



CONFEDERATION OF ASSOCIATIONS IN THE PRIVATE EMPLOYMENT SECTOR (CAPES)

The economic importance of retaining your flexibility

Mitigating your risk in uncertain times

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BACKGROUND

South Africa has been grappling with the concept of flexibility for several years with extreme opposite positions on the issue of labour brokers being held by trade unions such as COSATU, and the business community. In reality, there is no longer a “job for life” and companies and individuals are seeking to explore more flexible working relationships.

Although a ban on labour brokers, originally touted ahead of the 2009 general election, was overturned by the ruling party in favour of regulation, the issue has been vigorously debated over the past four years. Throughout these negotiations, handled at NEDLAC, labour, government and business has bumped heads on how to effectively regulate the sector.

In its own Regulatory Impact Assessment (RIA) report, the Government acknowledges that a ban or serious curtailment of the temporary employment services (TES) sector would have disastrous consequences on jobs. Sadly, this – and other research on the subject – seems to have fallen on deaf ears and we once again find ourselves at the mercy of a few calling for “regulation” that would be tantamount to a ban.

The industry, lead by the Confederation of Associations in the Private Employment Sector (CAPES), will challenge any over-regulation/ban on the basis of unconstitutionality. This document has been prepared to assist companies in understanding the importance of flexibility for competitiveness and how to mitigate their risks by choosing to work with compliant TES providers.

It is critical to retain your flexibility as well as your cost models during these times. If the legislation becomes final we as a sector will be in the best position to advise you as to what the legal interpretation is. Our current legal opinions indicate quite categorically that using a temporary employment service provider after X months, is perfectly permissible provided you have a justifiable reason. All businesses have justifiable reasons in respect of using flexible staff for a variety of reasons. Contact us to find out the models that we have worked on to retain your flexibility and keep your costs down.

CONTACT US

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The CAPES website contains all the latest information and updates on the current labour law amendments and in particular the impact on flexibility.

If you're interested in speaking to someone, to understand the impact on your business, please drop us an email.

IMPORTANCE OF FLEXIBILITY IN ECONOMICALLY UNCERTAIN TIMES

The world is an uncertain place at the moment with struggling economies and many businesses hanging in...barely. South Africa finds itself affected by these, and other, challenges and businesses need to operate within the context of the following realities:

- Extreme unemployment;
- Dismal education standards;
- Depressed economy;
- Massive labour unrest coupled with increasing wage demands and falling productivity;
- Escalating uncertainty around key issues, including the current labour law review processes, that make foreign businesses reluctant to invest in SA; and
- Strangling red tape requirements for business, including draconian labour legislation

Within this context, South African employers need to carefully manage their operations and often choose to utilise flexible workforces to ensure agility.

Global research suggests that to be competitive in today's global market, a business needs to have at least 30% flex within its workforce. This allows for contraction during tight times and the opportunity to upscale, at short notice, when business opportunities present themselves.

Businesses that utilise the expertise of professional temporary employment services (TES) companies have shown an advantage in tough times because they're able to source the right skill at the right time to enable them to take on projects that their competitors, who would potentially have downsized through mass retrenchments, cannot.

The Boston Consulting Group research, "Adapting to Change: How Private Employment Services facilitate adaption to change, better labour markets and decent work", proves this. According to the report, private employment agencies mitigate the impact of economic crisis in labour markets and those companies using agency work can be seen to accelerate faster out of the downturn. An IW Consult study carried out in Germany and covering the 2009-10 period demonstrates how those organisations using TES recorded revenue growth a full 5% higher than those who did not. The study clearly demonstrates that the ability to react to increasing demand quickly results in higher revenue growth and better financial performance. This outcome was confirmed by research undertaken by Eurofound, the European Foundation for the improvement of living and working conditions, which clustered companies into five different groups according to their flexibility profiles.

Evidence suggests that companies using a combination of flexible working hours, overtime, performance related pay schemes and TES were the ones experiencing the strongest financial results, highest labour productivity and greatest choice of staff and employee motivation.

The Boston Consulting Group research, "Adapting to Change: How Private Employment Services facilitate adaption to change, better labour markets and decent work", is available in electronic copy by [clicking here](#).

BENEFITS OF UTILISING EXPERTISE OF TEMPORARY EMPLOYMENT SERVICES PROVIDERS

There are many myths about temporary employment service providers, or “labour brokers” as they’re often referred to. In reality, professional TES provide a valuable service to clients (business) and individuals (workers) as well as boosting the South African economy.

MYTH 1: LABOUR BROKERS ADD NO VALUE TO CLIENTS/BUSINESS

BUSTED

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

MYTH 2: LABOUR BROKERS EXPLOIT WORKERS

BUSTED

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.

- **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**
- Often, particularly in skilled categories, contract workers earn more than their permanent counterparts, in line with supply & demand of scarce skills
- Under current legislation, temporary employees are protected with all the same rights & statutory benefits as permanent employees whether under BCEA or various sectoral determinations/collective agreements. Any problems that may exist in the sector relate more to a lack of enforcement of these rights/laws
- According to CCMA research in 2010, less than 1% of all cases brought to the CCMA were against labour brokers, despite labour brokers accounting for in the region of 6% of the labour force
- 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

- 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

BUSTED

MYTH 3: LABOUR BROKERS ADD NO VALUE TO INDIVIDUAL EMPLOYEES

The TES industry is proven to be an important entry point to the labour market and each year provides 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
- 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.
- 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

BUSTED

MYTH 4: 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

MYTH 5: LABOUR BROKERS DO NOT CONTRIBUTE TO THE SOUTH AFRICAN ECONOMY

BUSTED

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

MYTH 6: LABOUR BROKERS ARE ALL THE SAME

BUSTED

Given that the industry has low, or no barriers to entry, there are operators in the South African marketplace who may well, either on purpose or through ignorance, not work in accordance with the law or agreed best practice. For the most part, the majority of the industry is made up of professional businesses committed to provide quality service to both their clients and to their assignees.

It is recommended that clients choose to work with TES that are registered with a member of CAPES as they are expected to meet all compliance requirements, adhere to additional best practice standards and are held accountable to Codes of Ethics.

For more information on CAPES, simply visit our website www.capes.org.za or, check out the four associations that make up CAPES?

Federation of African Professional Staffing Organisations (APSO)

www.apso.co.za

Allied Nursing Association of South Africa (ANASA)

www.anasa.org.za

Constructional Engineering Association – Labour Broking Division (CEA-LBD)

www.cea.org.za

Information Technology Association (ITA)

www.ita.org.za

MITIGATING YOUR RISK

With the current uncertainty around the temporary employment services (TES) regulations, many companies are worried about engaging new TES suppliers or beginning new contracts. And because of the joint and several liability risks that already exist under current legislation, this is a critical decision that businesses should not make lightly.

So how do you know who to pick?

At present there are low or no barriers to entry and this means that companies may find themselves dealing with an operator that is inexperienced or incapable of delivering a compliant service. To mitigate risk, we recommend that companies choose only to deal with TES providers who belong to a recognised professional body, such as those under the Confederation of Associations in the Private Employment Sector (CAPES) umbrella, where they are required to meet minimum compliance standards and subscribe to a code of ethics and best practice.

What questions should you ask?

There are a few questions that you should ask every TES provider who you intend to work with to ensure that your risks are mitigated, including:

- Are they registered with the Department of Labour and in possession of a Private Employment Agencies (PEA) certificate?
- Do they belong to one of the recognised professional bodies, meaning that they are vetted in terms of compliance and adhere to a code of conduct/ethics? Have they provided you with a valid membership certificate?
- Are they registered, and in good standing, with SARS in terms of tax, VAT, PAYE, UIF, SDL and other employee deductions? Have they provided you with letters/certificates to this effect?
- If you work within a regulated sector, is the TES provider registered, and in good standing, with the applicable Bargaining Council and are their employee contracts and operations compliant with the collective agreements? Have they provided you with a certificate of compliance?
- Do they have sound internal policies and procedures to ensure fair labour relations practices and have they clearly explained the expectations of your role in the triangular employment relationship?
- Are there sufficient resources to ensure that TES employees are paid regularly, on the agreed dates, and that all associated employee administration is managed in accordance with legislation?
- Have you queried their recruitment methodology and how they manage the verification processes compliantly, to ensure that they are providing you with assignees who are qualified, effective and productive?

Choosing to work with a TES provider who belongs to a CAPES-recognised organisation will provide peace of mind and an opportunity for recourse in the event of a dispute.

SNAPSHOT OF THE SOUTH AFRICAN PRIVATE EMPLOYMENT SERVICES INDUSTRY

- More than 2700 companies with nearly 4000 offices across South Africa
- Introduced 5.4 million people to the world of work since 2000
- On average, an individual who makes use of an agency secures work within 90 days, whereas others would spend a staggering 806 days (equivalent to 2 years 3 months) looking
- Gateway to the world of work - profile of work seekers/candidates:
 - Never previously employed: 57%
 - Youth aged 18-35: 83%
 - Previously disadvantaged: 93%
- 1 009 212 people deployed (via TES) on a daily basis
- Of those initially employed as a temp, each year significant numbers are permanently deployed:
 - 28% within 1 year
 - 42% within 3 years
- One of the largest contributors to skills development – R500 million paid over in skills levies
- Facilitated in excess of 35 000 learnerships, apprenticeships, internships and formal skills programmes since 2000
- As a R40 billion industry, contributes significantly to Government coffers in the form of taxes and VAT