

WHEN DOES AN EMPLOYMENT RELATIONSHIP EXIST IN TERMS OF THE LABOUR RELATIONS ACT (LRA)

Has an Employer ever questioned whether someone within their organisation is an Employee, and what is required for a person to be considered an Employee which are entitled to certain rights as provided in the LRA?

This subject was discussed and decided in the case of *Universal Church of the Kingdom of God v Myeni and Others (2015) 36 ILJ 2832 (LAC)*. In this case a pastor of the church, Mr. Myeni, had his duties terminated regarding an alleged misconduct and, in turn, Mr. Myeni approached the CCMA claiming that he had been unfairly dismissed. The Church in this matter provided that Mr. Myeni had never been an employee but voluntarily rendered his services.

Mr. Myeni indicated that he had been an employee of the church as he received an income which he was dependant on, and such income had received deductions towards UIF.

The Labour court found Mr. Myeni to be an employee based in section 200A of the LRA which provides that a person is an employee, regardless of the form of contract entered into, but more importantly, if the following factors are present: such as the persons work and hours are subject to control, such person works an average of 40 (forty) hours per month over the last 3 (three) months. Such person is economically dependent on the other person, is provided with tools of the trade and works or renders services to one person.

The Labour Appeal Court (LAC) provided that Mr. Myeni was not an Employee as there had been no contractual arrangement in place and, therefore, the LRA does not apply. Mr. Myeni however signed two documents which were the regulations of pastors and the declaration of voluntary services which is a form of contract and therefore the LRA should apply.

It was further provided that in terms of section 200A it met most of the requirements to determine an employment relationship, however, this does not automatically mean that such person is an employee.

Therefore, when Employers intend on hiring a person as a employee it is advised that a formal employment contract be drawn up with the relevant provisions as contained in the Basic Conditions of Employment Act (BCEA) and taking into account the provisions as provided in section 200A of the LRA.

Should Employers continue to have difficulty with identifying whether there is an employment relationship, one can always refer to the Code of Good Practice: who is an employee.

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