

Meeting Report: Labour Law Reform Discussion

Meeting Overview

This meeting was organized by AgriSA to discuss pending labour law reforms and their potential impacts on the agricultural sector. The session featured a presentation on the pending Labour Law Reform Bill and included provincial and commodity organisation representatives.

Background on Labour Law Reform Process

NEDLAC Negotiations

The labour law reform process began during the pandemic in 2020 and concluded in October 2024 after four years of negotiations at NEDLAC. The process involved government, labour, and business as social partners, with provisions requiring agreement from two of the three parties to proceed. Professor Halton Cheadle and Professor Paul Benjamin assisted during different stages, with legal teams from Bowman's supporting the drafting process.

Current Status

The draft bills have passed through the state law advisor for constitutional review and were approved by the economic cluster of ministers, including the Minister of Agriculture. Cabinet authorised public comment in February, with the comment period closing on February 28th. The parliamentary process is expected to begin sometime in 2027, with no slots available for the rest of 2026.

Major Proposed Changes

1. Increased Severance Pay

The proposal increases severance pay from one week to two weeks per year of service under the Basic Conditions of Employment Act. Labour initially proposed four weeks, but government settled on two weeks despite business rejecting any increase. This change would double restructuring costs and impact long-term workforce planning.

2. On-Call Worker Protection

New section 9B requires 48 hours notice for temporary or casual work and mandates 40 hours minimum monthly pay. Originally designed for retail sector challenges, this provision doesn't account for weather-dependent agricultural operations. The requirement conflicts with existing sectoral determinations and seasonal work realities in farming.

3. Extended Employee Definition

The most significant change expands the definition of "employee" to include individuals working personally for someone who is not a client or customer. This broad definition threatens to capture independent contractors, piece workers, and seasonal workers as statutory employees. The new definition enables collective bargaining rights and allows the minister to create new sectoral determinations for these worker.

Sector-Specific Concerns for Agriculture

Operational Challenges

The presenter highlighted that farms rely on non-standard labour arrangements including seasonal workers, casual workers, and independent contractors. The proposed changes would subject all these categories to full statutory employee compliance. Weather-dependent operations make the 48-hour notice requirement particularly problematic.

Economic Impact

The combined effect of these changes creates a "rock and hard place" situation where casual harvest workers could be reclassified as statutory employees, operational delays would trigger minimum standby rates, and mechanization or downsizing would incur doubled severance costs.

Complexity with Existing Regulations

Attendees raised concerns about the distinction between farm-level workers and those in wineries or pack houses, noting existing complexity between different regulatory frameworks. These distinctions weren't considered in the draft legislation, which would apply the new employee definition across all agricultural operations.

Strategic Recommendations

Data Collection and Analysis

The presenter recommended that businesses document their use of piece workers, casual workers, and independent contractors, and track hours lost to weather events. This data will be crucial for economic impact assessments and lobbying efforts.

Engagement Strategy

Key recommendations included:

- Engaging with union confederations on health and safety, access, and social security issues.
- Leveraging relationships with different union federations (COSATU, FEDUSA, SAFTU, NACTU).
- Building relationships with technical officials in the Department of Employment and Labour.

Submission Process and Timeline

Current Phase

AgriSA is preparing comprehensive commentary for submission before the February 28th deadline.. The presenter noted that hundreds if not thousands of submissions are expected from various industry bodies and organisations.

Future Engagement

After the comment period, the Department of Employment and Labour will review all submissions before potentially proceeding to parliamentary hearings. The agricultural sector is likely to be called to make in-person submissions to parliament.

Challenges with Department of Employment and Labour

Ideological Approach

The department was criticized for proceeding without proper socioeconomic impact assessments. The department's approach has been characterised as ideologically driven rather than evidence-based.

Political Dynamics

There appears to be conflict between political heads (minister and deputy ministers) focused on unemployment issues and technocrats pursuing pro-labour positions. There are suggested opportunities to engage political leadership on economic impact concerns.

Next Steps and Opportunities

Immediate Actions

- Submit detailed comments by February 28th deadline
- Coordinate with other industry bodies for consistent messaging
- Engage provincial representatives and government officials
- Document economic impacts for future lobbying efforts



Long-term Strategy

It is very important to stay engaged throughout the lengthy process, which includes potential election impacts and multiple opportunities for influence. Building relationships across the system and maintaining organised opposition will be crucial.