



# Employment and Labour Law Alert

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Employment and Labour Law Alert | 27 February 2023

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## Highlights

### EARNINGS THRESHOLD

- Basic Conditions of Employment Act 75 of 1997: Determination: Earnings Threshold – All employees earning in excess of R241 110.59 (Two hundred and forty-one thousand, one hundred and ten rands, fifty-nine cents) per annum are excluded from sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3) of the Act with effect from 1 March 2023. – [GN3067 GG 48092 p3 20Feb2023](#)

### PRACTICE AND PROCEDURE

- [De Villiers v Bergview Convenience Centre \(Pty\) Ltd \(JS 465/2022\) \[2023\] ZALCJHB 15 \(7 February 2023\)](#)
- [Rogow and Others v Sun Chemical South Africa \(Pty\) Ltd \(C375&539/2017\(2\)\) \[2023\] ZALCCT 2 \(19 January 2023\)](#)
- [Southern African Clothing and Textile Workers Union and Others v Faeroes Properties \(Pty\) Ltd \(JS 751/2020\) \[2023\] ZALCJHB 14 \(7 February 2023\)](#)

### REINSTATEMENT

#### Case

- [Toyota SA Motors \(Pty\) Ltd v Commission for Conciliation, Mediation and Arbitration and Others \(DA6/ 2021\) \[2023\] ZALAC 5 \(14 February 2023\)](#)

### REMUNERATION

- National Minimum Wage Act 9 of 2018: Amendment of National Minimum Wages contained in Schedule 1 and Schedule 2 published under GN1732 in GG 45882 of 7 February 2023. Amendments are binding w.e.f. 1 March 2023.– [GN3069 GG 48094 p3 21Feb2023](#)

## ARBITRATION

### Law Firm Articles

#### Mnguni, Sandile. The current position on objections to the con/arb process.

2023 Feb 21 Malcolm Lyons & Brivik Inc.

“In a recent case of [Valinor Trading 133 CC t/a Kings Castle v CCMA and Others](#) [1] the Labour Court had to determine whether a Commissioner is permitted to proceed with arbitration in the event of an objection to the con/arb process being filed outside the 7-day time period.”

<https://www.lyonsbriviklaw.com/con-arb-process/>

#### Patterson, Brian and Gertzen, Jessie. The right to object to con-arb: Key considerations for employers and employees.

2023 Feb 21 ENSafrica

“In the recent decision of [Valinor Trading 133 CC t/a Kings Castle v The CCMA and Others](#), the Labour Court reiterated that rules are designed to assist, not bind, courts or tribunals. The corollary does not apply. Ultimately, rules cannot surpass legislation or the Constitution.”

<https://www.ensafrica.com/news/detail/6689/the-right-to-object-to-con-arb-key-considerat>

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## BARGAINING COUNCILS

### Government Gazettes

#### Labour Relations Act 66 of 1995

- Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades: Renewal of period of operation of the Main Collective Agreement to Non-parties.

GN3068 GG 48093 p3 20Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48093gon3068.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48093gon3068.pdf)

- List of bargaining councils that have been accredited by the CCMA for conciliation and/ or arbitration and/ or inquiry by arbitrator, with the terms of accreditation attached for the period 01 February 2023 to 31 January 2026.

GN1628 GG 48104 p97 24Feb2023

<https://bit.ly/3Y2vPcq>

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## CLASS ACTIONS

*Law Firm Article*

### Hofmeyr, Anja. Class actions: Can an order certifying a class action be appealed?

2023 Feb 21 Cliffe Dekker Hofmeyr

“On 6 February 2023, the Supreme Court of Appeal (SCA) handed down judgment in [DRDGold Ltd and Another v Nkala and Others \(Case no 688/2016\) \[2023\] ZASCA 9](#), which was an appeal brought by two appellant mining companies against both the certification order, as well as the declarator on the transmissibility of general damages. The issue for determination before the SCA was whether the High Court’s certification and declaratory orders were appealable.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Dispute/dispute-resolution-alert-21-february-2023-class-actions-can-an-order-certifying-a-class-be-appealed.html>

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## COMPLIANCE ORDERS

*Case – Law Reports*

### Mystra (Pty) Ltd t/a Silverton Spar & Tops v Thoka NO & others & Six Similar Cases (2023) 44 ILJ 204 (LC)

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Basic Conditions of Employment Act 75 of 1997 — Compliance Orders

Where the Director-General: Department of Employment & Labour has applied to have a compliance order made an arbitration award, the objecting employer may employ either of two processes — it may either oppose the enforcement proceedings brought under s 73 of the LRA 1995 or it may refer a dispute to the CCMA in terms of s 69(5) of the LRA (*Mystra (Pty) Ltd t/a Silverton Spar & Tops v Thoka NO & others & Six Similar Cases* at 204).”

<http://www.saflii.org/za/cases/ZALCJHB/2022/290.pdf>

Industrial Law Journal available from [Juta](#).

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## COIDA

*Internet Article*

### What are some of the guidelines to be taken into account to determine the degree of disability when an employee sustained an injury at the workplace?

2023 Feb 27 South African Labour Law Reports: article 4 of 2023

“In [Department of Labour: Compensation Commissioner v Botha \(2022\) 3 SALLR 17 \(SCA\)](#), our supreme court of appeal, inter alia, adopted the following approach:

- it is important to realise that, in terms of s49(2)(a) of COIDA, if an employee sustained an injury in Schedule 2, such employee is presumed to be permanently disabled to the degree as set out in the second column;
- what is the meaning of the sixth item in the first column of Schedule 2, to the effect that, if an employee suffered an injury not listed in such schedule, he would be deemed to be 100% disabled?”
  - the SCA indicated that not every injury not listed in Schedule 2 entails a 100% disablement and the extent of disability falling outside of Schedule 2 must be determined in the light of the specific facts of the specific case and according to medical evidence...”

<https://www.sallr.co.za/labouredge/article-4-2023/>

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## DISCIPLINARY PENALTY

*Case – Law Reports*

### Augustus and Sun International (2023) 44 ILJ 248 (CCMA)



[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Disciplinary Penalty — Interference in Penalty Handed Down by Chairperson

In *Augustus and Sun International* (at 248) a CCMA commissioner found that, where a disciplinary appeal chairperson had issued the employee with a final written warning for alleged assault, the employer could not change the final written warning to dismissal where there was no provision in its disciplinary code permitting it to do so. Similarly, in *Smith and Faurecia Interior Systems (Pty) Ltd* (at 284), a MIBCO arbitrator found that, where the employer substituted an external chairperson’s sanction with dismissal without advising the employee or permitting her to make representations, the employee’s dismissal was procedurally unfair.”

Industrial Law Journal available from [Juta](#).

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## DISCRIMINATION

### Law Firm Articles

#### **Hlwatika, Siphile. An expensive lesson for employers who ignore workplace discrimination.**

2023 Feb 21 ENSafrica

“A recent judgment by the South African Labour Court has demonstrated the consequences of an employer’s failure to meet its obligations in cases involving unfair discrimination allegations... The Labour Court recently considered the Code [of Good Practice on the Prevention and Elimination of Harassment in the Workplace] in [Solidarity obo Oosthuizen v South African Police Service](#), where it had to consider whether the South African Police Service was vicariously liable for the racial abuse Col. Oosthuizen suffered at the hands of her direct subordinates...”

<https://www.ensafrica.com/news/detail/6687/an-expensive-lesson-for-employers-who-ignore->

#### **Mahomed, Imraan and Vokwana, Kaoma. Discriminate in the workplace at your peril.**

2023 Feb 20 Cliffe Dekker Hofmeyr

“In the January 2023 decision of the Labour Court in [Solidarity obo A Oosthuizen v The South African Police Service \[JS1030/17\] \[2023\]](#), Judge Nkutha-Nkontwana, found that the South African Police Service (SAPS) failed to protect its employee, Colonel Oosthuizen, against racial abuse suffered at the instance of her direct subordinates and the failure of the employer to protect and defend her dignity. The court found against the SAPS and ordered it to pay Colonel Oosthuizen R300 000 compensation under the EEA for the harassment she suffered.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/employment-law-alert-20-february-Discriminate-in-the-workplace-at-your-peril.html>

### Media Comments

#### **Chambers, Dave. Legal blow to top Sanlam exec fired amid race, culture tension.**

2023 Feb 21 News24

“André Rheeder was fired as CEO of Sanlam Properties in 2019 after he was accused of resisting transformation. A CCMA commissioner ordered his reinstatement but a labour court judge said the hearing was unfair and ordered a new one. Now Rheeder has failed in an application for leave to appeal, meaning the CCMA must convene a new hearing.”

<https://www.news24.com/fin24/companies/top-sanlam-exec-fired-over-race-and-culture-fails-in-bid-to-challenge-court-defeat-20230221>

#### **Hlwatika, Siphile. Labour court ruling on SAPS case an expensive lesson for employers who ignore workplace discrimination.**

2023 Feb 26 Daily Maverick

“The landmark labour court judgment is the first to rule that racial, ethnic and social origin harassment constitute unfair discrimination under the Employment Equity Act’s code of good practice. This distinguishes it from its predecessor, which recognised only sexual harassment.”

<https://www.dailymaverick.co.za/article/2023-02-26-labour-court-ruling-on-saps-case-an-expensive-lesson-for-employers-who-ignore-workplace-discrimination/>

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## DISMISSALS

### Case – Law Reports

#### **Buscor (Pty) Ltd v Ntimbana NO & others (2023) 44 ILJ 125 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Dismissal — Dishonesty



The employees, both shop stewards, were dismissed for giving false testimony in unsuccessful unfair labour practice proceedings against their employer. An arbitrator found their dismissal to be substantively unfair, and this was upheld on review by the Labour Court. On appeal, the Labour Appeal Court found that the fact that the employees did not prevail in the unfair labour practice claim did not automatically render their witnesses' testimony untruthful or dishonest — a finding to the contrary would have a chilling effect in that potential witnesses would be deterred from voluntarily testifying in arbitration proceedings. It accordingly dismissed the appeal (*Buscor (Pty) Ltd v Ntimbana NO & others* at 125)."

<http://www.saflii.org/za/cases/ZALAC/2022/121.pdf>

Industrial Law Journal available from [Juta](#).

#### **Head of Department: Sport, Arts, Recreation & Culture, Free State v National Education Health & Allied Workers Union on behalf of Masekoa (2023) 44 ILJ 147 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

"Dismissal — Conflict of Interest

A senior municipal official had entered into a business deal with the municipality relating to the provision of accommodation to persons at her guesthouse during an annual cultural event. The Labour Appeal Court noted that senior public service employees were required to declare potential or actual conflicts of interest in terms of the Senior Management Service Handbook and the Public Service Code of Conduct and to take steps to avoid conflict. It was satisfied that the employee had failed to do so in this instance, and this justified her dismissal (*Head of Department: Sport, Arts, Recreation & Culture, Free State v National Education Health & Allied Workers Union on behalf of Masekoa & others* at 147).

<http://www.saflii.org/za/cases/ZALAC/2022/113.pdf>

Industrial Law Journal available from [Juta](#).

#### **Masscash (Pty) Ltd t/a Jumbo Cash & Carry v Mtsotsoyi & others (2023) 44 ILJ 162 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

"Dismissal — Gross Insubordination

In *Masscash (Pty) Ltd t/a Jumbo Cash & Carry v Mtsotsoyi & others* (at 162) the Labour Appeal Court found that the employee's repeated, persistent and wilful defiance of his employer's reasonable instruction amounted to gross insubordination, and justified his dismissal."

<http://www.saflii.org/za/cases/ZALAC/2022/117.pdf>

Industrial Law Journal available from [Juta](#).

#### **Reinhardt Transport Group (Pty) Ltd v National Bargaining Council for the Road Freight & Logistics Industry (2023) 44 ILJ 172 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

"Dismissal — Breach of Employer's Drivacam Policy

The employer's drivacam policy prohibited its truck drivers from obstructing cameras installed in their trucks to prevent them from recording. The employee breached the policy twice and was dismissed. The Labour Appeal Court found that breach of the policy was a dismissible offence even for a first-time offender except under exceptional circumstances. The employee was aware of the policy and his dismissal was therefore fair (*Reinhardt Transport Group (Pty) Ltd v National Bargaining Council for the Road Freight & Logistics Industry & others* at 172)."

<http://www.saflii.org/za/cases/ZALAC/2022/115.pdf>

Industrial Law Journal available from [Juta](#).

#### **SGB Cape Octorex (Pty) Ltd v Metal & Engineering Industries Bargaining Council & others (2023) 44 ILJ 179 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

"Dismissal — Breach of Employer's Alcohol and Drug Policy

The Labour Appeal Court, in *SGB Cape Octorex (Pty) Ltd v Metal & Engineering Industries Bargaining Council & others* (at 179), confirmed that an employer had the prerogative to adopt disciplinary rules establishing the standard of conduct required of employees, and that the purpose of adopting such rules was to create certainty and consistency in enforcing discipline. In this matter the employee had tested positive for smoking cannabis at work in breach of the employer's alcohol and drug policy and was dismissed. The court confirmed that the employer had a zero-tolerance policy, and that its golden rule was that anyone who violated the policy prohibiting drug use at the workplace would face dismissal even for a first offence. The court accordingly found the dismissal to be fair."

<http://www.saflii.org/za/cases/ZALAC/2022/118.pdf>

Industrial Law Journal available from [Juta](#).

#### **National Union of Metalworkers of SA on behalf of Nhlabathi & another v PFG Building Glass (Pty) Ltd & others (2023) 44 ILJ 231 (LC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

"Dismissal — Breach of Employer's Alcohol and Drug Policy





Where the employees tested positive for cannabis use in contravention of the employer's alcohol and drug policy and were dismissed, the Labour Court noted that the Constitutional Court had decriminalised the use of dagga in private and the right to institute criminal proceedings against individuals using dagga, but it did not offer protection to employees who contravened disciplinary codes. In this matter the employer had a zero-tolerance policy for alcohol or drug use, the employees were aware of the policy, the policy was applied consistently and it was justified because of the hazardous nature of the workplace and the employer's duty to provide a safe working environment. The court found, therefore, that the dismissal of the employees had been fair (*Nhlabathi & another v PFG Building Glass (Pty) Ltd & others* at 231)."

<http://www.saflii.org/za/cases/ZALCJHB/2022/292.pdf>

Industrial Law Journal available from [Juta](#).

#### Internet Article

#### **Chirume, Joseph. Dismissed immigrant lecturers refuse request to withdraw their court case.**

2023 Feb 22 GroundUp

"Four immigrant lecturers dismissed from Port Elizabeth TVET College have refused the college's request that they withdraw their court case. On Wednesday the Labour Court in Gqeberha postponed the case to 14 March to give the lecturers' lawyer time to study the documents... They approached the Labour Court which [granted a provisional interdict](#) earlier this month setting aside the termination of their employment. The court ordered the college to appear before it on 22 February to present reasons why the interdict should not be made final."

<https://www.groundup.org.za/article/dismissed-immigrant-lecturers-refuse-request-to-withdraw-their-court-case/>

#### Media Comments

#### **Chambers, Dave. Legal blow to top Sanlam exec fired amid race, culture tension.**

2023 Feb 21 News24

"André Rheeder was fired as CEO of Sanlam Properties in 2019 after he was accused of resisting transformation. A CCMA commissioner ordered his reinstatement but a labour court judge said the hearing was unfair and ordered a new one. Now Rheeder has failed in an application for leave to appeal, meaning the CCMA must convene a new hearing."

<https://www.news24.com/fin24/companies/top-sanlam-exec-fired-over-race-and-culture-fails-in-bid-to-challenge-court-defeat-20230221>

#### **Mavuso, Sihle. Sheriff to auction assets belonging to IFP-run municipality to compensate unfairly fired employee.**

2023 Feb 21 IOL News

"A sheriff of the court is set to auction assets belonging to [the cash-strapped eMadlangeni \(Utrecht\) local municipality](#) to raise money to pay an employee who was unfairly fired. [The municipality, which is run by the IFP](#), is set to lose two NP200 Nissan bakkies, 1 Nissan NP300 bakkie, a Mercedes Benz Fire truck and a TLB when the auction finally gets under way. It is feared that the auction would likely cripple service delivery in the rural municipality since it has only one fire truck and TLB which is used for services like digging graves for weekend burials."

<https://www.iol.co.za/news/politics/sheriff-to-auction-assets-belonging-to-ifp-run-municipality-to-compensate-unfairly-fired-employee-9ba142c5-ff8c-4e8e-8b07-c43e471984f0>

#### **Theunissen, Garth. Standard Bank fires 82 staff involved in MyMo accounts debacle.**

2023 Feb 21 Business Live

"Standard Bank has dismissed 82 employees, more than half of whom are from the Western Cape, for their role in the illegitimate activation of digital bank accounts held in the name of clients without their consent. A further eight Standard Bank employees are awaiting the conclusion of disciplinary processes after a more than year-long investigation into the scandal, which first came to the bank's attention in the final quarter of 2021 after a staff member blew the whistle on the issue. That means the total number of dismissed employees implicated in the scandal could swell to 90 once the disciplinary process is complete..."

<https://www.businesslive.co.za/bd/companies/financial-services/2023-02-21-standard-bank-fires-82-staff-involved-in-mymo-accounts-debacle/>

(Subscription Needed)

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## EARNINGS THRESHOLD

Government Gazette

### Basic Conditions of Employment Act 75 of 1997



Determination: Earnings Threshold – All employees earning in excess of R241 110.59 (Two hundred and forty-one thousand, one hundred and ten rands, fifty-nine cents) per annum are excluded from sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3) of the Act with effect from 1 March 2023.

GN3067 GG 48092 p3 20Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48092gon3067.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48092gon3067.pdf)

#### *Law Firm Articles*

#### **Abraham, Brett and Bux, Mehnaaz. 2023 earnings threshold entitles employees to stricter labour legislation protections.**

2023 Feb 21 Webber Wentzel

“From 1 March 2023, the earnings threshold will increase to ZAR 241 110.59, entitling employees falling below the new threshold to stricter protections in terms of labour legislation.”

<https://www.webberwentzel.com/News/Pages/2023-earnings-threshold-entitles-employees-to-stricter-labour-legislation-protections.aspx>

#### **Carman, Nigel and Mbambo, Owethu. Wage thresholds and the national minimum wage for 2023.**

2023 Feb 22 Fasken

“There are two recent developments which employers should take note of. First, on 9 February 2022, the Minister of Employment and Labour published his determination of a new earnings threshold under the Basic Conditions of Employment Act, 1997. Secondly, on 21 February 2023, the Minister published an amendment to the national minimum wages contained in Schedule 1 and Schedule 2 of the National Minimum Wage Act, 2018.”

<https://www.fasken.com/en/knowledge/2023/02/wage-thresholds-and-the-national-minimum-wage-for-2023>

#### **Hart, Melanie. Basic Conditions of Employment Act: Increase in earnings threshold.**

2023 Feb 21 Beech Veltman Inc

“On 20 February 2023, the Minister of Employment and Labour issued a determination in terms of section 6(3) of the Basic Conditions of Employment Act, 75 of 1997 in terms of which the annual earnings threshold was increased to R241 110.59 per annum (or R20 092.55 per month) with effect from 1 March 2023.”

<https://bv-inc.co.za/bcea/>

#### **Mnyandu, Mbali and Mather, Nadine. New earnings threshold and minimum wage to come into effect on 1 March 2023.**

2023 Feb 23 Bowmans

“On 1 March 2023, we will see the implementation of an increased annual earnings threshold in the amount of ZAR 241 110.59 per annum and an increased national minimum wage in the amount of ZAR 25.42 per hour worked.”

<https://bowmanslaw.com/insights/employment/south-africa-new-earnings-threshold-and-minimum-wage-to-come-into-effect-on-1-march-2023/>

#### **New earnings threshold effective 1 March 2023.**

2023 Feb 20 Cliffe Dekker Hofmeyr

“As of 1 March 2023, South Africans will see the implementation of the increased annual earnings threshold determined by the Minister of Employment and Labour in the amount of R241,110.59. This represents an increase of R17,030.11 from the previous amount of R224,080.48, which has been in effect since 1 March 2022.”

<https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Employment/New-earnings-threshold-effective-1-March-2023.html>

#### *Opinion*

#### **Bagraim, Michael. Earnings threshold raised in employment law.**

2023 Feb 22 Business Live

“The latest Government Gazette on the Basic Conditions of Employment Act has determined a higher earnings threshold. The ministerial determination states that anyone earning more than R241,110.59 a year is excluded from certain sections of the Basic Conditions of Employment Act. The sections that are excluded are sections 9, 10, 11, 12, 14, 15, 16, 17(2) and 18(3). This comes into effect on March 1. The definition of earnings is regular annual remuneration before deductions.”

<https://www.businesslive.co.za/bd/opinion/letters/2023-02-22-letter-earnings-threshold-raised-in-employment-law/>

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## EMPLOYMENT RELATIONSHIP

### *Case – Law Reports*

#### **Goliath v SA Broadcasting Corporation SOC Ltd & others (2023) 44 ILJ 185 (CCMA)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)



#### “Employee — Determination

A radio presenter was employed by the SABC on successive fixed-term contracts to present an on-air radio programme. He was informed that his contract would not be renewed, and referred an unfair dismissal dispute to the CCMA. The commissioner found that the CCMA had no jurisdiction to determine the dispute as the presenter was not an employee. On review, the Labour Court restated the well-established criteria for determination of the existence of an employment relationship, and upheld the commissioner’s finding that the presenter was an independent contractor and not an employee (*Goliath v SA Broadcasting Corporation SOC Ltd & others* at 185).”

Industrial Law Journal available from [Juta](#).

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## EMPLOYMENT EQUITY

*Internet Article*

### **Lottering, Chanté. Formulating numerical goals and targets for your company’s employment equity plan.**

2023 Feb 24 SEESA

“The outcome of the analysis must inform the numerical goals and the annual numerical targets and, according to the EAP (Economic Active Population), weighted more towards under-represented designated groups when conducting their Employment Equity Plan as per requirement by the Department of Labour. As per the Employment Equity Act (EEA), 55 of 1998, as amended, issued in terms of Section 25(1). Designated Groups mean: “Black people, women and people with disabilities who are citizens of the Republic of South Africa by birth or descents or became a citizen of the Republic of South Africa by naturalisation: before 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation before that date but were precluded apartheid policies.”

<https://blog.seesa.co.za/index.php/2023/02/24/formulating-numerical-goals-and-targets-for-your-companys-employment-equity-plan/>

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## FORCED LABOUR

*Law Firm Article*

### **Carslaw, Neil and Elson, Sean. UK High Court clarifies basis for NCA to investigate modern slavery allegations in supply chain.**

2023 Feb 22 Pinsent Masons

“A novel judicial review case concerning allegations of forced labour has shed a light on the UK National Crime Agency’s (NCA) willingness to investigate modern slavery claims under money laundering legislation. A legal theory submitted by a non-government organisation (NGO) in [a judicial review before the High Court](#) has outlined the possibility for the UK’s cross-border law enforcement agency to investigate companies for potential modern slavery claims in their supply chains on the grounds that such products may constitute the proceeds of crime.”

<https://www.pinsentmasons.com/out-law/news/high-court-nca-investigate-modern-slavery-supply-chain>

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## GIG WORK

*Media Comment*

### **Farouk, Menna [et.al]. High cost to women as African apps spread gospel of gig work.**

2023 Feb 19 Moneyweb

“Women who mop, sweep and clean homes across Africa are riding a new wave of digital platforms that promise flexible work and fresh opportunity – but critics say the fast-growing apps only expose the gig workers to age-old abuse and exploitation. They say the women – many of them vulnerable migrants – run a gamut of risks by signing up for gig work on the new apps, from underpay to assault, injury to debt, reputational damage as well as scant benefits and zero trade union representation. “The narrative of the gig economy is that domestic workers have flexibility, but in reality they have less autonomy, they feel subordinated to both the platform and the clients,” said Kelle Howson, a researcher who is an expert on gig work in South Africa.”

<https://www.moneyweb.co.za/news/africa/high-cost-to-women-as-african-apps-spread-gospel-of-gig-work/>

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## HARASSMENT

### Case – Law Reports

#### **Amathole District Municipality v Commission for Conciliation, Mediation and Arbitration and Others (2023) 44 ILJ 109 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Sexual Harassment — Liability of Employer

In *Amothole District Municipality v Commission for Conciliation, Mediation & Arbitration & others* (at 109) the Labour Appeal Court was satisfied that the evidence before the CCMA clearly showed that the conduct complained of was consensual, and that the employee had failed to prove sexual harassment. The employer was, in the circumstances, not liable in terms of s 60 of the Employment Equity Act 55 of 1998.”

<http://www.saflii.org/za/cases/ZALAC/2022/119.pdf>

Industrial Law Journal available from [Juta](#).

### Media Comments

#### **Govender, Prega. Principal back at school despite indecent assault conviction.**

2023 Feb 26 Times Live

“A principal who was fired for indecently assaulting a schoolboy has been re-employed after the KwaZulu-Natal education department had an unexplained change of mind over his fitness to return to teaching...”

<https://www.timeslive.co.za/sunday-times-daily/news/2023-02-26-principal-back-at-school-despite-indecent-assault-conviction/>

(Subscription Needed)

#### **Hartle, Ray. Eastern Cape judge-president faces sexual harassment probe.**

2023 Feb 19 Times Live

“Eastern Cape judge-president Selby Mbenenge is facing an investigation by the Judicial Conduct Committee after claims of sexual harassment levelled against him by a judge’s clerk based in the Makhanda high court...”

<https://www.timeslive.co.za/sunday-times/news/2023-02-19-eastern-cape-judge-president-faces-sexual-harassment-probe/>

(Subscription Needed)

#### **IFP councillor embroiled in ‘sex for jobs’ scandal.**

2023 Feb 24 The Citizen

“An Inkatha Freedom Party (IFP) councillor from KwaZulu-Natal has been accused of bartering sex for jobs.

This follows a damning audio clip of the party’s councillor from Alfred Duma local municipality that has gone viral on social media.”

<https://www.citizen.co.za/news/south-africa/politics/ifp-councillor-sex-for-jobs-scandal-february-2023/>

### Podcast

#### **Episode 151: Sexual harassment and how the employer can approach such an offence in the workplace..**

2023 Feb 22 SEESA

“SEESA Labour Legal Experts, Larisha Govender and Simone Abrahams discuss sexual harassment in the workplace, which is very often a difficult matter to navigate. They also focus on providing the employer with a guide to effectively approach such an offence and ways to possibly guard against it.”

<https://blog.seesa.co.za/index.php/2023/02/22/episode-151-sexual-harassment-and-how-the-employer-can-approach-such-an-offence-in-the-workplace/>

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## HEALTH AND SAFETY

### Internet Article

#### **Pillay, Deniro and Gangiah, Purnel. A reminder to employers; failure to guard against foreseeable harm at the workplace may attract liability [*Hobongwana v Benteler South Africa (Pty) Ltd (494/2019) [2023] ZAECQBHC 6 (6 February 2023)*].**

2023 Feb 22 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In circumstances where an employer fails to take reasonable steps to guard against the inherent dangers to employees in operating machinery on its premises, such entity may find itself liable for the damages sustained by the operator of the machinery. Operators of machinery must be reasonably trained by employers to ensure that they have the necessary skills to operate the specific machinery and to avoid any harm from occurring.”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/a-reminder-to-employers-failure-to-guard-against-foreseeable-harm-at-the-workplace-may-attract-liability/>



*Media Comment*

**Venter, Zelda. Court rules worker who suffered brain damage when flung from forklift may sue ex-employer.**

2023 Feb 21 IOL News

“A former employee at Shoprite Checkers, who suffered severe brain damage when she was flung from a forklift while packing goods on shelves, may sue the company. The woman, identified only as Mrs Mkhwanazi, is mentally not able to pursue the claim due to the severity of her brain injuries. The court earlier appointed a curator to handle the legal proceedings on her behalf.”

<https://www.iol.co.za/pretoria-news/news/court-rules-worker-who-suffered-brain-damage-when-flung-from-forklift-may-sue-ex-employer-41519bfa-c104-4729-86d7-0083b38cfd35>

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## LEAVE

*Internet Article*

**Is an employee entitled to payment for public holidays during maternity leave?**

2023 Feb 23 SEESA

“Section 25 (5)(1) of the Public Holidays Act 36 of 1994 provides that ‘every employee shall be entitled to at least the number of public holidays provided for in this Act. In terms of section 18 of the Basic Conditions of Employment Act (BCEA) provides that

(1) An employer may not require an employee to work on a public holiday except under an agreement.

(2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay –

(a) An employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day; ...”

<https://blog.seesa.co.za/index.php/2023/02/23/is-an-employee-entitled-to-payment-for-public-holidays-during-maternity-leave/>

*Media Comments*

**Naci, Eric. VUT vice-chancellor to pursue legal action against employer.**

2023 Feb 21 The Citizen

“The vice-chancellor and principal of the Vaal University of Technology, Professor Dan Kgwadi, has vowed to take the institution to the labour court, claiming he was “dismissed” last Friday for taking sick leave for which he had proof. Kgwadi said he was informed telephonically by the university council’s chair, Professor Mandla Radebe. No reason was given except that he was being placed on special leave pending a letter to be written to him on the matter. ‘Special leave’ “I don’t know the reason, there was nothing in writing, just a call from the council chair. Nothing was discussed with me...”

<https://www.citizen.co.za/news/vut-vice-chancellor-to-pursue-legal-action-february-2023/> (Subscription Needed)

**Spain backs law creating Europe's first 'menstrual leave'.**

2023 Feb 16 East Coast Radio

“Spanish lawmakers on Thursday gave final approval to a law granting paid medical leave to women suffering severe period pain, becoming the first European country to advance such legislation.”

<https://www.ecr.co.za/news/news/spain-backs-law-creating-europes-first-menstrual-leave/>

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## PENSION LAW

Our weekly publication, the [Insurance Law Alert](#), provides more in-depth coverage of pension law matters. Please contact [alert@lexinfo.co.za](mailto:alert@lexinfo.co.za) for further information.

*Case*

**Ndwandwe v Trustees of Transnet Retirement Fund and Others (D7381/2020; D3438/2020) [2023] ZAKZDHC 8 (22 February 2023)**

Pension – Death benefit – Nomination form – Fund not following allocations of deceased – Rule 10.4(iii) of Fund Rules – Fund permitted to make any distribution to nominees or dependents that it deems equitable – Deceased effectively



had two spouses – Conducting detailed investigation – Given competing financial demands of deceased's dependents, Fund's decision was one that reasonable decision-maker could have reached.

<http://www.saflii.org/za/cases/ZAKZDHC/2023/8.pdf>

#### Law Firm Articles

### National Budget Speech, 2023 – Proposed changes to retirement funds.

2023 Feb 22 Bowmans

“Changes to retirement funds relate mainly to the new two-pot retirement system, but changes are also proposed regarding two retirement tax issued and in respect of the regulation of retirement funds.”

<https://bowmanslaw.com/insights/tax/south-africa-national-budget-speech-proposed-changes-to-retirement-funds/>

### Yuda, Amina. The tussle between non-payment of contributions and the application of prescription [*Private Security Sector Provident Fund v Isidingo Security Services (t/a Unitrade (Pty) Ltd*] (3048/2021P) [2022] ZAKZPHC 67 (14 June 2022)].

2023 Feb 21 Norton Rose Fulbright: Financial Institutions Legal Snapshot

“In 2022, in a decision handed down by the KwaZulu Natal High Court... it was made clear that the failure by a pension fund to timeously collect arrear pension contributions from recalcitrant employers, will result in the fund not having a claim against the employer where the defence of prescription is raised by such employer. The case and its consequences have caused a debate in the retirement fund industry as to whether prescription should apply to arrear contributions in light of the onus placed on employers to ensure that contributions are paid to a pension fund; whichever fence you may sit on, the law remains clear on its stance: prescription applies.”

<https://www.financialinstitutionslegalsnapshot.com/2023/02/the-tussle-between-non-payment-of-contributions-and-the-application-of-prescription/>

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## PRACTICE AND PROCEDURE

### Cases

### De Villiers v Bergview Convenience Centre (Pty) Ltd (JS 465/2022) [2023] ZALCJHB 15 (7 February 2023)

Unfair dismissal claim – Condonation for late referral of dispute – Applicant failing to show good prospects of success – Application for condonation dismissed.

<http://www.saflii.org/za/cases/ZALCJHB/2023/15.pdf>

### Rogow and Others v Sun Chemical South Africa (Pty) Ltd (C375&539/2017(2)) [2023] ZALCCT 2 (19 January 2023)

Rule 11 applications – Two applications to dismiss brought by respondent company – Costs order in respect of C375/2017 reflecting negligence by applicants' attorneys warranting order of costs *de bonis propriis* – Delay in prosecution of contractual claim not due to abuse of process by individual applicants – Prejudice to respondent occasioned by delay not insurmountable – Interests of justice require that action be heard on merits.

<http://www.saflii.org/za/cases/ZALCCT/2023/2.pdf>

### Southern African Clothing and Textile Workers Union and Others v Faeroes Properties (Pty) Ltd (JS 751/2020) [2023] ZALCJHB 14 (7 February 2023)

Claim of unfair retrenchment – Condonation for late filing of statement of claim – Satisfactory reasons proffered for delay – Condonation granted.

<http://www.saflii.org/za/cases/ZALCJHB/2023/14.pdf>

#### Law Firm Article

### Myeni, Nombulelo; Kafula, Camille and Naicker, Keshni. The labour court confirms that section 188A(11) inquiries are not for the taking.

2023 Feb 24 Bowmans

“In the recent case of *Mamodupi Mohlala-Mulaudzi v Property Practitioners Regulatory Authority* (Case no: J68/23), the Labour Court highlighted, with disapproval, the prevalent trend of employees invoking the provision of section 188A (11) of the LRA without providing any evidence of a protected disclosure, and with the intention of delaying pending disciplinary proceedings against them. The Labour Court evaluated the import, purpose, and correct interpretation of section 188A (11) to curb the apparent abuse of the section.”

<https://bowmanslaw.com/insights/employment/south-africa-the-labour-court-confirms-that-section-188a-11-inquiries-are-not-for-the-taking/>

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## PUBLIC SERVICE

*Government Gazettes*

### Public Service Act (Proclamation No. 103 of 1994)

- Amendment of Schedule 2 to the Public Service Act, 1994: Substitution of designations of the Western Cape provincial departments and heads.  
Proc115 GG 48103 p3 23Feb2023  
[https://www.gov.za/sites/default/files/gcis\\_document/202302/48103pro115.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48103pro115.pdf)
- Draft Public Service Regulations: Comments invited within 30 days of publication.  
GenN1631 GG 48104 p103 24Feb2023  
<https://bit.ly/3Y2vPcq>

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## REINSTATEMENT

*Case*

### Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others (DA6/ 2021) [2023] ZALAC 5 (14 February 2023)

Remedy – Reinstatement not competent remedy where expiry of employee's fixed-term contract precedes unfair dismissal finding of arbitrator – In the circumstances, arbitrator has no discretion to choose between three remedies contemplated in Labour Relations Act 66 of 1995, s 193(1) but is obliged to order payment of compensation in terms of s 193(1)(c) – Where reinstatement is not competent remedy, s 193(2) has no application and employer is not required to prove that reinstatement of employee was not practicable in terms of s 193(2)(c).

<http://www.saflii.org/za/cases/ZALAC/2023/5.pdf>

*Media Comments*

### Chambers, Dave. Legal blow to top Sanlam exec fired amid race, culture tension.

2023 Feb 21 News24

“André Rheeder was fired as CEO of Sanlam Properties in 2019 after he was accused of resisting transformation. A CCMA commissioner ordered his reinstatement but a labour court judge said the hearing was unfair and ordered a new one. Now Rheeder has failed in an application for leave to appeal, meaning the CCMA must convene a new hearing.”

<https://www.news24.com/fin24/companies/top-sanlam-exec-fired-over-race-and-culture-fails-in-bid-to-challenge-court-defeat-20230221>

### Mavuso, Sihle. Sheriff to auction assets belonging to IFP-run municipality to compensate unfairly fired employee.

2023 Feb 21 IOL News

“A sheriff of the court is set to auction assets belonging to [the cash-strapped eMadlangeni \(Utrecht\) local municipality](#) to raise money to pay an employee who was unfairly fired. [The municipality, which is run by the IFP](#), is set to lose two NP200 Nissan bakkies, 1 Nissan NP300 bakkie, a Mercedes Benz Fire truck and a TLB when the auction finally gets under way. It is feared that the auction would likely cripple service delivery in the rural municipality since it has only one fire truck and TLB which is used for services like digging graves for weekend burials.”

<https://www.iol.co.za/news/politics/sheriff-to-auction-assets-belonging-to-ifp-run-municipality-to-compensate-unfairly-fired-employee-9ba142c5-ff8c-4ebe-8b07-c43e471984f0>

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## REMUNERATION

*Government Gazette*

### National Minimum Wage Act 9 of 2018

Amendment of National Minimum Wages contained in Schedule 1 and Schedule 2 published under [GN1732 in GG 45882 of 7 February 2023](#). Amendments are binding w.e.f. 1 March 2023.

GN3069 GG 48094 p3 21Feb2023

[https://www.gov.za/sites/default/files/gcis\\_document/202302/48094gon3069.pdf](https://www.gov.za/sites/default/files/gcis_document/202302/48094gon3069.pdf)



Law Firm Articles

**Carman, Nigel and Mbambo, Owethu. Wage thresholds and the national minimum wage for 2023.**

2023 Feb 22 Fasken

“There are two recent developments which employers should take note of. First, on 9 February 2022, the Minister of Employment and Labour published his determination of a new earnings threshold under the Basic Conditions of Employment Act, 1997. Secondly, on 21 February 2023, the Minister published an amendment to the national minimum wages contained in Schedule 1 and Schedule 2 of the National Minimum Wage Act, 2018.”

<https://www.fasken.com/en/knowledge/2023/02/wage-thresholds-and-the-national-minimum-wage-for-2023>

**Milo, Sandro; Lamb, Kyle-Terry and Bouchier, Dylan. Up once again! A substantial adjustment to the minimum earnings threshold in 2023.**

2023 Feb 21 Eversheds Sutherland

“Employers and employees must take note that the Minister of Employment and Labour has announced an upward adjustment to the earnings threshold in terms of section 6(3) of the Basic Conditions of Employment Act, 75 of 1997, which will take effect from 1 March 2023. The earnings threshold shall increase to R241 110.59 per annum. This is a substantial increase of 7,59%. Previously, the earnings threshold was R224 080.48 per year.”

[https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/UP\\_ONCE\\_AGAIN\\_A\\_SUBSTANTIAL\\_ADJUSTMENT\\_TO\\_THE\\_MINIMUM\\_EARNINGS\\_THRESHOLD\\_IN\\_2023](https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/UP_ONCE_AGAIN_A_SUBSTANTIAL_ADJUSTMENT_TO_THE_MINIMUM_EARNINGS_THRESHOLD_IN_2023)

**Milo, Sandro; Lamb, Kyle-Terry and Bouchier, Dylan. Up, up and way: An increase in the national minimum wage for 2023.**

2023 Feb 22 Eversheds Sutherland

“[T]he Minister of Employment and Labour announced amendments to the National Minimum Wage Act, 9 of 2018. In terms of the amendments, employers and employees will see an upward adjustment to the national minimum wage that will take effect from 1 March 2023.”

[https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/UP\\_UP\\_AND\\_WAY\\_AN\\_INCREASE\\_IN\\_THE\\_NATIONAL\\_MINIMUM\\_WAGE\\_FOR\\_2023](https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/UP_UP_AND_WAY_AN_INCREASE_IN_THE_NATIONAL_MINIMUM_WAGE_FOR_2023)

**Mnyandu, Mbali and Mather, Nadine. New earnings threshold and minimum wage to come into effect on 1 March 2023.**

2023 Feb 23 Bowmans

“On 1 March 2023, we will see the implementation of an increased annual earnings threshold in the amount of ZAR 241 110.59 per annum and an increased national minimum wage in the amount of ZAR 25.42 per hour worked.”

<https://bowmanslaw.com/insights/employment/south-africa-new-earnings-threshold-and-minimum-wage-to-come-into-effect-on-1-march-2023/>

**Patterson, Brian and Pawson, Amy. Load-shedding and lockdown: Do employers still need to pay employees even when the business can't operate?**

2023 Feb 21 ENSafrica

“In the recent decision in *Glencarol (Pty) Ltd v National Bargaining Council for the Clothing Manufacturing Industry (Northern Chamber) and Another*, Van Niekerk J dealt with an application to review an arbitration award where the arbitrator had upheld a bargaining council's compliance order compelling the Glencarol (Pty) Ltd (the employer) to comply with a collective agreement relating to the payment of annual bonuses and leave pay.”

<https://www.ensafrica.com/news/detail/6688/load-shedding-and-lockdown-do-employers-still>

**Ramjettan, Dhevarsha. New national minimum wage announced.**

2023 Feb 22 Webber Wentzel

“Employers need to be aware of the new higher National Minimum Wage rates from 1 March and to take these rates into account when they engage in collective bargaining agreements.”

<https://www.webberwentzel.com/News/Pages/new-national-minimum-wage-announced.aspx>

**Spanish court raises questions over calculation of severance pay.**

2023 Feb 23 Pinsent Masons

“A recent decision by the High Court of Justice of Catalonia has prompted debate over whether employees in Spain may be entitled to additional compensation on dismissal. Various Spanish newspapers have reported that compensation for unfair dismissal regulated by the Workers' Statute has been increased from 33 days per year worked to 48 days per year worked, following [a decision by the High Court of Justice of Catalonia](#) (11-page / 207KB PDF)... However, Madrid-based employment law expert Beatriz Moriones of Pinsent Masons said that the court's award in favour of the employee in this case included a compensatory element, based on the civil law concept of 'loss of profits', on top of the employee's entitlement under the Workers' Statute.”

<https://www.pinsentmasons.com/out-law/news/spanish-court-calculation-severance>

Media Comments





**Bell, Terry. Govt wants new 3-year public wage deal - and this time it can't renege.**

2023 Feb 23 News24

"Government is again seeking a three-year pay and conditions deal with the public sector unions. This offer is contained in a draft agreement submitted to the unions when negotiations began on Thursday. Significantly, the agreement contains a clause that apparently removes any possibility of the government, as the employer, again renegeing on any part of the deal."

<https://www.news24.com/fin24/economy/govt-wants-new-3-year-public-wage-deal-and-this-time-it-cant-renege-20230223>

**Big jump in domestic worker pay in South Africa – here's how much you should be paying.**

2023 Feb 21 Business Tech

"The Department of Employment and Labour has published the new National Minimum Wage for South Africa. The minimum wage will be hiked by 9.62% for the year, taking the going rate to R25.42 (up R2.23 from R23.19 before). Farm workers will earn a minimum in line with the rate, as will domestic workers. However, workers employed in expanded public works programmes will be entitled to a lower rate at R13.97 per hour. The new minimum wage means that domestic workers in South Africa should see a 9.6% pay hike. Calculated at 8 hours a day, the monthly wage for domestic workers (160 hours a month) should increase from around R3,700 to R4,100 – an increase of R400."

<https://businesstech.co.za/news/finance/666781/big-jump-in-domestic-worker-pay-in-south-africa-heres-how-much-you-should-be-paying/>

**Kachere, Thomas. Public sector pay: Godongwana cautions public servants about trade-offs.**

2023 Feb 22 GroundUp

"Finance Minister Enoch Godongwana stopped short of making an announcement on public sector wages in Wednesday's budget, saying he did not want to pre-empt the outcomes of the wage negotiations currently underway. But, he warned, any increase over the budgeted amount would have to be "clawed back" elsewhere. Unions are demanding a 10% wage increase. The government has offered 3% but according to reports has recently raised that to 4.7%."

<https://www.groundup.org.za/article/public-sector-pay-godongwana-cautions-public-servants-about-trade-offs/>

**Mahlaka, Ray. Government proposes below consumer inflation pay rise for public servants.**

2023 Feb 19 Daily Maverick

"The government has proposed an average 4.7% increase in the pay of public servants for the 2023/24 fiscal year, followed by adjustments in 2024/25 and 2025/26 that are linked to the expected consumer inflation rate. But trade unions representing public servants are already planning to embark on a strike over pay talks for 2022."

<https://www.dailymaverick.co.za/article/2023-02-19-government-proposes-below-consumer-inflation-pay-rise-for-public-servants/>

**Maqhina, Mayibongwe. Budget makes no provision for public service wage increases.**

2023 Feb 23 IOL News

"The 2023 Budget presented by Finance Minister Enoch Godongwana in Parliament on Wednesday has made no provision for public service wage increases as wage negotiations had only started this month. Instead, Godongwana said the wage negotiations have just begun and his Budget did not want to pre-empt the outcome of the talks with the labour unions. "Nevertheless, this and future wage negotiations must strike a balance between fair pay, fiscal sustainability, and the need for additional staff in front-line services," he said."

<https://www.iol.co.za/capetimes/news/budget-makes-no-provision-for-public-service-wage-increases-be687844-8a7b-4500-ac70-eecc28b4491a>

**Sizane, Mkhusele. Public Works employees sleep outside post office for a week waiting to be paid.**

2023 Feb 21 News24

"Employees of the Extended Public Works Programme from Chris Hani in the Eastern Cape have been sleeping outside the post office in Komani waiting to be paid and some said they had been there for a week. They are paid through Postbank but their cards no longer work, so they have to get their salary from the post office. Some spend R120 of their R810-a-month salary to get to and from Komani to draw their money."

<https://www.news24.com/fin24/economy/public-works-employees-sleep-outside-post-office-for-a-week-waiting-to-be-paid-20230221>

**Thukwana, Ntando. PSA encounters new hurdle in pay talks as state tables 4.7% offer.**

2023 Feb 21 Moneyweb

"Public sector unions affiliated with the Federation of Unions of South Africa (Fedusa) that abandoned the 2022/2023 salary negotiations faced a new hurdle when the government tabled a below-inflation offer of 4.7% for the 2023/2024 financial year. Last week, some Fedusa unions – including the 235 000-strong Public Servants Association (PSA) – said they were ready to commence a fresh round of negotiations pertaining to the new year."

<https://www.moneyweb.co.za/news/economy/psa-encounters-new-hurdle-in-pay-talks-as-state-tables-4-7-offer/>

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## RESIGNATION

### Media Comment

#### **Nicolson, Greg. André de Ruyter released from Eskom 'with immediate effect' following explosive interview.**

2023 Feb 23 Daily Maverick

"Eskom CEO André De Ruyter has left his job a month earlier than planned after reaching an agreement with the board. His early exit follows a candid interview on political interference and corruption at the embattled power utility."

<https://www.dailymaverick.co.za/article/2023-02-23-andre-de-ruyter-released-from-eskom-with-immediate-effect-following-explosive-interview/>

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## RETRENCHMENT

See also: [EMPLOYMENT EQUITY](#)

### Internet Articles

#### **Christian, Alex. How shrinking teams are pushing workers to the brink.**

2023 Feb 20 BBC News

"As layoffs bite, teams are becoming smaller – and fewer resources mean remaining employees are spread thin and overburdened... As the head of marketing for a UK restaurant group, James's role was to develop its long-term strategy, steadily build its digital audience and gradually increase footfall. However, his job looked different in practice – there were never enough employees to get even the smaller, more routine tasks done, let alone focus on the job he was hired to do."

<https://www.bbc.com/worklife/article/20230217-how-shrinking-teams-are-pushing-workers-to-the-brink>

#### **Schrodt, Paul. The myth of the 'compassionate layoff'.**

2023 Feb 22 BBC News

"In a fluctuating labour market, mass layoffs continue to dominate the headlines. The first wave of large-scale job cuts began with some of the biggest names in technology – including Google, Meta and Twitter – axing thousands of employees in the final months of 2022. And the layoffs have continued into the new year around the globe; tracker Layoffs.fyi has recorded 359 tech companies laying off more than 100,000 employees since January 2023, compared to about 160,000 positions cut in all of 2022. Now, however, layoffs are creeping into other sectors, including finance, media, automotive, retail and more."

<https://www.bbc.com/worklife/article/20230221-the-myth-of-the-compassionate-layoff>

### Media Comments

#### **Gumede, Michelle. Nampak slashes job cuts to 20 after Numsa talks.**

2023 Feb 26 Business Live

"Packaging giant Nampak has avoided a swathe of retrenchments at its plastics division after talks with unions resulted in an agreement to cut 20 jobs instead of the 213 initially planned. The diversified packaging manufacturer concluded an agreement with the National Union of Metalworkers of SA (Numsa) last week to pay severance packages by April 1 to those workers leaving at end-March. Staff who will depart at end-June are expected to receive payouts by July 1..."

<https://www.businesslive.co.za/bd/companies/2023-02-26-nampak-slashes-job-cuts-to-20-after-numsa-talks/> (Subscription Needed)

#### **Hays, Kall. Elon Musk faces upwards of \$130 million in legal fees to fight laid off Twitter workers over severance.**

2023 Feb 24 Business Insider US

"Elon Musk last month offered thousands of laid off Twitter workers a limited severance deal. Over 1,000 of the workers are now fighting for more through arbitration, a costly legal process. With many claims and more expected, Musk faces tens of millions of dollars in legal costs and fees."

<https://www.businessinsider.co.za/elon-musk-faces-130-million-legal-cost-twitter-severance-2023-2>

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## SELF-EMPLOYMENT

### Case



### **Cawood NO obo Nell v Road Accident Fund (65104/2020) [2023] ZAGPPHC 68 (10 February 2023)**

Motor collision – Self-employed gardener, painter and repairman – General damages well supported by medical evidence – Not proving that self-employed – No proof of income, bank statement, qualification towards profession, tax documents or invoices – Failing to show loss of earnings.

<http://www.saflii.org/za/cases/ZAGPPHC/2023/68.pdf>

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## SUSPENSIONS

*Internet Article*

### **Israelstam, Ivan. Beware suspending employees without just cause.**

2023 Feb 20 Lexinfo CC

“Angry employers too often fire employees on the spot for having broken workplace rules, or for doing poor work. This is understandable in circumstances where the employee has seriously messed up a business deal, damaged equipment, lost crucial information, committed a dishonest act, refused to obey an instruction or caused other serious damage. However, there is no place for anger in the implementation of discipline. This is because the law punishes employers who act hastily, and anger very often results in hasty and foolhardy action.”

<https://www.lexinfo.co.za/post/beware-suspending-employees-without-just-cause>

*Media Comment*

### **Pheto, Belinda. Mpumalanga police commissioner Lt-Gen Semakaleng Daphney Manamela suspended.**

2023 Feb 24 Times Live

“Mpumalanga police commissioner Lt-Gen Semakaleng Daphney Manamela has been suspended. TimesLIVE understands Manamela's suspension by national commissioner Gen Fannie Masemola is over her unduly receiving gifts including vouchers worth thousands of rand, a TV stand, couches and household appliances. The gifts are alleged to have been donated to Manamela by several of the province's police stations. While she had declared the items, it was however alleged she had influenced the police stations to donate them.”

<https://www.timeslive.co.za/news/south-africa/2023-02-24-mpumalanga-police-commissioner-lt-gen-semakaleng-daphney-manamela-suspended/>

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## TEMPORARY EMPLOYMENT SERVICES

*Case – Law Reports*

### **National Association of SA Workers on behalf of Members and Global Material Technologies SA Inc & another (2023) 44 ILJ 275 (CCMA)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Temporary Employment Service — Whether Service Provider a TES

The packaging function in the client's business was outsourced to a service provider. The union referred a dispute to the CCMA in terms of s 198 of the LRA 1995 to determine whether the service provider was a temporary employment service. The commissioner found that the service provider was engaged to perform a service to the client and not to supply labour; it billed for products packed not people supplied; and provided the same packaging services to other businesses. The service provider was therefore not a temporary employment service as envisaged by s 198 (*National Association of SA Workers on behalf of Members and Global Material Technologies SA Inc & another* at 275).

Industrial Law Journal available from [Juta](#).

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## TERMINATION OF EMPLOYMENT

*Media Comment*

### **Basson, Adriaan and Charles, Marvin. UCT crisis: Phakeng digs in heels, wants to be 'exonerated' in statement.**

2023 Feb 23 News24

“The University of Cape Town has not issued a statement on its decision to part ways with vice-chancellor Professor Mamokgethi Phakeng. Phakeng insists on being "exonerated" in the media statement. Phakeng will take an early retirement package after she and the university council reached an exit settlement deal.”



<https://www.news24.com/news24/southafrica/news/uct-crisis-phakeng-digs-in-heels-wants-to-be-exonerated-in-statement-20230223>

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## TRADE UNIONS

*Media Comment*

### **Concerns raised over declining trade union membership in SA.**

2023 Feb 23 The Citizen

“Trade union membership in South Africa is declining at an alarming rate and currently stands at 23%.

This was revealed on Wednesday during a meeting of Brics in Muldersdrift, northwest of Johannesburg.

The meeting was attended by Brazil, Russia, India, China and South Africa, the organisation’s five member states, along with the International Labour Organisation (ILO), African Union (AU) as well as Zimbabwe, Botswana, Eswatini, Namibia and Malawi as invitees.”

<https://www.citizen.co.za/business/concerns-declining-trade-union-membership-february-2023/>

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## TRANSFER OF BUSINESS

*Case – Law Reports*

### **Myeza & others and Leading Hospitality Solutions & another (2023) 44 ILJ 264 (CCMA)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Transfer of Business as Going Concern — Existence of Going Concern

When the employees were notified that their contracts of employment were terminating, they approached their employer which informed them that they were no longer employed by it as there had been a transfer of the business in terms of s 197 of the LRA 1995 some years earlier and the employees’ contracts had transferred to another entity. In unfair dismissal proceedings before the CCMA, the commissioner found that there had never been a transfer in terms of s 197 but that the employer had merely outsourced its security services as an arrangement of convenience. The applicants were therefore still its employees and had been unfair dismissed (*Myeza & others and Leading Hospitality Solutions & another* at 264).

Industrial Law Journal available from [Juta](#).

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## UNEMPLOYMENT

*Media Comment*

### **Nkonki, Anita. Unemployment nightmare for youth remains stubbornly high.**

2023 Feb 23 IOL News

“The youth who bear the brunt of unemployment in South Africa say they were convinced their education would secure better lives for them, but they have been met with disappointment after endless rejections. They mention the rising cost of living, which also makes it nearly impossible to maintain themselves in their quest for jobs. Delivering his 2023 Budget Speech, Finance Minister Godongwana said they are implementing growth-enhancing reforms to eradicate poverty, inequality, and unemployment.”

<https://www.iol.co.za/the-star/news/unemployment-nightmare-for-youth-remains-stubbornly-high-62ad5419-5939-4255-8965-fa5ee38c2d8f>

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## UNEMPLOYMENT INSURANCE FUND

*Media Comment*

### **Pereira-Kotze, Catherine. Five ways to improve domestic workers’ maternity protection.**

2023 Feb 15 Daily Maverick

“Some domestic workers experience discrimination, and many experience job insecurity due to pregnancy and childbirth. Domestic workers can’t access paid maternity leave, despite a national social insurance programme managed through the Unemployment Insurance Fund (UIF) and for which domestic workers are legally eligible. The



only payment that most domestic workers can access when they are on maternity leave is the Child Support Grant, which is often much less than what their salary would have been.”

<https://www.dailymaverick.co.za/article/2023-02-15-five-ways-to-improve-domestic-workers-maternity-protection/>

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## UNFAIR LABOUR PRACTICES

### Case – Law Reports

#### **Ekurhuleni Metropolitan Municipality v Mabusela NO & others (2023) 44 ILJ 135 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Unfair Labour Practice — Promotion

The municipality’s recruitment and selection policy empowered the divisional head of workforce capacity management to authorise deviations from the policy. The Labour Appeal Court found that this power did not originally vest in the city manager, but emanated from the policy itself, and therefore that, had the city manager approved the promotion of the employee, this would have been illegal. The court concluded that the failure to promote the employee was not unfair (*Ekurhuleni Metropolitan Municipality v Mabusela NO & others* at 137).”

<http://www.saflii.org/za/cases/ZALAC/2022/112.pdf>

Industrial Law Journal available from [Juta](#).

#### **Mashaba v University of Johannesburg & others (2023) 44 ILJ 156 (LAC)**

[Industrial Law Journal Preview Jan 2023 Summary:](#)

“Unfair Labour Practice — Promotion

In *Mashaba v University of Johannesburg & others* (at 156), the Labour Appeal Court confirmed that the discretion of an employer to promote is not assailable unless it is exercised capriciously or is vitiated by malice or fraud. It found that, in this matter, the failure to shortlist an unqualified candidate did not constitute an unfair labour practice.”

<http://www.saflii.org/za/cases/ZALAC/2022/116.pdf>

Industrial Law Journal available from [Juta](#).

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## WAGES

See: [REMUNERATION](#)

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## WHISTLEBLOWERS

### Media Comment

#### **Stent, James. Prasa board strikes back against whistleblower.**

2023 Feb 20 News24

“Prasa’s board has approached the Labour Court to review an arbitration award that was not in its favour. Prasa chair Leonard Ramatlakane says that the arbitrator “reached a decision that another decision maker could not have reasonably reached.” Whistleblower Martha Ngoye, who is opposing Prasa’s review application, will approach the court to certify the arbitration award, and may seek to hold Prasa’s board in contempt of court.”

<https://www.news24.com/fin24/companies/prasa-board-strikes-back-against-whistleblower-20230220>

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## WORKER’S RIGHTS

### Media Comment

#### **Maromo, Jonisayi. ‘Happy worker is a productive worker’: BRICS nations compare notes in Joburg on workers’ rights.**

2023 Feb 22 IOL News

“Deputy Minister of Employment and Labour Boitumelo Moloi has emphasised the importance of workers’ rights as the cornerstone of any fair, just and prosperous society which ensures that employees have access to safe working








conditions. Moloï made the remarks while addressing the inaugural BRICS meeting organised by the department of employment and labour under the theme: “Ensuring decent work, dignity and respect for all.”

<https://www.iol.co.za/news/africa/happy-worker-is-a-productive-worker-brics-nations-compare-notes-in-joburg-on-workers-rights-29f9d997-3a12-4e18-9b4b-dcd00356f4a7>

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|    | <p><b>Events Calendar for 2023</b></p> <p>View <a href="#">here</a>.</p>  |
|   | <p><b>Summaries of Constitutional Court and Supreme Court of Appeal Judgments: 2022</b></p> <p>View <a href="#">here</a>.</p>                             |
|  | <p><b>A list of draft and Parliamentary Bills gazetted/tabled during 2023 as well as Bills approved by Cabinet.</b></p> <p>View <a href="#">here</a>.</p> |

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