

Labour broking set to be banned in 2010

Amendment to legislation a 'very emotive issue'

By Donwald Pressly and Lucky Biyase

Amendments to the Labour Relations Act proscribing labour broking were likely to be passed by Parliament early next year, National Assembly labour portfolio committee chairwoman Lumka Yengeni said yesterday.

The committee would hold public hearings this week. But by the end of the week, MPs on the committee - dominated by the ANC - could call an end to hearings and seek to construct the amendments.

"This will be done in consultation with the Ministry of Labour," Yengeni said.

Jimmy Manyi, the labour director-general, said at the weekend that the department was in the process of amending laws to ban labour broking.

"The term labour broking does not exist in our legislation. The department will not regulate this bad practice. It must simply be outlawed," he said.

Manyi said the Cosatu stand to outlaw labour broking next year was too generous.

"We think Cosatu is very generous with its timelines. One day of tolerating worker abuse is one day too much," he said.

But some argue that banning the practice will knock the economy, which is already under pressure, and lead to an even higher unemployment rate.

Suraj Maharaj, the president of the Association of Personnel Services Organisations (Apso), which has more than 900 members, said the industry employed about 500 000 people on any given day and paid between R3.2 billion and R3.6bn in annual taxes.

"This is a R26bn a year industry and I don't think it will make sense to lose such a huge cash injection to the economy. This is a very emotive issue," he said.

His views were echoed by Sandra Burmeister, the chief executive of Landelhani Recruitment Group.

"In an era of growing global unemployment - a trend that South Africa is at pains to counter - that would be a disastrous unintended consequence," she said.

Burmeister said the temporary employment services industry covered not only unskilled workers but a range of professionals, all regulated under the same legislation.

She said the infrastructure projects being rolled out across the country in the electricity, roads, and telecommunications sectors relied on high-level project-based skills, particularly in engineering and information technology.

"Such skilled individuals tend to move on when the start-up phase is complete and the project enters an operational and maintenance phase.

"No business can expect to thrive in an increasingly competitive market if it is expected to retain these expensive skills on a permanent basis," Burmeister added.

Richard Pike, the chief executive of listed placement agency Adcorp Holdings, was distressed to hear of the plans.

"The simplistic measure of such a move will be catastrophic," he said.

But Yengeni said she had not found arguments in favour of broking convincing.

There was no support from workers for brokers' arguments that they protected workers rights, paid them adequately or allowed them to join trade unions, she argued.

She said there was a gap in the law that did not specify the nature of what constituted employment. Thus brokers "with laptops in their boots" and with no means of production simply were the conduit of employers, stripping people of their rights to unionisation and decent employment.

UCT constitutional law professor Pierre de Vos has argued that the jury was out in determining whether changes to the labour relations legislation would have an effect on a constitutional right.

In terms of the bill of rights, every citizen has the right to choose their trade, occupation or profession freely.

The practice of a trade, occupation or profession may be regulated by law, the constitution states.

"It doesn't immediately jump to mind that there may be a constitutional issue," said De Vos.

He said labour brokers would argue that the new legislation might limit the right to access a trade, profession or occupation, while those opposed to labour broking would argue that workers - employed via broking agencies as a conduit - were at the brokers' mercy.

De Vos said if the government came up with an argument that the new legislation could help to prevent exploitation of workers "then I would imagine that the court will find the legislation acceptable".

Manyi said the public debate on labour broking had been too broad, resulting in confusion where legitimate outsourcing services had become stigmatised with the abusive practices of the "bakkie brigade".

"Yes the minister (Membathisi Mdladlana) is correct, the bakkie brigade is indeed a modern form of slavery.

He admitted his department was using the services of outsourced labour providers, but he said the workers enjoyed decent work and collective bargaining conditions from their employer and then deployed to the department.

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