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VOORWOORD

Die droogte in ons land is uiteindelik gebreek deur goeie reën. Reën het nog altyd in Namibië die gemoedstoestand in die land verbeter. Ondanks die reën is die ekonomiese vooruitsigte vir 2017 maar bleek en dit blyk dat ons onself moet staal vir 'n uitdagende jaar.

Despite all the negative growth predictions for 2017 we must remain dedicated to our businesses and employees.

Seena Legal Consult will be there and will continue to assist your business with all Labour, NEEEF, Employment Equity and Training needs.



JJ Barkhuizen

MANAGING DIRECTOR

IGNORE PHONE CALLS FROM THE OFFICE OF THE LABOUR COMMISSIONER AT YOUR OWN PERIL

As the Labour Act and the rules (both the rules of the Labour Court and the Rules Relating to the Conduct of Conciliation and Arbitration Proceedings) are often very prescriptive with regard to time frames, the date on which one was served with a notice, award or other official document, is of utmost importance. Documents may be served in a number of ways and are generally served as prescribed in terms of section 129(2) of the Labour Act, which reads:

“(2) A document is served on a person if it is –

(a) delivered personally;

(b) sent by registered post to the person’s last known address;

(c) left with an adult individual apparently residing at or occupying or employed at the person’s last known address; or

(d) in the case of a company -

(i) delivered to the public officer of the company;

(ii) left with some adult individual apparently residing at or occupying or employed at it’s registered address;

(iii) sent by registered post addressed to the company or its public officer at their last known addresses; or

(iv) transmitted by means of a facsimile transmission.”

In the matter of Nestor Iyambo v Torra Bay Fishing (PTY) Ltd, the question arose as to whether or not telephonic notification of an award constituted service of that award as is required in terms of the provisions of section 89(2) of the Labour Act. The section reads:

“89(2) A party to a dispute who wishes to appeal against an arbitrator’s award in terms of subsection (1) must note an appeal in accordance with the Rules of the High Court, within 30 days after the award being served on the party.”

In this case Mr. Iyambo was telephonically informed by the Office of the Labour Commissioner, on the 13th of October 2015, that an award had been issued. Mr. Iyambo chose to collect the award 5 days later on the 18th of October and subsequently filed an appeal on the 16th of November 2015. During the appeal proceedings a point in lumine was raised that the appeal had in fact been filed out of time and that it should be struck from the roll as a result. The question therefore arose as to when service occurred? Was it:

1. On the 13th when Mr. Iyambo was telephonically informed of the arbitration award; or
2. On the 18th when he chose to collect the award from the Office of the Ministry of Labour?

In deciding the matter acting judge Van Wyk referred to rule 5(8) of the Labour Court, which reads:

“the court may accept proof of service in a manner other than prescribed in this rule, as sufficient.”

That, along with the provisions of section 17(4) of the rules, which stipulates that an appeal must be noted within 30 days ‘after the award came to the notice of the Appellant’, resulted in the judge upholding the point in lumine and as a result the

appeal was struck from the roll. In other words the date of telephonic notification was ruled to be the date of service of the award.

Employers should note that the Rules Relating to the Conduct of Conciliation and Arbitration Proceedings before the Labour Commissioner has similar provisions. Section 6(5) of these rules reads almost identical to section 5(8) of the Labour Court rules:

“The Labour Commissioner may order service in a manner other than prescribed in this rule”.

In light of the above, it is best not to take chances when telephonically notified to collect any form of documentation from the Office of the Labour Commissioner, as the date of telephonic notification may very well constitute the day of service. This may prove of vital importance when calculating the lapsing of statutory time frames. We strongly suggest all documents are collected without delay in order to give yourself and your business the best possible opportunity to respond in timeous fashion.

Case Ref: Iyambo v Torra Bay Fishing (PTY). Ltd. (LCA 63-2015 [NALCMD] 28 (21 July 2016)

Compiled by: Nicky Smit

THE EMPLOYMENT SERVICES ACT

The article below is a repeat of an article published in our newsletter dated October 2015. As our office receives regular queries on this topic we have decided to include it again in this edition.

During an information session held by the Ministry of Labour, Industrial Relations and Employment Creation (which we attended on 30 May 2016) it was communicated that all systems and structures would be in place in order to enforce the legislation by 1 April 2017. Since then they have made significant progress and have created the Namibia Integrated Employment Information System (NIEIS). You will find the link to their website here-below:

<http://www.namibiaatwork.gov.na/index.php/nieis>

The Employment Services Act, Act 8 of 2011, was published in the Government Gazette on the 15th of September 2015. In terms of section 15(1) of the Act, an employer who employs 25 or more employees is regarded as a “designated employer”. As such it is compelled to comply with certain provisions of the Act. Of particular importance to Seena clients are the following:

- **Section 16 – Designated Employers to Report Vacancies and New Positions**

The Employment Service Bureau (established by the Act) is to be notified, in the prescribed manner, of any vacancy or new positions that become available. This includes temporary positions. Attached you will find the prescribed form “ESA

3a". This form must be completed and submitted at least 14 calendar days prior to the closing date for the submission of applications (where the position is advertised) or 14 calendar days prior to the filling of the vacancy where no advertisements were done. **(Since the launch of the website notification may also be given by posting a job advertisement on the website, thus eliminating the need for completion of the ESA 3a form.)**

Where a new employment establishment intends on employing 25 employees or more, it too is obliged to inform the Bureau of all vacancies in no less than 30 calendar days prior to the employment of any person.

On receipt of aforesaid notifications the Bureau will forward the particulars of suitably qualified job-seekers, where available.

No designated employer may fill a vacancy or new position without considering, in good faith, any suitably qualified job-seeker referred by the Bureau. There is also an obligation on the designated employer to report to the Bureau whether or not it employed the job-seeker referred. Regulation 7 dictates that an employer must, within 30 calendar days from the date of receipt of the job-seekers referral, alternatively within 7 calendar days if the position is filled at a later date, submit such report. The report must indicate:

- ✓ The positions that were filled;
- ✓ The dates on which the respective positions were filled;
- ✓ Whether positions were filled or not by job-seekers referred by the Bureau; and
- ✓ If referred job-seekers were not employed by the Employer, reasons for such non-placement.

Where the position is not filled within 30 calendar days of receiving the job seekers' particulars, the employer must notify the Bureau of:

- ✓ Its intent to fill the position; and
- ✓ A contemplated date for filling the position.

Non-compliance with the aforesaid stipulations carries a maximum penalty of N\$ 20 000 (Twenty Thousand Namibian Dollars) or up to 2 years imprisonment, or both.

○ **Section 17 – Designated Employers to Provide Information to the Bureau**

Every designated employer must, in the prescribed manner and within the prescribed period, submit to the Bureau a profile of it's establishment, including the following information:

- ✓ The number of positions according to occupation, including apprenticeships, job attachments and vacancies;
- ✓ The number of employees who are Namibian citizens or permanent residents by sex, age, occupation passport number or birth certificate numbers;
- ✓ The salary or salary range for each occupation;

- ✓ Available skills development loans, bursaries and scholarships offered by the employer;
- ✓ Any other information that may be prescribed.

(It appears that this registration can now also be done online, although at the time of writing this article the functionality was not active.)

Aforesaid information must be submitted annually and strict record is to be kept of all vacancies, and aspects related to vacancies, for a period no less than 5 (five) years.

Once again, non-compliance with the aforesaid stipulations carries a maximum penalty of N\$ 20 000 (Twenty Thousand Namibian Dollars) or up to 2 years imprisonment or both.

Compiled by: Nicky Smit



VOCATIONAL EDUCATION AND TRAINING LEVY (VET LEVY)

Many Employers who are legally obliged to register for VET, still have not done so and are therefore placing their businesses at financial risk.

As of the 1st of April 2014, employers with a total annual payroll of N\$1 000 000.00 (one million Namibian Dollar) are obligated to pay a levy of 1% of its monthly payroll over to The National Training Authority (NTA). If you have not already registered we strongly suggest you do so without further delay.

Should you require any assistance in this regard please do not hesitate to contact you us.

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