



## **Indefinite or fixed term employment?**

### **The effects of Section 198B Labour Relations Act 66 of 1995 (LRA)**

19 February 2021

Employers and employees alike stand to gain from understanding the effects of the Section 198B Labour Relations Act 66 of 1995 (LRA) which came into effect in 2015. Employers can land themselves in hot water and employees can be taken advantage of if they are not familiar with this section of the Act.

In short, the Legislature through implementation of this Section of the Act has afforded greater protection to employees earning within the earnings threshold (currently R205 433,30 per annum, as prescribed by the minister of Labour from time to time), by creating a presumption of indefinite (permanent) employment when employees have worked for their employer in excess of three months.

Prior to this amendment, many employers would claim that employees were fixed term employees well after the first three months of work and would simply terminate their employment when it suited them, an easy and quick way of ridding themselves of trouble makers and poor performing employees, thus circumventing the process of conducting enquiries and disciplinary hearings.

Legislature stepped in and made it very clear that employees within the earnings threshold, working in excess of three months, irrespective of the wording of the contract, may have a right to indefinite employment. In practice, this means that even when a contract of employment states that an employee is on a year long fixed term contract that employee may very well have a right to employment beyond the end date of that contract.

Although the Act attempts to put the brakes on many dismissals and promotes job security, the Legislature is understanding to the fact that not all forms of fixed term work can be completed within three months and some exceptions to the rule do therefore exist.

When the employer is able to demonstrate a justifiable reason for longer fixed term period (in excess of three months) the employee is not deemed to be on an indefinite employment contract.

The following are examples of justifiable reasons as prescribed by the act:

- replacing another employee who is temporarily absent from work;
  - employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
  - student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
  - employed to work exclusively on a specific project that has a limited or defined duration;
  - a non-citizen who has been granted a work permit for a defined period;
  - employed to perform seasonal work;
  - employed for the purpose of an official public works scheme or similar public job creation scheme;
  - employed in a position which is funded by an external source for a limited period; or
  - has reached the normal or agreed retirement age applicable in the employer's business.
- This is not a closed list.

Section 198B LRA is not applicable to an employer that employs less than 10 employees, or that employs more than 50 employees and whose business has been in operation for less than two years (unless the employer conducts more than one business or the business was formed by the division or dissolution for any reason of an existing business).

Should you or your business need further information or assistance in assessing or drafting your employment contract(s) contact Albert Mouton at [albert@thomsonwilks.co.za](mailto:albert@thomsonwilks.co.za) or on 076 279 6680.



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