

Inevitability of Labour Broking in South Africa and the Need for Strict Regulation

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Abstract: It seems apparent that despite all the agitations, protests, and concerns raised by various organised trade unions, non-governmental organizations (NGOs), scholars and interested persons on the need for South Africa to out rightly ban the business of labour broking in South Africa because of the various unfair labour practices being perpetrated by the labour brokers and their clients, the business continues to thrive and prosperous. The ban continues to fail because till date, no single legislation has been enacted specifically to outlaw labour broking. Therefore, it seems that labour broking as a business is inevitable in South Africa and will continue to operate. That being said, even if it is not banned, this article strongly accentuates the need to stringently regulate labour broking considering various unfair labour practices that labour brokers and their clients perpetrate against workers. Against the backdrop of this, the article extensively relied on and utilised the recently enacted Labour Relations Amendment Act, 2014 which makes a moderate attempt to protect casual workers from unfair labour practices in South Africa. The South African courts have made tremendous progress by interpreting and applying this regulatory regime to protect the labour broker's employees and transform labour broking in South Africa. This article contributes to the body of knowledge regarding the need to ensure holistic protection for vulnerable casual works through stringent regulation of the business. This assertion is made against the backdrop that this aspect has not been robustly researched hence this article seeks to address the problem and proffer solutions.

Keywords: Temporary employment, Protection, Regulation, Transformation, Unfair labour practices.

INTRODUCTION

Fundamentally, virtually all standard employment relationships are characterised by open-ended contract and even, sometimes, without-limit-of-time usually performed by a worker for a single employer without protection against unfair dismissal (Aloisi, 2016). However, with regard to temporary or casual employment, the relationship is such that "the recruitment, dismissal and the employment functions performed by the employer are outsourced to an intermediary while the task side of the relationship is not outsourced" (Aloisi, 2016). Because of their vulnerability and the fear that they can be terminated at the will of the employer, a temporary worker has no protection against unfair labour practices, abuse, inhuman treatments and degrading treatments in the work place. Even if subjected to unfair labour practice or indecent working condition, the worker do not have any concrete recourse in law and where it seems that there could be a possibility to be protected, the employee can be very mean and cruel and terminate the contract forthwith. This type of employment is contrary to the aspirations of civilised constitutions and laws and other regulatory frameworks on employment relationship in democratic countries that seek mainly to protect workers from workplace abuses and ensure

that promotion of decent work for workers is the rule rather than the exception (Anker *et al.* 2003). Promotion of decent work and basic conditions of employment that protect human dignity would, undoubtedly, enhance sustainable socio-economic development and poverty reduction around the world. It is against this backdrop that the International Labour Organization (ILO), has continuously enjoin employers of labour and government to prioritize and promote decent work conditions for all workers in workplaces irrespective of their employment status (Odeku, 2015).

Similarly, the ILO Convention 181 concerning Private Employment Agencies seeks to make people aware that even though flexibility in the labour market and labour relation is generally allowed, provided that it is decently regulated (Van Haasteren, 2017).

According to Daniels (2007), labour brokers in South Africa emerged as a result of the inception of personal services companies that usually operate as "a limited company with a sole director who owns virtually or mostly all of the company's shares and operates as a generally supplies professional services to end user clients, either directly or via an agency." Since 1994, the use of labour brokers or Temporary Employment Services (TES) as they are referred to in the Labour Relations Act (LRA) 1995 has seen a massive exponential increase over the last two decades or thereabout in South Africa (Tomren, 2012). Labour broking in essence involves a triangular employment relationship between the labour broker, the client of the

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labour broker and the worker (Brand, 2010). The business model and arrangement is such that the labour broker on the one hand employs a worker and sends the worker to a client of the labour broker who uses the casual workers for the business and in turn supervises and control the casual worker (Elcioglu, 2010). As part of the arrangement, the client pays the labour broker and the labour broker remains the employer of the casual worker, and responsible for remunerating the casual worker for any work performed for the client during the course of the employment. (Theron, 2005).

The increase in the number of labour brokers in South Africa can be largely attributed to the fact that the industry provides employers with an escape route to circumvent the provisions of the Constitution of the Republic of South Africa 1996 (Constitution), the international law and statutory law specifically designed to protect workers from exploitation by the employers (Brand, 2010). It is trite that most of the owners of labour broking businesses have been reported to be engaging and sometimes perpetrating various abusive and unfair labour practices such as unfair dismissal perpetuated against casual workers with deliberate disdain to their human rights and dignity whereby the clients often instruct labour brokers without following any procedure to remove and replace casual workers demanding for labour rights, decent work condition and dignity. The right to association and to join any trade unions is guaranteed under the Constitution (Mubangizi, 2006). However, casual workers are faced with constant intimidation and harassment for attempting to or join any organised trade union in South Africa. This is a very serious predicament and in order to disorganise any casual worker seeking to exercise the constitutional right to join any trade union of choice, the labour broker client usually engaged in a common practice where the labour broker is instructed or compelled to strategically remove and move the non-compromising casual worker from one employment position to another so as to discourage and prevent the casual worker from joining union of choice or even attempted to form organised trade union to champion the rights of the workers. Denial of basic conditions of employment, deliberate racial profiling, denial of access to training and development and opportunities, blatant disregard for basic decent working environment are prevalent in the arrangement.

In South Africa, labour legislation that applies to labour brokers is LRA which refers to labour brokers in

terms of section 198(1) as Temporary Employment Services (TES), which means “any person who, for reward, procures for or provides to a client other persons -(a) Who render services to, or perform work for, the client; and (b) Who are remunerated by the temporary employment service.” The Basic Conditions of Employment Act 1997 (BCOE) contains the same meaning as articulated in the LRA. These provisions have no iota of any protection for temporary workers rather they merely state the meaning of TES and nothing more.

However, in recent years, there have been a sea-change in the sphere of employment regulations in South Africa which have been made through the legislative intervention framework to curb the exploitation of labour broker employees. As such, attention is drawn to the Labour Relations Amendment Act of 2014 with particular focus on the insertion of Section 190A which amends and now extends protection to casual workers. This amendment was made in order to overcome various challenges that temporary workers have been facing in the hands of both labour brokers and their clients in South Africa. The overall objective of the amendment was to ensure that there is ample protection for temporary worker's rights and also to ensure that they are not treated differently from permanent employees. This protective mechanism ensures that temporary workers are not subjected to any form of unfair labour practices.

The LRA defines what constitutes TES in Section 190A as follows in Section 38 of the Labour Relations Amendment Act of 2014, 198A(1). In this section, “a temporary service’ means work for a client by an employee for a period not exceeding three months.” While this provision seeks to protect casual workers, to a greater extent, it still expose casual workers to unfair labour practices and abuses if interpreted as is. The is why the provision and its interpretation have been a subject of controversy, particularly on the question that arises in section 198A(1)(a) on whether after a period exceeding three months, the worker in the workplace of the client remains an employee of the labour broker or the employee of the client.

The good news is that the The Commission for Conciliation, Mediation and Arbitration (CCMA) charged with resolution of trade and employment disputes are being proactive in interpretation and application to reflect the intention of the drafters of the LRA Amendments Act and the awards handed down in favour of the temporary workers in this regard speak to

the transformative adjudication of disputes in the realm of labour disputes in South Africa. Insights from some of these cases are therefore germane hence they are discussed below thus:

Take for an example, in the case of Assign Services (Pty) Ltd v Krost Shelving & Racking (Pty) Ltd vs CCMA and others [2015] 9 BALR 940 which was the first arbitration in which the CCMA was required to determine the meaning of the provisions of the new section 198A of the LRA, which is designed to regulate labour broking. The dispute arose when three months had passed after the implementation of the new provision, and the second respondent, NUMSA, contended that employees assigned by the applicant labour broker to the first respondent had become permanently employed by the first respondent. The Commissioner rejected the applicant's argument that the legal effect of the new provision was to create a "dual employer." That interpretation would create confusion. The CCMA said that the legislature had chosen a three-month period beyond which "temporary employment" ceased to be regarded as temporary, and had expressly provided that, after that period, the client becomes the employer. The first respondent was declared the affected employees' employer.

In the case of National Union of Metalworkers of South Africa obo Members/Johnson Controls Automotive SA and another [2015] 10 BLLR 1013 (MIBCO) it was held that, after three months, employees assigned by TES to their clients become permanently employed by the clients by operation of law. The Commissioner rejected the respondents' arguments that when that period expired, the TES and its client became "dual employers," and that the contracts of service are still vested in the TES. These arguments flew in the face of the wording of, and intention underlying the new section 198A of the LRA. The first respondent was ordered to issue contracts of employment to the assigned employees, and to avail them fulltime permanent employment.

In another situation, the applicant in the case of Groenewald/Keystone Projects Recruitment (Pty) Ltd [2014] 6 BALR 538 (MEIBC) worked for a client of the respondent for five years before being told that his services were no longer required. The Commissioner found that the respondent was not entitled to rely on the "temporary" employment contract with the applicant to defend his unfair dismissal action, because the contract undermined the applicant's right to be unfairly dismissed. The applicant had been given no hearing

whatsoever before his dismissal, and the respondent had made no attempt to find him an alternative position. The applicant received compensation.

In the case of Food and Allied Workers' Union obo Members/Giant Canning CC and Mighty Solutions CC [2019] 1 BALR 21 (CCMA), four applicant employees, in rendered services to the first respondent, a client of the second respondent temporary employment service. They claimed after three months that they had become permanently employed by the first respondent. The client pleaded that due to adverse trading conditions it could not afford to permanently employ the TES employees and that it would be forced to retrench. The Commissioner held that affordability is not a ground for resisting the operation of the deeming provision in section 198A of the LRA. The first respondent was directed to employ the employees on a permanent basis.

The highest court in South Africa, the Constitutional Court had confirmed the interpretation of these protective sections which deemed casual workers to be client's employee in the case of Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others CCT 194/17. The facts of the case are that in 2015, Assign Services, a TES, "placed 22 workers, of which many were members of the National Union of Metalworkers of South Africa (NUMSA) with Krost Shelving and Racking (Pty) Limited (Krost). These workers provided services to Krost for a period exceeding three months and on a full time basis. Assign Services' view was that section 198A(3)(b) created a dual employer relationship, while NUMSA contended that a sole employer relationship resulted from the section. The Commission for Conciliation, Mediation and Arbitration (CCMA) supported NUMSA's sole employer interpretation." This judgement was affirmed by the constitutional court because "sole employer interpretation best protected the rights of placed workers and promoted the purpose of the LRA and the amendments." Interestingly, in this case, "the Constitutional court unanimously held that the purpose of section 198A must be contextualised within the right to fair labour practices in section 23 of the Constitution and the purpose of the LRA as a whole. The court found that, on interpretation of sections 198(2) and 198A(3)(b), for the first three months the TES is the employer and then subsequent to that time lapse, the client becomes the sole employer. The majority found that the language used by the legislature in section 198A(3)(b) of the LRA is plain and that when the

language is interpreted in the context, it supports the sole employer interpretation.”

An employee of a labour broker who has been converted to a client's' employee must not be treated less favourably compared to other client's employees unless there is a justifiable reason for the differential treatment as contemplated by section 198A(5). Justifiable reasons that may warrant differential treatment are listed in Section 198(D)(2) of the Labour Relations Amendment Act of 2014 which include, (a) Seniority, (b) Merit, and (c) The quality or quantity of work performed.

These selected cases were chosen to articulate the protective provisions inherent in the amendments to the LRA. Working for a client for 3 months automatically transitioned the temporary worker to a permanent worker of the client with all the rights and benefits usually accorded a permanent employee. This provision is deemed and operates instantly without any iota of doubt. It meant to protect the right to fair labour practices as espoused in section 23 of the Constitution and deters unfair labour practices and abuses.

PROBLEM STATEMENT

In South Africa, the issues surrounding labour broking also known as temporary agency work have increasingly become the most debated and contentious form of non-standard employment which the government is still battling to find solution to. While there has been recent amendment to the LRA to specifically provide regulation on how casual labour is protected, labour brokers have consistently been looking for loopholes in the law in order to circumvent the provisions that seek to regulate their activities. This unrepentant attitude of the labour brokers and their clients have led to several civil actions instituted in the court in order to uphold the protective mechanisms in the Amendment Act.

OBJECTIVES

The key objective of this article is to critically analyse the protective mechanisms as contained in the law that sought to regulate and offer broad protection for casual workers or temporary employer against powerful labour brokers and their clients. Another objective relevant to the key objective is the critical analysis of the court's role in holding labour brokers and their clients accountable for violating workers' rights by using everything within their power to

circumvent the law in order to continue to subject casual workers to precarious employment.

METHODOLOGICAL APPROACH

The methodology for this article was an intensive reliance on extensive relevant literature on the issues pertaining to casual employment, labour brokers and protection of temporary workers in the workplaces in South Africa. Legislation and scholarly works were used to indicate how to drive and bring about positive social changes in the society particularly with regard to protection for casual workers who are vulnerable because of their employment status. Against the backdrop of demonstrating the need to protect temporary or casual workers, this article rigorously reviewed, utilized and applied germane literature that sought to protect the vulnerable casual workers from being abused by labour brokers and their clients. The recent amendment to the LRA provides necessary impetus for demonstrating how a temporary employer status can be converted to permanent status using the salient provisions of the law. More importantly, non-complying labour brokers or their clients that sought to circumvent the law would have themselves to blame because of the punitive sanctions enshrined in the amendment law.

LITERATURE REVIEW

Even though there have been persistent fierce debates amongst various pundits on why labour broking should be out rightly banned, South African labour framework and labour practices still fervently recognise and allow the use of TES otherwise generally referred to as labour broking (Ncube, 2013). Labour broking entails active involvement of three entities namely the client, the labour broker and worker in a triangular employment relationship where the labour broker would employ workers and supply them to a client (Aloisi, 2015). The client monitors and dictates the duties of the workers. What makes this employment relationship unique is that the client dictates and supervises the roles of the workers, the labour broker still retains the status of the employer and is usually responsible for paying the workers. As a matter of fact, the workers are the employees of the labour brokers, and not that of the client.

Interestingly, due to the flexible nature of labour broking, the business has attracted a lot of players in South Africa because it enables most of the employers to circumvent existing laws that have been put in place

to protect workers from unfair labour practices such as exploitation, fraud and inhuman treatments (Mbwaalala, 2013). Fundamentally, profit is the sole aim of any business and labour broking is not an exemption. The primary aim of the business is to make huge profit from the transaction as much as possible and as such, the idea of protecting workers from unfair labour practices, abuses or inhuman treatments does not really resonate with labour brokers. This being said, in the case of SA Post Office versus Mampeule [2009] 30 ILJ 664 (LC), the court had admonished that “the Constitution provides that everyone and not just employees have the right to fair labour practices. Consequently, even though a person may not be regarded by law as an employee of the client but of the labour broker, the client still has a legal duty to do nothing to undermine an employee’s right to fair labour practices unless the limitation is justified by national legislation.” What the court is emphasizing in this case is that even though casual workers are vulnerable, the law and court still have responsibility that no human being is subjected to unfair labour practices and abuses in the workplace. The vulnerability of vulnerable casual workers under the democratic South Africa is well articulated by Standing *et al.* (2006) and assert thus “in the post-apartheid era, South Africa is faced with a lot of high socio-economic challenges, including poverty, low economic growth, extreme income wage disparities and inequality which do not meet the various standards set by International Organizations. There is also chronic high unemployment caused by low economic growth and labour broking is now exacerbating the problem as it contributes immensely to unemployment and job insecurity.”

It is a known fact that South Africa is currently facing huge unemployment problem and the economy is not growing at the pace that will generate and create employment opportunities; rather the economy was reported to have contracted by 3,2% in the first quarter of 2019. This problem revealed the inability of the government to create jobs and vulnerable job-seekers are desperate to accept any job for survival. Due to mounting poverty and unemployment, vulnerable desperate job seekers are always ready to take and accept any job offered to them in order to work and raise money to take care of themselves and family members. Recognizing and identifying this vulnerability, labour brokers are taking advantage of this unemployment situation in the country by subjecting workers to various unfair labour practices and abuses. The businesses of labour brokers are now

thriving and booming in South Africa as they are reported to be exploiting this vulnerability and desperation by placing the majority of job seekers in temporary employment without protection (Aloisi, 2015).

Similarly, abuses and unfair labour practices are deliberately being perpetrated by labour brokers and their clients on the vulnerable workers. Oftentimes, labour brokers use desperate conditions of the lack of job opportunities, chronic unemployment and poverty which entrenched the vulnerability of these workers who are predominately black job seekers to prey on them (Barchiesi 2007). Worse still, the clients often cajole unsuspecting desperate unemployed job seekers to accept the offer of temporary employment with a promise of standard permanent employment if they work very hard, increase productivity, maintain peace and tranquility in the workplace (Odeku, 2015). In most cases, these promises are not fulfilled. With the introduction of the Amendment Act and the transformative constitutional interpretation and application of the law, the courts have started to take bold steps to protect vulnerable temporary workers by converting them into permanent employees through courts judgements and orders.

Even though labour broking is recognized under the law, the issue is that casual temporary workers are usually subjected to indecent working conditions where their dignities are being diminished and compromised (Ndung'u, 2012). In the words of Kalleberg (2002), labour broking is, “an aspect of employment relationship that is recognized under the law but seems not to be a decent work because of its limitations. The friction has always been on how to pay this workforce a living wage and how the employers will find the undeniable costs linked to the provision of a social justice and security system that can effectively protect this workforce.” It is as a result of these inhuman treatments that organized labour unions have continued to challenge those who thrive in the business of labour broking.

Odeku (2015) clearly explains the frustration of the organized trade unions by stating emphatically that “it is apparent that for various reasons ranging from lack of respect for labour laws, inhumane and unequal treatments of workers, outrageous and ridiculous wages and modern day slavery have been the justifications for persistent calls by the trade unions to out rightly prohibit labour brokers in South Africa.” The courts are also lending their voices through their

numerous judgements which seek to strongly advocate for respect and protection of the dignity and human rights of temporary workers even if they are hired through labour brokers (Odeku, 2015).

What has generated intense debate is the issue of vigorous attempt of doing everything to exclude casual workers from being member of organized trade unions despite South Africa's post-apartheid viable and all-inclusive constitutionally sanctioned industrial relations which protects the rights of every worker to dignity and broad protection of labour rights (Barchiesi, 2019). It is important to note that this deliberate exclusion has caused tension which most times have resulted in the labour brokers departed from the constitutionally framed industrial relations which sought to resolve disputes in a manner that is fair to all parties. However, casual workers are disgruntled because labour brokers are quick to depart from this constitutional means of resolving disputes instead they, most times resort to prosecute and engage in alternative vicious violent forms of industrial actions such as protest and strike (Dickinson, 2017).

The organised trade unions have been playing very active role in ensuring that labour brokering is well regulated and that labour brokers play by the rules. Worker's organization have been intervening in regulation of labour broking through monitoring, feedback from workers, independent investigators in order to ensure that labour standards are being implemented and in order to deter the problem of indecent working environment to which casual labours are being subjected to (Tilly *et al.*, 2013).

In the same vein, due to reports of various abusive practices and deliberate violations of the rights of temporary workers, the Department of Labour in South Africa had initiated comprehensive investigations into the activities of labour brokers' employees in order to discover and unravel these abusive practices and expose them. Temporary casual workers were able to tell their stories, and this has triggered interest in formulating legislation to address various abusive practices and consequently the birth of the Amendment to the LRA to include protection to temporary casual workers which is currently being implemented and enforced and convert them to permanent employees.

Undoubtedly, numerous loopholes abound in most of the interventions in the strive to protect labour broker employees from abuses. Even with the promulgation of the labour Amendment Act 2014 which seeks to protect

labour broker employees, labour brokers and their clients are now involved in trying to sabotage the efforts of the government and in particular the provision of section 198A(1) of the LRA Amendment Act. Cases articulated above illustrate desperation of employers to sabotage the amendment Act using different evasive strategies to ensure the temporary casual workers were prevented from being converted to permanent employees as enshrined in the Amendment Act.

Although, pundits who have argued against the banning of labor broking have also argued that any attempt to regulate labour standards particularly regarding temporary employment in companies generally face clear difficulties because most companies themselves may not have the requisite executive power to enable them enforce the terms and conditions due to the complex and fragmented subcontracting arrangements and structures which, if not diligently thought through might lead to protracted litigation (Williams *et al.*, 2015).

It is also important to point out that labour brokers and their clients might think that using temporary workers is cost saving exercise. However, research has shown that these temporary workers would have inadvertently acquired some level of skills from the work being done during the course of the temporary employment (Forrier and Sels, 2003). In the long run, by prematurely removing them, the employer might be the greatest loser because if new casual workers have to be hired frequently, the employer has to continually train the newly employed casual workers to do the same job. In the words of Tilly *et al.*, (2013), "while there may be short-run cost benefits associated with outsourcing, there appear to be longer term costs associated with declining employer-funded training, skills losses, reduced employer commitment to human resource development generally, and declining employee loyalty, trust and commitment." These are the consequences and repercussions of using temporary casual workers and dumping them and this have serious implications for the sustainability and profitability of the employers' business in the long run.

In Indonesian, government has made frantic attempt to license informal brokers. To do this, the government is using biometric fingerprint technology programme to register labour broker who utilized mostly immigrants as casual workers (Lindquis, 2018). South Africa can look into this and probably emulate it in order to register and capture informal labour brokers (Ayuwat and Chamaratana, 2014). This is against the backdrop

that there are many pockets of informal labour brokers in South Africa who operate without being registered, undoubtedly, this will entrench abuse and violation of the rights of the casual labours.

Employers usually engage in outsourcing because in most cases, they want to engage labour without any obligation or protection (Ellram *et al.*, 2008). This is one of the reasons casual workers too have little obligation to the employers as well hence putting in lower levels commitment to the employer's work knowing very well that within a short period of time, their employment will be terminated and they will be dumped in the unemployment market (Hall, 2000).

MOTIVATION FOR EMPLOYEES' TAX EXEMPTION BY LABOUR BROKERS

The South African Revenue Services (SARS) has become vocal and focus on ensuring that labour brokers comply with the law. Thus, the Fourth Schedule of the Income Tax Act sets out the requirements that labour brokers should comply with in respect of employees' tax (Daniels, 2007). The client who enters into the agreement with the labour broker is not liable to remunerate the employees but pays amount due to the labour broker who in turn is liable to remunerate employees (Daniels, 2007). Labour brokers are obliged to complete "an IRP 30(a) Form should they wish to be exempted from employee's tax. The agreement must specify the number of employees, the time period required, the nature of the work to be performed as well as the details of the payment for the labour procurement" (Daniels, 2007).

After the labour broker has satisfied all the requirements for tax exemption, SARS issues an exemption certificate (IRP 30). Therefore, when a labour broker procures the services of a client and presents the IRP 30 certificate, the client is absolved from deducting employees' tax from any payments made to the labour broker. This is one of the reasons why clients find the services of labour brokers appealing because they are absolved from paying employees' tax to SARS (Daniels, 2007).

If a labour broker fails to satisfy the SARS Fourth Schedule requirements, the employee's tax exemption certificate is withheld from the labour broker and the client is compelled to withdraw employee's tax from the amounts due to the labour broker. As a result, the client becomes an agent of SARS and the client is obliged to deduct and pay the employee's tax to SARS (Daniels, 2007).

Factors which may cause a labour broker not to be granted an IRP 30, are instances "where more than 80% of the gross income of the labour broker consists of amounts received from one client and associated institutions; where the labour broker provides its labour to another labour broker and where the labour broker is under an obligation in terms of a contract to provide a specific employee to perform a specific job for a client" (Daniels, 2007).

The labour broker must apply on an annual basis for "the tax exemption certificate, and this must be done at least two months before the current tax exemption certificate expires" (Daniels, 2007).

REGISTRATION AS A VIABLE OVERSIGHT TOOL ON LABOUR BROKERS

Currently, labour brokers merely operate like usual business but they are not registered and supervised as envisaged by the Convention 181 which requires member states to put in place measures that will determine the governance of labour brokers in accordance with a system of licensing or certification. Although the LRA 1998 had repealed the requirements for registration as prescribed by the Labour Relations Amendment Act of 1983, the Skills Development Act 1998 provided for the criteria for labour brokers' registration. In terms of the Skills Development Act, a labour broker must apply for registration with the Department of Labour (DoL) in the prescribed manner, and the DoL must register the applicant if it is satisfied that such applicant has satisfied the requirements in terms of section 36.

As part of steps being taken to provide oversight on labour brokers, in 2007 the DoL has elaborated on the prescribed criteria for registration of labour brokers by publishing a draft regulation for public comment which amongst others stipulated that "when labour brokers apply for registration, they must provide the DoL with proof of the following; that the company is a registered entity in terms of the relevant legislation; that the entity is registered and responsible for employees' tax as mentioned, skills development levy, unemployment insurance fund/contributions and or Value Added Tax (VAT) where applicable; entity registered with a bargaining council; compliance with the Skills Development Act, Unemployment Act 63 of 2001, Basic Conditions of Employment Act 75 of 1997, Employment Equity Act 55 of 1998, Compensation for Occupational Injuries and Deceases Act 130 of 1993 and the Unemployment Insurance Contributions Act 20

of 2002.” Undoubtedly, the requirements for labour brokers registration will ensure that there is strict compliance with labour laws, minimise fraud and protect employees (Aloisi, 2015).

CONCLUSION

Although the Amendment Act makes a moderate attempt to offer protection for temporary workers, it has been revealed through cases presented herein that labour brokers and their clients have continued to find ways to circumvent the law and take advantage of the vulnerability of the temporary workers. One of the methods being used by labour broker is to take advantage of the provisions of section 198A(1) by ensuring that employees do not exceed the period of three months of employment in a particular workplace thus preventing the employee from being converted to become a permanent employee of the client. This is often done by either rotating labour broker employees around different clients before three months lapsed or alternatively provide three month's contracts renewable on a three-month basis. In addition, labour broker employees suffer unjustified unfair labour practices and abuses. The article demonstrates that due to the vulnerability of temporary workers and lack of hope to secure decent work, labour brokers will continue to operate and thrive for decades to come if the issues surrounding high unemployment rate and chronic poverty are not resolved. The best solution in protecting employees of labour brokers is to continue to enforce the Amendment Act against any erring employer that do not want to comply with the law. The CCMA and courts have demonstrated robust actions in holding employers liable for any unfair labour practices being meted to vulnerable temporary workers. As part of oversight, steps are being taken to make sure that labour broking is registered in line with the principles of Convention 181 which mandate registration of labour brokers and compliance to labour laws.

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