



South African Institute of Race Relations NPC

Submission to the Department of Employment and Labour

regarding the

Labour Laws Amendment Bill of 2025 and the Labour Relations Amendment Bill of 2025

28 March 2025

SYNOPSIS

1 Introduction

This submission on the Labour Law Amendment Bill of 2025 (“the LLA Bill”) and the Labour Relations Amendment Bill of 2025 (“the LRA Bill”) is made by the South African Institute of Race Relations NPC (“the IRR”), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the people of South Africa.

2 Unconstitutional “tick-box” public participation

Public participation in the legislative process is a vital aspect of South Africa’s democracy, as the Constitutional Court has repeatedly reaffirmed in many judgments. The Department of Employment and Labour (“the Department”) has nevertheless adopted an unconstitutional “tick-box” approach to public consultation.

No comprehensive socio-economic impact assessment (SEIA) report was published together with the Bills. Nor was the public provided with “the best available evidence, data, and knowledge” regarding their likely ramifications. South Africans have thus been denied the information they need to “know about” the issues raised by the Bills and have “an adequate say” on them, as the Constitution requires. In addition, the minister of employment and labour, Ms Nomakhosazana Meth (“the minister”) allowed only 30 days (effectively 21 working days) for public comment on a complex, 120-page document that cannot be understood without reading the lengthy principal statutes that the Bills seek to change.

3 The content of the Bills

Given the short time allowed for public comment, the IRR has been able to focus on only some of the provisions in the two Bills. Many of the proposed amendments it has analysed lie outside the scope of this synopsis, but are included in its full submission.

As regards dismissals, most of the amendments are relatively minor or apply only to a small number of employees: those on probation for three months (in general) and those earning more than R1.8 million a year. The most important change aims to simplify the rules for disciplinary proceedings, so that it may suffice to give employees a “reasonable opportunity to respond.”

This will help address the problem of “internal disciplinary processes that have come to mimic court proceedings.” For the rest, however, onerous rules will continue to make employers “risk-averse” and anxious to avoid the legal risks in new hires.

*As regards **major retrenchments*** (dismissals of 5% of employees or more for operational reasons), the key change proposed is clearly negative. Doubling obligatory severance pay will have major ramifications for many companies already battling to survive in an adverse economic environment. It will also provide a further deterrent to the creation of new jobs for the 12.6 million South Africans now unemployed on an expanded definition (which includes those too discouraged to keep actively looking for jobs).

*As for **the extension of bargaining council agreements***, a two-year exemption for small and medium enterprises (“SMEs”) employing fewer than 50 people will help these firms avoid artificially high wage costs for a short period. This may give them a stronger foundation for survival and growth than they would otherwise have. However, the change will do almost nothing to address the overall burden of coercive blanket coverage.

*As regards **the National Minimum Wage (NMW)***, the proposed exclusion of all deferred payments, such as pension fund contributions, means that take-home pay will have to be increased in many instances. This will add to the already crippling burden of South Africa’s unusually high NMW, which has already led to some 430,000 job losses. The NMW also prevents new entrants to the labour market from accepting lower-paying “stepping stone” jobs that would provide important experience and help them climb the jobs ladder.

*As regards **“gig” workers***, imposing complex rules on the employers of such workers could well result in fewer “gig” jobs being offered. This could constrain such employment and add to the joblessness crisis.

*As regards **harassment rules***, the amendment envisaged here could again cause more harm than good. Allowing employees to bring harassment claims on a wide range of grounds is likely to add to the burden on the CCMA. Facilitating many more harassment claims – some of which are likely to be poorly substantiated – could also make employers more reluctant to take on new staff if other options can be found.

Overall, adding reams more rules to labour laws that are already unduly long, complex and onerous will do nothing to reduce the unemployment crisis in South Africa, which is by far the most important need.

4 Ramifications of the Bills

4.1 The magnitude of the unemployment crisis in South Africa

Unemployment is the greatest of all the crises confronting South Africa. In 1994 the unemployment rate stood at 20%, but by 2025 it had risen to 33.2% on the official definition. On the “expanded” definition, the unemployment rate has risen from 32% in 1994 to 42.9% in 2025. The number of people wanting work but unable to find it is enormous too. On the expanded definition, the number of jobless people has risen from 3.7 million in 1994 to 12.6 million in 2025.

Overcoming the unemployment crisis is a moral, economic and political imperative. It is also what most South Africans want the most. In IRR opinion polls going all the way back to 2001,

black (and most other) respondents have consistently identified joblessness as by far the most important problem they would like the government to overcome.

4.2 The urgent need for rapid economic growth

The best way to generate millions more jobs is to trigger a rapid upsurge in economic growth. Only then will thriving businesses in every sector need many more employees to help them meet rising demand. Ideally, the country requires a sustained annual economic growth rate of around 7% of GDP, which would see the economy double in size every ten years. This level of growth cannot be attained immediately, but it could be reached over time as policy barriers are overcome, along with logistical constraints and other obstacles.

By contrast with the 7% needed, South Africa's annual growth rate since 2008 has averaged around 1.3%. At the current pace it will take 54 years for the economy to double its current size. Meanwhile, with the growth rate often lower than the rate of population growth, GDP per capita has been stagnating since 2008. Growth of this paltry kind makes all South Africans poorer on average with every passing year. It reduces consumer demand, inhibits fixed investment, and makes it difficult for businesses to expand or take on more staff.

4.3 The damaging impact of intrusive labour laws

The National Minimum Wage Act ("NMWA") of 2018 was brought into force in 2019. The national minimum wage (NMW) was initially set at R20 an hour or roughly R3,360 a month (assuming 21 working days of eight hours each in most months). By March 2026, the NMW had risen by more than 45% to R30.23 an hour or some R5,080 a month for most employees. Only the individuals working temporarily for the state on public works programmes have continued to receive considerably less, at R16.62 an hour.

Many nations set the NMW at between 7% and 55% of the median wage. In South Africa, by contrast, the NMW in 2023 already amounted to 76% of the median wage, which is exceptionally high. This helps explain why an estimated 430,000 jobs have been destroyed since the NMW came into effect in 2019. This estimate of jobs lost may also be too low.

South Africa's high NMW also prices the unskilled and inexperienced out of the labour market, and is one of the main reasons youth unemployment is so high. For those aged 15 to 24, the jobless rate currently stands at 62.2% on the official definition and at a staggering 71.7% on the expanded definition.

Many jobless South Africans would no doubt prefer to work for less than the NMW – to earn R4,500 a month, say, rather than the R5,080 a month now stipulated – rather than have no income at all. But the NMWA prevents voluntary agreements of this kind and deprives the poor of choice.

4.3.2 Coercive bargaining council agreements

The LRA includes a system of "blanket coverage," under which bargaining council agreements on wages and working conditions – which are generally reached in negotiations between big businesses and big unions – are extended by ministerial regulation to SMEs within the sector which often cannot afford them.

The impact on entry level wages has been considerable. In the metals & engineering sector, for instance, entry-level wages (including employee benefits) rose to some R13,000 a month in 2024, which many smaller businesses could not afford. As journalist Michael Avery reports, even larger employers in the industry have acknowledged that “the relentless push for higher entry-level wages,...inflated by decades of collective bargaining, has in effect priced out many entry-level workers, rendering them unemployable unless companies obtain exemptions from the collective agreement.” Yet seeking exemptions is “a cumbersome and inefficient process,” offering at best a temporary solution.

4.3.3 Rules raising the costs of dismissals

The LRA also makes it difficult to dismiss poorly performing employees, as all dismissals are automatically deemed unfair unless employers can prove they were carried out for fair reasons and following fair procedures. Dismissed employees can easily claim reinstatement and/or significant damages from employers via the CCMA. Employers are thus constantly at risk of being dragged before the CCMA on grounds that may be spurious but nevertheless take significant time, effort, and money to refute. In this situation, employers are reluctant to hire and prefer to stay small or to automate their operations as much as possible to avoid the burden that unduly onerous labour laws have created.

4.4 More harm than benefit from the amendments proposed

When the LRA was first proposed, organised business warned against it, saying that “no developing country could adopt labour standards which even the developed world could not afford to maintain.” It cautioned that the statute would have “a disastrous effect” on SMEs vital to growth and employment – but unable to cope with the statute’s enormously complex and onerous rules.

In 1996 a business lobby group – then called the South Africa Foundation and now Business Leadership South Africa (BLSA) – added that the LRA was likely to increase the unemployment rate on the expanded definition from 32% in 1994 to 40% in 2004. This was remarkably prescient, for it was indeed in 2004 that the jobless rate on the expanded definition reached the 40% level of which the BLSA had warned.

The BLSA urged that a “two-tier” labour market should be allowed, with more flexible conditions for young and inexperienced workers who would otherwise struggle to find jobs. The government rejected the idea. Thirty years later, however, with youth unemployment standing at 71.7% on the expanded definition, it is time for bold reforms to labour legislation. Sadly, most of the changes being proposed by the amendments will instead increase the burden of regulation. Only a few will allow a little more freedom for business and the unemployed.

5 The way forward

The way forward lies, firstly, in jettisoning a flawed belief in redistribution and acknowledging the great value in a proven formula for faster growth and rising prosperity. It also lies in moving with speed to implement major reforms to labour law.

5.1 Rejecting redistribution and embracing growth

The African National Congress has long believed in large-scale redistribution as the key to upward mobility. It believes that prosperity will flow from placing the state at the centre of the

economy and heavily regulating businesses, while imposing a heavy tax burden on the economy and focusing on wealth extraction rather than wealth generation.

However, the belief that poverty can be defeated through redistribution is profoundly mistaken. In reality, poverty can be beaten only by fast economic growth. Fortunately, there is a formula for rapid growth, which can readily be adopted and pushes poverty close to zero. The formula requires economic freedom, marked by a reduction in state control, lower regulatory burdens and flexible labour markets. The countries with the greatest economic freedom have significantly higher levels of general prosperity than the countries with the least economic freedom, many of which are socialist states.

These outcomes have once again been confirmed by a 2025 report on economic freedom in 165 countries, compiled by the Fraser Institute, a Canadian think tank. A comparison of the most free countries with the least free ones shows that average incomes in the most free countries are “6.2 times greater” than in the least free nations. Moreover, in the most free countries, “the bottom 10% of incomes are 7.8 times greater; people tend to work seven fewer hours each week; people live about 17 years longer; far fewer children die in infancy; people are more satisfied with their lives; governments are less corrupt; and environments are cleaner.”

5.2 Making real reforms to labour laws

In a hobbled economy unable to generate jobs on anything like the scale required, people have become increasingly desperate for work. In May 2017, for example, the Johannesburg Metropolitan Police Department advertised 1,500 new posts and received what it described as a “staggering” 65,000 applications – a telling testament to the “vast” unemployment rate in the city. In June 2023 Gauteng premier Panyaza Lesufi advertised 8,000 job vacancies across various provincial departments as part of his “Nasi Ispani” (isiZulu for “here is a job”) campaign and received an even more extraordinary 1.2 million applications.

Bold reforms are needed to end the suffering to which these figures point. Both the National Minimum Wage Act and the LRA rules for the extension of bargaining council agreements need to be repealed altogether, so they no longer price the unskilled out of the labour market.

Rules regarding dismissals must also be reformed. Greater flexibility in the hiring and firing process is vital so that employers can insist on sound performance and swiftly adjust to peaks and valleys in demand. Employers will hire freely only if they can dismiss freely too. The presumption that dismissals are unfair unless the employer can prove otherwise should be removed. Instead, employees alleging unfair discrimination should bear the onus of proving this. In addition, employers should be able to dismiss workers under the agreed notice periods included in their employment contracts.

The current Bills should be jettisoned and replaced by a new set of labour law amendments that sweep away coercive regulation and allow business and labour to negotiate and agree on suitable terms of employment without the state’s intrusion. The best guarantee of decent work is an economy that is doubling in size every ten years – and in which the demand for labour is strong. That will give employees real bargaining power without the need for state coercion.