



ANNUAL LABOUR LAW & COMPLIANCE SUMMIT

Litigation in the Public Service: Emerging Trends, Institutional Challenges and effective dispute resolution

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CURRENT REALITY

- Government remains the largest employer in South Africa
- As of February 2025 – approximately 1.2 million employees (excl SOE's and local authorities)
- 10% of all formal sector employees
 - 11.4 million formal sector employees and 5.7 million informal sector employees according to stats SA in the Q1 of 2026
- 2025/2026 wage bill reportedly R 853 billion
- Average salary of R710k per annum and 37 800 earning in excess of R 1 million p.a

ACCESS TO LITIGATION

- Strikes 79 public sector strikes in 2025 (68% of all strikes)
- At least 29% of judgements on SAFLII from JHB Labour Court emanate from the Public Sector in 2025
- Clear indication that higher income eases access to litigation

INSTITUTIONAL CHALLENGES GIVING RISE TO LITIGATION

- Highly complex regulatory framework
 - Public Service Act vs Labour Relations Act
 - Abundance of Collective Agreements
 - Section 158(1)(h) reviews
- Procurement, funding and resourcing
 - Understaffed HR and IR departments
 - Lengthy procurement processes
 - Lack of Training
 - Underfunded Dispute Resolution Tribunals
- Internal and external Political Interference

ADDRESSING CHALLENGES

- A proposed amendment to Section 158(1B) of the Labour Relations Act to include rulings and outcomes in Disciplinary Hearings
- Prioritise training and recruitment
 - Quicker outcomes for internal processes
 - Reduce the need for procurement
 - Possible reduction of claims due to more perceived fairness

ADDRESSING CHALLENGES (continued)

- Internal ADR systems
 - Implement mandatory internal mediation or early-resolution panels for grievances with defined timelines;
 - Trained neutral mediators and binding settlement frameworks to reduce CCMA/Labour Court referrals
- Hybrid Models (Internal ADR + external validation)
- Renegotiating Collective Agreements on hearing procedures
 - Alignment with the new code of good practice and proposed amendment to Section 188(2), (3)&(4) of the LRA
 - *Mpembe v University of Zululand Case Nr 2025-248322 (Delivered on 22 December 2025)*

WHAT TO EXPECT – CHANGES TO LITIGATION TRENDS

- Labour Law Amendment Bill published in February 2026
 - Amendment of Section 25 of the BCEA - Parental Leave following the decision in ***Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others [2025] ZACC 20***
 - Restrictions on remedies for high earners (not applicable to automatically unfair dismissal)
 - Prevention of duplication of claims – proposed amendment to section 196 of the LRA
 - Proposed “Run in period” for full protection – proposed amendment to Section 188(4) of the LRA

WHAT TO EXPECT – CHANGES TO LITIGATION TRENDS (CONTINUED)

- Reduction of Applications to Interdict Disciplinary Enquiries – ***Cibane and Another v Premier of the Province of Kwazulu Natal and Another (2025) 46 ILJ 2587 (LAC)***.
- Expanded Harassment claims

FOOD FOR THOUGHT

- If the Bill limits reinstatement for high-earners, will public-sector senior managers pivot to contractual protections and negotiated exit agreements - and what does that mean for accountability?
- Do expanded CCMA prevention and consolidation powers risk de-judicialising important constitutional questions about public employment, or will they create practical efficiencies
- With persistently late judgments and court delays, is investment in internal ADR the best allocation of scarce public funds (versus investing in court capacity)