



Close Window

Axing labour brokers not the answer

21 July 2009
Sandile July

Trade unions should ensure they adhere to collective agreements

FIRST and foremost the Labour Relations Act provides for the temporary employer services – labour brokers.

The business of all labour brokers is to procure services for their clients. They employ people who in turn render services to their clients.

In terms of Section 198 of the LRA, a labour broker is the employer of a person who has been procured to render services to a client.

In the same breath, the person whose services have been procured by the labour broker is an employee of that labour broker.

A relationship between the three parties can best be explained as follows. A labour broker enters into a service level agreement with a client in terms of which the labour broker will procure a person to render services to the client.

The salary of this person is paid by the labour broker. The person who has been procured by the labour broker enters into a separate employment contract with the labour broker.

Except for rendering services to the client, there is no contractual obligation between the client and the one rendering the services.

This is a tripartite relationship.

The consequence of the tripartite relationship is that the labour broker and the client have different terms and conditions of employment applicable to their respective employees.

This gives rise to different terms and conditions applicable to the employees rendering the same service to the same employer.

Having said that, the provisions of the LRA seek to prevent the differentiation.

Section 198(4) provides: "the temporary employment services and the client are jointly and severally liable of the temporary employment service, in respect of its employees, contravenes:

- (a) a collective agreement concluded in a bargaining council that regulates terms and conditions of employment;
- (b) a binding arbitration award that regulates terms and conditions of employment;



FAIRNESS: Workers employed by a labour broker must enjoy the same rights as those employed on a permanent basis .

(c) the Basic Conditions of the Employment Act; or

(d) a determination in terms of the Wage Act.

It is clear from this that the labour broker is bound by the collective agreement that regulates the terms and conditions of employment in a particular sector.

The contravention of the collective agreement might result in both the labour broker and the client being liable. The labour brokers, like their clients, are equally bound by the BCEA.

The provisions of the LRA in an attempt to prevent the differentiation further provides for the extension, to the non-parties, of the collective agreements reached between two or more bargaining councils that fall within the registered scope.

It is my view, therefore, that there is no basis for employees employed by a labour broker not to enjoy the same rights and obligations that are enjoyed by employees employed on a permanent basis by a client of the labour broker.

I am not convinced that the abolishment of the labour brokers is the only way to deal with the problems experienced by the employees employed by the labour brokers.

Instead, the trade unions need to keep a close watch on labour brokers to ensure that they comply with the collective agreements and BCEA.

The trade unions also have to ensure that the collective agreements reached at the bargaining councils are extended to the non-parties.

Article Tools



Print



E-Mail

--oO Article End Oo--