

Companies

What employers can expect from the labour inspector

The labour inspectorate does not require a warrant or any notice to enter a workplace

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The department of employment and labour (DEL) recently intensified its compliance inspection raids, particularly within the hospitality sector, in a bid to clamp down on contraventions of the Immigration Act.

So far, the department has enforced department corrections amounting to more than R10m and has arrested 81 undocumented workers. While it also plans to expand the department's inspectorate capacity from 2 000 to 20 000 inspectors over the next three years.

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“According to the BCEA (Basic Conditions of Employment Act), the labour inspectorate does not require a warrant or to give you any notice to enter a workplace or another workplace [where] employers carry out their business or keep employment records. There is such a broad spectrum where this power entry can apply without a notice or a warrant,” said a senior associate at Cliffe Dekker Hofmeyr, Leila Moosa.

Speaking at a Cliffe Dekker Hofmeyr webinar on immigration compliance and workplace enforcement, Moosa said that the employment and labour department fulfilled the inspectorate and the monitoring functions in relation to a broad spectrum of laws, the powers of which were derived from the Basic Conditions of Employment Act. The laws permitted the minister to appoint the labour inspectors, and the purpose of the inspectors was to monitor compliance with employment.

“The legislation allows the labour inspectors to advise employees and employers of their rights in terms of employment law, that they can conduct inspections, and investigate complaints and issue compliance orders,” said Moosa.

However, the provisions include that the labour inspectors’ powers of entry are limited to what is termed “at reasonable times”, which relates to an employer’s business and the nature of its operations, and that the inspector must notify a trade union representative and employer that they are present in the workplace and the reason.

“Employers are also within their rights to ask for a labour certificate to confirm the powers of a labour inspectorate before they attend to any of the exercises in the workplace,” Moosa said.

Senior employment law associate Taryn York said that many of the compliance raids had revealed violations of the Immigration Act, particularly concerning expired work visas. As a result, HR practitioners, foreign nationals and employers had faced arrests for their noncompliance.

“A general expectation is that an employee cannot work on an expired visa but in certain instances, the minister of home affairs has extended the statuses of validity of certain visas pending the outcome of a renewal application, and the reason for that is the backlog in visa applications,” York said.

York advised that employers must consistently monitor the visas of their foreign employees. If these employees are promoted to a different position than outlined on their visa, the employers should ensure that a change of conditions is applied for.

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