

July Circular from the Labour Team

Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others (Case number CCT 194/17) .

On 26 July 2018, the Constitutional Court handed down judgment in the matter between **Assign Services (Pty) Limited v National Union of Metalworkers of South Africa and Others (Case number CCT 194/17)**.

This judgment deals with the so-called “deeming provisions” contained in section 198A(3)(b) of the Labour Relations Act, 1995, whereby the worker placed by a Temporary Employment Service (TES) (or Labour Broker) is deemed to be the employee of the client after a period of three months has elapsed. Effectively, the Constitutional Court has found that on an interpretation of the Labour Relations Act, for the first three months the TES is the employer of the worker placed with the client and after the three month period has elapsed, the client becomes the sole employer of that worker.

The judgment has been supported by a majority of ten judges, being Dlodlo AJ writing for the majority, and including Zondo DCJ, Froneman J, Goliath AJ, Jafta J, Khampepe J, Madlanga J, Petse AJ and Theron J concurring. Cachalia AJ was the lone dissenting judge.

The Constitutional Court has held that the purpose of section 198A of the Labour Relations Act must be contextualised within the right to fair labour practices in section 23 of the Constitution and the purpose of the LRA as a whole. As such, on an interpretation of sections 198(2) and 198A(3)(b) of the Labour Relations Act, for the first three months the TES is the employer and then subsequent to the elapse of three months, the client becomes the sole employer. The majority of judges found that the language used by the legislature in section 198A(3)(b) of the LRA is plain and that when the language is interpreted in the context, it supports the “sole employer” interpretation.

We are studying the judgment and will provide a further exposition of the legal position shortly.

July Circular from the Labour Team

FURTHER ADVICE

Should you require advice or assistance on Employment Law matters, please contact: Alexander Rocher on (031) 031 536 8502 / arocher@coxyeats.co.za or Sunil Hansjee on (031) 536 8526 / shansjee@coxyeats.co.za

