



-- PRESS RELEASE --

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### **UPDATE: ASSIGN LABOUR APPEAL COURT JUDGMENT**

On 10 July 2017, the Labour Appeal Court handed down its Judgment in the Assign matter.

CAPES has read, with a degree of frustration and disappointment, several reports about the Judgment which seem to fail to appreciate some important aspects of the Judgment. More importantly, these fail to appreciate the fact that all involved in the matter have known, since the challenge was originally made to the CCMA in 2015, that the matter would, in all likelihood, go from the CCMA, to the Labour Court, to the Labour Appeal Court and ultimately to the Constitutional Court.

### **Appeal will be lodged**

It is now a matter of public knowledge that the legal team has been instructed to file an application for leave to appeal to the Constitutional Court. This will be done within the three-week period contemplated in the rules.

In terms of s18(1) of the Superior Courts Act, the noting of an application for leave to appeal has the effect of suspending the decision which forms the subject matter of that application. **Accordingly, the noting of the appeal will have the effect of the status quo remaining until the Constitutional Court finally determines the matter.**

Accordingly, and despite all knee-jerk responses to the Judgment, it is not anticipated that anything will change, and if it does, that will only be after the Constitutional Court ruling.

Whilst it is normally very difficult to determine how long it will take for the matter to be heard in the Constitutional Court, we anticipate that it should be dealt with within a year.

Quite apart from the fact that the status quo will remain for the time being, even the Labour Appeal Court Judgment itself envisages labour brokers remaining in the equation post-deeming becoming operative. If the labour broker does remain involved, the joint and several liability provisions apply to both the labour broker and client. It follows that should the Constitutional Court dismiss the appeal, the Labour Appeal Court Judgment will continue to allow labour brokers to play an important role, servicing clients in much the same way as they do now.

Having consulted with our legal team, CAPES is optimistic, believing that there are excellent prospects on appeal.

## Appeal Grounds

CAPES was admitted to the Labour Appeal Court hearing as an amicus curiae (friend of the court) with a view to arguing one primary point. That point being that the Labour Appeal Court has, itself, ruled that the Basic Conditions of Employment Act and Labour Relations Act must be interpreted in a manner that do not conflict with another. They must be interpreted as being in harmony with each other. Despite a great deal of argument being placed before the Labour Appeal Court as to why the single employer argument would result in disharmony (and other problems) this issue was not dealt with by the Labour Appeal Court. CAPES believes that if this issue was dealt with by the Labour Appeal Court, the result would probably have been different.

CAPES, with respect to the learned Judges of Appeal, finds it extraordinary that the court deemed it prudent to admit CAPES into the matter because of the issue CAPES wanted to address, but then did not deal with that issue in the Judgment.

There are various other legal grounds that serve to lead CAPES to be optimistic about the appeal. For example, another significant aspect not addressed by the court is that one of the primary objectives of the amendments was affording labour broker employees extra protection. While much of the argument in both the Labour Appeal Court and Labour Court addressed this issue, the Labour Appeal Court Judgment does not address this issue. We understand it to be accepted by most that the fact that the labour broker remains involved serves to give added protection.

## Industry plays crucial role in South Africa

It is a fact that workforce solutions and flexible staff arrangements contribute to major socio-economic gains. It is necessary for the sustainability of many businesses. South Africa competes in the global market and needs the same flexibility as that enjoyed by other countries to remain competitive. In addition, the industry has been proven to provide an essential gateway to the labour market for particularly Youth, enabling access to skills development and employment opportunities.

In summary, too many people have read too much into the Labour Appeal Court Judgment and have failed to appreciate the consequences of the pending appeal. **In our view, it is business as usual for the industry and all should await the outcome of the Constitutional Court ruling before forming views about the future.**

Should you have any queries relating to this matter or require context to the case, please do not hesitate to contact Assign's Attorney of Record, Craig Kirchmann of Kirchmanns Incorporated on 043 721 0963.

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### ABOUT CAPES

The Confederation of Associations in the Private Employment Sector (CAPES) is an umbrella body, formed in 2002, when the need for a unified voice for the South African staffing industry became apparent. CAPES was created specifically to act as the lobbying organisation for the four primary staffing associations, who represent thousands of SME staffing businesses, and several of South Africa's largest corporate staffing companies.