



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

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Dear Sir/Madam

DIRECTIVE IN TERMS OF SECTION 19(1)(b) OF THE LABOUR RELATIONS AMENDMENT ACT, 2018

On 1st January 2019, the amendments to the Labour Relations Act, 1995 came into operation whereby further measures were introduced to ensure that registered trade unions and employers' organisations comply with their constitutions and requirements of the Act.

In terms of section 95(5)(q) of the LRA, the constitution of every trade union or employers' organisation must provide that a trade union or employers' organisation, before calling a strike or lock-out, must conduct a ballot of members in respect of whom it intends to call the strike or lock-out.

Section 95(5)(p) provides that a member of a trade union or employers' organisation may not be disciplined or have their membership terminated for a failure or refusal to participate in a strike or lock-out if no ballot was held or, if a ballot was held, a majority of members did not vote in favour of a strike or lock-out.

Section 95(9) provides that a ballot includes any system of voting by the members of a trade union or employers' organisation that is recorded and secret. The clarification of a ballot is to provide for new technologies of balloting while at the same time ensuring good governance and secrecy.

The Minister has also issued guidelines in terms of section 95(9) after consultation with NEDLAC in this regard. Copy is attached for your attention.

Section 19 of the Labour Relations Amendment Act, 2018 requires the Registrar of Labour Relations within 180 days of the Act coming into effect, to consult with the national office bearers of trade unions and employers' organisations which have constitutions that do not provide for the conducting of a secret ballot before calling a strike or lockout and to issue a

directive to those unions and employers' organisations as to the period within which their constitutions must be amended to ensure compliance with the requirements for conducting a secret ballot.

It must also be noted that in terms of section 19(2) of the Labour Relations Amendment Act, 2018, until such time as a registered trade union or employers' organisation complies with the directive to change its constitution, a registered trade union or employers' organisation before engaging in a strike or lockout must conduct a secret ballot of its members.

Registered trade unions and employers' organisations are directed to work through their constitutions and amend the constitutions to comply with the new provisions of the the Labour Relations Act, 1995 as amended or advise this office this instances where the registered trade union or employers' organisation is of the view that it complies, with these LRA Amendments by referring this office to such provision(s) in its constitution.

In terms of section 106(2A) the Registrar may cancel the registration of either a trade union or an employers' organisation by removing its name from the appropriate register if the registrar is satisfied that the registered trade union or employers' organisation is not, or has ceased to function as a genuine trade union or employers' organisation. This will include non-compliance with the constitution.

All organisations are expected to comply with the provisions of the Labour Relations Act, 1995 as amended.

Yours faithfully



REGISTRAR OF LABOUR RELATIONS

DATE: 28 February 2019