CAPES
CONFEDERATION OF ASSOCIATIONS IN THE PRIVATE EMPLOYMENT SECTOR

MEMO

Dated: 24 January 2014

Dear All

Compliments of the new year. We wish you a successful 2014.

2014 was predicted to be a busy year and it has not disappointed thus far. Besides the current labour unrest and looming national election dates, matters have moved quite rapidly on the legislative front.

The Basic Condition of Employment Act

This piece of legislation was gazetted in December with no further changes. This is clearly indicative of the start of the finalisation of the labour law amendment process and we should expect these to be in play during the first quarter of 2014.

Employment Tax Incentive Bill

This bill has finally seen the light of day and is effective as from 1 January 2014.

In brief the Bill introduces a Tax Incentive aimed mainly at encouraging employers to hire young and less experienced work seekers. Although specific regulations are still outstanding, specifying industries applicable etc, there is no indication in the scheme to preclude temporary employment services (TES) however we are not precisely sure whether you can claim the subsidy yet or not. We are investigating and will let you know as an industry as soon as possible.

It would be interesting to see how this short term measure impacts upon youth unemployment and whether this provides sufficient incentive for employers to increase their hire.

Employment Equity Act

This bill was also gazetted on the 17th of January with the fines still sitting at the R1.5 million mark in certain instances and 2% of turnover in others.

No effective date (i.e. implementation) has been set for this or the BCEA as yet and we suspect that this will be aligned to the LRA and Employment Services Bill (ESB) as soon as these are finalised at the National Assembly, expected shortly after their return from recess.

Whilst we are discussing the LRA, there still appears to be a limited amount of individuals who still have the incorrect interpretation of the deemed provision. We refer to our previous correspondences with industry where we indicated that the interpretation is:

"After consideration of the Act and the statements made by the Department, an employee will be deemed an employee of the client company and the TES after the 3 month period for the purposes of the Labour Relations Act only. What this means is that the employees remains on the TES's books and these employees may cite both the TES and their client company in a dispute. This amounts to joint and several liability and your risk area as a client is mainly around dismissals. Similarly when the employee (subject to application being limited to those paid under the threshold amount (R193 805) has completed 3 months' service, then the principles of equal treatment for work of equal value apply. That is only where you have an exact comparator in your permanent workforce. Issues like length of service, quantity and quality of output, qualification and experience and any other non-discriminatory factors will justify a differential."

We have also engaged some of the most well respected firms and labour specialists in the country for their opinions. These have echoed our views. If you or any of your clients require more explanation or discussion of this clause do not hesitate to contact writer hereof.

We look forward to providing you with information as it happens as well as support through this challenging period.

Regards,
Jonathan Goldberg
CAPES Chief Operating Officer

For assistance please contact the CAPES secretariat:- info@capes.org.za