

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

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## THE PRESIDENCY

No. 629

18 August 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 6 of 2014: Labour Relations Amendment Act, 2014**



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**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)*  
*(Assented to 15 August 2014)*

# ACT

To amend the Labour Relations Act, 1995, so as to facilitate the granting of organisational rights to trade unions that are sufficiently representative; to strengthen the status of picketing rules and agreements; to amend the operation, functions and composition of the essential services committee and to provide for minimum service determinations; to provide for the Labour Court to order that a suitable person be appointed to administer a trade union or employers' organisation; to enable judges of the Labour Court to serve as a judge on the Labour Appeal Court; to further regulate enquiries by arbitrators; to provide greater protection for workers placed in temporary employment services; to regulate the employment of fixed term contracts and part-time employees earning below the earnings threshold determined by the Minister; to further specify the liability for employer's obligations; and to substitute certain definitions; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 66 of 1995**

1. Section 1 of the Labour Relations Act, 1995 (hereinafter referred to as the principal Act) is hereby amended by the substitution in section (1) for paragraph (a) of the following paragraph: 5

“(a) to give effect to and regulate the fundamental rights conferred by [section 27] section 23 of the Constitution of the Republic of South Africa, 1996;”.

**Amendment of section 21 of Act 66 of 1995**

2. Section 21 of the principal Act, is hereby amended— 10

(a) by the deletion in subsection (8)(b) of the word “and” at the end of subparagraph (iii) and the addition of the following subparagraph:

“(v) the composition of the work-force in the *workplace* taking into account the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment; and”;

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(b) by the insertion after subsection (8) of the following subsections:

“(8A) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant a registered *trade union* that does not have as members the majority of *employees* employed by an employer in a *workplace*—

(a) the rights referred to in section 14, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 14 in that *workplace*.

(b) the rights referred to in section 16, despite any provision to the contrary in that section, if—

(i) the *trade union* is entitled to all of the rights referred to in sections 12, 13, 14 and 15 in that *workplace*; and

(ii) no other *trade union* has been granted the rights referred to in section 16 in that *workplace*.

(8B) A right granted in terms of subsection (8A) lapses if the *trade union* concerned is no longer the most representative *trade union* in the *workplace*.

(8C) Subject to the provisions of subsection (8), a commissioner may in an arbitration conducted in terms of subsection (7) grant the rights referred to in sections 12, 13 or 15 to a registered *trade union*, or two or more registered trade unions acting jointly, that does not meet thresholds of representativeness established by a *collective agreement* in terms of section 18, if—

(a) all parties to the *collective agreement* have been given an opportunity to participate in the arbitration proceedings; and

(b) the *trade union*, or *trade unions* acting jointly, represent a significant interest, or a substantial number of *employees*, in the *workplace*.

(8D) Subsection (8C) applies to any dispute which is referred to the Commission after the commencement of the Labour Relations Amendment Act, 2014, irrespective of whether the collective agreement contemplated in subsection (8C) was concluded prior to such commencement date.”; and

(c) by the addition of the following subsection:

“(12) If a *trade union* seeks to exercise the rights conferred by Part A in respect of *employees* of a temporary employment service, it may seek to exercise those rights in a *workplace* of either the temporary employment service or one or more clients of the temporary employment service, and if it exercises rights in a *workplace* of a client of the temporary employment service, any reference in Chapter III to the employer’s premises must be read as including the client’s premises.”.

#### Amendment of section 22 of Act 66 of 1995

3. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

“(5) An arbitration award in terms of Part A may be made binding on the employer and in addition to—

(a) the extent that it applies to the *employees* of a temporary employment service, a client of the temporary employment service for whom an *employee* covered by the award is assigned to work; and

(b) any person other than the employer who controls access to the *workplace* to which the award applies, if that person has been given an opportunity to participate in the arbitration proceedings.”.

**Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998 and section 5 of Act 12 of 2002**

4. Section 32 of the principal Act is hereby amended—
- (a) by the insertion in subsection (3) of the following paragraph after paragraph (d):  
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“(dA) the bargaining council has in place an effective procedure to deal with applications by non-parties for exemptions from the provisions of the collective agreement and is able to decide an application for an exemption within 30 days;”;
  - (b) by the substitution in subsection (3)(e) for the words preceding subparagraph (i) of the following words:  
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“provision is made in the *collective agreement* for an independent body to hear and decide, as soon as possible and not later than 30 days after the appeal is lodged, any appeal brought against—”;
  - (c) by the insertion after subsection (3) of the following subsection:  
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“(3A) No representative, office-bearer or official of a *trade union* or *employers’ organisation* party to the *bargaining council* may be a member of, or participate in the deliberations of, the appeal body established in terms of subsection (3)(e).”;
  - (d) by the deletion in subsection (5) of the word “and” at the end of paragraph (a) and the addition of the following paragraphs:  
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“(c) the *Minister* has published a notice in the *Government Gazette* stating that an application for an extension in terms of this subsection has been received, stating where a copy may be inspected or obtained, and inviting comment within a period of not less than 21 days from the date of the publication of the notice; and  
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(d) the *Minister* has considered all comments received during the period referred to in paragraph (c);”;
  - (e) by the insertion after subsection (5) of the following subsection:  
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“(5A) When determining whether the parties to the *bargaining council* are sufficiently representative for the purposes of subsection (5)(a), the *Minister* may take into account the composition of the workforce in the sector, including the extent to which there are *employees* assigned to work by temporary employment services, *employees* employed on fixed term contracts, part-time *employees* or *employees* in other categories of non-standard employment.”; and  
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  - (f) by the addition of the following subsection:  
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“(11) A *bargaining council* that has a *collective agreement* extended in terms of this section must ensure that the independent appeal body is able to determine appeals within the period specified in subsection (3)(f).”.

**Amendment of section 49 of Act 66 of 1995, as amended by section 11 of Act 12 of 2002**

5. Section 49 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
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“A *bargaining council*, having a *collective agreement* that has been extended by the *Minister* in terms of section 32, must inform the *registrar* annually, in writing, on a date to be determined by the *registrar* as to the information specified in subsection (3) and the number of employees who are—”;
  - (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
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“A *bargaining council* other than one contemplated in subsection (2) must on request by the *registrar*, inform the *registrar* in writing within the period specified in the request as to the number of *employees* who are—”;

- (c) by the substitution for subsection (4) of the following subsection:

“(4) A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the *council* for the year following the determination for any purpose in terms of this Act, including a decision by the Minister in terms of sections 32(3)(b), 32(3)(c) and 32(5).”.

**Amendment of section 51 of Act 66 of 1995, as amended by section 11 of Act 42 of 1996 and section 12 of Act 12 of 2002**

6. Section 51 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection: 10

“(9) A *bargaining council* may, by collective agreement—

- (a) establish procedures to resolve any *dispute* contemplated in this section;  
(b) provide for payment of a dispute resolution levy; and  
(c) provide for the payment of a fee in relation to any conciliation or arbitration proceedings in respect of matters for which the Commission may charge a fee in terms of section 115(2A)(l), which may not exceed the fee provided for in that section.”. 15

**Amendment of section 65 of Act 66 of 1995**

7. Section 65 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 20

“(c) the *issue in dispute* [is] is one that a party has the right to refer to arbitration or to the Labour Court in terms of *this Act* or any other employment law;”; and

- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 25

“(b) any determination made in terms of [the *Wage Act*] Chapter Eight of the Basic Conditions of Employment Act and that regulates the *issue in dispute*, during the first year of that determination.”.

**Amendment of section 67 of Act 66 of 1995** 30

8. Section 67 of the principal Act is hereby amended by the deletion of subsection (9).

**Amendment of section 69 of Act 66 of 1995, as amended by section 20 of Act 42 of 1996**

9. Section 69 of the principal Act is hereby amended—

- (a) by the substitution for subsection (6) of the following subsection: 35

“(6) The rules established by the Commission may provide for picketing by *employees—*

(a) in a place contemplated in section 69(2)(a) which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the Commission before the rules are established; or 40

(b) on their employer’s premises if the Commission is satisfied that the employer’s permission has been unreasonably withheld.”;

- (b) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words: 45

“Any party to a *dispute* about any of the following issues, including a person contemplated in subsection (6)(a), may refer the *dispute* in writing to the Commission—”; and

- (c) by the addition of the following subsections:

“(12) If a party has referred a *dispute* in terms of subsection (8) or (11), the Labour Court may grant relief, including urgent interim relief, which is just and equitable in the circumstances and which may include—

(a) an order directing any party, including a person contemplated in subsection (6)(a), to comply with a picketing agreement or rule; or 55