

FIXED TERM CONTRACTS WORKSHOP

**PRESENTED BY
ADVOCATE PUSHPA NAIDU**

EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

- THE AMENDMENT INCREASES THE PROTECTION FOR EMPLOYEES ON FIXED TERM CONTRACTS.
- WHAT IS A FIXED TERM CONTRACT ?
- IT IS A CONTRACT OF EMPLOYMENT THAT TERMINATES ON:
 - (A) THE OCCURRENCE OF A SPECIFIC EVENT;
 - (B) THE COMPLETION OF A SPECIFIC TASK OR PROJECT; OR
 - (C) A FIXED DATE OTHER THAN AN EMPLOYEES' NORMAL OR AGREED RETIREMENT AGE.

FIXED TERM CONTRACT

- WHAT ARE THE IMPLICATIONS:
 - IT AFFORDS EMPLOYEES EARNING UNDER THE BCEA EARNING THRESHOLD (R205 433 PER ANNUM) PROTECTION
 - AN EMPLOYEE CAN ONLY BE ENGAGED ON A FIXED TERM CONTRACT OR SUCCESSIVE FIXED TERM CONTRACTS FOR LONGER THAN 3 MONTHS IF-
THE NATURE OF THE WORK ' IS OF LIMITED OR DEFINITE DURATION' OR
THE EMPLOYER CAN DEMONSTRATE 'ANY OTHER JUSTIFIABLE REASON' FOR DOING SO.

EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

- WHAT MAY CONSTITUTE A JUSTIFIABLE REASON FOR HAVING A CONTRACT OVER 3 MONTHS :-
 - a. IS REPLACING ANOTHER TEMPORARILY ABSENT EMPLOYEE;
 - b. IS EMPLOYED DUE TO A TEMPORARY INCREASE IN WORK OF UP TO 12 MONTHS
 - c. IS A STUDENT OR RECENT GRADUATE EMPLOYED FOR THE PURPOSE OF BEING TRAINED OR TO GAIN WORK EXPERIENCE OR TO GAIN WORK EXPERIENCE TO ENTER A JOB OR PROFESSION;
 - d. IS EMPLOYED TO WORK EXCLUSIVELY ON A SPECIFIC PROJECT OF LIMITED OR DEFINED DURATION ;

EMPLOYEES ON FIXED TERM CONTRACTS SECTION 198B

- e. IS A NON –CITIZEN GRANTED A WORK PERMIT FOR A DEFINED PERIOD;
- f. IS EMPLOYED TO PERFORM SEASONAL WORK
- g. IS EMPLOYED ON AN OFFICIAL PUBLIC WORKS SCHEME OR SIMILAR JOB CREATION SCHEME;
- h. IS EMPLOYED IN A POSITION FUNDED BY AN EXTERNAL SOURCE FOR A LIMITED PERIOD;
- i. HAS REACHED THE NORMAL OR AGREED RETIREMENT AGE IN THAT BUSINESS.

EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

FORMALITIES:

- CONTRACT MUST BE WRITING AND STATE THE REASONS FOR FIXING THE TERM OF THE CONTRACT. THE EMPLOYEE MUST HAVE AGREED TO THE TERMS.
- AN EMPLOYER BEARS THE ONUS OF PROVING JUSTIFIABLE REASON;
- IF A FIXED TERM CONTRACT DOES NOT COMPLY WITH THE PROVISIONS IT WILL RESULT IN THE EMPLOYMENT BEING DEEMED TO BE ON AN INDEFINITE BASIS (SECTION 198B(5))

FIXED TERM CONTRACT

- CONSEQUENCES IF LONGER THAN 24MONTHS?
- IF A FIXED TERM CONTRACT IS LONGER THAN 24 MONTHS THE EMPLOYER MUST ON EXPIRY OF THE CONTRACT AND SUBJECT TO ANY COLLECTIVE AGREEMENT PAY THE EMPLOYEE ONE WEEK'S REMUNERATION FOR EACH COMPLETED YEAR OF THE CONTRACT.
- THIS OBLIGATION FALLS AWAY IF THE EMPLOYER OFFERS THE EMPLOYEE EMPLOYMENT OR FINDS EMPLOYMENT FOR THE EMPLOYEE WITH A DIFFERENT EMPLOYER, COMMENCING AT THE EXPIRY OF THE CONTRACT AND ON SIMILAR TERMS.

EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

- IF THE FIXED TERM CONTRACT IS FOR MORE THAN 3 MONTHS THE EMPLOYEE MUST IN TERMS OF SECTION 198B NOT BE TREATED 'LESS FAVOURABLY' THAN AN EMPLOYEE EMPLOYED ON A PERMANENT BASIS PERFORMING SIMILAR WORK, UNLESS THERE IS A JUSTIFIABLE REASON' FOR THE DIFFERENT TREATMENT. JUSTIFIABLE REASON INCLUDE SENIORITY, EXPERIENCE OR LENGTH OF SERVICE; MERIT, THE QUALITY OR QUANTITY OF WORK ETC
- ANY EMPLOYEE ON A FIXED TERM CONTRACT (OF WHATEVER) LENGTH MUST ALSO BE PROVIDED WITH THE SAME OPPORTUNITIES TO APPLY FOR VACANCIES AS EMPLOYEES EMPLOYED ON AN INDEFINITE BASIS.

- EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

IMPLICATIONS

- WE NEED TO DO AN AUDIT OF ALL FIXED TERM CONTRACTS;
- REVIEW USE OF FIXED TERM CONTRACT (CAN WE JUSTIFY)
- FINANCIAL IMPLICATIONS (SEVERANCE PACKAGE FOR 24 MONTHS)
- ASSESS IN WHAT RESPECT 'TREATMENT' OF FIXED TERM CONTRACTS DIFFER AND CONSIDER IF IT IS "LESS FAVOURABLE' THAN EMPLOYEES ON INDEFINITE CONTRACTS.

- EMPLOYEES ON FIXED TERM CONTRACTS

SECTION 198B

IMPLICATIONS

- CONSIDER RULES OF BENEFIT SCHEMES AGAINST REQUIREMENT TO TREAT EMPLOYEES NO LESS FAVOURABLE AND SEE IF THEY NEED TO CHANGE
- IF THERE IS A RISK THAT A PARTICULAR FIXED TERM CONTRACT MAY BE DEEMED INDEFINITE EMPLOYED, MAKE SURE YOU HAVE A FAIR REASON TO TERMINATE AND FOLLOW FAIR PROCESS BEFORE ALLOWING THE CONTRACT TO EXPIRE.

EMPLOYEES ON FIXED TERM CONTRACTS SECTION 198B

- THE AMENDMENTS HAS INTRODUCED AN EXPECTATION OF PERMANENT EMPLOYMENT.
- FIXED TERM CONTRACTS CAN ONLY BE FOR 3 MONTHS
- THE CCMA HAS THE JURISDICTION TO ADJUDICATE ALL DISPUTES REGARDING THE INTERPRETATION AN/OR APPLICATION OF SECTION 198A, B AND C.

THE END !!!!

ADVOCATE PUSHPA NAIDU

Litigation Consultant

LEGAL SERVICES

(031) 260 8257

naidup@ukzn.ac.za