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Labour laws need to protect temporary employees

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Further, labour brokers need to be regulated to outlaw "unacceptable" labour practices and clamp down on fly-by-night or bogus brokers.

The Namibian High Court recently took a decision to ban the practice of labour brokering. Namibia's new Labour Act criminalises the practice of "labour hire" (a term used synonymously with the more colloquial "labour broking").

Shortly after learning of the court's ruling, South African Labour Minister Membathisi Mdladlana, expressed his support for the prospect of banning labour broking after the general elections. The minister's sentiments have been echoed by some trade unions outspoken against the practice.

St Elmo Wilken, a director and head of labour law at Taback Attorneys, says labour brokers are usually used by companies for a number of reasons. These include coping with seasonal peaks and avoiding labour relations problems.

The difficulty with the labour brokering industry is that temporary workers have been abused, Wilken says. Only a minority of labour brokers (about 20%) are registered with the Department of Labour or are accredited with associations such as the Association of Personnel Service Organisations of SA.

Wilken says the result is that some of these unregistered businesses operate using unethical and unregulated practices. Temporary employees are usually employed by companies to avoid labour relations problems such as large-scale retrenchments, restructuring of companies and trade unions.

With more than 6000 recruitment centres nationwide, the labour broker industry has experienced increasing growth over the past decade. The R26bn industry employs about 500000 people annually.

"However, the industry needs to be regulated."

The Labour Relations Act allows for the lawful operation of the industry. Under the act, a labour broker or temporary employment service is regarded as an "employer".

Wilken says it is unfortunate that many companies think it is "okay" to abuse the labour laws. "They do not provide employees with benefits, particularly where they have been employed for a long period of time."

Wilken suggests the Labour Relations Act be amended to provide for long-term benefits to be given to temporary employees in certain instances.

John Botha, chief operations officer of the Confederation of Associations in the Private Employment Sector (Capes), is in the process of negotiating a statutory private employment agency board. Botha says the board would license, investigate and deregister noncompliant labour brokers.

Botha says that the world of work is taking on a new look in light of changes in technology and the shortage of skills. He says that Capes will be embarking on a study tour at the end of July to look at the European model.

Jorge Araujo, employment law partner at Webber Wentzel, says that should SA pursue the Namibian path in banning labour broking, it is likely that it will face a constitutional challenge.

Araujo says it is clear that any law banning labour broking would need to comply with the general limitations clause. It may be possible for a labour broker to show that there are less restrictive means of achieving the purpose of protecting workers' rights.

Either the formulation of a more appropriate regulatory framework for the industry or simply an improvement on the enforcement mechanisms may suffice, he says.

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