

## BAN LABOUR BROKERS?

### Overcoming the usual objections to Temporary Employment Services (TES) in South Africa

The public onslaught against labour brokers has been renewed with the most recent reports that some members within the parliamentary portfolio: labour committee are seeking to revert to the original position of “banning” labour brokers.

To assist members in managing the common questions (including objections) and to ensure that we educate as widely as possible, APSO has prepared this Overcoming Objections document. We ask members to make themselves familiar with this document and to use this as the basis for any discussions on the topic.

#### **Objection: Labour brokers take money from the worker.**

- This should never be the case as the law expressly forbids employment agencies from charging fees to workers for securing or providing employment.
- Labour brokers make their money by charging a service fee to the client for managing their workforce.
- The difference between the hourly rate paid to the worker and the hourly rate charged to the client is due to the employer statutory costs and client service fee payable.

#### **Objection: If the labour broker was removed, the worker will earn more.**

- The difference between the hourly rate paid to the worker and the hourly rate charged to the client is made up primarily of employer statutory costs that would have to be paid over even if the labour broker was removed from the equation. For example:

Hourly rate to worker	<b>R20.00</b>
<i>Statutory costs</i>	
UIF	R00.20
SDL	R00.20
COIDA	R00.30
<i>Provision for statutory benefits</i>	
Sick leave	R00.85
Annual leave	R01.28
Public holidays	R01.03
Family responsibility leave	R00.26
<i>Administration fees</i>	
Bank charges, payroll, interest etc	R05.50
Total cost of employment	<b>R29.62</b>

**Objection: Temporary employees do not receive any benefits.**

Firstly, it would erroneous to assume that just because a person is permanently employed they receive additional benefits such as medical aid and provident.

- Stats SA research shows that fewer than half the people employed in South Africa receive company benefits such as provident (49%) and medical aid (32%)

The answer to this objection is complex, as it differs depending on where the temporary employees are working.

*Temporary Employees working under Basic Conditions of Employment Act (BCEA)*

- All employees, including temps who work for more than 24 hours in any given month, are entitled to the statutory benefits including within the BCEA, including:
  - Sick leave : 1 hour for every 26 hours worked
  - Annual leave : 1 hour for every 17 hours worked
  - Paid public holidays : if this is a day the temp would ordinarily have worked
- All employees, including temps who work for more than four months for the same employer are also entitled to 3 days family responsibility leave in each cycle

*Temporary Employees working in industries governed by Sectoral Determinations or Collective Agreements (Bargaining Councils)*

- **Nearly 60% of all temps working for labour brokers are covered under collective agreements and/or sectoral determinations and are therefore entitled to the Union-negotiated minimum wages and benefits that can include provident/pension, medical aid etc**
- Research conducted in 2010 by the National Association of Bargaining Councils (NABC) concluded that the majority of labour brokers are compliant
- According to the MEIBC, 92% of labour brokers are compliant, with payments up-to-date, compared to just 30% of employers

*Additional benefits, such as provident*

- An industry-specific provident fund was established in 2010 by CAPES and caters specifically for temp workers in that it encourages preservation of retirement funding and allows for transferability between different TES employers
- Several of the larger TES companies also have their own organisational provident funds that are offered to their assignees

**Objection: Once a temp, always a temp!**

Access to the world of work is challenging in South Africa and statistics show that the use of an intermediary, such as a labour broker, greatly improves the employment chances for individuals:

- It takes on average 90 days for an individual to secure employment via an agency and a whopping 806 days (2 years, 3 months) when looking on their own
- Individuals who register with an agency are exposed to a multitude of job opportunities that can be coordinated by the agency on their behalf. This is significantly more effective, time efficient and less costly (for the individual) than trawling through the job classifieds and attempting to put themselves forward to different potential employers
- Labour brokers also seek to secure ongoing work opportunities for their temps and often assist them in moving between sectors and employers to ensure consistent earning opportunities. An example is that of a banqueting waiter who can, through a broker, secure 5 days of work a week and where he is assured of being paid the agreed industry wages and receiving the associated benefits, in a coordinated fashion. If he didn't have the opportunity to work via the broker he would be reliant on going door-to-door hoping to secure piecemeal work.
- On average, nearly 30% of temps secure permanent employment within 12 months
- Within 3 years, 40% of temps secure permanent employment

**Objection: Labour brokers add no value to workers.**

The TES industry is proven to be an important entry point to the labour market and each year provide access to thousands of people many of whom were previously unemployed.

- More than 50% of temps were previously unemployed
- It takes on average 90 days for an individual to secure employment via an agency and 806 days (2 years, 3 months) when looking on their own
- Since 2000, more than 5.4 million people have been introduced to the world of work by TES
- TES workers receive skills development opportunities to assist them in improving their skills and increasing their employability. Since 2000, more than 35 000 people have been put on learnerships, internships and apprenticeships, facilitated by TES
- TES workers have employment security in that they can be easily transferred between sectors in the event that a specific industry is experiencing a downturn

**Objection: Labour brokers add no value to client companies.**

Flexible workforces are becoming essential for companies that wish to remain globally competitive. In order to manage this flexibility effectively, many client companies choose to focus on their core business and to outsource the flexibility management to TES

- TES companies can quickly source and assess skills required by a client who needs to upscale to take advantage of a business opportunity
- The expertise and experience of a TES is utilised by the client company to effectively manage supply & demand of skill, manage shift scheduling and all associated human resources administration and management, allowing them to focus on their core business
- Client companies often make use of TES to manage skills development initiatives such as learnerships and apprenticeships, leveraging their expertise and administrative capacity
- In cyclical business environments, client companies make use of TES to bring in additional workers when demand increases, knowing that the workers that will be provided have been assessed, skilled (where necessary) and will be managed in accordance with applicable legislation

**Objection: Labour brokers add no value to the South African economy.**

The ILO recognises that the private employment services (PrEA) industry plays an integral and important part in a well-functioning modern labour market. They also provide regulatory framework guidelines within ILO convention 181.

In South Africa, TES impacts the economy positively by:

- Actively reducing unemployment by enabling access to the world of work, especially to young people (under 35 years old) who make up 83% of the temp workforce
- Increasing the long-term employability of people through regular, structured, skills development initiatives. Since 2000, more than 35 000 people have received formal training via learnerships, apprenticeships and skills programmes
- Facilitating sector transitions, moving workers from depressed sectors to those that are thriving
- Providing client companies with access to suitable workers, within short timeframes, so as to take advantage of business opportunities – think World Cup 2010...
- The TES industry generates more than R40 billion per year, resulting in additional revenue for the Government in the form of taxes and VAT
- The TES industry directly employs nearly 20 000 people and on average daily over 1 million temp workers

**Objection: Labour brokers are slave traders and exploit workers.**

A TES business is dependent on having productive, happy and skilled workers to provide the services a client company is looking for. It therefore makes no sense for a TES to mistreat their workers.

- The majority of temp workers, employed via TES, work in sectors governed by sectoral determinations/collective agreements and will therefore earn at least the minimum wages as negotiated by trade unions in those sectors
- Often, particularly in skilled categories, contract workers earn more than their permanent counterparts, in line with supply & demand of scarce skills
- Workers receive ongoing training and development to ensure long-term employability and productivity. Many TES companies also provide Employee Assistance Programmes (EAP) to ensure employee wellness.
- More than 77% of TES companies cited in 2010 research conducted by the Services SETA confirmed that the majority of their workers came as a result of word of mouth referrals, indicating that TES workers are happy with their working conditions

**Objection: Temps can just be fired at the drop of a hat.**

All temps who work for more than 24 hours in a month are required to have an employment contract and are protected by the same dismissal rights as permanent employees as per the LRA

- According to research conducted by the CCMA, unfair dismissal cases cited against labour brokers accounted for less than 1% of the total cases brought against employers

**Objection: Labour brokers stop employees from joining trade unions.**

Freedom of association is a right recognised and respected by compliant TES and is included within the industry's Code of Conduct.

- The Confederation of Associations in the Private Employment Sector (CAPES) has, together with FEDUSA, set up a dedicated temp call centre that focuses on educating workers about their rights and to manage any complaints
- A pilot project, involving nearly 1000 temp workers, was run by CAPES and FEDUSA as part of an MOU, to provide these workers with access to union membership and associated benefits
- In cases where temp workers are members of trade unions, TES manage the deduction of union membership fees as part of their payroll administration

**Objection: Labour brokers are opposed to regulation.**

The formal TES sector has long called for regulation in the industry to ensure compliance and address rogue operators. In support of effective regulation, the industry calls for:

- Clear, fair regulation that is properly enforced to avoid over-regulation of the already compliant and a growth in rogue operators
- Co-regulation model whereby the industry partners other stakeholders to ensure efficient policing of TES operators

The formal TES sector has for many decades self-regulated through membership of recognised associations, such as APSO, where members must meet compliance requirements and adhere to a Code of Ethical & Professional Practice.

**Objection: Labour brokers do not create jobs!**

Whilst labour brokers may not create jobs per se, they definitely create employment opportunities for people, especially those who find it difficult to access the labour market. With statistics released indicating that on average, public universities in SA have just 15% pass rate, is it any wonder that young people find it difficult to secure employment?

- The TES industry is a significant skills development driver and has, since 2000, facilitated in excess of 35 000 learnerships, apprenticeships, internships and formal skills programmes enabling otherwise “unemployable” people to access to the world of work.
- Employers are nervous about employing young people who are not equipped to manage in the job and don’t have the time or risk appetite to “tata ma chance” on a young person who may, or may not, work out.
- Given the administrative nightmare associated with managing skills programmes funded by SETAs, one wonders what will happen to skills development in the country if an employer, especially a smaller employer, is unable to utilise the services of a labour broker who not only recruit the learners but who also manage shift scheduling (to ensure balance between time off for learning and the required levels of workplace production) and all associated administrative burdens.
- The industry is the gateway to the world of work in South Africa, the profile of labour broker employees in SA is:
  - 83% are youth, under the age of 35 yrs
  - Nearly 60% were previously unemployed
- Working via a labour broker is also a proven stepping stone as those who first enter the labour market through a labour broker acquire skills and gain experience that enables them to secure better employment. In fact, on average nearly 30% of “temps” secure permanent employment within 12 months and within 3 years, almost half secure permanent employment.