

## A laborious issue

2009/10/05 01:59:00 PM

THE labour broking debate - which affects the essence of job creation and economic policy - is set to take off soon.

The process of trying to regulate or ban the practice will determine the fate of our economic future - and it's a tricky issue.

A glance at the arguments for and against the matter soon make it clear that answers won't be easy to find.

The arguments against labour broking have become fairly well known recently. They include no protection for workers when there are job cuts, as has happened to many thousands of people over the past year since the worldwide recession.

Wages are significantly lower for workers who do the same work but are appointed in ordinary posts. It's difficult or even impossible for trade unions to organise these people. There is also anxiety among employees faced with the uncertainty of such temporary, non-typical employment, because of the short-term nature of the jobs.

These objections are contained in a discussion document drawn up by University of Cape Town (UCT) labour law specialist Professor Paul Benjamin. Benjamin is an adviser to Minister of Labour Membathisi Mdladlana. The document is backed by sociologists, legal experts and economists at the University of the Witwatersrand and UCT.

The discussion document was used as a starting point for the Nedlac process of amending labour legislation in this regard. It was handed to representatives of Business South Africa (Busa) in September, with the message that formal draft legislation would follow by mid-October, that is within a week or so.

Benjamin's document states one side of the case, which received considerable attention especially during the election campaign. The debate so far has been emotional and one-sided, particularly since it was an election issue. The organised business sector hasn't really had much to say about it yet.

The counter-arguments have been set out properly for the first time in a document drawn up for Busa by the Confederation of Associations in the Private Employment Sector (CAPES), an association of labour brokers, in view of the coming Nedlac process.

### **New facts come to light**

This document contains valuable information about the temporary employment sector which has not been disclosed in South Africa before.

Here are some examples.

- About 902 350 people work for labour brokers, and an industry with an annual turnover of R23bn has come into being. Including temporary workers managed by the companies themselves without the assistance of agencies, the total workforce comes to about 2.7 million people.
- CAPES claims that since 2005 the industry has introduced about 3.5 million people to temporary, part-time or contract work. For 2 million of them, it was the first time they had ever worked.
- Among the contract workers who work through brokers, service conditions of 79% of them are covered by existing bargaining council agreements. It therefore looks as if the problem with the exploitation of these

workers is not so much the low levels of protection, but rather the inability of bargaining councils and trade unions to recruit these labourers and to enforce labour standards.

- About 57% of workers who find work through labour brokers are first-time employees, and 85% of them are young people between the ages of 18 and 35. CAPES says it's misleading to compare their conditions of employment with those of more experienced workers.

"Labour broking is in fact the most important route to traditional, permanent jobs in South Africa, because 32% of the broker workers are given permanent jobs within 12 months, and 47% get such jobs within three years.

"This indicates that labour brokers are involved in facilitating jobs, rather than creating them. It doesn't make any sense to hold labour brokers responsible for the nature and quality of jobs in the economy," the CAPES document reads.

The organisations want an overall controlling body to be formed out of the ranks of existing brokers to control the industry. CAPES proposes making it compulsory for labour brokers to register with this body.

### **Throwing out the baby with the bathwater**

The organisations say that temporary employment is an essential part of total employment in cyclical sectors like transport, commerce and construction.

Labour brokers only handle about one-third of the total temporary workforce, and banning them will therefore not solve the problem.

These figures and arguments more or less state the other side of the case.

There is little doubt that many labour brokers came into being in order to dodge labour legislation - to bring about more "flexibility" in employment, in such a way that flexibility is nothing more than a means to water down employee protection.

But it looks as if most of the jobs created in the boom years before the worldwide recession were formed by unconventional methods of employment. And simply banning them, as stated in election slogans, would be a case of throwing out the baby with the bathwater.

In the 1990s, the organised business sector made serious requests for a so-called two-tier labour system - a regulated labour market, as we all know it today, and an unregulated labour market in which employment would be cheap and easy. It was rejected by President Nelson Mandela's new ANC government without a moment's hesitation.

Is today's labour-broking sector not simply the second-tier labour system asked for at the time?

And will a ban not simply result in this kind of employment just reasserting itself later in some other way?

Those who negotiate the plans for legislation must think very carefully. Benjamin's discussion document definitely doesn't have all the answers.

The debate is too complicated and involves too many different points of view for that.

- Fin24.com