



## Labour Law Review Bulletin

4<sup>th</sup> EDITION – 10 FEBRUARY 2012

### STATE OF THE NATION ADDRESS 2012

Last evening President Zuma gave his annual State of the Nation address and the general consensus is that he did a good job. On the back of the many ambitious targets set and promises made in 2011, this year's address seems to take a more pragmatic approach, no doubt spurred on by the ongoing global economic slowdown and upcoming political processes.

It was good to see that President Zuma did not capitulate in the face of COSATU's threats for mass action, and referred instead to the original ANC Manifesto in terms of the need for regulation for the temporary employment services sector.

Herewith the exact quote which comes from the State President's address.

*"Meanwhile, the NEDLAC Process on the A-typical Forms of Employment and Labour Broking has now been completed.*

*Government seeks to eliminate all forms of abusive practices inherent in labour broking, in order to strengthen the protection of vulnerable workers. We trust that common ground will be found this year on this matter."*

Commenting on the State of the Nation address, COO of CAPES, Johnny Goldberg said:

"When the President speaks of the parties finding each other, he must surely speak of COSATU coming to the table who have had a single-minded approach in respect of banning this industry. The President and the whole of the ANC understand that this cannot be achieved. I think the message is important and I think it is positive for our industry."

If you are interested in reading the full transcript of the State of the Nation Address [click here](#)

### A BARRAGE OF PRESS COVERAGE IN THE PAST WEEK

COSATU's calls for a national strike, including essential services and teachers, has hit the headlines in a big way over the past week and numerous articles have been run on the subject. A full archive of these articles is available on the website and is being circulated via the APSO social media sites. To ensure that you're receiving the latest information, please join our groups:

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#### **APSO RESPONDS & CONDEMNS COSATU'S CALL FOR STRIKES THAT PLACE THE ILL, AGED AND YOUTH IN DANGER**

In a press release issued yesterday, APSO responded to the ongoing calls by COSATU for rolling mass action including essential services and teachers. Below is an excerpt from the press release:

#### **COSATU's call for stay away on brokers contradictory to the national objective of reducing unemployment and securing decent jobs**

The media has been flooded with articles showcasing COSATU's aggressive call for a national strike including their assertion that teachers, doctors and nurses should join ranks. Whilst we acknowledge the right of workers to stay away, we cannot condone the suggestion that citizens of this country, especially those who are ill, aged or at school, be placed in danger. It is, in our opinion, irresponsible of the trade union to expect hospitals, clinics and schools to shutdown as they provide essential services to the communities they serve.

With unemployment at the heart of many of South Africa's problems and at the forefront of almost all of the Government's strategic imperatives, it is concerning to see that COSATU is unwilling to engage constructively to find a solution that achieves the ultimate goal of getting more people into work.

"We hope that the stay away will take place peacefully. Further, we encourage those who have chosen a vocation to care for, or nurture others, to remain at their posts, especially teachers who play a vital role in educating our youth who, without proper education, will be doomed to join the ranks of the unemployed," pleads Natalie Singer, APSO Chief Operating Officer.

To read the full press release, [click here](#)

#### **CALL FOR ALL INTERESTED PARTIES AFFECTED IN THE ROAD FREIGHT AND LOGISTICS INDUSTRY (NBCRFLI)**

A group of interested parties, primarily temporary employment services (TES) providers and an

employer organisation, is planning to take action against the National Bargaining Council for the Road Freight and Logistics Industry (NBCRFLI) in terms of claiming back the interest income on certain levies and benefits payable to the council. They are interested in connecting with other TES providers who are involved with the NBCRFLI and ask that you make contact with them to explore becoming involved in this class action. The summary provided by Martin Bruning states:

1. Companies that fall under the jurisdiction of the NBCRFLI are required to pay certain levies and employee benefits to the NBCRFLI on a monthly basis as they are obliged to do by virtue of the extension of the collective main agreement by the Minister of Labour to non-parties.
2. Section 28(1)(g) of the Labour Relations Act 66 of 1995 (hereinafter referred to as "the LRA") enjoins bargaining councils, *inter alia*, to establish and administer various funds for the benefit of one or more of the parties to the bargaining council or their members.
3. Clause 2.8 of the current NBCRFLI Constitution dated 20 July 2010 mirrors Section 28(1)(g) of the LRA.
4. Clause 12 of Constitution states that the expenses of the Council shall be met from a fund which shall be raised by levies on the parties.
5. We contend that the running expenses of the Council must therefore be covered exclusively by this levy and not from interest income from other levies such as the leave pay or holiday pay bonus funds.
6. Our view is that the Council has enriched itself by earning interest income on the Council's various funds at the expense of the levy paying companies and other parties to the Bargaining Council or their members, in direct contravention of the provisions of both the LRA and the NBCRFLI Constitution as set out above.
7. This practice by the Council has had the undesirable effect of taking cash flow out of a business and preventing such funds from being utilised in the growth of its business.

We have taken legal advice from amongst others Paul Pretorius SC, and have been informed that our case has merit. We are currently in the process of drafting an application to the High Court to recover the interest on funds held in trust by the NBCRFLI. We are interested in learning whether any other interested parties may wish to join our application against the Bargaining Council in this regard.

**For more information or to express interest please contact Martin Bruning directly on 082 566 4028.**

#### **TES BREAKFASTS CO-HOSTED BY CAPES AND APSO SCHEDULED FOR MARCH/APRIL 2012**

Due to demand from members, APSO and CAPES have elected to add another breakfast, in Pretoria, to the schedule. As a result, some of the dates have had to change and we urge you to check that you've saved the date correctly.

These sessions will include an update on the NEDLAC negotiations and possible draft regulations by Johnny Goldberg, CAPES' Chief Operating Officer, and the formal launch of the CIETT Adapting to Change research presented by James Gribben, head researcher at CIETT.

This is a golden opportunity for you to educate yourself (and your team) and to ensure that your clients are receiving accurate information, from the negotiating table, to assist them in making the right decisions, in respect to continued flexibility, in their businesses. More detailed information, including venues and pricing, will be available next week. Bookings will open shortly.

<b>DATE</b>	<b>FORMAT / TIME</b>	<b>REGION</b>
Mon 26 March 2012	Luncheon 12h00 – 14h30	Durban
Tues 27 March 2012	Breakfast 08h00 – 10h30	Pretoria
Wed 28 March 2012	Breakfast 08h00 – 10h30	Johannesburg
Thur 29 March 2012	Breakfast 08h00 – 10h30	Cape Town
Mon 02 April 2012	Breakfast 08h00 – 10h30	East London
Wed 04 April 2012	Breakfast 08h00 – 10h30	Port Elizabeth

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