

**FOOD & ALLIED WORKERS UNION SUBMISSIONS TO THE  
DEPARTMENT OF LABOUR ON PROPOSED AMENDMENTS  
ON  
LABOUR RELATIONS AMENDMENT BILL 2010; BASIC CONDITIONS OF  
EMPLOYMENT AMENDMENT BILL 2010; EMPLOYMENT EQUITY  
AMENDMENT BILL 2010; EMPLOYMENT SERVICE BILL 2010.**

Kindly take note that Fawu has had an opportunity to consider the above proposed bills and we generally support the proposed amendments and believe that they go a long way of addressing labour relations in this country. The following submissions is to an extent limited to Fawu's concern on each proposed bill, in the event that Fawu is in agreement with the proposed amendment we will not comment, for instance we are quite happy with the proposed repealing of section 198 as it address both the ANC Polokwane resolutions as well as the Cosatu call for banning of labour broking. Herewith find our comments on each proposed amendment bill.

### **1. Labour Relations Amendment Bill 2010**

- ❖ Commission may appoint commissioner to conciliate in the public interest.

Fawu proposes that the Act should define what is meant by Public interest so as to avoid any conflict or inconsistency.

- ❖ Sec 150(5) Fawu is concern about this section as it has the potential to interfere with the worker's constitutional guaranteed right to strike.

### **2. Jurisdiction Of Labour Court**

Proposed Sec 157(2)-We are concern about the implications of the sections particularly in instances where the commission is called upon to determine a jurisdictional issue but before the actual matter is heard,

where one party is not happy with ruling of the commission.

### **3. Limitation on Application of Chapter VIII**

Proposed section 187 A. We are concern about the insertion of this section as it has the potential of denying access to the CCMA by certain employees. We propose that the threshold be not less than 500 000 alternatively such employee to be charged a particular fee when they refer matters to the CCMA.

### **4. Amendments of Section 188 A of Act 66 of 1995**

We support the proposed changes in total and particularly the change of pre dismissal arbitration to inquiry by arbitrator.

### **5. Amendment of Section 191 of Act of 1995**

We propose that further to the proposed amendments a section is inserted which compels a party objecting to commencement of arbitration immediately after conciliation to make formal objection with reasons 14 days prior the commencement of the process.

### **6. Section 200 C**

We are concern about the wide definition of “workplace” and propose that workplace should be confined to one place of business where the employer carries its business as the current framework has the direct negative impact on organisational rights of employees.

### **7. CCMA rules of section 115(2) and (2A)**

We support the proposed amendments and insist that they should be incorporated in the Act as they are.

## **8. Jurisdiction and Powers Of Labour Court**

{Section 157 & 158}

We propose that a consideration should be made for a creation of another labour court seat in either Limpopo or Mpumalanga to deal with disputes of those two provinces.

## **9. Basic Conditions Of Employment Act, 1997**

### **❖ Substitution of section 4 of Act of 75 of 1997**

We do not understand the substitution in this section and therefore request that a concrete explanation be made.

#### **Sec 43 (3)**

proposes the insertion of the word “criminal” before offence.

Proposed that contract of employment should mean a common law or arrangement under which a person agrees to work for an employer but excluding a contract for work as an Independent Contractor.

#### **Sec 35 (4)**

We believe that this section is ambiguous and therefore propose that it be reworked before it can be considered for insertion in its totality.

#### **Sec 65 (4)**

Insert the word “registered” before “union”.

## **10. Employment Equity Amendment Bill**

### **Section 1**

We propose the insertion of the “black” before “women” as we believe that white women are benefiting more than the black women in

Employment Equity.

❖ **Amendment of Section 10 of Act 55 of 1998**

We support the proposed section 4 (b) and propose that the threshold to be not less than 88 000.

Comment

- ⇒ *We propose that a focus should be on service to be provided either than on persons.*
  
- ⇒ *Believed that a number of employees working in Agricultural sector is undocumented and means should be devised in addressing this abnormality by among other things compelling Farm Employers to record all their employees particularly those so called Migrant farm workers who provide seasonal work in the main.*

**PROPOSED AMMENDMENTS:**

**Employment Services Bill 2010**

**Chapter 3 - Private Employment Services**

**Registration and Licensing of private employment agency:**

**SECTION 14**

- (1) delete may , insert must.**
- (3) No person will operate.**
- (4) Application shall be in prescribed manner and form.**
- (5) Issuing of licenses must be notifiable to interested parties and subject to objections.**

**Functions :**

**SECTION15**

**(1) delete sub-paragraph (ii) and insert (iii)**

**(2) delete “ may” insert “ must”.**

**16 (2) delete “may not” insert “may”.**

**19 (1) delete “may” insert “must”**

**(2) (b) insert “interested”**

**(3) insert “publicly withdraw”**

**Schedule 2 item 4 - Transitional arrangements:**

**Upon promulgation, this Act will take effect, item 4 on TESs will not apply as the TESs must cease to operate upon repeal of s 198 of the LRA.**

**Chapter 5 - Establishment of Productivity SA.**

**S 27 (2) add “ and Promotion of Administrative Justice Act ,2000.**

**Functions of Productivity SA:**

**S 28 add (i) power to intervene on its own or by invitation by any party to save jobs, rescue and assist in establishment of social plan or businesses that are under financial distress.**

**Chapter 6 - General provisions:**

**S33(3) delete entire subsection.**