

The logo for accotech, featuring the word "accotech" in a bold, lowercase, sans-serif font. The letter "a" is stylized with a blue square containing a white dot.

INTERIM OUTSOURCING

The LRA Knowledge Centre

Collectively Shaping Our Future

November 2014

Keeping YOU informed

Key Labour Amendments

Understand the **major impacts of the LRA** on your business and **what you need to do NOW!**

The four labour bills (Labour Relations Act (LRA), Basic Conditions of Employment Act (BCEA), Employment Equity Act (EEA) and Employment Services Bill (ESP)) have been signed by the President.

The Implementation date is still to be confirmed but we expect it to be in January 2015.

NEW LABOUR BILLS WILL IMPACT YOUR WORKPLACE! ARE YOU READY FOR THE CHANGE?

What you can **EXPECT** when the **NEW LEGISLATION** comes into effect:

- Implementation and enforcement mechanisms will be strengthened; with fines for non-compliance which will be based on turnover
- Regulating equal pay for work of equal value
- Revision of definitions of designated groups
- Increased directives on equity compliance assessments
- The Minister of Labour can publish Sectoral Determination that will apply to all employees who are not covered by any other Sectoral Determination (this normally enforces minimum conditions of employment and minimum wage rates)
- Easier access for the Director-General of Labour to enforce compliance orders
- Increased regulation of private employment services
- The employment of foreign nationals are curtailed
- Employers will be obligated to report all vacancies to the Department of Labour
- More protection for fixed term contractors and temporary employment services employees
- A more streamlined procedure for CCMA arbitration award reviews
- Easier access to organisational rights for Unions
- Public bodies and designated private entities will be required to develop and implement measures to protect and promote women and realised a minimum of 50% representation of women including Boards

All of the above will radically change the future of the workplace for all business in South Africa.

NON STANDARD EMPLOYMENT

The Regulation of non standard (or A-typical) employment and its general provision is contained in section 198 of the Labour Relations Amendment (LRA) Bill.

Section 198 specifically deals with Temporary Employment Services (TES) and sets out the scope within which all TES' and its clients should operate.

It includes and specifies three different categories of A-typical Employment under sections 198A – 198C which deals with the following specifics:

- 198A deals with a “temporary service” need an example
- 198B deals with a “fixed term contract” need an example
- 198C deals with “part-time” employment need an example

At the outset, it is important to note that all these amendments only apply to employees earning below the earnings threshold as determined in terms of the Basic Conditions of Employment Act (BCEA), which is currently set at R 193 805 per annum.

The amendments in section 198 seek to make additional provisions to regulate the relationship specifically between the TES and its employees. In the new amendments, clients still remain jointly and severally liable at this stage.

To regulate private employment services providers, registration and compliance to any applicable legislation will be required.

Is it the
END OF THE ROAD
for **TEMPORARY**
EMPLOYMENT
SERVICES?



Simply put, NO!

To show you the evidence of this in the new LRA, let's run through the sections that may affect temporary employment, the challenges facing business and the solutions.

1 The DEEMING PROVISION and what it means to your business

Section 198A, deals with the definition and the consequences of a “temporary service”. The deeming provision primarily stems out of this section.

Section 198A 1 defines a temporary service, among other things, to mean work for a client by an employee for a period not exceeding three (3) months.

In Section 198A 3, it states that an employee not performing such a temporary service for the client will be deemed to be the employee of that client and on an indefinite basis.

This does not mean that all temporary employees must now become permanent. To confirm this, there is provision in the amendments for staffing flexibility.

This is found under Section 198B, which deals with fixed term contracts. This section defines fixed term contracts as a contract of employment that terminates on, among other things, the occurrence of a specified event, the completion of a specific task or project or a fixed date other than an employee's normal or agreed retirement age.

This section also clearly states the following in sub section 3:

An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three (3) months of employment, only if

- a. The nature of work for the which the employee is employed is of a limited or definite duration; or
- b. The employer can demonstrate any other justifiable reason for fixing the term of the contract.

We therefore reiterate that the amendments do make provision for a TES or any employer to employ an employee for longer than 3 months.

Sub section 4 of this particular section goes further to stipulate any other reasons, without limiting the generality of subsection 3 (as mentioned above) for fixing the term of the contract. These reasons are listed below:

- a. is replacing another employee who is temporarily absent from work;
- b. is engaged on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
- c. is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
- d. is engaged to work exclusively on a genuine and specific project that has a limited or defined duration;
- e. has been engaged for a trial period of no longer than 6 months for the purpose of determining the employee's suitability for employment;
- f. is a non-citizen who has been granted a work permit for a defined period;
- g. is engaged to perform seasonal work;
- h. is engaged on an official public works scheme or similar public job creation scheme;
- i. is engaged on a position which is funded by an external source for a limited period;
- j. has reached the normal or agreed retirement age applicable in the employer's business.

In respect of reasonable expectation as contemplated in section 186, it is important to note that the expectation will be weighed up against the justifiable reason for fixing the duration of the contract. Any employee, who claims that he or she had a reasonable expectation of continued employment, would have to prove same in the face of such a justifiable reason.



2 Dealing with EQUAL PAY for WORK OF EQUAL VALUE

Section 198B 8 (a) also states that:

An employee employed in terms of a fixed term contract, for longer than three (3) months, must not be treated less favourably than an employee employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for different treatment.

In terms of the amendments, justifiable reason above, includes that the different treatment is a result of the application of a system that takes into account the following:

- a. seniority, experience or length of service,
- b. merit,
- c. the quality or quantity of work performed, or
- d. any other criteria of a similar nature not prohibited by section 6(1) of the Employment Equity Act, 1998 (Act No. 55 of 1998).

This leaves a very wide scope for interpretation. Fair discrimination therefore comes down to the employer's method of selection to discriminate in this regard and the employers' ability to prove that the discrimination is fair grounds for discrimination.

3 UNION ACCESS – you need support & expertise

Collective bargaining in the workplace is a very important part of dialog. NEDLAC procedures are only one attempt to provide a mechanism for such dialog. In order to achieve this objective, it requires a strong union presence in the workplace. The authors of the amendments do not believe that this objective can be achieved through the current access requirements set out in the LRA.

Therefore, to increase the ability of unions to organise, the Department of Labour is seeking to implement amendments that would make it easier for unions to gain access and recognition within the workplace.

Access can be divided into two steps.

1. Access in order to enable the union access to the workplace, in order to make recruitment easier
2. Access in order to gain recognition rights. In addition to the aforementioned there are also the additional amendments to include and extend temporary employment services ("TES") employees into the 'client' workplace, as well as, extend the right of access to owners and persons in control of premises in order to prevent businesses preventing access to the union on the basis of the rights of property owners to prohibit access to premises.

With this expected increase in union activity within the workplace it is imperative for companies to partner with providers who can provide support and deal knowledgeably and effectively with such instances. The Workforce Group has expertise in this area through our internal IR structures and also through our division, Interchange Business Consulting, who can provide guidance and resolution in union matters.

Coupled with the increased powers of the CCMA and the restrictions placed on review, The Workforce Group has the relevant experience and skilled individuals to cater for such events.



CLIENT-DRIVEN SOLUTIONS that PROTECT your business

How TES integrates into the workplace to protect compliance and mitigate risk

Due to the complex nature of the LRA and the impact on business, the need for temporary employment services will become vital to business. In consideration of the amendments, Accotech has developed the following client-driven solutions which will come into effect only following the implementation of the changed amendments into law:

1. Introduction of a multi contract structure which will be controlled by the Workforce Intelligence System™ which will determine the type of contracts used and the periods of placements on various contracts in compliance with the LRA requirements as well as business needs;
2. Integrated categorisation and remuneration structures to provide cost effective structures following implementation of the amendments;
3. Integrated software based performance management system and policy that provides for proactive progressive performance management that will assist with increased productivity management;
4. Cost effective employee benefits, such as funeral plan, provident fund and medical aid/products where relevant;
5. Specialised industrial relation services to safeguard against the provisions of the deeming provisions in the LRA in respect of terminations;
6. Specialised industrial relation services to address any union related issues arising from the provisions in the LRA in respect of union access;
7. Specialist CCMA representation in disputes into the future;
8. Proposed pre-emptive policies to address any possible industrial action into the future from the ballot and picketing provisions in the LRA;
9. Specialised systems and representation to address any possible compliance orders;
10. Specialist support to assist with any labour inspections;
11. Learnership and internship programmes;
12. Process outsourcing whereby we take over the full function of a non-core process to drive productivity and cost savings.

The most important factors in dealing with these amendments are:

- Don't ignore the other more far reaching amendments
- Do not think that the amendments prohibit flexible employment. The amendments only complicate and restrict flexible employment in so far as the businesses' ability to *prove* the need for that flexibility
- Ensure that you have the capability to gather, process and apply information and data intelligently in your business

When considering your options, you should:

- Remember that the amendments present complicated issues, however Accotech can provide simple solutions with the required detailed proof
- Ensure that your business is not only aligned with a registered TES but more importantly a TES that is capable of successfully adapting to *ALL* of the amendments



THE WAY FORWARD

Accotech Interim Outsourcing, a specialist talent search division of The Workforce Group, is there for you. For over the past 42 years we have been at the forefront of the staff outsourcing industry. We are still the company to turn to when you need compliant, flexible and hassle-free staffing solutions.

WHAT WE ARE DOING NOW TO ROLL OUT THE NEW LRA

We are ready to embrace change with confidence. Through our IR & HR, Legal, IT Software, Sales and Marketing teams, **OUR BUSINESS IS READY TO OPERATIONALISE THE CHANGES.**

There is an expectation that the two new acts will be enforced within the next month. Regardless, we are *moving forward now* – we are confident we will have our current clients' business protected and fully aligned to the new act before the end of November.

We have already rolled out a series of training roadshows and communications initiatives to provide our 150+ branches PLUS 3 400+ clients PLUS 33 500+ assignees nationwide with the necessary information and tools to make the change seamlessly.

The outcome is to position you to operationalise the changes within your business with ease and efficiency and to alleviate any fears you may have about the future of your business.

The **AIM** is to ensure we continue to provide *flexible staffing solutions* to you that are **compliant** and **protects** your **business**.

If you should wish to consult with a specialist now, please contact Geraldine Turner at:

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For updates on the key labour amendments, please visit The Workforce Group's website and register for free at <http://www.workforce.co.za/lra/index.php/registration-form>

**EXPERIENCE
our EXPERTISE!**

Roll out the new
complex LRA with
Accotech

