
GOVERNMENT NOTICES

DEPARTMENT OF LABOUR

No. R. 1734

1 November 1996

LABOUR RELATIONS ACT, 1995 AMENDMENT OF SCHEDULE 7

Under the powers vested in me by section 207(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), I hereby amend Schedule 7 to that Act by effecting the additions and changes as set out in the Annexure.

T.T. MBOWENI
Minister of Labour

ANNEXURE

AMENDMENT OF SCHEDULE 7 TO THE LABOUR RELATIONS ACT, 1995

1. Item 5 of Schedule 7 of the Labour Relations Act, 1995 (Act No. 66 of 1995), is hereby amended by the substitution for subitem (1) of the following subitem:

“(1) A trade union or employers' organisation registered or deemed to be registered in terms of the labour relations laws immediately before the commencement of this Act will be deemed to be a registered trade union or registered employers' organisation under this Act and continues to be a body corporate.”

2. Item 7 of that Schedule (hereinafter referred to as Schedule 7), is hereby amended by the substitution for subitem (1) of the following subitem:

“(1) An industrial council registered or deemed to be registered in terms of the Labour Relations Act immediately before the commencement of this Act is deemed to be a bargaining council under this Act and continues to be a body corporate.”

3. The following item is hereby inserted in Schedule 7 after item 8:

“8A. Pending enquiries by industrial registrar

Any pending inquiry conducted by the industrial registrar under section 12(3) of the Labour Relations Act must, after the commencement of this Act, be continued and dealt with further by the same person in terms of the Labour Relations Act as if it had not been repealed.”

4. Item 12 of Schedule is hereby amended -

(a) by the substitution for subitem (1) of the following subitem:

“(1)(a) Any agreement promulgated in terms of section 48, any award binding in terms of sections 49 and 50, and any order made in terms of section 51A, of the Labour Relations Act and in force immediately before the commencement of this Act, remains in force and enforceable, subject to paragraphs (b) and (c) of this subitem, and to subitem (5B), for a period of 18 months after the commencement of this Act or until the expiry of that agreement, award or order, whichever is the shorter period, in all respects, as if the Labour Relations Act had not been repealed.

(b) On the request of any Council deemed by item 7(1) to be a bargaining council, an agreement referred to in paragraph (a) that had been concluded in that council -

- (i) if it expires before the end of the 18-month period referred to in paragraph (a) may be extended in accordance with the provisions of subsection (4)(a)(i) of section 48 of the Labour Relations Act, for a period ending before or on the expiry of that 18-month period, which provisions, as well as any other provisions of the Labour Relations Act relating to the industrial council agreements extended in terms of that subsection, will apply in all respects, read with the changes required by the context, in relations to any agreement extended on the authority of this subparagraph as if those various provisions had not been repealed;
- (ii) may be cancelled, in whole or in part, in accordance with the provisions of subsection (5) of section 48 of the Labour Relations Act, which provisions, as well as any other provisions of the Labour Relations Act relating to industrial council agreements wholly or partly cancelled in terms of that subsection, will apply in all respects, read with the changes required by the context, in relation to any agreement wholly or partly cancelled on the authority of this subparagraph as if those various provisions had not been repealed.

(c) An agreement referred to in paragraph (a) that had been concluded by parties to a conciliation board –

- (i) if it expires before the end of the 18-month period referred to in paragraph (a), may, at the request of the parties that were represented on that conciliation board at the time of the conclusion of that agreement, be extended in accordance with, and in the manner provided for in, paragraph (b)(i) which will apply, read with the changes required by the context, in relation to the extension of agreements of that nature;
- (ii) may, at the request of those parties, be cancelled, in whole or in part, in accordance with paragraph (b)(ii), which will apply, read with the changes required by the context, in relation to the cancellation of agreements of that nature.”;

(b) by the insertion after subitem (1) of the following subitem:

“(1A)(a) An agreement referred to in subitem (1) that had been concluded in a council deemed by item 7(1) to be a bargaining council, may be amended or amplified by a further agreement concluded in that bargaining council and promulgated in accordance with the provisions of subsections (1) and (2) of

section 48 of the Labour Relations Act, which provisions will apply, in all respects, read with the changes required by the context, for the purposes of this paragraph as if they had not been repealed.

(b) Subitems (1)(b), (3) and (8)(a) will apply to any further agreement concluded and promulgated on the authority of paragraph (a) of this subitem, in all respects, as if it were an agreement referred to in subitem (1)(a).;

(c) by the insertion after subitem (5) of the following subitems:

“(5A) Any exemption from an agreement or award, or from an order, contemplated in subitem (1), that was in force immediately before the commencement of this Act, will remain in force for a period of 18 months after the commencement of this Act or until the period for which the exemption has been granted, has expired, whichever is the shorter period, as if the Labour Relations Act had not been repealed.

(5B) Any one or more of or all the provisions of an order referred to in subitem (1)(a) may be cancelled, suspended or amended by the Minister in accordance with the provisions of section 51A(4)(a) if the Labour Relations Act, which provisions will apply for the purposes of this subitem as if they had not been repealed.”;

(d) by the substitution for subitem (6) of the following subitem:

“(6) Any pending application for an exemption from all or any of the provisions of any agreement or award remaining in force in terms of subitem (1), or for an exemption from any provision of an order remaining in force in terms of that subitem, must -

- (a) in the case if that agreement or award, be dealt with in terms of the provisions of section 51 and, whenever applicable, any other relevant provisions, of the Labour Relations Act, in all respects, read with the changes required by the context, as if the provisions in question had not been repealed;
- (b) in the case of that order, be dealt with in terms of the provisions of section 51A and whenever applicable, any other relevant provisions of the Labour Relations Act, as if the provisions in question had not been repealed.”; and

(e) by the addition after subitem (7) of the following subitem:

“(8) After the commencement of this Act and despite the repeal of the Labour Relations Act –

- (a) any person or class of persons bound by an agreement or award remaining in force in terms of subitem (1) may apply, in accordance with the provisions of section 51 of the Labour Relations Act, for an exemption from all or any of the provisions of that agreement or award (as the case may be). Any application so made must be dealt with in terms of the provisions of section 51 and, whenever applicable, any other relevant provisions of the Labour Relations Act, in all respects, as if the provisions in question had not been repealed;
- (b) any person, bound by an order remaining in force in terms of subitem (1), may apply, in accordance with the provisions of section 51A of the Labour Relations Act, for an exemption from any provision of that order. Any application so made must be dealt with in terms of the provisions of section 51A and, whenever applicable, any other relevant provisions of the Labour Relations Act, in all respects, as if the provisions in question had not been repealed.”

5. The following item is hereby inserted in Schedule 7 after item 12:

“12A. Designated agents

(1) Any person appointed under section 62 of the Labour Relations Act as a designated agent of an industrial council deemed by item 7(1) to be a bargaining council, who holds that office immediately before the commencement of this Act, will be deemed to be a designated agent appointed for the bargaining council under section 33 of this Act.

(2) The certificate of appointment that had been issued in terms of section 62(2) of the Labour Relations Act to that designated agent, will be deemed to have been issued in terms of section 33(2) of this Act.”

6. The following item is hereby inserted in Schedule 7 after item 21:

“21A. Dispute resolution by councils before their accreditation

(1) Despite the provisions of section 52, a council may attempt to resolve through conciliation -

(a) any dispute that may be referred to it in terms of this Act before 1 December 1996; and

(b) if the council has applied for accreditation in terms of section 127 of this Act before 1 December 1996, also any dispute so referred to it after 1 December 1996 but before the governing body of the Commission has made a decision on that application in terms of section 127(5) of this Act.

(2) For the purposes of subitem (1), any person appointed by a council to perform on its behalf the dispute resolution function referred to in that subitem will be competent to exercise any of the powers conferred on a commissioner

by section 142 of this Act, except the powers contemplated in subsection (1)(c) and (d) of that section. In applying that section for the purposes of this subitem, that section must be read with the changes required by the context, and any reference in that section to the director must be read as a reference to the secretary of the council.

(3) A council must refer to the Commission, for arbitration, any dispute that -

(a) was referred to the council in terms of this Act on the authority of subitem (1); and

(b) remains unresolved after the council has attempted to resolve it through conciliation; and

(c) is by this Act required to be resolved through arbitration.”

7. Item 22 of Schedule 7 is hereby amended -

(a) by the insertion after subitem (2) of the following subitems:

“(2A) In relation to any proceedings which, in terms of this Schedule, are brought or continued before the industrial court, the rules which, immediately before the commencement of this Act, were in force under the provisions of paragraphs (c) or (d) of section 17(22) of the Labour Relations Act will apply as if those provisions had not been repealed, subject to item (2B).

(2B) The Minister, after consultation with the president of the industrial court, may make rules in accordance with the provisions of paragraph (c) of section 17(22) of the Labour Relations Act and, in accordance with the provisions of paragraph (d) of that section, may repeal or alter any rule so made, as well as any of the rules contemplated in subitem (2A), as if those provisions had not been repealed and the Minister where the Board contemplated in those provisions.”; and

a. by the addition after subitem (5) of the following subitem:

“(6) Despite the provisions of any other law, but subject to the Constitution, no appeal will lie against any judgement or order given or made by the Labour Appeal Court established by this Act in determining any appeal brought in terms of subitem (5).”.

8. Schedule 7 is hereby amended by the addition of the following Part:

“PART G: ESSENTIAL SERVICES

24. Essential services in the public service

An essential service contemplated in section 20(1) of the Public Service Labour Relations Act will be deemed to have been designated an essential service in terms of this Act for a period of six months as from the commencement of this Act.

25. Essential services provided for in Labour Relations Act

The services in which employers referred to in paragraphs (a) and (b) of section 46(1) of the Labour Relations Act and employees referred to in paragraphs (e) and (f) of that section are engaged, as well as any service contemplated in paragraphs (a) or (b) of section 46 (1) of that Act in which are engaged the employers and employees to whom a notice in terms of the latter section applied immediately before the commencement of this Act, will be deemed to have been designated essential services in terms of this Act for a period of six months as from the commencement of this Act.”

No. R. 1735

1 November 1996

LABOUR RELATIONS ACT, 1995 (ACT No. 66 OF 1995)

WITHDRAWAL OF REGULATIONS

The Minister of Labour hereby withdraws the regulations made under section 208 of the Labour Relations Act, 1995 (Act No. 66 of 1995), as published under Government Notice No. R 1497 of 13 September 1995 with effect from 11 November 1996.