

Setting the record straight on temporary employment services

For the last number of years, temporary employment services (TES) - which were previously termed 'labour brokers' - have been given the reputation as being exploitative. Since the landmark decision in the Constitutional Court - in the *Assign Services* matter - much has been written in the media (as recently as the beginning of November 2019) about the notion that temporary employment services are now out of the picture.



© alexskopje – 123RF.com

“Nothing could be further from the truth,” says John Botha: HR expert and COO of Global Business Solutions. “Yes, for the purposes the Labour Relations Act, an employee who has been assigned to a client for a period of longer than three months is deemed to be the employee of the client. What must be underlined is that this is only a deeming provision. In other words, there is no transfer of employment from the TES to the client but rather that the client may be liable if the TES contravenes provisions of the Labour Relations Act. In respect of the other statutes such as UIF, COID, BCEA, SDL and most of the EEA, the TES is still the employer.

Therefore the TES is still responsible for paying these assignees as long as the commercial relationship – between them and the client – exists. The case of *AMITU obo Members / National Brands Snackworks And Adcorp BLU (KNDB16915-17)* demonstrates this.”

In this case, the issue to be decided was whether or not the TES was allowed to handle all activities (such as payroll and bonus-allocation) related to the payment of the workers who had been placed with the client. The issue was raised as the employees had been with the client for longer than three months.

The Commissioner, in her analysis, referred to the outcome of the Constitutional Court case (*Assign Services*). In essence, she indicated that the client becomes the employer of the TES employees after the three-month period for the purposes of the LRA. However, the TES's liability in respect of the other statutes lasts as long as their commercial relationship with the client exists.

She then found that nothing in the Constitutional Court outcome prevents the commercial relationship, or the TES, from playing the same role that it played prior to the employees being deemed to be the employees of the client.

"TES service providers are responsible for providing much-needed access to the world of work in a country which is sitting with an unemployment rate of 29%," concludes Botha. "The research indicates that the majority of such jobless people are the youth. Thus, it is vital that the nature of the employment relationship – in the TES environment – be properly understood. In the changing world of work, more forms of flexible employment are being created daily through technology."

For more, visit: <https://www.bizcommunity.com>