Winners and losers
of the changing labour laws

The amendments to the Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA) finally come into effect from 1 August 2002. The amendments were the subject of debate at the recent 15th Annual Labour Law Conference.

Much has been written about the process leading to the final drafting of the amendments, which were seen by business to favour labour. Labour lawyer Andre van Niekerk argued during the conference that he did not necessarily support conventional wisdom, which saw business as being the loser in the process. He believed that the real losers were a range of institutions such as the Commission for Conciliation Mediation and Arbitration (CCMA) and the Labour Court. The 'failure to reach agreement on a number of issues has compromised the integrity and efficiency of those institutions and processes,' he said. The labour department has disputed this and indicated that the overall review process had a broader focus than to exclusively look at the functioning of one institution.

The issues raised by van Niekerk include the following:

- *Labour Court* – The Labour Court was established in 1995 as a specialist court, with a status equivalent to the High Court and Supreme Court of Appeal. The intention was to create a specialist, expeditious and efficient system of dispute resolution. Regrettably, the Labour Court no longer meets any of these criteria because government, business and labour were unable to agree on matters relating to the tenure of Labour Court judges and the gratuities to which they should be entitled at the end of their periods of office. This has been on the table for more than six years and remains unresolved. The consequence has been that the Labour Court has recently been unable to attract suitable candidates for appointment, and a significant number of those judges that were appointed in earlier times have left for the High Court. Amendments proposed at the outset of negotiations attempted to resolve this issue by proposing that judges of the Labour Court be appointed simultaneously as judges of the High Court. Transitional provisions were included to permit current Labour Court judges, who opted not to transfer to the High Court, to accrue and be paid benefits equivalent to Judges of the Land Claims Court on expiry of their terms of office. Refinements of the drafting in the bill were prepared for submission to Parliament. They were dropped at the last minute. The failure of the Amendment Act to resolve the Labour Court issue will exacerbate the backlogs, delays and over-burdened court rolls, and that increasingly, the Courts will be staffed by judges who may not be acknowledged specialists in labour law or the cadre of acting judges.

- *CCMA* – A number of delegates at the conference believed that the CCMA was not consulted sufficiently on the changes to the LRA. The proposed measures included the capacity to charge fees for arbitrations (to encourage the referral of more disputes to private arbitration), restrictions on employer and worker organisations formed solely to acquire the right of representation in CCMA proceedings, the conflation of conciliation and arbitration procedures into a single process in unfair dismissal cases, and extending the basis on which commissioners are entitled to make costs orders in arbitration proceedings. An inability to reach agreement on these issues led to the debate being deferred to the CCMA governing body. The issues remain unresolved since the parties who manage the CCMA, have been unable to reach agreement on them.

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