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IN DIE NUUS: ARBEIDSKONTRAKTEURS

Na aanleiding van die Konstitutionele hofuitspraak onlangs omtrent wat algemeen in landbou bekendstaan as "brokers", wil ons probeer om van die vele vroeë wat bestaan, op te klaar.

Ons raai produsente egter aan om self die uitspraak te bestudeer:
<http://www.saflii.org/za/cases/ZACC/2018/22.pdf>

- Word landbouwerke wat deur 'n "broker" voorsien word na 3 maande die kliënt se werkers?

Indien **tydelike** werkers deur 'n geregistreerde "broker" bekom word, word hierdie werkers nie na 3 maande die kliënt se werkers nie. Dit is nie die geval in die landbou nie. (Sien spesifiek 198 B (4)(f) van die Wet op Arbeidsverhoudinge, Wet 66 van 1995 wat lees: *the conclusion of a fixed term contract will be justified if the employee **(f), is employed to perform seasonal work***.

Die werkers word steeds vergoed deur die "broker" en hulle bly sy werkers.

- Wat staan Produsente te doen?

Dit is belangrik om 'n behoorlike kontrak te sluit met die "broker" en spesifiek aandag te skenk aan die volgende uittreksel uit 198 B van die Wet op Arbeidsverhoudinge:

Fixed term contracts with employees earning below earnings threshold

(1) For the purpose of this section, a 'fixed term contract' means a contract of employment that terminates on-

- (a) the occurrence of a specified event;*
- (b) the completion of a specified task or project; or*
- (c) a fixed date, other than an employee's normal or agreed retirement age, subject to subsection (3).*

(2) This section does not apply to-

- (a) employees earning in excess of the threshold prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act;*
- (b) an employer that employs less than 10 employees, or that employs less than 50 employees and whose business has been in operation for less than two years, unless-*

- (i) the employer conducts more than one business; or*
- (ii) the business was formed by the division or dissolution for any reason of an existing business; and*
- (c) an employee employed in terms of a fixed term contract which is permitted by any statute, sectoral determination or collective agreement.*

(3) An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment only if-

- (a) the nature of the work for which the employee is employed is of a limited or definite duration; or*
- (b) the employer can demonstrate any other justifiable reason for fixing the term of the contract.*

(4) Without limiting the generality of subsection (3), the conclusion of a fixed term contract will be justified if the employee-

- (a) is replacing another employee who is temporarily absent from work;*
- (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;*
- (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;*

(d) is employed to work exclusively on a specific project that has a limited or defined duration;

(e) is a non-citizen who has been granted a work permit for a defined period;

(f) is employed to perform seasonal work;

(g) is employed in a position which is funded by an external source for a limited period; or

(h) has reached the normal or agreed retirement age applicable in the employer's business.

Indien daar enige twyfel bestaan, of indien die "broker" nie geregistreerd is nie, raai ons produsente aan om self die werkers tydelik in diens te neem en te vergoed.

- Op wie het die uitspraak dan betrekking?

Soos ons dit verstaan, geld die uitspraak slegs vir werkneemers wat nie vir seisoenwerk aangestel is nie, maar permanent en wat onder die vergoedingsdempel (huidiglik R205 433,30 per jaar) val.

In die geval waar die "broker" se permanente werkneemers die 3 maande oorskry, sal die kliënt die werkgever word wat die Wet op Arbeidsverhoudinge betref en sal die makelaar slegs die loonadministrasie behartig.

Ons verwag dat daar verdere litigasie sal plaasvind en ons sal ons kliënte inlig soos en wanneer verdere inligting beskikbaar word.

LATEST NEWS ON THE NATIONAL MINIMUM WAGE

The National Minimum Wage Bill was adopted by Parliament's select committee on economic development on Tuesday. The committee also adopted accompanying pieces of legislation, the Basic Conditions of Employment Amendment Bill, the Labour Relations Amendment Bill and the Labour Laws Amendment Bill, without any changes.

When this will be passed by Parliament into law is still uncertain.



SALARIS- EN LOONOPNAME 2018

Hierdie jaar loods KAW (Kaapse Agri Werkgewerorganisasie) weer die salaris enloonopname vir die primêre landbousektor. Hierdie opname help produsente om hulle inligting te vergelyk met die mark en die verskillende poste, asook om billikheid te bepaal in die werksplesk.

Besoek KAW se webblad [HIER](#) vir meer inligting.



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Groete,

Die HC span



Vir ons opgedateerde Opleidingsprogrammlys kliek [hier](#)

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