

Say "no" to temporary contracts with retrenchment clauses

Labour brokers are finding ways to sidestep the recent amendment to South Africa's labour law and judgement by the Constitutional Court that compels companies to provide permanent contracts to temporary employees after a three-month period.



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The ruling was meant to clarify the employment relationship between labour brokers, their clients and employees after the conclusion of a three-month employment period. Continued employment after three months triggers the 'deeming provision' – section 198A (3)(b) – of the Labour Relations Act.

Innovative Staffing Solutions managing director, Arnoux Maré, says labour brokers are trying to find ways around the law by getting workers to sign contracts where they agree to be retrenched after three months.

"While employers are trying to avoid the cost implications of the deeming provision, these tactics are unlawful and not in workers' best interests. Retrenchment should only be a last resort if the company has financial difficulties, operational requirements or if the company is restructuring," he adds.

In addition, the South African labour law states that in the event companies retrench employees, they should make every effort to help those employees find alternative employment.

Maré suggests labour brokers are attempting to bend the retrenchment law to fit their business models. “They cannot do this. Retrenchment cannot be foreseen. A company cannot get employees to sign a contract that states it may be in financial difficulty in three months and therefore they must consent to being retrenched.”

He says the ruling should have opened the door for the more legitimate practice of outsourcing staff. “At Innovative Staffing Solutions we employ people on a permanent basis and then outsource their expertise to our clients. This creates jobs and provides employees with stability and a sense of belonging.

“We understand the challenges corporates are facing in the current economic climate, which is why outsourcing makes so much sense because it contributes to bottom-line savings. At the same time, we are acutely aware of the unemployment crisis and how illegal labour practices can create an untrusting and insecure workforce,” says Mare.

The new ruling is aimed at removing that uncertainty and providing employees with greater certainty relating to their rights in terms of the Labour Relations Act. “Unfortunately, unscrupulous operators are finding ways around the law and perpetuating that uncertainty,” concludes Maré.

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