

# Key legislative developments and their impact on employment

 By [Chloë Loubser](#)

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The workplace is a dynamic environment. Employers are constantly adapting to keep up to date with changes to employment laws and developing workplace trends, as well as demands and expectations of the workforce.



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Some of the key legislative developments in the South African employment law field that are on the cards, as well as emerging workplace trends that are likely to continue into 2024 and beyond are summarised in this article.

## Increased focus on employment equity compliance

Amendments to the Employment Equity Act 55 of 1998 (EEA) have been passed into law and are anticipated to come into force in 2024. Among other things, the amendments empower the Minister of Employment and Labour to identify national economic sectors and to determine numerical targets for demographic representivity in the workplaces of 'designated employers' in these sectors.

The amendments, and particularly the draft regulations published in May 2023, have been the subject of much controversy and legal challenge. Nevertheless, with the amendments expected to be in full force by 2024, employers, and particularly 'designated employers', will need to ensure that they take proactive steps to comply with the amended provisions of the EEA.

## Changes to incapacity management

Amendments to the Compensation for Occupational Injuries and Diseases Act 130 of 1993 have been passed into law and are to come into force on a date still to be fixed by the President.

Among other things, the amendments envisage the introduction of facilities, services and benefits aimed at rehabilitating employees suffering from occupational injuries or diseases, to facilitate their return to their work or to reduce any disability.

Draft regulations were published for public comment in June 2023 which place certain obligations on employers to facilitate access to rehabilitation. Once in effect, employers will likely need to adapt their existing incapacity policies and procedures to align with the amendments.

## **Introduction of statutory remuneration disclosure requirements**

The long-awaited amendments to the Companies Act 71 of 2008 have been introduced in Parliament.

Among other things, the Companies Amendment Bills, 2023 propose that public and state-owned companies be required to prepare a remuneration report, consisting of a remuneration policy, an implementation report with details on the remuneration and benefits paid to directors and prescribed officers, as well as remuneration details of the highest and lowest paid employees, the average and median remuneration of all employees and an indication of the pay gap between the top 5% highest paid and bottom 5% lowest paid employees.

We anticipate the amendments to make their way through the parliamentary process and be promulgated by mid-2024.

## **A new approach to parenting leave**

Following a ground-breaking judgment in the High Court on 25 October 2023, which found the maternity, adoption, commissioning parental and parental leave provisions in the Basic Conditions of Employment Act 74 of 1997 (and the corresponding provisions of the Unemployment Insurance Act 63 of 2001) unconstitutional, a new approach to parenting leave is on the horizon.

The judge found that the provisions unfairly discriminate between mothers and fathers; and between one set of parents and another on the basis of whether their children were born of the mother, conceived by surrogacy or adopted.

The Court suspended the declaration of invalidity for a period of two years to allow Parliament an opportunity to cure the defects. In the interim, it read in amendments to the sections effectively to allow parents 'of whatever the stripe' to enjoy four consecutive months' parental leave collectively.

This declaration of invalidity still needs to be confirmed by the Constitutional Court before it will have any force and effect and we anticipate this hearing to take place in about the third quarter of 2024. In the meantime, while there are no immediate changes to the legal position, employees' thinking around parental leave and traditional caregiving roles will likely be changing and employers will need to consider adapting their policies accordingly.

## **Remote working and rise of 'Employer of Record' services**

Over the past few years, and particularly in response to the Covid-19 pandemic, we have seen remote working become more prevalent (with workforces either working fully remotely or as part of a flexible/ hybrid working model).

As a product of this, we have also seen a rise in the use of 'Employers of Record' (EORs) by foreign companies seeking to engage local South African talent. EORs are local entities that act as intermediaries to facilitate employment relationships.

In South Africa, most EORs would be classified as 'temporary employment services' (commonly referred to as 'labour brokers'). The use of such service providers is strictly regulated, particularly where the employees earn below the earnings threshold (currently R241,110.59 per annum).

We expect that remote working and the use of EORs by foreign employers will continue in 2024.

## **'AI revolution'**

With ChatGPT taking the world by storm in 2023, we anticipate that more and more employers will be exploring, developing or adopting AI-powered technology to improve their human resources processes in 2024. Examples of areas in which we expect to see development are recruitment, performance management and task distribution and employee monitoring.

There are various employment law and data protection issues that will need to be borne in mind by employers as they navigate the 'AI revolution'.

## **ABOUT CHLOË LOUBSER**

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