

Labour broking industry likely to face regulation

PUBLISHED: 2009/08/25 06:20:51 AM

THE outright banning of labour brokers is off the cards, but the government has several options it can consider in regulating an industry that has been accused of gross exploitation of workers, especially those in vulnerable sectors.

Labour think-tank Naledi has made suggestions that it believes will deal with the bulk of the problems associated with labour broking.

The call for the complete banning of labour brokers has gained momentum, with many trade unions accusing them of paying “poverty wages” and denying workers the benefits they are entitled to by law. But the Confederation of Associations in the Private Employment Sector, which brings together five member associations, is opposed to the ban on grounds that it could have dire repercussions for 500000 “assignees” placed daily by temporary employment services.

The confederation’s chief operating officer, John Botha, said earlier this month that he supported the

co-regulation of the industry by the National Economic Development and Labour Council’s (Nedlac’s) partners to stop illegal and unethical practices. He blames the Department of Labour for poor enforcement of many aspects of existing legislation, which he says is adequate.

Although Labour Minister Membathisi Mdladlana initially supported an outright ban on labour brokers, he recently proposed that Nedlac give him the right to ban brokers in specific sectors only. African National Congress spokeswoman Jessie Duarte has said she opposes an outright ban but favours the introduction of laws to regulate the industry.

Naledi senior researcher Kimani Ndungu says he focuses primarily on legislative mechanisms when dealing with the problems associated with labour broking, and a legislative response alone is inadequate. Organising by unions remains key to workers enjoying their constitutional and legal rights to fair labour practices, he says.

Ndungu says that the labour laws have perpetuated the growth of labour broking and the problems associated with it.

In SA, a “legal fiction” has been created because the broker is the real employer and not the company, which means workers have great difficulty enforcing their rights.

“Take for instance the right to fair labour practices. For a worker to claim this right, she would first have to show that her employer has engaged in unfair labour practices. But the worker cannot do so against her real employer (client), who the law says is not her employer, but against the labour broker, who is not present at the workplace and who neither determines the tasks to be performed nor supervises the performance of such tasks,” he says.

Ndungu says any attempt by the government to outlaw labour broking will be challenged and could be unconstitutional. “While government could rely on section 36 of the constitution, which permits the limitation of rights by way of a law of general application, it will be hard pressed to argue that a less restrictive measure such as regulation would be inadequate to achieve the purpose of ensuring that workers employed by labour brokers enjoy the right to fair labour practices.” Ndungu instead suggests a combination of regulation and banning.

He says the Labour Relations Act and the Basic Conditions of Employment Act should be amended so that the labour broker and the client are jointly liable in respect of the rights conferred by the act. These include the right not to be unfairly dismissed, the right to organise and the right to collective bargaining. Also the definition “workplace” in the act needed to be amended so that it applied equally to both client and labour broker.

Ndungu says broking should be prohibited in sectors where workers are vulnerable to exploitation, such as farming, construction, mining, private security and domestic work. Labour brokers should be registered with the labour department and no clients should be allowed to use their services if they are unregistered, he says. Ndungu also suggests a time limit on temporary employment, at the expiry of which the worker should be deemed the employee of the client.

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