

REPUBLIC OF SOUTH AFRICA

EMPLOYMENT SERVICES BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official text
of the Bill)*

(MINISTER OF LABOUR)

[B - 2010]

B I L L

To provide for public employment services; to provide for the registration of private employment agencies; to provide for the establishment of the Employment Services Board; to provide for the establishment of Productivity South Africa; and to provide for transitional provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CONTENTS

Section

CHAPTER 1

DEFINITIONS; PURPOSE; INTERPRETATION AND ADMINISTRATION

1. Definitions
2. Purpose of Act
3. Interpretation
4. Administration of Act

CHAPTER 2

PUBLIC EMPLOYMENT SERVICES

5. Public employment services
6. Promotion of employment of youth
7. Promotion of employment of persons with disabilities
8. Economic recession and company closures
9. Employment of foreign workers
10. Reporting of vacancies and filling of positions
11. Employment information
12. Information from educational and training institutions:
13. Financing of public employment services

CHAPTER 3**PRIVATE EMPLOYMENT AGENCIES**

14. Registration and licensing of private employment agency
15. Functions of private employment agency
16. Charging of fees by private employment agencies
17. Retention of information by private employment agencies
18. Confidentiality of information collected
19. Withdrawal of licence to operate as private employment agency
20. Review of decision of registrar

CHAPTER 4**EMPLOYMENT SERVICES BOARD**

21. Establishment of Employment Services Board
22. Composition of Board
23. Functions of Board
24. Constitution of Board
25. Secretariat of Board
26. Remuneration of members of Board

CHAPTER 5**EMPLOYMENT GROWTH AND PRODUCTIVITY**

27. Establishment of Productivity South Africa
28. Functions of Productivity South Africa
29. Establishment and composition of Productivity South Africa Board
30. Constitution of Productivity South Africa Board

- 31. Remuneration of members of Productivity South Africa Board
- 32. Finances of Productivity South Africa

CHAPTER 6

GENERAL PROVISIONS

- 33. Jurisdiction of Labour Court
- 34. Monitoring and enforcement
- 35. Offences
- 36. Penalties
- 37. Delegations
- 38. Regulations
- 39. Repeal of Laws and transitional provisions
- 40. Short title and commencement

SCHEDULE 1

AMENDMENTS TO SKILLS DEVELOPMENT ACT 1998

SCHEDULE 2

TRANSITIONAL PROVISIONS

SCHEDULE 3

PENALTIES FOR CONTRAVENING EMPLOYMENT SERVICES

CHAPTER 1

INTERPRETATION, PURPOSES AND ADMINISTRATION

Definitions

1. In this Act, unless the context otherwise indicates—

"Basic Conditions of Employment Act" means the Basic of Employment Act, 1997 (Act No. 75 of 1997);

"Commission" bears the same meaning ascribed to it in section 1 of the Basic Conditions of Employment Act;

"Department" means the Department of Labour;

"Director-General" means the Director-General of the Department of Labour;

"Employment Services Board" means the Employment Services Board established by section 22.

"Employee" means any person who is employed by or works for an employer and who receives or is entitled to receive a remuneration and who works under the direction or supervision of an employer;

"Employer" means any person who, or any institution, organisation or organ of state, which, employs or provides work to an employee, directs or supervises the employee, remunerates or tacitly or expressly undertakes to remunerate such employee for services rendered;

"independent contractor" means a person who works for or supplies services to a client or customer as part of that person's business, undertaking or professional practice;

"Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"Minister" means the Minister of Labour;

"NEDLAC" means the National Economic, Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No.35 of 1994);

"NEDLAC social partners" means the members of NEDLAC contemplated in section 3 of the National Economic, Development and Labour Council Act;

"placement" means to place, recruit, or otherwise contract persons to work for another person, but does not include work as an independent contractor;

"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 or community service;

"Private Employment Agency" means any natural or juristic person who procures for or provides to an employer, other persons who render service or perform work for the employer;

"public employment services" means the public employment services contemplated in section 5;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"registrar" means the registrar contemplated in section 19 of this Act;

"Sheltered Employment Factories" means sheltered employment factories established by section 8(1);

"Skills Development Act" means the Skills Development Act, 1998 (Act No. 97 of 1998);

"this Act" includes regulations;

"work seeker" means any person, and includes a legal foreign worker, who is unemployed and is looking for work;

"youth" means any person who is between the ages of 15 and 35 years.

Purpose of Act

2. (1) The purpose of this Act is to—

- (a) promote employment of citizens;
- (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;
- (e) improve employment prospects of work-seekers and employees facing retrenchments;
- (f) facilitate access by work seekers to training and;
- (g) promote employment growth and workplace productivity.

(2) The purpose is to be achieved by—

- (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;
- (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 qualifying foreign workers and other related prescribed matters.

Interpretation

- 3.** Any person applying this Act must interpret its provisions to give effect to—
- (a) its purpose; and
 - (b) South Africa's obligations in terms of any relevant international labour standard.

Administration of Act

- 4.** Subject to the laws governing the public service, the Director-General must ensure that the Department—
- (a) including its provincial offices and labour centres, has the personnel and financial resources necessary for performing its functions in terms of this Act;
 - (b) 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 2

PUBLIC EMPLOYMENT SERVICES

Public employment services

- 5.** (1) The Department must provide the following public employment services free of charge in a manner that is open and accessible to members of the public:
- (a) match work seekers with available work opportunities;
 - (b) register work seekers;
 - (c) register job vacancies and other placement opportunities;

- (d) facilitate the placement of work seekers with employers or in other placement opportunities;
- (e) advise workers on access to social security benefits;
- (f) provide specialised services to assist specific categories of work seekers including the youth, new entrants into the labour market, disabled persons and members of rural communities;
- (g) facilitate 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; and
- (h) generally, perform any other function in terms of an employment law or prescribed in terms of this Act.

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

- (a) Vocational and career counselling;
- (b) assessment of work-seekers to determine suitability; and
- (c) other related life skills to secure employment.

Promotion of employment of youth

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

(2) The employment of youth in terms of a scheme established under this section is subject to any terms and conditions that the Minister may determine on the recommendation of the Commission.

(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 (2): Provided that—

- (a) for the purposes of section 54(3) of that Act, the 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 prescribe—

- (a) any incentive, including a subsidy, that may be provided to employers in terms of the scheme contemplated in subsection (1); and
- (b) the period for which a youth may be employed in terms of such scheme.

(5) A regulation made in terms of subsection (4) must be made in consultation with the Minister of Finance.

(6) The employment of youth in terms of the scheme terminates at the expiry of the period contemplated in subsection (4)(b).

Promotion of employment of persons with disabilities

7. (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;
- (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 in accordance with the Skills Development Act, 1998 (Act No.97 of 1998);

- (c) provide training and assist in placing people with disabilities in employment;
- (d) provide technical assistance to emerging and existing enterprises that promote the employment of people with disabilities;
- (e) remain flexible and adaptable to meet the changing needs of people with disabilities in a changing economy.

(3) The Director-General is the accounting authority of the Sheltered Employment Factories and must ensure that they are managed—

- (a) in a viable and sustainable manner; and
- (b) in accordance with the Public Finance Management Act.

(4) The Minister may, on the recommendation of the Employment Commission, determine the terms and conditions of persons with disabilities 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 (4): Provided that—

- (a) for the purposes of section 54(3) of that Act, the Commission must also consider the likely impact that any proposed condition of employment may have on the employment of persons with disabilities and the achievement of the purposes of this Act; and
- (b) section 55(7) of that Act does not apply.

(6) The Minister may fund bodies or organisations that have similar objectives as Sheltered Employment Factories.

Economic recession and company closures

8. The Minister may—
- (a) after consultation with the NEDLAC social partners establish schemes to respond to economic recession;
 - (b) after consultation with the NEDLAC social partners develop regulations regarding turn around strategies; lay-offs and alternative employment opportunities;
 - (c) may subsidise worker allowances and or employer costs in respect of paragraphs (a) and (b).

Employment of foreign workers

9. (1) Employment of a foreign worker may not compromise the South African citizen's opportunity for employment, employment conditions, economic development or social stability.

(2) An employer must not employ a foreign national within the territory of the Republic of South Africa prior to such foreigner producing the applicable and valid work permit, issued in terms of the Immigration Act, 2002 (Act No.13 of 2002).

(3) The Minister may publish in the Gazette every second year categories of 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;

- (b) submit reasons to the Director-General, within 14 days of appointment of a foreign national, as to why the employer cannot employ amongst the persons with relevant profiles referred to them by the Department; 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 in terms of the Immigration Act.

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

- (a) Employ 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) dismiss or lay off a South African citizen as a result of having employed a foreign worker; or
- (d) exert coercion, threat, or any other illegal means upon the employed foreign worker to enforce him or her to engage in work contrary to his or her free will.

Reporting on vacancies and filling of positions

10. (1) Employers must notify the Department 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 Department of vacancies or new positions in their establishment.

(3) An employer must notify the Director-General of the filling of any vacancy within 14 days of such an appointment.

Employment information

11. (1) The Department may develop and operate an up-to-date employment information system on which it records—

- (a) the names, qualifications and previous occupations of work seekers;
- (b) vacancies in the labour market;
- (c) training opportunities that are available;
- (d) specialised skills and qualifications possessed by work seekers registered on the public employment services system;
- (e) employers details; and
- (f) employment trends in the country.

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

Information from education and training institutions

12. The Department may require education and 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.

Financing of public employment services

13. (1) The provision of public employment services in terms of this Act must be financed from the money voted by Parliament for this purpose and may in addition, be financed from—

- (a) money allocated from the Unemployed Insurance Fund;
- (b) money allocated from the Compensation Fund;
- (c) money generated from the registration and licensing of private employment agencies; and
- (d) grants and donations made for this purpose to the Department.

(2) The monies received by the Department for public employment services may be used only in the prescribed manner and to fund—

- (a) the administration and performance of its functions in terms of this Act;
- (b) schemes for retrenched workers and 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;
- (e) private employment agencies for specific and or specialised projects; or
- (f) any other project that the Minister may decide upon, that is promoting public employment services or is consistent with the objects of this Act.

CHAPTER 3
PRIVATE EMPLOYMENT AGENCIES

Registration and licensing of private employment agency

- 14.** (1) The Minister may prescribe the criteria for the registration and licensing of private employment agencies.
- (2) The Minister must designate an official of the Department as the registrar of private employment agencies.
- (3) A person may not operate a private employment agency, except in terms of a licence issued by the registrar in terms of this Act.
- (4) A person may apply to the registrar in the prescribed form and manner for registration of a private employment agency.
- (5) The registrar must, within 60 days of the application, issue a private employment agency with a licence if the application is successful.
- (6) The registrar must maintain in electronic form a register of private employment agencies that have been registered in terms of this Act.
- (7) The private employment agency must display the licence in a conspicuous place on its premises.

Functions of private employment agencies

- 15.** (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—
 - (i) vocational counselling;
 - (ii) assessment of work seekers to determine suitability; and
 - (iii) offering other related life skills to secure employment.
- (2) A private employment agency may not—
- (a) provide false employment services information;
 - (b) offer job intermediary services to any employer without a lawful licence;
 - (c) counterfeit, alter or transfer the licence of the private employment agency; or
 - (d) retain the identity documents or qualification certificates of work seekers.

Charging of fees by private employment agencies

16. (1) A private employment agency must not charge a fee to any work seeker for providing employment services to that work seeker.

(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 this section is invalid and of no force and effect.

(6) The Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995)

or a bargaining council having jurisdiction may conciliate and arbitrate any dispute concerning the application of this section.

Retention of information by private employment agencies

17. (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 that have been placed in employment; and
- (c) particulars of the employer where the work seeker was placed.

(2) The records contemplated in subsection (1) must be retained for a minimum period of five years.

Confidentiality of information collected

18. (1) The processing of personal information of work seekers by a private employment agency must—

- (a) be done in a manner that protects this information and ensures respect for the person's privacy; and
- (b) be limited to matters related to the qualifications and professional experience of the worker concerned and any other relevant information.

(2) A private employment agency—

- (a) may provide information to a prospective employer concerning a work seeker, in accordance with subsection (1); and

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

Withdrawal of licence to operate as private employment agency

19. (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 before withdrawing the licence—

- (a) notify the private employment agency in writing of his or her intention to cancel its registration and the reasons for such cancellation;
- (b) give the private employment agency 30 days written notice, calculated from the date the notice was given, to make representations on why its licence should not be cancelled;
- (c) consider any representations received; and
- (d) notify the employment agency of the decision.

(3) If the licence is withdrawn, the registrar must remove the name of such private employment agency from the register of private employment agencies.

Review of decision of registrar

20. (1) Any person aggrieved by the 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.

(2) The Labour Court may, on good cause shown, extend the period within which a person may lodge the application for review.

CHAPTER 4

EMPLOYMENT SERVICES BOARD

Establishment of the Employment Services Board

21. (1) The Employment Services Board is hereby established.

(2) For the purpose of this chapter "Board" means the Employment Services Board.

Composition of Board

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

- (a) the 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 in the same manner as a member of the Board was appointed in terms of subsection (1), appoint an alternate member for each member of the Board.

(3) An alternate member may in the absence of a member of the Board from a meeting of the Board, attend such meeting on behalf of such member and the alternate member is deemed to be a member of that meeting.

(4) A member of the Board may be appointed—

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

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

(5) The Director-General must designate a person in the employ of the Department to be an *ex-officio* member of the Board.

Functions of Board

23. (1) The Board must advise the Minister on—

(a) the employment services strategy;

(b) employment trends and statistics;

(c) employment schemes and opportunities;

(d) regulations to be made; or

(e) any matter related to employment services, on request of the minister;

(2) The Board must liaise with the Department and other relevant bodies as regards the employment services.

Constitution of Board

24. (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 may remove a member from the Board and the procedure for doing so;
- (b) the procedure for the election of a deputy-chairperson to act on behalf of the chairperson, in the absence of the chairperson;
- (c) the establishment and functioning of the committee of the Board, including an executive committee;
- (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;
- (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;
- (h) subject to subsections (4) and (5), a procedure for amending the constitution; and
- (i) any other matter necessary for the performance of the functions of the Board.

(3) 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.

(4) A supporting vote of at least two thirds of the members of the Board and the approval of the Minister is required for an amendment to its constitution.

Secretariat of Board

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

Remuneration and expenditure

26. (1) A member of the Board who is not in full-time employment of the State may be paid such an allowance for travel and subsistence as may be determined by the Minister after consultation with the Minister of Finance.

(2) The allowance determined under subsection (1) may differ according to the office held, or the functions performed, by a member.

CHAPTER 5

EMPLOYMENT GROWTH AND PRODUCTIVITY

Establishment of Productivity South Africa

27. (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) Productivity South Africa acts through its Board.

(4) For the purpose of this chapter, Board means Productivity South Africa Board established by section 29.

Functions of Productivity South Africa

28. 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 evaluate 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.

Establishment and composition of Productivity South Africa Board

29. (1) Productivity South Africa Board is hereby established.

(2) The Board 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.

(3) The Board is responsible for the management and control of the affairs of Productivity South Africa.

(4) The members of the Board hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve for more than two consecutive terms of office.

Constitution of Productivity South Africa Board

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

(2) The constitution contemplated in subsection (1) must, subject to this Act, provide for—

- (a) the establishment and functioning of committees of the Board, including an executive committee;
- (b) rules for convening and conducting of meetings of the Board of 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 of the Board and the manner in which decisions are to be taken by the Board and its committees;
- (d) the circumstances and manner in which a member of the Board may be removed from office;
- (e) the procedure for the filling of vacancies of the Board;
- (f) a code of conduct for the members of the Board;
- (g) the circumstances and manner in which the Minister may dissolve the Board 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;
- (i) the procedure for amending the constitution;
- (j) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits;
- (k) the appointment of an executive officer and such other employees necessary for the effective performance of the functions of Productivity South Africa by the Board, including the determination of their terms and conditions of employment; and
- (l) any other matter necessary for the effective performance of the functions of Productivity South Africa.

Remuneration of members of Productivity South Africa Board

31. Members of the Board must receive such remuneration and allowances as the Minister may determine in consultation with the Minister of Finance.

Finances of Productivity South Africa

- 32.** Productivity South Africa is financed from—
- (a) money appropriated by Parliament for this purpose;
 - (b) income earned from services rendered by it;
 - (c) grants or donations made to it; and
 - (d) money received from any other source.

CHAPTER 6

GENERAL PROVISIONS

Jurisdiction of Labour Court

33. (1) Subject to the jurisdiction of the Labour Appeal Court, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act.

(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 arising from this Act 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 Court.

Monitoring and enforcement

34. Chapter 10 and Schedule II of the Basic Conditions of Employment Act apply with changes required by the context to—

- (a) the monitoring and enforcement of this Act; and
- (b) any legal proceedings concerning a contravention of this Act.

Offences

35. (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;

- (b) furnish false information in any prescribed document knowing that the information is false;
- (c) engage a foreign worker within the territory of the Republic of South Africa without a valid work permit;
- (d) recruit foreign workers in violation of section 10(4);
- (e) operate a private employment agency without a licence issued in terms of section 15(3);
- (f) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act.
- (g) fail to notify the Department of any vacancy or new position created in terms of section 11;
- (h) fail to display a licence in a conspicuous place on the premises as contemplated in section 15(7);
- (i) detain the work seeker's identity cards or qualifications as contemplated in subsection 16(2)(d).
- (j) charge a fee to any individual work seeker for employment services as contemplated in section 17(1) and (2);
- (k) deduct from any worker's remunerations or permit an employee to pay any amount for placement services as contemplated in section 17(4);
- (l) fail to keep up to date records as contemplated in section 18;
- (m) compromise the confidentiality of information as contemplated in section 8;

Penalties

36. (1) Penalties in respect of the offences contemplated in section 35 are contained in Schedule 3.

(2) The Minister must review fines contemplated in Schedule 3 every second year and publish a notice to this effect in the *Gazette*.

Delegations

37. (1) The Minister may delegate to the Director-General any power or duty conferred or imposed on the Minister in terms of this Act, except a power to make regulations.

(2) The Director-General may delegate to an officer of the Department any power or duty conferred to the Director General in terms of this Act.

(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.

(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.

Regulations

- 38.** (1) The Minister may, after consultation with the Employment Services Board, make regulations relating to—
- (a) the categories of employment in respect of which vacancies and new positions must be reported, including—
 - (i) job description;
 - (ii) qualifications;
 - (iii) remuneration levels
 - (iv) the format and manner in which vacancies and filling of positions must be reported,
 - (b) the procedure and forms in terms of which private employment agencies may apply for licensing;
 - (c) a procedure for lodging and considering grievances concerning the operation of private employment agencies;
 - (d) the procedure for considering the withdrawal of the licence of a private employment agency; and
 - (e) any other 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.

Repeal of laws and transitional provisions

39. (1) The laws specified in Schedule 1 is repealed to the extent specified in that Schedule.

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

Short title and commencement

40. 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
LAW REPEALED
(section 39)**

No. and Year of Law	Short title	Extent of repeal
Act No.66 of 1995	Labour Relations Act, 1995	Section 198
Act No. 97 of 1998	Skills Development Act, 1998	<p>1. The deletion of the definition of "employment services".</p> <p>2. Sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) in so far as it relates to Productivity South Africa, 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(1) and (2), 33, 36(a), (o), (p) and (q).</p> <p>3. Item 7 of Schedule 2A and Schedule 4.</p> <p>4. Any other provisions in so far as it relates to "employment services" or Productivity South Africa, as established by section 26K.</p>

Schedule 2

TRANSITIONAL PROVISIONS

Definitions

1. In this chapter —

"Skills Development Act" means the Skills Development Act, 1998, (Act No.97 of 1998), as amended;

"Productivity South Africa" means the Productivity South Africa established in terms of section 26K of the Skills Development Act;

"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.

Productivity South Africa

2. (1) Productivity South Africa established in terms of the Skills Development Act remains in force until repealed by this Act.

(2) Anything done under the repealed provisions of the Skills Development Act relating to Productivity South Africa is deemed to have been done in terms of this Act.

Service Product Factories

3. All assets, rights, liabilities and obligations of the Service Product Factories established by Cabinet in 1948 are transferred to Sheltered Employment Factories established in terms of section 8 of this Act, with effect from the date determined by the Minister by notice in the *Gazette*.

Temporary Employment Services

4. All the existing temporary employment services contemplated in section 198 of the Labour Relations Act—

- (a) continue to exist for a period of three years from the date of commencement of this Act; and
- (b) must register in terms of this Act.

**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	
(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	R5 000.00	

<u>NATURE OF AN OFFENCE</u>	<u>APPLICABLE FINE</u>	<u>PRISON TERM</u>
in terms of section 15(7);		
(8) retaining the identity documents or qualifications certificates of work seekers in terms of section 16(2)(d).	R5 000.00	
(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
(11) failing to keep up to date records in terms of section 18;	R5 000.00	
(12) compromising the confidentiality of information in terms of section 19.	R5 000.00	

MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT SERVICES BILL, 2010

1. BACKGROUND

1.1 The Employment Services Bill (the Bill seeks to repeal all the employment services provisions and Productivity South Africa, currently contained in the Skills Development Act, 1998 (Act No.97 of 1998), and the Labour Relations Act, 1995 (Act No.66 of 1995), and to incorporate them in the Bill. The Bill furthermore aims to strengthen these provisions in the Bill.

1.2 The Bill will further assist and strengthen the Department's re-organisation and public employment services. The Department of Labour conducted a review of its programmes to determine its effectiveness and to make appropriate adjustments with the assistance of the International Labour Organisation (ILO). A comparative study was also conducted across Ministries of Labour / Labour and Social Affairs / Labour and Employment with similar characteristics and or countries having similar economic conditions with South Africa. The outcome of these discussions resulted in the Department prioritising the following three areas namely: Inspection and Enforcement Services, Labour Policy and Industrial Relations and Public Employment Services inclusive of Unemployment Insurance Fund and Compensation Fund. All these programmes are supported by the programme administration.

1.3 The Bill will contribute to the government's objectives for "More jobs, decent work and sustainable livelihoods". The Bill repositions public employment services to play a

major role in employment promotion and employment preservation and will also assist employers and workers to adjust to changing labour market conditions.

1.4 The Bill will amongst others contribute towards—

- * reduction of unemployment, inequalities and poverty eradication;
- * promotion and preservation or retention of employment;
- * reducing work seeker reliance on the Unemployment Insurance Fund or Social Security grants, and reliance of rehabilitated workers injured on duty on the Compensation Fund;
- * acceleration of employment creation; and
- * employment growth and productivity promotion.

1.5 The strategic objectives will be achieved through institutional arrangements that the Department will further establish to provide free services to citizens such as registration of job seekers, registering of placement opportunities, matching services, referral to training, careers information. The private employment agencies could charge employers for providing similar services in accordance with regulations and ILO Conventions.

1.6 In addition, the Bill requires employers to register vacancies, requires the Minister to introduce schemes to promote employment or preserve employment for the unemployed; youth; people with disabilities; rehabilitation of workers injured on duty, retrenched and seasonal workers, work seekers and employees facing retrenchments.

1.7 The Minister can also introduce measures and subsidies to respond to work place closures and or economic recession, regulations to protect citizen's conditions of

employment in case of employment of foreign workers. The Department will collaborate with a number of players and bodies already functioning within employment services to achieve its objectives.

2. CLAUSE BY CLAUSE ANALYSIS

CHAPTER 1: DEFINITIONS, PURPOSE, INTERPRETATION AND ADMINISTRATION OF THE ACT

2.1 Clause 1: Provides for definitions.

2.2 Clause 2: Outlines the key intentions of the Act and the kind of measures or institutional frameworks that will be used to achieve its purpose.

2.3 Clause 3: Provides for the interpretation of the Act to give effect to its purpose including other applicable international conventions on employment services.

2.4 Clause 4: Provides for the administration of the Act by the Director-General and offices under his/her accountability including agencies that could be licensed or receive transfers.

CHAPTER 2: PUBLIC EMPLOYMENT SERVICES

2.5 Clause 5: Provides for functions that the public employment services must provide to South African citizens free of charge. These functions include matching work-seekers

with available work opportunities; registering work-seekers; registering job vacancies and other placement opportunities; facilitating the placement of work seekers with employers or in other placement opportunities; advising workers on access to social security benefits; providing specialized services to assist specific categories of work-seekers including youth, new entrants into the labour market, disabled persons and members of rural communities; facilitating the exchange of information among labour market participants including employers, work-seekers; careers counseling; assessment of work-seekers to determine suitability and other related life skills necessary to secure employment.

2.6 Clause 6: Gives powers to the Minister to establish decent work schemes to promote youth employment. There is an obligation to consult with the Minister of Finance when related subsidy regulations are made.

2.7 Clause 7: Provides for the promotion of employment of persons with disabilities. Service Product Factories established in 1948, are given legal status and established anew as Sheltered Employment Factories under the Act. The factories mandate is also being expanded to facilitate on-the-job training for people with disabilities, to promote their access to formal and self employment. The factories are to be managed as viable and sustainable enterprises that must adapt to changing needs of people with disabilities.

The Minister is also given powers to allocate subsidies to bodies or organisations that have similar objectives as sheltered employment factories.

2.8 Clause 8: Gives the Minister, powers to establish employment promotion schemes to respond to economic recession, company closures and pending retrenchments or lay-offs.

2.9 Clause 9: Protects South African citizen employment conditions and opportunities, economic development and social stability from being affected as result of employment of foreign workers. Procedures that employers must follow if they have to employ a foreign worker are also outlined including the consequences for not complying or abusing foreign qualifying workers.

2.10 Clause 10: Provides for the reporting and registration of existing or new vacancies by employers with the Public Employment Services, the employment of people referred by the Public Employment Services.

2.11 Clause 11: Provides for the type of statistical information that the Department may collect to inform policy makers regarding developments in the Labour Market.

2.12 Clause 12: Provides for the kind of information that the Public Employment Services may collect from skills development and education and training institutions in order to assist in the referral of work seekers for further learning.

2.13 Clause 13: Provides for sources of funding that could be utilised to mobilise resources to create employment; to promote re-integration of retrenched or workers who lost their employment as a result of injuries or illness; and to preserve employment.

CHAPTER 3: PRIVATE EMPLOYMENT AGENCIES

2.14 Clause 14: Provides for the registration and licensing of any person or body who wants to operate as a private employment agency and the consequences for operating a business in this area without a license.

2.15 Clause 15: Provides functions that Private Employment agencies are to be licensed for.

2.16 Clause 16: Prohibits Private Employment Agencies from charging work seekers any fees for services rendered.

2.17 Clauses 17 & 18: Provides for safeguarding of work seekers information and prohibits the abuse of such information.

2.18 Clauses 19 & 20: Provides powers and conditions under which the Registrar of Public Employment Services can withdraw Private Employment Agent license and the appeal process in case of dissatisfaction with the Registrar's decision.

CHAPTER 4: EMPLOYMENT SERVICES BOARD

2.19 Clauses 21 & 22: Provides for the establishment of the Employment Services Board, the advisory functions to the Minister that they must render and bodies that they can liaise in order to fulfill their functions.

2.20 Clauses 23 & 24: Provides for the composition of the Board, the nomination process of Board members and the constitution of the Board to govern its business.

2.21 Clauses 25 & 26; Provides for the administrative support to be provided by the Department to assist the Board to fulfill its functions and the remuneration of Board members.

CHAPTER 5: EMPLOYMENT GROWTH AND PRODUCTIVITY

2.22 Clause 27: Provides for the establishment anew of Productivity South Africa, established under the Skills Development Act of 1998 as Amended to promote growth and productivity.

2.23 Clauses: 28 & 29: Provides the functions and composition of Productivity South Africa Board.

2.24 Clause 30: Provides areas that the constitution of the Board Productivity South Africa must address to govern its procedures and business.

2.25 Clause 31: Provides for remuneration of members of Productivity South Africa Board.

2.26 Clause 32: Provides for the financing of Productivity South Africa through state grants, self funding and donations.

CHAPTER 6: GENERAL PROVISIONS

2.27 Clause 33: Provides for the Labour Court to have overall jurisdiction in so far as settling disputes that may arise in the implementation of this Act.

2.28 Clause 34: Provides for the monitoring and enforcement of the provisions of the Act in accordance with Schedule two of the Basic Conditions of Employment Act.

2.29 Clauses 35 & 36: Provides for contraventions of the Act and applicable penalties.

2.30 Clause 37: Provides procedures that the Minister and the Director General must follow when delegating officials in the Department to perform functions outlined in the Act on their behalf.

2.31 Clause 38: Provides areas in which the Minister may make regulations to achieve the purpose of the Act.

3. SCHEDULES

3.1 SCHEDULE 1

The Schedule provides for repeal of certain sections in the Skills Development Act and the repeal of section 198 of the Labour Relations Act.

3.2 SCHEDULE 2

The schedule provides transitional provisions.

3.3 SCHEDULE 3

The schedule provides penalties in the form of fines that the Minister must review every second year and the applicable minimum prison terms that the courts may impose on offenders.

4. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

5. FINANCIAL IMPLICATIONS FOR STATE

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.