

Labour relations amendments: bargaining councils

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Bargaining councils have been attracting headlines lately. In terms of current legislation, the minister of labour is empowered to extend bargaining council agreements to non-parties if the parties to the agreement are sufficiently representative of the bargaining sector.

This means that terms and conditions in such agreements (for instance, minimum wage stipulations) are imposed on employers who may not have been parties to those agreements. Those employers may, however, apply to the bargaining council for an exemption from the agreement.

An application is currently pending in the North Gauteng High Court challenging the power of the Minister to extend bargaining council agreements. The challenge is predicated on the claim that such a power is unconstitutional, apparently because it unjustifiably infringes on an employer's right to act freely in the marketplace and results in anti-competitive practices. The outcome of this case could have significant consequences for collective bargaining in South Africa.

The minister has proposed changes to the legislation

In the middle of all this, the Minister has proposed changes to the legislation currently regulating bargaining councils. These amendments seek to strengthen the position of non-parties to whom such agreements have been extended and also propose a quicker and more efficient exemption procedure for non-parties.

Section 32 of the Labour Relations Act, No 66 of 1995 currently provides that a collective agreement may not be extended unless a bargaining council has an effective procedure in place to deal with exemption applications by non-parties. The amendment will have the effect that exemption applications must be decided within 30 days of receipt and that an appeal against any exemption ruling must also be decided within 30 days. The amendment will also limit who may be a member of such an appeal body, to ensure that the body is entirely independent.

Another proposed change is that, before the Minister extends an agreement, she must first publish a notice in the Government Gazette and consider comments received from the public. Furthermore, she would be compelled to consider the composition of the applicable workforce and the extent to which there may be employees within the sector employed in non-standard forms of employment.

The above amendments appear to represent a sensible attempt to mitigate the effect that collective agreement extensions may have on non-parties (who are, in any event, almost always minority employers and employees). However, if the current legal challenge throws out the "bargaining council baby" with the "collective bargaining bath water", the proposed

amendments may be the least worrisome thing on the employment relations horizon.

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