

EMPLOYMENT SERVICES BILL

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OBJECTS OF THE BILL

To provide for the establishment of a Public Employment Services functions and institutional arrangements to promote employment and to assist employers and workers to adjust to changing labour market conditions; to provide for the promotion of employment of youth; to provide for the promotion of employment of people with disabilities; to provide for employment schemes and measures to respond to work place closures or economic recession; to provide for procedures for employment of foreign workers; to provide for the registration of vacancies by employers; to provide for the registration and licensing of Private Employment Agencies; to provide for the establishment of an Employment Service Board to advise the Minister on employment services matters; to provide for the improvement of the workplace productivity and promotion of job security, measuring and evaluating productivity and competitiveness in the workplace and preventing job losses by establishing Productivity South Africa and; to provide for the inspection services to enforce the law and penalties in case of non compliance; to provide for other matters incidental employment services; to provide for the enactment of certain provisions to the Skills Development Act 1998;

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CHAPTER ONE**INTERPRETATION, PURPOSES AND ADMINISTRATION****1. Definitions**

- (1) **“Department”** means the Department of Labour;
- (2) **“Director-General”** means the Director-General: Labour
- (3) **“Employment Services Board”** means the Employment Services Board established in terms of section 21 of this Act;
- (4) **“Employment Services”** means services provided for assisting nationals and qualifying foreign person seeking employment and employers in recruiting and employing suitable employees;
- (5) **“Employee”** means any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration and who works under the direction and supervision of an employer.
- (6) **“Employer”** means any person, institution or organization, including government who employs and provides work to an employee, directly supervises, remunerates or tacitly or expressly undertakes to remunerate such employee for services rendered by such employee;
- (7) **“independent contractor”** means a person who works for or supplies services to a client or customer as part of the person’s business, undertaking or professional practice;”
- (8) **“Minister”** means the Minister of Labour.
- (9) **“placement”** means to place, recruit, or otherwise contract persons to work for another person, but does not include work as an independent contractor.

(10) **“Placement opportunity”** means any opportunity for work or learning that could be offered to an individual and includes vacancies for employment, an opportunity for self-employment, a learning programme and community service;

5 (12) **“Private Employment Agency”** means any natural or juristic person; independent of the public authorities, which provides the services for matching offers of applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there-from;

10 (13) **“Public Employment Service”** means an institution established in terms of section 5(1) of this Act;

(14) **“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

15 (15) **“Sheltered Employment Factories”** means sheltered employment factories established in terms of this Act.

(16) **“this Act”** includes any regulations but does not include the footnotes;

(17) **“work seeker”** means any person and includes a legal foreign worker either employed or unemployed who is looking for work.

(18) **“Youth”** means any person who is between the ages of 14 and 35 years.

20 **2. Purpose**

(1) The purpose of this Act is to-

(a) promote employment of citizens;

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- (b) improve access to the labour market for work seekers;
- (c) provide opportunities for new entrants to the labour market to gain work experience;
- (d) improve employment prospects of persons with disabilities;
- 5 (e) improve employment prospects of work-seekers and employees facing retrenchments;
- (f) facilitate access by work seekers to training;
- (g) promote employment growth and workplace productivity;

(2) The purpose is to be achieved by-

- 10 (a) providing comprehensive and integrated free public employment services;
- (b) coordinating the activities of public sector agencies whose activities impact on the provision of employment services;
- 15 (c) encouraging partnerships between the public and private employment agencies in the provision of employment services;
- (d) establishment of schemes, measures and subsidies to promote employment;
- (e) providing a regulatory framework for the operation of private employment agencies; registration of vacancies, employment of
20 qualifying foreign workers and other related prescribed matters.

3. Interpretation

Any person applying this Act must interpret its provisions to give effect to-

- (a) its purpose;

- (b) South Africa's obligations in terms of any relevant international labour standard.

4. Administration of this Act

Subject to the laws governing the public service, the Director-General must ensure that –

- (a) the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for performing its functions in terms of this Act;
- (b) the Department maintains labour centres at which members of the public are able to access the public employment services provided for in terms of this Act.

CHAPTER TWO

PUBLIC EMPLOYMENT SERVICES

5. Establishment of public employment services

The Minister hereby establishes the public employment services.

6. Provision of public employment services

The Department:-

(1) must provide the following public employment services free of charge in a manner that is open and accessible to members of the public by –

- (a) matching work-seekers with available work opportunities;
- (b) registering work-seekers;
- (c) registering job vacancies and other placement opportunities;

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(d) facilitating the placement of work seekers with employers or in other placement opportunities;

(e) advising workers on access to social security benefits;

(f) providing specialised services to assist specific categories of work-seekers including youth, new entrants into the labour market, disabled persons and members of rural communities;

(g) facilitating the exchange of information among labour market participants including employers, workers and work-seekers, private employment agencies, Sector Education and Training Authorities and training providers;

(h) performing any other function in terms of an employment law or prescribed in terms of this Act.

(2) may also provide the following services to facilitate the matching of work seekers to employment opportunities:

(a) vocational and careers counselling;

(b) assessment of work-seekers to determine suitability;

(c) Other related life skills to secure employment

7. Promotion of employment of youth

(1) The Minister may establish decent work schemes for the employment of youth who are unemployed.

(2) The employment of any youth in terms of a scheme established under this section is subject to any terms and conditions that may be determined by the Minister on the recommendation of the Employment Conditions Commission established by section 59(1) of the Basic Conditions of Employment Act.

(3) Chapters Eight and Nine of the Basic Conditions of Employment Act apply, with the changes required by the context, to a determination made in terms of subsection (3) except that-

(a) for the purposes of section 54(3) of that Act, the Employment Conditions Commission must also consider the likely impact that any proposed condition of employment may have on the employment of youth and the achievement of the purposes of this Act; and

(b) section 55(7) of that Act does not apply.

(4) The Minister may by regulation specify-

(a) any incentive, including a subsidy, that may be provided to employers in terms of scheme under this section;

(b) the period for which a youth may be employed in terms of a scheme under this section.

(5) A regulation in terms of sub-section 4(a) must be made in consultation with the Minister of Finance.

(6) The employment of a youth in terms of a scheme under this section terminates at the expiry of the period specified in terms of a regulation made in terms of sub-section 4(b).

8. Promotion of employment of persons with disabilities

(1) The Sheltered Employment Factories are hereby established to promote the employment of persons with disabilities.

(2) The Sheltered employment factories must:

(a) provide work opportunities for disabled people;

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- (b) facilitate on-the-job training for disabled people, leading to qualifications and competencies that enable access to jobs and income generation capability in the labour market;
- (c) provide training and assist in placing people with a disability in employment;
- 5 (d) be managed to be viable and sustainable enterprises;
- (e) provide technical assistance to emerging and existing enterprises that promote the employment of people with disabilities;
- (f) remain flexible and adaptable to meet the changing needs of people with disabilities in a changing economy.
- 10 (3) The Director-General is the accounting authority of the sheltered employment factories as contemplated by section 49(2) (b) of the Public Finance Management Act and must-ensure that they are managed in accordance with the Public Finance Management Act.
- (4) The Minister, on the recommendation of the Employment Conditions
15 Commission, may determine the terms and conditions of persons with a disability employed in sheltered employment factories.
- (5) Chapters Eight and Nine of the Basic Conditions of Employment Act apply, with the changes required by the context, to a determination made in terms of subsection (3) except that-
- 20 (a) for the purposes of section 54(3) of that Act, the Employment Conditions Commission must also consider the likely impact that any proposed condition of employment may have on the employment of persons with a disability and the achievement of the purposes of this Act; and
- 25 (b) section 55(7) of that Act does not apply.

- (6) The Minister may in the prescribed manner fund bodies or organisations that have similar objectives as sheltered employment factories.

9. Employment schemes to respond to economic recession and company closures

The Minister may:

- 5 (1) after consultation with the NEDLAC social partners establish schemes to respond to economic recession;
- (2) after consultation with the NEDLAC social partners develop regulations regarding turn around strategies; lay-offs and alternative employment opportunities;
- 10 (3) may subsidise worker allowances and or employer costs to achieve sub-section (1) and (2)

10. Employment of foreign workers

- (1) Employment of a foreign worker may not compromise South African citizen's opportunity for employment, employment conditions, economic development or social stability.
- 15 (2) No employer must engage a foreign worker in work within the territory of the Republic of South Africa prior to the worker producing the applicable work permit.
- 20 (3) The Minister may publish in the Government Gazette every second year categories of provisional work within which foreign nationals may be employed.
- (4) Employers must exhaust the following steps before resorting to recruiting foreign nationals:
- (a) Make use of the public employment services;

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(b) Submit reasons to the Director General why they cannot employ amongst persons with relevant profiles referred to them by the public employment services; and

(c) Provide proof to the Director General that they have tested the local labour market through recruitment campaigns.

(5) An employer must submit a detailed skills transfer plan when employing a foreign national in scarce skills categories published by the Minister of Home Affairs.

(6) An employer must not engage in any of the following:

(a) Employing in the name of the Employer a Foreign worker, but in reality causing that foreign worker to engage in work for a third party;

(b) Force the employed qualifying foreign worker to engage in work that is not within the sphere of the permit;

(c) Dismissing or laying off national worker(s) as a result of having employed foreign worker(s); or

(d) Exerting coercion, threat, or any other illegal means upon the employed Foreign worker(s) to enforce him/her/them to engage in work contrary to his/her/their free will.

11. Reporting on vacancies and filling of positions

(1) Employers must notify the Public Employment Service of any vacancy or new position in their establishment within 14 working days after the position became vacant or was created.

(2) The Minister may prescribe how employers must notify the Public Employment Services of vacancies or new positions in their establishment including:-

-
- 5 (a) categories of employment in respect of which vacancies and new positions must be reported;
- (b) the job description;
- (c) qualifications;
- 5 (d) remuneration levels;
- (e) the format and manner in which vacancies and filling of positions must be reported;
- (3) An employer must provide written reasons within 14 days to the Director General as to why any of the referred candidates with the required profiles could not be appointed.
- 10 (4) An employer must notify the Director General of the filing of vacancy within 14 days of such an appointment.

12. Employment information

- (1) The Department may develop and operate an up-to-date employment information system on which it records -
- 15 (a) The names, qualifications and previous occupations of work-seekers;
- (b) Vacancies in the labour market;
- (c) Training opportunities that are available;
- (d) Specialized skills and qualifications possessed by work seekers registered on the public employment services system;
- 20 (e) Employers details; and
- (f) Employment trends in the country.

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- (2) The Department may co-operate with other state institutions to link their information-bases.

13. Information from educational and training institutions:

The Department may require educational or training institutions to submit information in respect of-

- (a) persons who completed accredited educational programmes;
- (b) persons who are currently in such programmes; and
- (c) courses offered by them.

14. Financing of Public Employment Services

(1) The provision of public employment services in terms of this Act shall be financed from money voted by Parliament for this purpose and may in addition, be financed from:-

- (a) money allocated from Unemployed Insurance Fund;
- (b) money allocated from the Compensation Fund;
- (c) money generated from the registration and licensing private employment agencies, and
- (d) grants and donations made to it;

(2) The monies received by the Public Employment Services may be used only in the prescribed manner and to fund:-

- (a) the administration and performance of its functions;
- (b) schemes for retrenched and unemployed work seekers;

-
- (c) rehabilitation and promotion of re-entry into employment for people injured on duty;
- (d) subsidies to organisations providing work place opportunities for people with disabilities;
- 5 (e) private employment agencies for specific and or specialised project;
- (f) any other project as the Minister may decide upon that is promoting public employment services or consistent with the object of the Act.

CHAPTER THREE

10 PRIVATE EMPLOYMENT AGENCIES

15. Application for a licence to operate as private employment agency

- (1) The Minister may in a prescribed manner issue regulations for registration and licensing of private employment agencies
- 15 (2) The Minister must designate an official of the Department as the Registrar of private employment agencies.
- (3) No person may operate a private employment agency, except in terms of a licence issued by the Registrar in terms of this Act;
- (4) An application for registration as an employment agency must be submitted to the Registrar in the prescribed form and manner;
- 20 (5) The Registrar must issue a private employment agency with a licence within 60 days; and
- (6) The Registrar must maintain in electronic form a register of private employment agencies that have been registered in terms of this Act; and

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- (7) The licence issued by the Registrar shall be displayed by the holder in such a position that it can be readily seen by persons visiting to that premises.

16. Functions of private employment agencies

- (1) The functions of private employment agencies are only limited to providing services related to:-

(a) matching work seekers ;

(b) referring workers to employers,

(c) career information including:-

(a) vocational counselling;

(b) assessment of work-seekers to determine suitability and

(c) offering other related life skills to secure employment

- (2) No private employment agency may:-

(a) provide false employment services information;

(b) offer job intermediary services to any employer without a lawful licence;

(c) counterfeit, alter or transfer the employment agency licence;

(d) detain the work seekers identity card or qualifications;

17. Charging of fees by private employment agencies

- (1) No private employment agency must charge a fee to any work-seeker for providing employment services to that individual.

(2) A private employment agency may not charge a fee to any worker using its services for matching offers of and applications for employment.

(3) A private employment agency may only charge a fee to an employer.

-
- (4) An employer must not deduct any amount from the remuneration of an employee or require or permit an employee to pay any amount in respect of the placement of that employee with the employer.
- (5) Any agreement concluded with an employee that is in breach of the provisions of this section is invalid and of no force and effect.
- (6) The Commission or a bargaining council having jurisdiction may conciliate and arbitrate any dispute concerning the application of this section brought by an employee earning less than the amount prescribed by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.

10 **18. Retention of information by private employment agencies**

- (1) A private employment services agency must keep an up-to-date electronic and manual register reflecting –
- (a) the work-seekers registered with them
 - (b) work seekers placed;
 - (c) particulars of the employer where the work seeker was placed.
- (2) The records in subsection (1) must be retained for a minimum of five years.

15 **19. Confidentiality of information collected**

- (1) Subject to subsection (2), the processing of personal information of work-seekers by an employment agency must:
- (a) be done in a manner that protects this information and ensures respect for person's privacy;
- 20

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(b) be limited to matters related to the qualifications and professional experience of the workers concerned and any other relevant information.

(2) A private employment agency:

5 (a) may only provide information to a prospective employer concerning a work seeker in accordance with subsection (1).

(b) must provide information to the Public Employment Services as requested by it, with due regard to the confidential nature of such information.

10 **20. Withdrawal of licence to operate as a Private Employment Agency**

(1) The Registrar may withdraw a licence issued to a private employment agency for failure to comply with prescribed procedures or contravention of any provision of this Act.

(2) The Registrar must:

15 (a) notify the private employment agency in writing of the intention to cancel its registration and the reasons for such cancellation;

(b) give the private employment agency 30 days notice calculated from the date the notice is given to make representation on why its licence should not be cancelled;

20 (c) consider any representations received in reaching a decision;

(d) notify the employment agency of the decision; and

(e) if the licence is withdrawn, remove the name of an employment agency from the register of private employment agencies.

21. Review of the Registrar's decision

- (1) Any person aggrieved by a decision of the Registrar to refuse to issue, or to withdraw a licence may apply for a review to the Labour Court against that decision within 30 days of the date of the Registrar's decision;
- 5 (2) The Labour Court may, on good cause shown, extend the period within which a person may note the application for review.

CHAPTER FOUR**EMPLOYMENT SERVICES BOARD****10 22. Establishment of the Employment Services Board**

The employment services board is hereby established in terms of this Act.

23. Functions of the Employment Service Board

- (1) An Employment Services Board must advise the Minister on: –
- (a) the employment services strategy;
 - 15 (b) employment trends and statistics
 - (c) employment schemes and opportunities
 - (d) regulations to be made;
 - (e) any employment services related matter on request
- (2) Liaise with employment services and other related bodies

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24. Composition of the Employment Services Board

(1) The Employment Service Board consists of the following individuals, appointed by the Minister as follows:

(a) a Chairperson;

(b) two persons to represent the interest of the State;

(c) two persons nominated by NEDLAC to represent organised labour;

(d) two persons nominated by NEDLAC to represent organised business;

(e) two persons nominated by NEDLAC to represent organisation of community and developmental interests; and

(f) two persons with employment services expertise;

(2) The Minister may appoint alternate members to participate on the Board in the absence of a member contemplated in sub-section 1(b) to (f).

(3) A member of the Employment Services Board may be appointed -

(a) for a term of up to four years; and

(b) may be appointed for a maximum of two terms.

25. Constitution of the Board

(1) The Board must, as soon as possible after the appointment of its members and subject to the approval of the Minister, adopt a constitution.

(2) Subject to this Act, the constitution of the Board must provide for-

(a) the circumstances under which the Minister remove a member from the Board and the procedure for doing so;

-
- (b) the procedure for the election of a Vice-chairperson to chair the Board in the absence of the chairperson;
- (c) the establishment and functioning of committees, including an executive committee;
- 5 (d) the rules for convening and conducting of meetings of the Board and its committees, including the quorum required for and the minutes to be kept of those meetings;
- (e) the voting rights of the different members and the manner in which decisions are to be taken by the Board and its committees;
- 10 (f) a code of conduct for the members of the Board;
- (g) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and
- (h) subject to subsections (4) and (5), a procedure for amending the constitution.
- 15 (3) The Constitution may, in addition, provide for any other matter necessary for the performance of the functions of the Board.
- (4) At least 30 days notice must be given for a meeting of the Board at which an amendment of the constitution or a regulation to be made is to be considered.
- (5) A supporting vote of at least two thirds of the Board's members and the
20 approval of the Minister is required for an amendment to its constitution.

26. Administration and provision of resources to the Board

- (1) The Director-General must designate a person in the employ of the Department to be ex-officio member of the Board; and

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- (2) The Director-General must provide the necessary resources and secretariat to enable the Board to fulfil its functions.

27. Remuneration and expenditure

- (1) A member of the Board who is not in full-time employment of the State may be paid an allowance for travel and subsistence at a rate determined by the Minister with the consent of the Minister responsible for finance.
- (2) The allowance determined under subsection (1) may differ according to the office held, or the functions performed, by a member.

CHAPTER FIVE**EMPLOYMENT GROWTH AND PRODUCTIVITY****28. Establishment of Productivity South Africa**

- (1) Productivity South Africa is hereby established as a juristic person to promote employment growth and productivity.
- (2) Productivity South Africa must be managed in accordance with the Public Finance Management Act.
- (3) The Board of Productivity South Africa consists of seven members appointed by the Minister in accordance with section 31.
- (4) The Minister must approve a constitution for Productivity South Africa which, subject to this Act, complies with the requirements set out in section 32.

29. Functions of Productivity South Africa

The functions of Productivity South Africa are—

- (a) to promote a culture of productivity in workplaces;
- (b) to develop relevant productivity competencies;

(c) to facilitate and evaluate productivity improvement and competitiveness in workplaces;

(d) to measure and evaluating productivity in the workplace;

(e) to maintain a data-base of productivity and competitiveness systems and publicising these systems;

(f) to undertake productivity-related research;

(g) to support initiatives aimed at preventing job losses; and

(h) to perform any other prescribed function.

30. Composition of Productivity South Africa

(1) Productivity South Africa consists of seven members appointed by the Minister, as follows:

(a) a chairperson;

(b) two members nominated by NEDLAC to represent organised labour;

(c) two members nominated by NEDLAC to represent organised business; and

(d) two members to represent the government.

(2) Members of Productivity South Africa hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

31. Constitution of Productivity South Africa

(1) The Minister must approve the constitution of Productivity South Africa, which subject to this Act must provide for—

(a) the establishment and functioning of committees, including an executive committee;

(b) rules for convening and conducting of meetings of Productivity South Africa and its committees, including the quorum required for and the minutes to be kept of those meetings;

(c) the voting rights of the different members and the manner in which decisions are to be taken by Productivity South Africa and its committees;

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(d) the circumstances and manner in which a member of Productivity South Africa may be removed from office;

(e) the procedure for the filling of vacancies on Productivity South Africa;

(f) a code of conduct for the members of Productivity South Africa;

5 (g) the circumstances and manner in which the Minister may dissolve Productivity South Africa and appoint an administrator on a temporary basis to perform its functions;

(h) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;

10 (i) the procedure for amending the constitution; (x) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits;

15 (j) the appointment of an executive officer and such other employees necessary for the effective performance of the functions of Productivity South Africa by its members, including the determination of their terms and conditions of employment; and

(k) any other matter necessary for the performance of the functions of Productivity South Africa.”

20 **32. Finances of Productivity South Africa**

(1) Productivity South Africa is financed from—

(a) money voted by Parliament for this purpose;

(b) income earned from services rendered by it;

(c) grants or donations made to it; and

25 (d) money received from any other source.

CHAPTER SIX**GENERAL PROVISIONS**

33. Jurisdiction of the Labour Court

- (1) Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act;
- 5 (2) The Labour Court may review any act or omission of any person in connection with this Act on any grounds permissible in law;
- (3) If proceedings concerning any matter contemplated in subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour
- 10 Court.

34. Monitoring and enforcement

- (1) Chapter Ten and Schedule Two of the Basic Conditions of Employment Act apply with changes required by the context to:-
- i. the monitoring and enforcement of this Act; and
- 15 ii. any legal proceedings concerning a contravention of this Act.

35. Contraventions of the Act

- (1) It is an offence to:-
- (a) obtain or attempt to obtain any prescribed document by means of fraud, false pretences or submitting a false or forged prescribed document;
- 20 (b) furnish false information in any prescribed document knowing that information is false;
- (c) engage a foreign worker within the territory of the Republic of South Africa without the necessary permit in terms of section 10(2) and or to engage in any aspects in terms of section 10(6);
- 25 (d) operate a private employment agency without a licence issued in terms of section 15(3);

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(e) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act.

(2) A labour inspector must issue a fine where there is a contravention of any of the following or a combination of them:-

5 (a) fail to notify the public employment services of any vacancy or new position created in terms of section 11;

(b) failing to display a licence issued by the Registrar in a position that can be readily seen by persons visiting that premises in terms of section 15(7);

10 (c) detain the work seeker's identity cards or qualifications in terms of subsection 16(2)(d).

(d) charge a fee to any individual work seeker for employment services provided in terms of section 17(1) and (2);

(e) deduct from any worker's remunerations or permit an employee to pay any amount for placement services in terms of section 17(4);

15 (f) failing to keep up to date records in terms of section 18;

(g) compromising the confidentiality of information in terms of section 19;

36. Penalties

(1) Any person convicted of an offence in terms of section 35 (1) will be liable to a fine or imprisonment, or both a fine and imprisonment.

20 (2) The Labour Inspector has all the powers and authority to issue a fine in terms of schedule 3 for contraventions listed in section 35(2).

(3) The fine issued by the labour inspector must be paid within 21 days of the contravention of an offence.

25 (4) The Minister must review fines in Schedule 3 every second year and publish a Notice in the Gazette.

37. Delegations

(1) The Minister may in writing delegate the Director General or any other officer in the Department any power or duty conferred or imposed on the Minister by this Act.

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(2) The Director General, may in writing, delegate to any officer of the Department any power or duty conferred to the Director General by this Act.

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(3) Any person to whom any power or duty has been delegated in terms of subsection (1) and (2) must exercise that power or perform that duty subject to the conditions that the person who made the delegations considers necessary.

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(4) Any delegations in terms of subsection (1) and (2)-

(a) must be in writing;

(b) does not prevent the person who made the delegations from exercising the power or performing the duty so delegated; and

(c) may at any time be withdrawn in writing by that person.

38 Regulations

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(1) The Minister may after consultation with the Employment Services Board, make regulations:

(a) prescribed in this Act;

(b) the procedure and forms in terms of which private employment services may apply for licencing

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(c) a procedure for lodging and considering grievances concerning the operation of private employment services;

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(d) the procedure for considering the withdrawal of the licence of an private employment agency; and

(e) any matter relating to employment services.

(2) The Minister may, after consulting Productivity South Africa Board, make regulations regarding any improvements in workplace productivity and competitiveness which is necessary or expedient to enable the Board to perform its functions under this Act.”.

39. Repeal of laws and transitional provisions

(1) The sections of the Skills Development Act, 1998, referred to under in Schedule 1 are hereby repealed to the extent specified.

(2) The repeal of those sections is subject to the transitional provisions in Schedule 2.

40. Act binds the state

(1) This Act binds the state

41. Short title and date of commencement

(1) This Act is called the Employment Services Act, 2010 and comes into operation on a date determined by the President by Proclamation in the gazette.

SCHEDULE 1**AMENDMENT TO SKILLS DEVELOPMENT ACT, 1998.**

Skills Development Act, 1998 (Act No. 97 of 1998)	All the provisions are repealed:- a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2),
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	<p>36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and</p> <p>b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services”, as defined in section 1, or Productivity South Africa, as established by section <u>26K</u>.</p>
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SCHEDULE 2

TRANSITIONAL PROVISIONS

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Definitions

1. In this schedule

“Skills Development Act” means the skills development Act, 1998,(Act no.97 of 1998) as amended;

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“President Proclamation” means a Proclamation by the President of the Republic of South Africa No. 56, 2009, published in Gazette No 32549 of 04 September 2009.

“Productivity South Africa” means the Productivity South Africa established in terms of section 26K of the Skills Development Act

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“Service Product Factories” means 12 Service Product Factories established in 1948 employing people with disabilities and have for years continued to receive subsidies from the Department of Labour.

2. Employment Services functions

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(1) All skills development Act employment services provisions mentioned in column 1 of the schedule of the President’s Proclamation remain in force until repealed by a Notice published by the Minister of Labour in the Gazette.

3. Productivity South Africa

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(1).All skills Development Act Productivity South Africa provisions in column 1 of the President’s Proclamation remain in force until repealed by a Notice published by the Minister of Labour in the Gazette.

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(4).On a date determined by the Minister by a Notice in the Gazette, all assets, rights, liabilities and obligations of the current Service Product Factories established by Cabinet in 1948 are transferred to Sheltered Employment Factories.

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SCHEDULE 3**PENALTIES FOR OFFENCES COMMITTED UNDER THIS ACT**

<u>NATURE OF AN OFFENCE</u>	<u>APPLICABLE FINE</u>	<u>PRISON TERM</u>
(1) Obstructing or attempt to influence improperly a person who is performing a function in terms of this Act;	Minimum of R15 000.00	12 months
(2) Obtaining or attempt to obtain any prescribed document by means of fraud, false pretences or submitting a false or forged prescribed document.	To be determined by the court	To be determined by the court
(3) furnishing false information in any prescribed document knowing that information is false;	To be determined by the court	To be determined by the court
(4) engaging a foreign worker within the territory of the Republic of South Africa without the necessary permit in terms of section 10(2) and or to engage in any aspects in terms of section 10(6);	Minimum of R15000.00	Double the salary paid to an illegally employed foreign worker since appointment and or a Minimum of two years

		imprisonment
(5) failing to notify the public employment services of any vacancy or new position created in terms of section 11;	Minimum of R10000.00 to be issued by inspectors	
(6) operating a private employment agency without a licence issued in terms of section 15(3);	Minimum of R15 000.00	Minimum of 12 months imprisonment
(7) failing to display a licence issued by the Registrar in a position that can be readily seen by persons visiting that premises in terms of section 15(7);	R5 000.00 to be issued by inspectors	
(8) detaining the work seeker's identity cards or qualifications in terms of subsection 16(2)(d).	R5 000.00 to be issued by inspectors	
(9) charge a fee to any individual work seeker for employment services provided in terms of section 17(1) and (2);	Minimum of R15 000.00 for each individual	Minimum of 12 months imprisonment
(10) deducting from any worker's remunerations or permit an employee to pay any amount for placement services in terms of section 17(4);	Minimum of R15 000.00 for each employee	Minimum of 12 months imprisonment

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(11) failing to keep up to date records in terms of section 18;	R5 000.00 to be issued by inspectors	
(12) compromising the confidentiality of information in terms of section 19.	R5 000.00 to be issued by inspectors	