

## **MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT SERVICES BILL, 2010**

### **1. BACKGROUND**

1.1 The Employment Services Bill (the Bill seeks to repeal all the employment services provisions and Productivity South Africa, currently contained in the Skills Development Act, 1998 (Act No.97 of 1998), and the Labour Relations Act, 1995 (Act No.66 of 1995), and to incorporate them in the Bill. The Bill furthermore aims to strengthen these provisions in the Bill.

1.2 The Bill will further assist and strengthen the Department's re-organisation and public employment services. The Department of Labour conducted a review of its programmes to determine its effectiveness and to make appropriate adjustments with the assistance of the International Labour Organisation (ILO). A comparative study was also conducted across Ministries of Labour / Labour and Social Affairs / Labour and Employment with similar characteristics and or countries having similar economic conditions with South Africa. The outcome of these discussions resulted in the Department prioritising the following three areas namely: Inspection and Enforcement Services, Labour Policy and Industrial Relations and Public Employment Services inclusive of Unemployment Insurance Fund and Compensation Fund. All these programmes are supported by the programme administration.

1.3 The Bill will contribute to the government's objectives for "More jobs, decent work and sustainable livelihoods". The Bill repositions public employment services to play a

major role in employment promotion and employment preservation and will also assist employers and workers to adjust to changing labour market conditions.

1.4 The Bill will amongst others contribute towards—

- \* reduction of unemployment, inequalities and poverty eradication;
- \* promotion and preservation or retention of employment;
- \* reducing work seeker reliance on the Unemployment Insurance Fund or Social Security grants, and reliance of rehabilitated workers injured on duty on the Compensation Fund;
- \* acceleration of employment creation; and
- \* employment growth and productivity promotion.

1.5 The strategic objectives will be achieved through institutional arrangements that the Department will further establish to provide free services to citizens such as registration of job seekers, registering of placement opportunities, matching services, referral to training, careers information. The private employment agencies could charge employers for providing similar services in accordance with regulations and ILO Conventions.

1.6 In addition, the Bill requires employers to register vacancies, requires the Minister to introduce schemes to promote employment or preserve employment for the unemployed; youth; people with disabilities; rehabilitation of workers injured on duty, retrenched and seasonal workers, work seekers and employees facing retrenchments.

1.7 The Minister can also introduce measures and subsidies to respond to work place closures and or economic recession, regulations to protect citizen's conditions of

employment in case of employment of foreign workers. The Department will collaborate with a number of players and bodies already functioning within employment services to achieve its objectives.

## **2. CLAUSE BY CLAUSE ANALYSIS**

### **CHAPTER 1: DEFINITIONS, PURPOSE, INTERPRETATION AND ADMINISTRATION OF THE ACT**

**2.1 Clause 1:** Provides for definitions.

**2.2 Clause 2:** Outlines the key intentions of the Act and the kind of measures or institutional frameworks that will be used to achieve its purpose.

**2.3 Clause 3:** Provides for the interpretation of the Act to give effect to its purpose including other applicable international conventions on employment services.

**2.4 Clause 4:** Provides for the administration of the Act by the Director-General and offices under his/her accountability including agencies that could be licensed or receive transfers.

### **CHAPTER 2: PUBLIC EMPLOYMENT SERVICES**

**2.5 Clause 5:** Provides for functions that the public employment services must provide to South African citizens free of charge. These functions include matching work-seekers

with available work opportunities; registering work-seekers; registering job vacancies and other placement opportunities; facilitating the placement of work seekers with employers or in other placement opportunities; advising workers on access to social security benefits; providing specialized services to assist specific categories of work-seekers including youth, new entrants into the labour market, disabled persons and members of rural communities; facilitating the exchange of information among labour market participants including employers, work-seekers; careers counseling; assessment of work-seekers to determine suitability and other related life skills necessary to secure employment.

**2.6 Clause 6:** Gives powers to the Minister to establish decent work schemes to promote youth employment. There is an obligation to consult with the Minister of Finance when related subsidy regulations are made.

**2.7 Clause 7:** Provides for the promotion of employment of persons with disabilities. Service Product Factories established in 1948, are given legal status and established anew as Sheltered Employment Factories under the Act. The factories mandate is also being expanded to facilitate on-the-job training for people with disabilities, to promote their access to formal and self employment. The factories are to be managed as viable and sustainable enterprises that must adapt to changing needs of people with disabilities.

The Minister is also given powers to allocate subsidies to bodies or organisations that have similar objectives as sheltered employment factories.

**2.8 Clause 8:** Gives the Minister, powers to establish employment promotion schemes to respond to economic recession, company closures and pending retrenchments or lay-offs.

**2.9 Clause 9:** Protects South African citizen employment conditions and opportunities, economic development and social stability from being affected as result of employment of foreign workers. Procedures that employers must follow if they have to employ a foreign worker are also outlined including the consequences for not complying or abusing foreign qualifying workers.

**2.10 Clause 10:** Provides for the reporting and registration of existing or new vacancies by employers with the Public Employment Services, the employment of people referred by the Public Employment Services.

**2.11 Clause 11:** Provides for the type of statistical information that the Department may collect to inform policy makers regarding developments in the Labour Market.

**2.12 Clause 12:** Provides for the kind of information that the Public Employment Services may collect from skills development and education and training institutions in order to assist in the referral of work seekers for further learning.

**2.13 Clause 13:** Provides for sources of funding that could be utilised to mobilise resources to create employment; to promote re-integration of retrenched or workers who lost their employment as a result of injuries or illness; and to preserve employment.

**CHAPTER 3: PRIVATE EMPLOYMENT AGENCIES**

**2.14 Clause 14:** Provides for the registration and licensing of any person or body who wants to operate as a private employment agency and the consequences for operating a business in this area without a license.

**2.15 Clause 15:** Provides functions that Private Employment agencies are to be licensed for.

**2.16 Clause 16:** Prohibits Private Employment Agencies from charging work seekers any fees for services rendered.

**2.17 Clauses 17 & 18:** Provides for safeguarding of work seekers information and prohibits the abuse of such information.

**2.18 Clauses 19 & 20:** Provides powers and conditions under which the Registrar of Public Employment Services can withdraw Private Employment Agent license and the appeal process in case of dissatisfaction with the Registrar's decision.

**CHAPTER 4: EMPLOYMENT SERVICES BOARD**

**2.19 Clauses 21 & 22:** Provides for the establishment of the Employment Services Board, the advisory functions to the Minister that they must render and bodies that they can liaise in order to fulfill their functions.

**2.20 Clauses 23 & 24:** Provides for the composition of the Board, the nomination process of Board members and the constitution of the Board to govern its business.

**2.21 Clauses 25 & 26;** Provides for the administrative support to be provided by the Department to assist the Board to fulfill its functions and the remuneration of Board members.

#### **CHAPTER 5: EMPLOYMENT GROWTH AND PRODUCTIVITY**

**2.22 Clause 27:** Provides for the establishment anew of Productivity South Africa, established under the Skills Development Act of 1998 as Amended to promote growth and productivity.

**2.23 Clauses: 28 & 29:** Provides the functions and composition of Productivity South Africa Board.

**2.24 Clause 30:** Provides areas that the constitution of the Board Productivity South Africa must address to govern its procedures and business.

**2.25 Clause 31:** Provides for remuneration of members of Productivity South Africa Board.

**2.26 Clause 32:** Provides for the financing of Productivity South Africa through state grants, self funding and donations.

## **CHAPTER 6: GENERAL PROVISIONS**

**2.27 Clause 33:** Provides for the Labour Court to have overall jurisdiction in so far as settling disputes that may arise in the implementation of this Act.

**2.28 Clause 34:** Provides for the monitoring and enforcement of the provisions of the Act in accordance with Schedule two of the Basic Conditions of Employment Act.

**2.29 Clauses 35 & 36:** Provides for contraventions of the Act and applicable penalties.

**2.30 Clause 37:** Provides procedures that the Minister and the Director General must follow when delegating officials in the Department to perform functions outlined in the Act on their behalf.

**2.31 Clause 38:** Provides areas in which the Minister may make regulations to achieve the purpose of the Act.

## **3. SCHEDULES**

### **3.1 SCHEDULE 1**

The Schedule provides for repeal of certain sections in the Skills Development Act and the repeal of section 198 of the Labour Relations Act.

### **3.2 SCHEDULE 2**

The schedule provides transitional provisions.

### **3.3 SCHEDULE 3**

The schedule provides penalties in the form of fines that the Minister must review every second year and the applicable minimum prison terms that the courts may impose on offenders.

## **4. DEPARTMENTS/ BODIES/ PERSONS CONSULTED**

## **5. FINANCIAL IMPLICATIONS FOR STATE**

## **6. PARLIAMENTARY PROCEDURE**

6.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
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Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
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