

Dear valued client

I am writing to keep you abreast of developments regarding the Department of Labour's proposed changes to the country's labour laws, the latest of which happened on 17 December when the Minister of Labour published four draft bills for public comment. They are amendments to the Labour Relations Act, the Basic Conditions of Employment Act and the Employment Equity Act. In addition, a new Employment Services Bill has been tabled to effectively deal with private and public employment services and requires, among other things, for all employers to register each and every job vacancy.

Contrary to popular opinion, these proposed changes to the labour laws will not only affect the temporary employment services industry but will also have far-reaching implications for all businesses in that the changes seek to address all forms of atypical employment. If passed in their current form, the bills will severely impact on business's flexibility and ability to compete in local and international markets.

The bills fail to recognise that a flexible workforce is a growing, world-wide phenomenon and are not in line with the ANC's manifesto of regulating non-standard work in a way that recognises its legitimate role in a modern economy but seeks to prevent it being used as a vehicle for worker exploitation.

Through CAPES (the Confederation of Associations in the Private Employment Sector), the industry body of which the Kelly Group is a member, we have long supported a regulatory model of greater compliance and enforcement in order to rid the industry of those unscrupulous players who have exploited workers as a result of legislative loopholes.

The proposed bills are problematic in a number of respects. In their current form, they are inconsistent, contradictory and confusing. Among other things, the bills propose that temporary positions should be declared permanent; they also propose equal pay for equal work between temporary and permanent staff and categorically ignore the ILO notion for equal pay for work of equal value; and the triangular employment relationship is repealed.

In addition, the bills ignore the recommendations of the Regulatory Impact Assessment (RIA) report that was compiled at the behest of the Cabinet last year. This provided an analysis of the likely impacts of government interventions and weighed up the costs, benefits and risks associated with each legislative option in order to identify the most effective form of government intervention.

As they stand, these draft bills will affect the livelihood of hundreds of thousands of temporary and contract workers. The reality is that there are an estimated two million atypical workers in South Africa with no guarantee of finding a permanent position.

The first National Economic Development and Labour Council (NEDLAC) engagement on the proposed amendment bills will take place on 20 January 2011. CAPES, of which our executive director Elias Monage is president, will be an active participant in these negotiations and the group is confident that many of the problematic provisions in the bills will be resolved before being tabled at Parliament. The well-informed RIA report will provide the basis for negotiations at NEDLAC.

There is also recourse to the Constitutional Court should the public comments and NEDLAC negotiations fail to address the problems in the draft bills given that the Namibian supreme court recently overruled

a ban on labour broking in that country on constitutional grounds. Our constitution, like that of Namibia's, protects the right of individuals and business to carry on a trade.

Given the implications these bills pose to our business partnership, the Kelly Group intends issuing updates on the proposed changes to the labour laws on a more regular basis. The next major milestone in this ongoing development will be on 17 February, the deadline for public comments on the draft bills. In the meantime, please feel free to write to us at info@kellygroup.co.za should you have any further questions.

Yours sincerely
Grenville Wilson
Chief executive

Please take a few minutes to complete the Kelly Global Workforce Index survey by clicking on the link [KGWI survey](#). The feedback, which we will share with you once the survey has been completed, will provide us with valuable insight into your working world and how it compares with those of other countries