

THE EMPLOYMENT RELATIONSHIP

THE NATIONAL HEALTH INSURANCE AND EMPLOYEE BENEFITS

Cliffe Dekker Hofmeyr's **AADIL PATEL**, director and head of the Employment Law practice, and **FIONA LEPPAN**, director in the Employment Law practice, discuss the impact of the NHI on employee benefits

The National Health Insurance Bill ("NHI"), passed by the National Council of Provinces on 6 December 2023 and assented to by President Cyril Ramaphosa on 15 May 2024, is now an Act of Parliament. The discussion about a national health system that achieves, at point of need, universal health coverage for all people has been long and controversial and continues to attract scrutiny and criticism from all sectors of society.

Even though the NHI Act has been signed into law, it is not in force and effect. However, when it does take effect it would still take time for the NHI Fund and its related structures to be established and become fully operational. The envisaged implementation period is significant with some stakeholders indicating the optimal achievement of the NHI system and infrastructure could take decades to realise. The NHI Act may also be open to notable challenges during its establishment, contributing to implementation delay.

Once the Minister of Health declares the NHI to be "fully implemented", medical schemes would be precluded from offering

most of the basic services they currently provide, so healthcare services, products and treatment a person might want to procure outside of the ambit of the NHI, if this is would even be permissible, would need to be paid for privately by that person. The impact on persons with current comprehensive private medical cover is yet to be determined.

IMPLICATIONS FOR EMPLOYERS AND EMPLOYEES

Offering private healthcare benefits is an important mechanism that assists employers in attracting new talent and retaining employees. As healthcare costs rise, businesses are forced to pay higher medical subsidies, which impacts their profit line, but increasing premiums also affects their employees who would then have less disposable income. The NHI could negatively impact the employment relationship regarding existing healthcare subsidies, post-retirement medical aid arrangements and other related employee benefits provided by employers, which could increase the tax burden on employees ultimately reducing their disposable income.

To retain employees, employers may have to consider different ways to offer employees equivalent medical aid benefits that they can privately access, but this would potentially be costly. Employers may also need to restructure employees' remuneration due to an increased tax burden to finance the NHI.

Noting the potential increased costs of medical aid, it is unlikely that employers would or could offer employees additional or post-retirement medical aid benefits.

It is not clear to what extent an eligible person who would otherwise be covered by



Fiona Leppan

the NHI Fund, once it becomes operational, can choose to procure private healthcare. One should have a choice but the dilemma would be the cost of affording compulsory contributions to the NHI and payment for private healthcare with the consequence that any such choice is eroded.

Other health services offered by employers, for example, health clinics, HIV/AIDS treatment and occupational health services, could also be at risk if the NHI is implemented in its current form.

Media publications report there are plans afoot to reach a compromise with those who for compelling reasons oppose the NHI in its current form. The new administration appears to be adopting a more conciliatory approach in that regard – a positive step.

As the NHI has not been implemented and regarding the need for sensible amendments to the Act, there is no urgency for employers to amend the current benefits they offer employees, and they would be best placed not to do so at this stage. Patience seems to be the game. Importantly, all role players should engage and comment on any changes that may be published so their concerns are noted. ■



Aadil Patel

THE NHI COULD NEGATIVELY IMPACT THE EMPLOYMENT RELATIONSHIP REGARDING EXISTING HEALTHCARE SUBSIDIES, POST-RETIREMENT MEDICAL AID ARRANGEMENTS AND OTHER RELATED EMPLOYEE BENEFITS.

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