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Law and practice of private employment agency work in South Africa

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Acronyms and abbreviations

APSO	Federation of African Professional Staffing Organizations
BCEA	Basic Conditions of Employment Act
BUSA	Business Unity South Africa
CAPES	Confederation of Associations in the Private Employment Sector
CCMA	Commission for Conciliation, Mediation and Arbitration
COIDA	Compensation for Occupational Injuries and Diseases Act (1993)
COSATU	Congress of South African Trade Unions
ECC	Employment Conditions Commission
EEA	Employment Equity Act
FEDUSA	Federation of Unions of South Africa
GIWUSA	General Industries Workers Union of South Africa
ILO	International Labour Office *or* International Labour Organization
LRA	Labour Relations Act
MHSA	Mine Health and Safety Act
NACTU	National Council of Trade Unions
NEDLAC	National Economic and Development Council
OHSA	Occupational Health and Safety Act
PrEA	Private employment agency
RIA	Regulatory Impact Assessment
SARS	South African Revenue Service
SDA	Skills Development Act
SECTOR	Sectoral Activities Department (ILO)
SSETA	Services Sector Education and Training Authority
TEA	Temporary employment agency
TES	Temporary employment service
UIF	Unemployment Insurance Fund

Preface

This paper, written by Paul Benjamin, presents the findings of a study on laws, regulations and practice relating to the work of private employment agencies in South Africa. The study covers the temporary agency work industry (known as "labour broking" in South Africa) as well as the recruitment and placement of individuals in permanent or temporary employment. The responsibility for opinions expressed in this paper rests with the author, and publication does not constitute an endorsement by the ILO of the opinions expressed in it.

A separate study empirical and statistical aspects related to this industry in South Africa has also been completed. These two papers on South Africa have been prepared at a time when the relevant legislative provisions are under revision, following a long period of intense political debate in the country on this subject.

This paper is one of several research studies prepared in 2013 for the Sectoral Activities Department (SECTOR) on the impact of the Private Employment Agencies Convention, 1997 (No. 181); the framework for operation of private employment agencies; employment conditions; and treatment as regards such issues as pay, social protection, leave and pensions in selected countries, providing sectoral information as appropriate. The first such paper, on Morocco, was published in September 2011. The 2013 studies – on Argentina, Chile, China, the Netherlands, South Africa, Spain, Sweden and Uruguay – consist of (a) statistical and empirical research on private employment agencies and agency work and/or (b) legal research on whether and how the provisions of Convention No. 181 are reflected by laws and regulations and by practice in selected countries.

The initial proposal to carry out this research on the impact of the Private Employment Agencies Convention, 1997 (No. 181) was proposed at the Sectoral Advisory Body for Private Services Sectors in October 2010 and recommended by the Sectoral Advisory Body Meeting in January 2011. The proposal was endorsed at the March 2011 sitting of the ILO's Governing Body. At the March 2012 sitting the Office was asked to bear in mind for future work the views expressed by the participants in the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors (October 2011), as summarized in the *Final report of the discussion*. These research papers were prepared taking into account those views, and are preliminary documents intended – like other SECTOR Working papers – to stimulate discussion and critical comment, and should not be considered as ILO policy papers or documents. The ILO uses the term "private employment agency *industry*" (not "sector", an inappropriate word to refer to such a cross-sectoral industry). We use the term "sector" for a more distinctive and well-delineated category of industries that can be clearly distinguished from other sectors of the economy, and our Department currently works on 22 such sectors.

SECTOR promotes decent work by addressing social and labour issues in various economic sectors, both at international and national levels. By tackling challenges for specific sectors, the International Labour Organization (ILO) assists governments, employers and workers to develop policies and programmes that generate decent employment and improve working conditions in each sector. SECTOR's integrated approach links up with the entire Decent Work Agenda, allowing the ILO to respond comprehensively to specific needs of the sectors in relation to employment, social protection, labour rights and social dialogue issues.

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INTRODUCTION

The regulation of temporary employment agencies (TEAs) has been a high-profile issue in South Africa for at least a decade. Legislation to regulate TEAs was first enacted in 1983, and amendments were made to it in 1995 with the introduction of a new labour relations framework by the first democratic Parliament, just before the International Labour Conference adopted the Private Employment Agencies Convention, 1997 (No. 181). However, over the past 10 years the role of TEAs has become an increasingly controversial and divisive issue in both the labour market and political debates. This policy process is as yet incomplete: the National Assembly has approved amendments to the Labour Relations Act, 1995, which are discussed in detail in this report, which will significantly revise the framework for regulating TEAs. However, at the time of finalizing this report (September 2013) these amendments have yet to be approved by the National Council of Provinces.

In the apartheid era, African workers employed in urban areas were required to conclude annual labour contracts with their employers through the state-run employment bureaux. The much-hated influx-control system, which included the legal requirement for Africans to carry a pass, was eventually removed from the statute books in 1986. While there are no historical studies of the emergence of labour hire in South Africa, it is probable that the initial impetus for its development lay in the loosening of influx-control in the 1970s and 1980s when employers started to turn to sources other than the government labour bureaux to meet their labour requirements.

A note on terminology

The term 'labour broker' is used in South Africa to refer to what are more commonly referred to as labour hire firms or temporary employment agencies in other countries. Although the statutory terminology was changed to 'temporary employment services' in 1995, the term 'labour broker' has stuck and is often used with a pejorative meaning in public discourse. The broader category of labour market intermediaries are, in keeping with international practice, referred to as private employment agencies. Temporary employment services are therefore a sub-category of private employment agencies. The enterprise with whom the employees are placed is referred to in ILO terminology as the 'user enterprise' and are variously referred to as the client, user or host enterprise.

EVOLUTION OF THE LEGISLATIVE FRAMEWORK

1983 legislation

South African labour law first recognized agency work in 1983 when the concept of a 'labour broker' was introduced in amendments to the Labour Relations Act, 28 of 1956. Here labour brokers were 'deemed' to be the employers of individuals whom they placed to work with their clients, provided that they were responsible for paying their remuneration. In other words, South Africa adopted a rule permitting temporary employment agencies to be classified as the employers of those whom they placed to work with a client more than a decade prior to this type of arrangement being reflected in international standards with the adoption of ILO Convention No. 181 of 1997.

At the same time, a legal requirement for labour brokers to register with the Department of Labour was introduced. A further provision included in the Act provided that the client's premises – where they were assigned by the labour broker – were deemed to be their place of work.

The rationale given for enacting the amendments was that firms were structuring their employment relationships to prevent these workers receiving the protection of statutory wage-regulating measures and other minimum conditions of employment (Brassey and Cheadle, 1983). Ironically, this amendment has enabled employers – post-1996 – to avoid aspects of labour law, in particular, collective bargaining and unfair dismissal protection.

1996 legislation

South Africa underwent its transition to democracy in 1994. A high-calibre drafting committee comprising of government, labour and business, assisted by leading international experts provided by the ILO, prepared legislation that was the subject of intense negotiations in the tripartite policy forum NEDLAC (the National Development and Labour Council),which was subsequently enacted by the new democratic Parliament in late 1995. The Labour Relations Act (LRA), 66 of 1995 came into effect in October 1996.

The drafting committee identified one significant shortcoming in the 'deeming' approach adopted in 1983 to the regulation of labour hire. While this early approach clarified who the employer of a placed employee was, the drafters recognized that it left employees vulnerable to abuse by 'fly-by-night' labour brokers, colloquially known as the 'bakkie brigade'[1]. If, for example, a labour broker who had provided workers to a client failed to pay them, it identified that the employees had no recourse against the client because the client was not their employer. If the employees could not find the labour broker, or the labour broker had no assets, there was no mechanism available to employees to recover wages and other payments owed to them. As

[1]A 'bakkie' is an Afrikaans term for a small truck, and the phrase captures the practice of small-scale agencies who convey workers to their client's workplace in the back of a truck and who generally do not have formal business premises.

a result, the risk of non-compliance by labour brokers rested on the employees and not on the client.

The 1995 LRA therefore retained in section 198 the formulation that the labour broker (renamed a *temporary employment service*[2]) was the employer of persons they placed with clients as employees if they assumed responsibility for remunerating these employees. However, the law was changed to make the client for whom the employees worked jointly and severally liable for breaches of the Basic Conditions of Employment Act (BCEA), sectoral determinations that set minimum wages, collective agreements and arbitration awards.
An initial proposal to extend joint and several liability for unfair dismissal and unfair labour practices was included in the draft Bill, but was removed during negotiations at NEDLAC. In addition, two provisions that had been introduced in 1983 were not included in the 1995 LRA. These were the requirement for labour brokers to register with the Department of Labour and the provision that the place of work for such employees was deemed to be the client's premises. It would appear that these two omissions were inadvertent rather than deliberate policy decisions, during a major revision of labour legislation in South Africa conducted over a short period.

THE STATUS OF TEMPORARY EMPLOYMENT SERVICES (LABOUR BROKERS) UNDER OTHER LEGISLATION

Basic Conditions of Employment Act (1997)

Temporary employment services that provide employees to clients are deemed to be the employer of those employees in terms of the Basic Conditions of Employment Act (BCEA). However, the client is jointly and severally liable for compliance with the minimum standards set by the Act as well as those contained in sectoral determinations issued by the Minister in terms of the BCEA, on the recommendation of the Employment Conditions Commission (ECC).

The consequence of joint and several liability is that if a labour broker fails to pay amounts owed to its employees, the client for whom the employees worked is liable to make those payments. This liability arises regardless of whether the client has paid the temporary employment agency/service or not. In theory, the introduction of this form of joint and several liability transfers the risk of the labour broker defaulting on its obligations from the employee to the client. However, the client's liability is a default liability. The client cannot be sued directly in the Commission for Conciliation, Mediation and Arbitration (CCMA) or Labour Court because it is not an employer. The employee can only proceed against the client if it has obtained a judgment or order against the labour broker that the labour broker has declined to pay.

[2]This change was introduced into the Bill as a result of representations by the Association of Personnel Service Organisations (APSO) during the Parliamentary Portfolio Committee hearings, but we will use the term "TEA" or "agency" hereafter.

Employment Equity Act (1998)

The Employment Equity Act (EEA) prohibits unfair discrimination and requires employers (excluding smaller employers) to take affirmative action measures. The EEA prohibits all 'persons', from unfairly discriminating against employees. As a result, both a temporary employment agency (TEA) and a client with whom employees are placed are covered by the Act's prohibition on unfair discrimination. In addition, a client is jointly and severally liable for unfair discrimination by the TEA on the express or implied instructions of the client.[3]This would be the case if the client's instructions resulted in the labour broker selecting candidates on a proscribed ground such as race.

For the purposes of the EEA's affirmative action provisions, a person supplied by a TEA is considered to be an employee of the client if they are placed with the client for an indefinite period, or for three months or longer.[4] This requires employers to take account of these categories of employees in preparing and implementing their employment equity plans, and to take measures to promote employment equity. As a result, placed employees are deemed to be employees of the client in the following two circumstances –

- from the inception of their employment, if they are hired on an indefinite basis;
- after three months, if they are hired for an indefinite period.

Whether or not employees who are placed as temporary employees are also considered employees of the TEA – for purposes of affirmative action – would have to be established by the ordinary test for determining whether an employment relationship exists.

Skills Development Act (1998)

The Skills Development Act (SDA) does not make any reference to temporary employment services. Accordingly, identifying the employer of a placed employee will depend on the application of the conventional test of the employment relationship developed by the courts. This is relevant for determining whether, for example, an employer could conclude a learnership agreement with an employee who has been engaged via a TEA. However, as learnership arrangements are voluntary contractual arrangements, this does not appear to have any practical significance.

Temporary employment services fall within the broader category of a 'private employment services agency' in terms of the SDA. This was introduced into the Act by the 2003 SDA Amendment Act. Although the SDA empowers the Minister of Labour to issue regulations requiring private employment service agencies to register with the Department of Labour, no regulations on this have been published since the 2003 amendments. Regulations for private employment services passed in 2000 require these services to register and regulate the fees that they may charge.

[3] Section 57 (1).
[4] Section 57 (2).

Skills levies, unemployment contributions and income tax

For the purposes of the Skills Development Levies Act and the Unemployment Insurance Act, Schedule 4 to the Income Tax Act is used to determine whether or not a TEA is an employer. A TEA that has applied for, and been issued by the South African Revenue Service(SARS) with an **exemption certificate (IRP 30)** is an employer for the purposes of the SDA and Unemployment Insurance Fund (UIF) and may deduct tax from employees' income and pay it to SARS. These certificates are valid for a year and must be renewed. If a TEA does not hold a valid exemption certificate, it is the client's obligation to pay the skills development levy as well as the employer's and employee's contribution to the Unemployment Insurance Fund, and the employer may not use the TEA to deduct and make tax payments on behalf of the employees it places.

Health and safety legislation

A labour broker is the employer for the Compensation for Occupational Injuries and Diseases Act 1993 (COIDA). The TEA must therefore register with the Compensation Fund as an employer, comply with the Act's reporting obligations, pay assessments (contributions) to the fund, and report occupational accidents and diseases in terms of the Act. In addition, the protection from civil claims applies to the TEA and not to the client.[5]

On the other hand, the client is also the employer for the purposes of compliance with health and safety legislation. This is true of both the Occupational Health and Safety Act (OHSA) and the Mine Health and Safety Act (MHSA). One of the consequences of this is that an accident involving a placed employee must be reported by the labour broker to the Compensation Fund, but it must be reported by the client to the inspectorate in terms of OHSA or MHSA.

ALLOCATION OF RESPONSIBILITY UNDER SOUTH AFRICAN LAW

Convention No. 181 requires ratifying countries to determine the respective responsibilities of agencies and user enterprises. South Africa does achieve this, and responsibility is designated as stated in the table below. However, the allocation of responsibility to the agency may well be inappropriate, particularly for employees who are placed indefinitely with a particular client.

[5]This is well-illustrated by *Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Rieck* (2007) 28 *ILJ* 307 (SCA).Rieck, an employee supplied to a poultry company by a TES, was taken hostage in a robbery at a shop on the poultry farm and bundled into the robbers' get-away vehicle. Two security control employees of the company fired bullets at the car in an attempt to apprehend the robbers, but injured Rieck. The company accepted that the security employees acted in the course and scope of their employment, and the court ruled that shooting at the vehicle was negligent. As Rieck was supplied by a TEA, the company was liable for the damages she suffered as a result of the shooting. If the company had employed her directly, she would have been precluded by section 35 of COIDA, which bars civil claims by an employee against an employer, and would have been restricted to receiving statutory worker's compensation.

Table 1: ALLOCATION OF RESPONSIBILITY FOR AGENCY EMPLOYEES

Topic	**Responsibility**
Collective bargaining	Agency
Minimum wages	Agency (client has joint and several liability)
Working time and other working conditions	Agency (client has joint and several liability)
Statutory Social Security Benefits	Agency
Occupational Health and Safety Protection	Client
Compensation for Occupational Accidents or Diseases	Agency
Compensation in case of Insolvency and Protection of Workers' claims	Agency
Maternity Protection and Benefits	Agency

Application of the Private Employment Agencies Convention to South Africa

At this stage it is worth reflecting on the context in which the Private Employment Agencies Convention, 1997 (No. 181) impacts on South African labour law. The Convention deals with the role of private employment agencies in performing both recruitment and labour hire functions. Countries that ratify the Convention may prohibit the operation of employment agencies in particular sectors of the economy.[6]Agencies may not charge fees to employees.[7] While the Convention does not make a system of licensing mandatory for ratifying countries, it does require that they have adequate machinery for lodging and investigating complaints concerning agencies.[8]

The 1997 Convention does seek to ensure that workers placed in user enterprises by employment agencies receive adequate protection under labour law as well as protection against discrimination and violation of their privacy rights. The key provision giving effect to this approach requires ratifying countries to enact legislation – stipulating the responsibilities of agencies and user enterprises in ensuring the protection of placed workers – in respect of freedom of association, collective bargaining, wages and conditions of employment, social security benefits, health and safety and other aspects of labour law.[9]

However, (according to Vosko[10]) the Convention "does not establish how responsibilities should be allocated amongst the entities party to the triangular relationship. It also fails to provide guidelines for the division of responsibility in this type of relationship..." In addition,

[6] Article 2(4).
[7] Article 7.
[8] Article 10.
[9] Article 12.
[10] Vosko, Leah F. 1997. "Legitimizing the Triangular Employment Relationship: Emerging International Labour Standards from a Comparative Perspective." *Comparative Labour Law and Policy Journal.*19 (Fall), p. 43 at 63.

the Convention does not deal with the circumstances that countries should take into account in deciding whether to permit agencies to be classified as employers, nor does it address the security of employment of workers hired by private employment agencies.

In retrospect, it is evident that at the time the Convention was adopted, the extent to which this approach would be used as a technique to deprive employees of labour law protection was not yet anticipated. The Employment Relationship Recommendation, 2006 (No. 198) is the only international standard that addresses this issue through its non-binding recommendation that countries should adopt a national policy to ensure that employed workers, including those engaged in terms of multi-party relationships, should have the protection which they are due.
South African legislation on agency work was enacted prior to the adoption of the Convention. In contrast to the Convention, the key trend in recent regulatory activity has been the extension of the principles of equality and non-discrimination to placed employees. This has emerged as the key strategy to ensure that agency work and non-standard employment does not lead to a 'race to the bottom', and has been a key driver of the legislative reform process in South Africa.

Practice of agency work

Despite section 198 of the LRA using the term 'temporary employment service', its application is not limited to agencies supplying temporary employees. There is no doubt that the drafters of the 1983 amendments, as well as section 198 of the current LRA, envisaged that they were developing a regime to regulate the placement of temporary employees with clients by labour brokers. However, arrangements that meet the criteria of section 198 have been increasingly used as a basis for hiring employees on an indefinite basis.

There are examples in case law and empirical studies to indicate that often this arrangement has been used to 'convert' employees who had been engaged 'directly' by their employer into employees placed by labour brokers.[11] This consequence flows from the fact that the broker procures or supplies the employees and remunerates them. No other formalities are required to achieve this result. Employees engaged in this way have no security of employment with the 'client', even though they are working on an ongoing basis for the client as if it was their employer. The client's decision to request an agency to withdraw an employee is conveyed from client to agency in terms of their commercial arrangement, and therefore falls beyond the

[11]The practice of conversion is well illustrated by the following case before the Labour Court in 2011. Mr. Dyokwe started working at a factory in Cape Town in 2000 owned by Mondi, a South African-based multi-national and one of the world's largest paper manufacturers. In 2003, the manager told him to go to an office "to sign a form". The office turned out to be the premises of a labour broker owned by Adecco, the world's large employment agency company, which operates in 60 countries. He was told he would have to sign a contract with the labour broker to keep his job. He signed the form and returned to the factory where he continued in the same job under the same supervisor. However, his hourly rate was cut by 20%. He worked for another 5-and-a-half years, but in January 2009 he was told that his name was on a list of employees whose services had been terminated. He went to the labour broker, but was told that he was too old to be placed in another job. Mr. Dyokwe sought compensation for unfair dismissal from Mondi. The company raised the argument that it was not his employer. The Labour Court found that Mr. Dyokwe was still employed by Mondi, and that the labour broker never became his employer. This is a correct reading of the law, as a temporary employment service (labour broker) must "provide or procure" employees to work for their clients. This did not happen in the present case because Mondi had referred him to the labour broker. The case was subsequently settled. (*Dyokwe* v *De Kock NO & Others* (C 418/11).

reach of labour law. The case law also shows that employees are frequently not aware that the TEA is – in law – their employer.

For example, in October 2002, 4,000 workers at the century-old ERPM gold mine east of Johannesburg went on strike. Almost the entire mine's workforce was employed by a labour broker[12] rather than by the mine-owners. The striking workers demanded that the labour broker paid them money it had received from the mine, which they believed to be part of their wages. Until shortly before the strike, most of the workers apparently believed that they were employed by the mine. The mine terminated its contract with the labour broker because it had failed to provide an uninterrupted supply of labour, leaving 4,000 employees unemployed and the mine without a workforce.

Research commissioned by the Department of Labour and tabled in NEDLAC in 2004 indicated that employees engaged through brokers are paid significantly less than the employees whom they work alongside performing the same work. A statutory provision intended to facilitate the supply of temporary staff has therefore become a vehicle for enabling a permanent triangular arrangement of employment, leaving employees without any job security and earning less than their equivalents who are employed directly by the employer.

There has been an exponential growth in the number of employees placed by labour brokers, particularly in the period after 2000. In 1995, it was estimated that about 3,000 labour brokers were placing an estimated 100,000 employees annually (Standing *et al.,* 1996). The official labour market statistics do not record the number of employees who are placed by TEAs. In late 2010, the National Association of Bargaining Councils estimated that TEAs placed 780,000 employees in the private sector, representing 6.5% of the total workforce.[13] Figures provided by CAPES for this report estimate that the number of placed employees is close to one million.[14] These figures in all likelihood underestimate the full extent of employment through TEAs, and do not take into account placements by smaller agencies that do not belong to the industry associations.

The interpretation of these figures has been a further source of controversy. Spokespersons for the labour broking industry claim that the growth in the number of employees placed indicates that labour brokers play a large role in creating jobs. However, no empirical study distinguishes the extent to which these figures reflect the creation of 'new' jobs as opposed to positions in which agency employees have been substituted for workers who previously worked directly for the employer. There is evidence in case law of occasions where employers pressurized employees to apply for their own jobs at lower rates, or retrenched employees and replaced them with workers supplied by labour brokers.

The growth of agencies from 2000 onwards indicates that labour law avoidance is a major force contributing to the rise in labour brokers.[15] Prior to 2000, independent contracting was

[12] Bezuidenhout, Andries. (2008). New patterns of exclusion in the South African mining industry, in Habib, A., Bentley, K. (eds.) *Racial redress and citizenship in South Africa*. Cape Town: HSRC Press.
[13] Information supplied by National Association of Bargaining Councils.
[14] Communication from E. Monage.
[15] For instance, the number of TEAs registered with the Services SETA increased from 1076 in 2000 to 3140 in 2006. (see Theron 2005).

the prevalent mechanism for disguised employment. However, at this stage the courts began to cast a more critical eye over such arrangements, and a presumption of employment to curb disguised employment was introduced into labour legislation in 2002.[16]
The TEA industry also frequently makes the argument in the press and in public forums that TEAs are better employers than other employers because they dismiss their workers so infrequently. This is based on information obtained from the CCMA that although 7.5% of South Africa's employees are employed by labour brokers, only 8% of cases received by the CCMA are referred by their employees.

However, there is considerable doubt over the accuracy of these figures, which were a rough estimate supplied by the CCMA. The CCMA did not at the time record as part of its Case Management System whether or not employers involved in disputes before it were labour brokers, and therefore could not provide accurate statistics on the issue. A lower rate of referral of cases by the employees of TEAs indicates that these employees do not have effective protection against unfair dismissal and unfair labour practices.

The Labour Relations Act applies to workers who are placed to work with clients as employees. Whether or not they are covered by labour law depends on their relationship with the client. In other words, if their work for the client is that of an employee, they become an employee of the agency. The manner in which they interact with the agency plays no part in determining whether they are an employee of the agency. An agency who places persons to work with a client subject to the control and supervision of the client is their employer of the persons.[17] If, on the other hand, their relationship with the client is not that of an employee but one of an independent contractor, they are not an employee of either the client or the agency.

There is extensive evidence indicating that the manner in which many labour brokers operate has led to the exploitation of vulnerable workers, with the result that they are effectively deprived of their constitutional protections and rights under labour legislation. This – coupled with the fact that joint and several liability does not extend to unfair dismissal protection[18] and to the contract of employment – has led to widespread permanent triangular employment relationships with employees generally earning less than those workers hired directly by the employer (Bezuidenhout, 2004). When examining the practice of agency work, it must be remembered that the abuse of agency workers cannot only be attributed to the shortcomings of the legal provisions dealing with labour broking. These are also the result of broader shortcomings in the enforcement of labour laws, which affect vulnerable (contingent) workers more generally.

The broad legislative definition of a temporary employment service or TEA means that the range of persons and organizations that fall within its terms can vary greatly. They range from large multinational corporations and well-established firms that supply particular categories of

[16] See section 200A of the Labour Relations Act 66 of 1995 and section 83A of the Basic Conditions of Employment Act 75 of 1997.
[17] *LAD Brokers v Mandla* (2001) 22*ILJ* 1813(LAC).
[18] The initial draft Bill submitted to NEDLAC for negotiation proposed this but it was removed during the NEDLAC negotiations.

skilled employees to 'informal recruiters' such as seasonal farmworkers who are asked by a farmer to bring a few more workers. Provided the employer uses the 'recruiting' employee as a conduit to pay the other workers, that employee becomes a temporary employment service, and the farmer is not the employer (except for purposes of compliance with health and safety legislation). The combination of lax regulation of labour broking, patriarchal employment relations in agriculture and high rural unemployment has resulted in the widespread use of labour broking as means of exploitation and labour law avoidance in the countryside (Women on Farms Project, 2005).

There is evidence from studies of both arbitration awards (Theron, 2005) and sociological research (Webster *et al.,* 2008) that employees are often unsure whether they are employed by an agency or by the business where they work. Arbitration awards show that employees who are dismissed refer cases against the enterprise they consider to be their employer, only to be met with the defence that their 'legal' employer is an agency who recruited them or to whom they were transferred. Reported case law includes examples of employers dismissing placed employees who participated in a legal strike,[19] 'transferring' their employees to a TEA,[20] and employees who were unaware that their employer was the TEA.[21]

For many years, Labour Court judges tended to construe section 198 of the LRA in an extremely literal manner, with the result that employees were left without a remedy in all but the most egregious cases. The almost inevitable consequence was that a claim for unfair dismissal by a placed employee failed because no challenge could be made to the client's rationale for requesting the termination of its assignment. As long as the client remained on the books of the agency, there had not been a dismissal. This would be the case even when the agency did not offer the employee another assignment. It is only since 2010 that Labour Court judges have fashioned remedies that give a measure of employment security to employees placed by labour brokers.[22]These judgments have adopted a more purposive approach and have proceeded from the premise that section 198 was not intended to deprive employees of their constitutional protection against unfair labour practices, including unfair dismissal.

A report by the CCMA (CCMA 2009), based on its experience in conciliating disputes involving labour brokers and other forms of outsourced labour identified the following problems:

1. Where employers contract out their core operations (whether to labour brokers or independent contractors), there is usually inequity between contracted workers and permanent employees regarding job security, equal treatment, equitable pay and benefits. These inequities usually result in a demand from contract employees to become permanently employed.

[19] *Buthelezi v Labour for Africa* (1991) 12 ILJ 1288 (IC).
[20] *NUMSA v Genlux Lighting* [2009] 3 BLLR 245 (LC); *NUMSA obo Ketlhoilwe v Abankedisi Labour Brokers* (Labour Court, Case No: JS1284/01).
[21] *Vitapront Labour Brokers CC v SACCAWU & Others* [2000] 2 BLLR 238 (LC).
[22] *Nape v INTCS Corporate Solutions (Pty) Ltd (*2010) 31 ILJ 2120 (LC); *Mahlamu v CCMA & Others* [2011] 4 BLLR 314 (LC).

2. A further consequence of contracting out core operations is that it undermines collective bargaining. Organizational rights, in particular the basic right of access, are almost impossible to enforce where the employer is a labour broker and the employees work at a client's premises.

3. Most labour broker and independent contractor agreements provide that the client may direct the broker/contractor to remove an employee from the client's premises if it so wishes. This often results in termination of the worker's employment without any fair reason for the termination and no fair dismissal procedure.

4. Most labour broker and independent contractor agreements provide that if the contract is terminated by the client, the employee's contract is terminated 'automatically', in the same way that a fixed-term contract expires. The labour broker therefore avoids following a fair retrenchment procedure for termination (in terms of section 189 of the LRA) and providing severance pay.

5. Often there are clauses in the commercial contract which prohibit the client from employing the workers directly for six months after the termination of the contract. This effectively deprives employees of the prospect of earning a livelihood, for it is at that workplace where the workers have gained the necessary skills and experience. While the clause denies the employees an income, the client is under no obligation to find alternative employment or continue to remunerate the employees for the period they are unable to work.

A study of the CCMA in 2013 commissioned by the ILO (Benjamin, 2013) concluded that the increased use of TEAs and other trends towards casualization of the workforce have contributed to what South Africa's National Planning Commission has described as an 'increasingly fraught' labour relations climate.[23]

> "There has been an increasing demand for social benefits, such as medical aid schemes and the payment of transport and housing allowances, to be included in remuneration packages. These demands are in respect of employees who may formerly have belonged to such schemes but have been excluded because their employment was 'casualized'. …Trade unions have responded in the collective bargaining arena to the increased use of non-standard employment by South African employers. This has included a demand by COSATU, the country's largest trade union federation, for a prohibition on labour brokers (temporary employment services). This demand has been pursued at a national level, with calls for a legislative ban on labour brokers, as well as at plant-level and sectoral collective bargaining. In 2009, for example, all issues in dispute in collective bargaining in the private security industry were resolved, except the demand for a ban of labour brokers. This issue gave rise to a lengthy strike. The incidence of disputes over the issue of "labour broking" peaked in 2011.The publication of draft legislation addressing many of the abuses associated with labour broking has resulted in a decline in the number of related disputes in 2012."

[23] National Planning Commission, 2012 at 34.

COMPLIANCE WITH ILO CONVENTION NO. 181, 1997

Freedom of association and collective bargaining

Article 4 of the ILO's Private Employment Agencies Convention, 1997 (No. 181) states that:

> *"Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively."*

The Labour Relations Act does not contain an enforceable duty to engage in collective bargaining, nor does the law regulate the conduct of collective bargaining through a concept such as good-faith bargaining. Rather, it uses a system of statutory organizational rights to promote the recognition and effective operation of representative trade unions. This system, coupled with a protected right to take industrial action (strike or lock-out) after a dispute has been referred to conciliation, constitutes the primary legal mechanism for promoting collective bargaining.

Placed employees in South Africa are entitled to join and participate in the activities of trade unions, and are protected against retaliation for engaging in these activities. Registered trade unions that are sufficiently representative in a workplace are entitled to obtain the basic organizational rights: requiring the employer to deduct and pay union subscriptions and grant reasonable access to union officials to enter the employer's premises to conduct union business. Trade unions may acquire these rights individually or by acting together. If a dispute about acquiring organizational rights cannot be resolved at conciliation before the CCMA or a bargaining council, the trade union may refer it to arbitration or call a strike.

Trade unions with majority representation in a workplace are entitled to have their elected trade union representatives recognized by the employer; for office-bearers to have time off for union business and training; and to receive information for collective bargaining. In addition, they may conclude a collective agreement with the employer setting the threshold at which trade unions can obtain basic organizational rights and conclude agency shop agreements requiring non-members who benefit from collective bargaining to contribute to the union.

In theory, placed employees have the same rights as other employees in this regard. However, there are a number of ways in which they are effectively prevented from exercising their rights. These flow from the legal fiction ('deeming clause').which makes the TEA the employer, even if they are working indefinitely for a client of the TEA. Those who are permanently placed by labour brokers cannot process a demand calling on their effective employer to bargain with them because they are not in law employed by them.

One of the clearest illustrations of this can be seen in the concept of the 'workplace' which is used to determine trade union representativity for the purposes of gaining organizational rights. The workplace is defined as 'the place or places where the employees of an employer work'. Employees placed by labour brokers do not work at a workplace belonging to their normal employer and may seldom, if ever, enter their employer's premises.[24]Therefore a trade union organizing employees of ate would be able to acquire the right of access to the premises of the TEA, which is not of any practical use. What it does require is access to the premises of the client where the employees work.

This problem is well-illustrated in a 2012 Labour Court case concerning employees' right to picket on or outside the employer's premises during a protected strike. Trade union members working at Mogalakwena Mine, which belonged to Rustenburg Platinum Mines, staged a protected strike. All the employees concerned were employed by a labour broker or temporary employment service (TES) and were placed at the mine. The union's members started picketing on the mine, in support of the protected strike. Violence occurred and the mine obtained an urgent interim interdict aimed at preventing further violence. The Labour Court ordered the mine owner and union to attend a hearing at the CCMA to determine picketing rules. The parties could not agree on picketing rules and the CCMA commissioner therefore established picketing rules in terms of section 69(5) of the Labour Relations Act. In terms of the picketing rules, the striking employees were permitted to stage pickets at the premises of the TEA which was 30km away from the mine, but were prohibited from picketing on the Mogalakwena Platinum Mine's premises. This ruling was set aside by the Labour Court because, in its view, the Commissioner had failed to consider what the proper place for picketing to take place was.[25]

As a result, employees placed by TEAs to work for client enterprises are unable to exercise organizational rights or participate in collective bargaining. It is arguable that section 198 of the LRA in its current form offends the constitutional entrenchment of labour rights guaranteed under section 23 of the South African Constitution. These rights include protection against unfair labour practices, the right to belong to a trade union, the right of trade unions and employers to engage in collective bargaining, and the right to strike. However, no such legal challenge has been brought.

This issue has been dealt with in the amendments to the Labour Relations Act (which were approved by the Parliamentary Portfolio Committee in 2013) by allowing a trade union that represents employees of a TEA to exercise organizational rights in respect of the workplace of either the TEA or its client. In addition, an arbitration award establishing organizational rights may be made binding on the TEA and the client for whom the TEA's employees work.

[24] The 1983 Amendments to the 1956 LRA did contain a provision in which the premises on which workers provided by labour brokers worked was deemed to be the labour broker's premises (section 1(3)(d)).
[25] *Consolidated Workers' Union of South Africa* vs *CCMA & others* (Case no: JR 3124/12).

Unfair discrimination

Article 5 of ILO Convention No. 181 provides that:

> 'In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.'

As discussed previously, the Employment Equity Act prohibits all 'persons' from unfairly discriminating against employees. As a result, both a TEA and a client with whom employees are placed are covered by the terms of the Act's prohibition on unfair discrimination. In addition, a client is jointly and severally liable for unfair discrimination by the TEA on the express or implied instructions of the client.[26] This would be the case if the client's instructions resulted in the labour broker selecting candidates on a proscribed ground such as race.

However, there has been no ruling that it is unfair discrimination to treat employees who are placed with a client by a TEA less favourably than employees who are hired directly by the client to perform work of equal value. The fact that the 'client employer' is not their statutory employer means that wage differentiation in the workplace of this type does not amount to proscribed discrimination.

Trade unions have directed, and processed through the statutory conciliation system, demands that have led to public and private sector employers agreeing to phase out the use of labour brokers.[27] In a number of sectors in which collective bargaining takes place through bargaining councils, collective agreements have been concluded restricting the proportion of the workforce that employers can engage through temporary employment services.

A 2003 research project, commissioned by the Department of Labour, was the first report to argue that strategies of externalising work (in particular outsourcing and labour broking) was the major driver of the informalization of work in South Africa, rather than casualization by hiring temporary and part-time workers (Bezuidenhout *et al* 2004). Labour broking had been utilised by firms to reduce standard employment in order to reduce labour costs and minimise risks associated with employment. The report concluded that workers supplied by TEAs are paid significantly less than those employed directly by the firms where they work and have no security of employment. The report also pointed out that while the avoidance of legislation had provided the motive for firms to use TEAs, the legislative provisions concerning TEAs had provided the opportunity. The report identified the legislative provisions regulating labour

[26] Section 57 (1).

[27] Employers who have concluded collective agreements phasing out the use of labour brokers after procedural strike action include Goodyear Tyres (September 2006), Tshwane (Pretoria) Municipality (May 2008), South African Airways (March 2009) and the Post Office (2012). In June 2012 a German chemical manufacturer Lanxess announced that it was hiring 357 employees who had been placed by labour brokers at its chrome mine. These employees constituted 70% of the mine's workforce and did not enjoy the same remuneration and benefits as direct employees. This arrangement had been in existence for 12 years. The company said it was taking this step to take full control of its workforce skills development at the mine. (*Business Day*, 12 June 2012).

brokers as a priority for policy and legislative reform. While these proposals were tabled in the tripartite labour advisory forum (NEDLAC) in 2004, no report or recommendation emerged from its deliberations.

A number of subsequent reports have confirmed the trend towards the use of temporary employment services. A 2008 report, again commissioned by the Department of Labour, proposed outlawing labour brokers who merely act as employers of sub-contracted labour, except for those at the higher end of the labour market who provide workers with specialist skills (Webster et al., 2008).[28] The call, which was first made by the then Minister of Labour, was adopted as a campaign by the labour movement, particularly COSATU. Nevertheless, the official policy of the ruling party has remained that labour broking and other forms of non-standard work should be regulated in order to avoid the abuse of workers.[29]Despite this, the rhetoric in favour of a ban culminated in the publication of labour law amendments in late 2010 that sought to phase out labour brokers.

LEGISLATIVE REFORM

2010 draft legislation

In late 2010, the Department of Labour published a Bill containing amendments to the LRA. This was the first occasion on which draft legislation dealing with labour broking was published in South Africa. The Bill proposed repealing section 198 which regulates labour broking in its entirety, inserting a new definition of 'employer' and amending the definition of 'employee.' A draft Employment Services Bill that dealt with the regulation of private employment agencies would prevent these agencies placing their employees to work for others. Simultaneous to the publication of these Bills, the Department of Labour released a Regulatory Impact Assessment (RIA), which had been requested by the Cabinet in response to an earlier version of the Bill (Benjamin et al., 2010).

The intention of these proposed amendments was to prevent triangular employment relationships and effectively prevent TEAs from being employers. This emerged unequivocally from the proposed new definition of an employer, which would have provided that only a person who directly supervises the work of the employee may be that person's employer. The drafters of the Bill argued in the accompanying Explanatory Memorandum that

[28] The report, which can be accessed at http://www.labour.gov.za, contains the following passage: 'We propose the outlawing of labour brokers who merely act as employers of subcontracted labour, except for those labour brokers at the higher end of the labour market who provide a specialized skill such as shaft sinkers. Before amending the law, it is necessary to examine the response of employers to the ban on labour brokers in Namibia. Last year Namibia amended its Labour Act to prohibit all forms of "labour hire".'

[29] For instance, the ANC's 2009 Election Manifesto states that 'In order to avoid exploitation of workers and ensure decent work for all workers as well as to protect the employment relationship, [government will] introduce laws to regulate contract work, subcontracting and outsourcing, address the problem of labour broking and prohibit certain abusive practices.'

this would prevent the operation of TEAs, because the essence of the triangular employment relationship is the supply of employees to work under the supervision of another (the client).[30]

In order to prevent the operation of TEAs, the proposed amendments would have had the result that the criteria of 'direction and supervision' by an employer would become a mandatory requirement to be a statutory employee. This would have effectively narrowed the definition of an "employee" as interpreted by the Labour Courts. In 2008, the Labour Appeal Court had ruled that there are three 'primary criteria' for determining whether a person is an employee:-

- the employer's right to supervision and control;
- whether the employee forms an integral part of the organization of the employer;
- the extent of the employee's economic dependence on the employer.[31]

The courts accepted that it is sufficient for a worker to establish one of these criteria to be classified as a statutory employee. The unintended consequences of the proposed amendment was that employees who only qualified as employees because they satisfied the second or third of these criteria would cease to be employees. This would exclude from the ambit of labour legislation employees who are not directed or supervised by the employer such as taxi-drivers, truck-drivers and commercial travellers. In addition, the draft legislation rested on the erroneous assumption that the repeal of section 198, which regulates labour brokers, would prevent triangular employment rather than result in a situation in which the validity of these arrangements would be determined by reference to contractual principles.

The regulatory impact assessment (RIA) commissioned by the government concluded that narrowing the definition of employment would constitute an unjustifiable limitation of the rights of excluded workers (employees who are not directly supervised by their employers) to receive the protections guaranteed to 'workers' in terms of section 23 of the Constitution. The Bill was opposed by employers as well as trade unions who favoured a ban on labour brokers. In the case of the unions, this was because it would decimate membership by unintentionally excluding many employees from the scope of labour legislation (Benjamin *et al.,* 2010). As a result, the draft legislation was withdrawn in early 2011.

The underlying motivation for this approach was to prevent triangular employment relationships without an explicit prohibition on the operation of temporary employment services. This was doubtlessly motivated by a concern that any explicit prohibition on temporary employment services would be challenged as violating section 22 of the Constitution, which provides that every citizen has the right to choose their trade, occupation or profession freely.

[30] The Labour Relations Amendment Bill 2010 and its Explanatory Memorandum were published for public comment in the 17 December 2010 *Government Gazette,* and can be accessed through the Department of Labour website.
[31] *State Information Technology Agency (Pty) Ltd v Commission for Conciliation Mediation & Arbitration & others* (2008) 29 ILJ 2234 (LAC). See also Pam Golding Properties v Erasmus &others *(2010)* 31 ILJ 1460 (LC).

2013 Amendments to the Labour Relations Act

Legislation tabled in South Africa's Parliament in 2012 and passed in mid-2013 adopts a rather different approach. The framework for regulating temporary employment services introduced in 1995 is left intact, although the provisions dealing with joint and several liability are strengthened. Employees are given the option to institute proceedings against either the agency or the user enterprise, and to enforce any order or award made against either of these parties.[32] In addition, labour inspectors enforcing minimum standards legislation may secure or enforce compliance against the TEA, or the client, or both of them. The amendments also seek to promote trade unionism among placed workers by permitting these workers and their trade unions to exercise organizational rights at the client's workplace and not exclusively at the workplace of the temporary employment agency, as is currently the case.[33]An arbitration award granting organizational rights that applies to employees of the agency may also be made binding on a user enterprise (on condition that they have been given the opportunity to participate in arbitration proceedings).[34]

A new set of protections are introduced for lower-paid employees that will restrict agencies to employing these workers to perform work of a temporary nature. These employees will only be considered to be employees of the agency during placements lasting less than three months, or if the worker is a substitute for an employee during a period of temporary absence. However, the Bill that was approved by the Cabinet after an extensive negotiation process in NEDLAC set this period at six months. This was the final proposal of the Department of Labour representatives in NEDLAC, and was opposed by some trade union federations who favoured prohibiting TEAs (COSATU and NACTU, 2012). It was also opposed by organized business who proposed that the period of employment by TEAs should be two years (BUSA, 2012).One trade union federation engaged in the NEDLAC process supported the amendments dealing with TEAs (FEDUSA, 2011). In addition, the Minister of Labour has the power to classify other categories of work as temporary, during which an employee can remain an employee of the agency.

An employee placed by an agency who works for a user enterprise for longer than three months is deemed to be the employee of the user enterprise, and will have full labour law protections – including protection against unfair dismissal and unfair discrimination – against the user enterprise. These employees must be treated for the purposes of employment in the same manner as other employees of the user enterprise, unless the employer can justify the differentiation. In order to prevent agencies defeating this provision by terminating assignments within the three months, the law provides that the termination of an assignment to avoid the employee becoming the client's employee is a dismissal, which can be challenged as an unfair dismissal.

The draft legislation also proposes restrictions on the use of short-term contracts. Employers are able to conclude three-month contracts with new employees. However, any additional

[32] Section 198 (4A) of the Bill.
[33] Section 1(a) & (c) of the 2012 Draft Bill.
[34] Section 2 2012 Draft Bill.

contracts may only be concluded if the work that the employee is performing is not of an indefinite nature, or there are other justifications to conclude a fixed-term contract. After the three-month period, employees hired under fixed-term contracts must be treated in the same manner as employees who have been hired indefinitely, unless there are rational grounds for differentiation.

The legislation presented to Parliament sought to strike a balance between what is seen as the legitimate role of agencies in placing employees for short-term assignments, including probationary placements, with the severe abuses associated with long-term triangular employment. In particular, it seeks to address the concern that short-term placements and a greater flexibility to conclude fixed-term contracts will encourage the hiring of new employees. However, the reduction of the period of 'temporariness' from six to three months will significantly undermine the capacity to achieve this goal. Furthermore, the key new protections – particularly those that guarantee protection against unfair dismissal and parity of work conditions with direct employees – only apply to lower-paid workers.

The trade unions continue to argue for a prohibition on labour brokers, arguing that the abuses associated with labour broking are so severe that they cannot be remedied by regulation. Organized business, while accepting the need for greater regulation to prevent abuse, argues that the proposed approach is overly restrictive and will have negative consequences on job creation. They suggest that agencies should be able to remain the employers of employees they place for up to two years (BUSA 2012).

Employment Services Bill

An Employment Services Bill was the subject of negotiations in NEDLAC during 2012. It was debated in Parliament during the second half of 2013 and it is probable that it will come into effect in 2014. The Bill establishes a framework for regulating private employment agencies, including TEAs. A requirement for registration is reintroduced, and it will be a criminal offence to operate without registration. The Bill provides for the appointment of a registrar of private employment agencies, as well as registration and de-registration procedures.

The Minister, after consulting a tripartite Employment Services Board, may prescribe registration criteria. This must differentiate between agencies that provide temporary employment services (labour brokers) and the other functions of private employment agencies. The board may also develop guidelines for the implementation of the Act. The powers of the board allow the social partners at NEDLAC to consult on the implementation of the legislative framework for regulating TEAs as contemplated by the Convention.

In terms of the Bill, private employment agencies may not charge work-seekers any fees for services rendered. The Bill also prohibits practices by which employers or agencies may seek to circumvent this prohibition or make deductions from employees' remuneration. However, the Minister may permit the charging of fees for specific categories of employees, or for the provision of specialist services. The Bill also regulates the retention of information by Private

Employment Agencies (PrEAs) and the confidentiality of information concerning employees. The provisions in the Employment Services Board dealing with the charging of fees by PrEAs reflect the influence of Article 7 of the Convention.

FUTURE MODELS FOR REGULATION

The Department of Labour has a policy that emphasizes the importance of social dialogue and seeking consensus on regulatory reform. The highly divergent positions adopted by the social partners during and after the process of reforming the laws make it extremely unlikely that there can be more far-ranging reform regarding the role of TEAs. COSATU and NACTU, the country's two largest trade union federations, are both of the view that the abuses associated with labour broking are so severe that the industry should be banned rather than regulated, and have for this reason opposed a regulatory package that seeks to limit the role of TEAs to placing temporary employees. CAPES – the organization that represents businesses operating as TEAs – favours self-regulation and has consistently argued that the legislative model is adequate and that the problem lies with the enforcement of labour legislation. However, the lack of consensus on the issue means that it is highly unlikely that there is any immediate prospect of the model of regulation moving away from enforcement by the Department of Labour. As indicated, the legislative amendments which are likely to come into effect in 2014 are the culmination of a policy process that commenced about a decade ago. During this period, the issue has becoming increasingly controversial. It is highly unlikely that any significant further legislative changes will be proposed in the next few years.

However, it is anticipated that once the legislative changes approved by Parliament come into effect, there could be a far greater number of disputes referred to the CCMA by employees who are placed by TEAs. This, it is envisaged, could put an even greater strain on the CCMA's and Department of Labour's already stretched resources. It is therefore of great importance that the implementation of the new legislative arrangements be closely monitored. This may provide a basis for meaningful social dialogue to occur over the development of effective strategies for enforcing compliance with the new legislative provisions applicable to agency employees. If the legislative model is seen to promote the goals of decent work, rather than giving rise to new strategies of labour law avoidance, it is conceivable that social dialogue could occur over the development of specific labour market institutions to regulate the activities of TEAs and to provide protection for the employees.

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Hacia el trabajo decente en el Perú: la mujer en la industria pesquera (Gerardo Pejerrez Piedra)	2008	WP.261
Alimentación, bebidas, tabaco – El banano en Costa Rica y sus retos laborales (Ernesto Quirós)	2008	WP.262
The Kretek cigarette industry, Indonesia – challenges and opportunities for decent work (Ratih Pratiwi Anwar)	2008	WP.263
Safety and health in the European forestry sector. The impact of more open markets and of increased regulation (Malcolm Gifford)	2008	WP.264
Guide for social dialogue in the tourism industry (Dain Bolwell and Wolfgang Weinz)	2008	WP.265
Reducing poverty through tourism (Dain Bolwell and Wolfgang Weinz)	2008	WP.266
Review of socially responsible HR and labour relations practice in international hotel chains (Jacqui Boardman and Candida Barbato)	2008	WP.267
Reducir la pobreza a través del turismo (Dain Bolwell and Wolfgang Weinz)	2008	WP.268
Industrial relations and social dialogue in the oil and gas industries in Indonesia (based on a field study) (Ratih Pratiwi Anwar and Muyanja Ssenyonga)	2009	WP.269
The role of worker representation and consultation in managing health and safety in the construction industry (David Walters)	2010	WP.270

[35] Working Papers Nos. 1-259 are not included on this list for reasons of space, but may be requested from the Sectoral Activities Department.

Sectoral Coverage of the Global Economic Crisis, Trends in Employment and Working Conditions by Economic Activity, Statistical Update, Third Quarter 2009	2010	WP.271
Strengthening social dialogue in the utilities sector in Nigeria (Professor Sola Fajana)	2010	WP.272
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The Global Economic Crisis: Trends in Employment and Working Conditions by Economic Activity, Statistical Update, Fourth Quarter 2009 (Erick Zeballos and Stefanie Garry)	2010	WP.274
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Working Conditions of Contract Workers in the Oil and Gas Industries (Ian Graham)	2010	WP.276
Dispute Prevention and Resolution in Public Services Labour Relations: Good Policy and Practice (Clive Thompson)	2010	WP.277
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Situation of Social Dialogue in the Philippines Water Supply (Marie Beth Lorenzo)	2011	WP.281
Responsible contracting: An approach aimed at improving social and labour practices in the property services sector (Andrew Bibby)	2011	WP.282
Private Employment Agencies in Morocco (Ghada Ahmed)	2011	WP.283

Restructuring and social dialogue in the chemical industry in India (National Safety Council of India-NSCI)	2011	WP.284
Restructuring and social dialogue in the chemical industry In China (Xiangquan Zeng, Xiaoman Li and Liwen Chen)	2011	WP.285
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The Digital Labour Challenge: Work in the Age of New Media (Aidan White)	2012	WP.287
The Health of Workers in Selected Sectors of the Urban Economy Challenges and perspectives (Francisco Comaru and Edmundo Werna)	2012	WP.288
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Private Employment Agencies and Labour Dispatch in China (Liu Genghua)	2014	WP.293
Las agencias de empleo privadas en Argentina, Chile y Uruguay (Sandra Goldflus Wasser)	2014	WP.294