are in place;
- require registered trade unions and employer organisations to provide in their constitutions for secret ballots of members prior to industrial action; and
- for the CCMA to establish an Advisory Arbitration Panel in an attempt to resolve industrial action where this is deemed to be in the public interest.

All these measures are designed to promote:

- the peaceful resort to a strike or lockout free of intimidation and violence;
- the maximum involvement of workers and worker representatives in negotiations; and
- steps to avoid and prevent prolonged or violent industrial action.

RESOLUTION OF DISPUTES THROUGH CONCILIATION (SECTION 135 (2A))

Parties still have the right to agree to extend the 30-day conciliation period. In the absence of such an agreement, the amendment to section 135 allows for the commissioner conciliating the dispute or a party to the conciliation to apply to the Director of the CCMA for an extension, not exceeding 5 days, in order to ensure a meaningful conciliation process.

The Director may only extend the period if satisfied that the extension is necessary to ensure a meaningful conciliation process; a party's refusal to agree to the extension is unreasonable; and that there are reasonable prospects of reaching agreement.

No extension is permitted by the Director where the State is the employer.

PICKETING

The aim of the amendments to section 69 of the Act is to prohibit a picket unless there are picketing rules in place. Accordingly, the amendments to the section require a commissioner (or a bargaining council conciliator) conciliating a dispute that may lead to industrial action to determine picketing rules if there is no existing agreement between the parties or

collective agreement regulating picketing, or the commissioner has failed to secure an agreement on picketing before the expiry of the conciliation period i.e. 30 days - unless otherwise extended.

The commissioner in determining the picketing rules must take into account representations made by the parties attending the conciliation or a person, other than the employer, if that person controls the premises where the picket is contemplated to take place. The commissioner in determining the rules must also take into account Annexure B of the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing, which provides guidelines on default picketing rules.

SECRET BALLOTS

By the introduction of section 95(9) to the Act a ballot is now defined as including "any system of voting by members that is recorded and in secret". The LRA requires trade unions and employer organisations that seek registration to have a provision in their constitutions requiring a ballot of members before embarking on industrial action.

The LRA does not require the conduct of a ballot as a requirement for a strike or lockout. Section 67(7) of the LRA explicitly states that no litigation affecting the protected status of a strike may arise from a failure to conduct a ballot.

Transitional provisions apply to the provision of a recorded and secret ballot in the constitution of a registered trade union and employers' organisation.

ESTABLISHMENT OF AN ADVISORY ARBITRATION PANEL

The introduction of sections 150A to 150E have the purpose of seeking to resolve strikes that are intractable, violent or may cause a local or national crises.

The amendments provide for the establishment of an advisory arbitration panel to investigate the cause and circumstances of the strike or lockout and make an advisory award in order to assist the parties to resolve the dispute.

The Director of the CCMA may establish an advisory arbitration panel on the Director's own accord; on application by a party to the dispute or by agreement between the parties; and if directed to do so by the Minister of Employment and Labour or the Labour Court, but only if the Director has reasonable grounds to believe that any one or more of the following circumstances exists:

- (i) the strike or lockout is no longer functional to collective bargaining in that it has continued for a protracted period of time and no resolution of the dispute appears to be imminent.
- (ii) there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the strike or lockout through the threat or use of violence or the threat of or damage to property, or
- (iii) the strike or lockout causes, or has the imminent potential to cause, or worsen, an acute national or local crises affecting conditions for the normal social and economic functioning of the community or society.

An advisory award is only binding if a party to the dispute has accepted or is deemed to have accepted the advisory award.

OTHER (SUMMARY)

Amendments have been made to section 32 of the LRA relating to requirements for the extension of collective agreements to non-parties to a bargaining council and with the insertion of section 32A "renewal and extension of funding agreements.

RELEVANT LEGISLATION

Labour Relations Act Amendment Act 8 of 2018