

EXPLANATORY NOTE: PENDING LABOUR LAW REFORMS AND RISKS TO THE AGRICULTURAL SECTOR

Status: *Please note that the proposed amendments outlined below are currently in the legislative process as part of the Employment Laws Amendment Bill, 2025, and have not yet been finalised or enacted into law. They have been published for public comment.*

This explanatory note outlines the key proposed changes to South African labour legislation that will significantly impact the agricultural sector. It details the proposed reforms, the recorded positions of Organised Business during the National Economic Development and Labour Council (NEDLAC) negotiations, and the specific operational and financial risks these pending changes pose to agricultural businesses.

1. New Regulations for "On-Call" Workers

The Proposed Change: A new Section 9B is being inserted into the Basic Conditions of Employment Act (BCEA) to heavily regulate "on-call" work (where an employee works only when the employer makes work available). Employers will be required to specify maximum hours and notice periods for both reporting to work and cancelling work. Crucially, if an employer cancels work without the requisite notice, they must still remunerate the employee for the cancelled hours. Furthermore, these workers must not be treated less favourably than other employees performing similar work.

Organised Business Position: Business strongly rejected this proposal, arguing that these issues should be handled through sectoral determinations rather than blanket legislation. **Risk to Agriculture:** The agricultural sector relies heavily on weather-dependent and seasonal operational flexibility. If a harvest or planting day is abruptly cancelled due to unforeseen weather, farmers will face the severe financial risk of paying wages for unworked hours. Additionally, the administrative burden of formalising precise notice periods for casual farm labourers will drastically reduce the sector's operational agility.

2. Broadened Definition of an "Employee" (Schedule 11 and Chapter 8)

The Proposed Change: The reforms introduce a broadened definition of an "employee" to cover "dependent contractors"—individuals who provide services but are not genuinely conducting their own independent business. Under the new Schedule 11, these non-standard workers will be granted the right to freedom of association, allowing them to form or join trade unions, strike, and participate in collective bargaining. There is a statutory presumption that an individual is an employee unless the employer can prove they are free from control and direction.

Organised Business Position: Business wholly rejected extending the Act to include these non-standard workers, opposing the expansion of the "employee" definition. Risk to Agriculture: Farms frequently utilise independent contractors, piece-rate workers, and seasonal labour brokers (e.g., harvesting teams, independent transport drivers). This amendment risks reclassifying these contractors as direct employees. This will expose farmers to increased unionisation, collective bargaining demands, and potential strike action from a workforce that was previously managed through commercial, independent contracts.

3. Increased Statutory Severance Pay

The Proposed Change: The Bill amends Section 41 of the BCEA to double the statutory severance pay from one week to two weeks' remuneration for each completed year of continuous service. This applies prospectively to years of service completed after the Amendment Act commences. Furthermore, the Commission for Conciliation, Mediation and Arbitration (CCMA) will be granted jurisdiction to arbitrate disputes regarding severance pay.

Organised Business Position: Business completely rejected any increase to statutory severance pay. Risk to Agriculture: The agricultural sector is vulnerable to economic shocks, droughts, and disease outbreaks that sometimes necessitate restructuring or operational downsizing. Doubling the statutory severance pay severely inflates the cost of retrenchments, placing heavy financial strain on struggling farming enterprises during times of crisis.

4. Exclusion of Deferred Payments from the National Minimum Wage (NMW)

The Proposed Change: Following a Labour Appeal Court judgment, the National Minimum Wage Act is being amended to explicitly state that deferred payments cannot be taken into account when calculating an employer's compliance with the national minimum wage.

Organised Business Position: Business rejected this amendment, maintaining that the original Act intended for such payments to be included in minimum wage calculations. **Risk to Agriculture:** Farmers who utilise deferred payment structures—such as end-of-season bonuses or harvest-completion incentives—will no longer be able to count these toward minimum wage compliance. The base regular wage must meet the NMW outright. This poses a significant cash-flow risk, forcing farms to increase their regular monthly wage bills rather than tying compensation to the successful completion of a harvest.

Conclusion: While these reforms are pending and subject to public and parliamentary processes, the agricultural sector must urgently assess its reliance on on-call workers, independent contractors, and current wage structures. Preparing for these potential structural shifts now will help mitigate future financial and legal exposures.