

Employment Law

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SOUTH AFRICA

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**EMPLOYMENT LAW
ALERT**

Improving health and safety in the iron and steel sector

On 26 February 2025, the Deputy Minister of Employment and Labour (Deputy Minister) addressed delegates from the iron and steel sector (sector) about the importance of improving occupational health and safety (OHS). He encouraged the delegates to continue fighting to ensure that compliance improves, highlighting the importance of being resilient in this fight. He pointed out that the sector has a long way to go because it remains marred by high levels of accidents, injuries and diseases. These high levels are also prevalent in other sectors and must be addressed. Government, employers and employees all have a role to play in ensuring compliance in the sector.

The Code of Practice on OHS in the sector is an important tool in this regard as it aims, amongst other things, to protect workers, outline the common causes of injuries and illness, define the roles and responsibilities of all stakeholders, and facilitate the improvement of OHS in the sector. He highlighted the importance of companies in the sector implementing the recommendations made based on the impact of noise-induced hearing loss study of 2012.

In an effort to increase compliance and uphold OHS standards, the OHS inspectorate conducted high impact blitz inspections in the sector. The Occupational Health and Safety Act 85 of 1993 (OHSA) is also undergoing reforms to ensure that policies are continually improving and that legislation plays a role in the improvement of OHS.

Promoting decent work

The Deputy Minister indicated that the sector has to reflect on the contributions it has made in promoting decent work. This is because decent work is fundamental for quality of life. He explained that decent work focuses on current and future jobs as well as working conditions. This will require the incorporation of technological advancements in the workplace. He implored the sector to invest in the training and development of its workforce. Again, Government, employers and employees will have to play their part in achieving a high standard of decent work.

Government to invest in infrastructure

He indicated that Government will spend close to R1 trillion on infrastructure over the next three years, and the sector will be key in providing support to the projects that will be implemented, such as the building and revitalisation of bridges. These projects will create jobs opportunities and contribute to sustainable development.

Fiona Leppan and Biron Madisa



**EMPLOYMENT LAW
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Tender of services: A prerequisite for the enforcement of claims flowing from reinstatement awards

In the recent Labour Appeal Court (LAC) case of *South African Municipal Workers Union (SAMWU) obo Koopman v City of Cape Town and Others* (CA5/2023) [2025] ZALAC (22 January 2025) the appellant sought to enforce an arbitration award ordering his reinstatement with backpay, by filing a contempt application against the City of Cape Town, 10 years after the arbitration award was issued. One of the defences relied on by the City of Cape Town was that it was not in contempt as the appellant had never tendered his services.

When does back payment become due and payable in the instance of reinstatement?

In dealing with the contempt claim, the LAC held that reinstatement awards create a reciprocal duty between the employer and the employee. Reinstatement awards have the effect of reviving the employment contract and the duty of an employee to tender their services. The LAC highlighted the duty of an employee to tender their services and the reciprocal duty of the employer to remunerate them in return, as a fundamental tenet of the employer-employee relationship. What this demonstrates, held the LAC, is that the tendering of services becomes a pre-requisite for the enforcement of a reinstatement award. As a result, an employer's obligation to pay backpay flows from the revival of the employment relationship and the tendering of service from the employee.

Where an employee is awarded reinstatement with backpay they are required to tender their services within the period set out in the reinstatement award.

Accordingly, where an employer has taken the necessary steps in ensuring an employee's employment, the duty then shifts to the employee, who must ensure that they timeously make themselves available for the resumption of their duties. The LAC found that because the appellant did not tender his services, there was no contempt, and the appeal was accordingly dismissed.

As an aside, however, the LAC acknowledged the 'blunt effect' of the dismissal of the matter on the appellant who, despite being in possession of a reinstatement award, was now left without further recourse.

The LAC therefore ordered that its judgment be referred to the Minister of Employment and Labour for consideration as to whether any legislative amendments might remedy similar situations in future. A suggested remedy put forward by the LAC was the creation of a requirement that an employer must be obligated to initiate communication with the reinstated employee. In this communication, the employer would be expected to inform the reinstated employee as to when they are expected to tender their services, taking into account the reinstatement order. The LAC maintained that this would provide both employers and employees with certainty and proof that a request for the tendering of services was made while keeping the onus on the employee to tender services.

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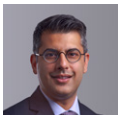
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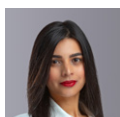
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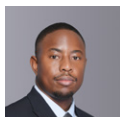
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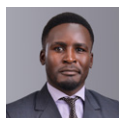
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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