



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

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TO: ALL SECRETARIES OF BARGAINING AND STATUTORY COUNCILS

Circular 3/2014

Dear Sir/Madam,

REPRESENTIVITY AND VERIFICATION OF COUNCIL FIGURES

A. The purpose for the circular

The purpose of this circular is to remind councils of the information requirements relating to representivity of councils and to outline the Department's approach and methods in relation to verification of information. The context for the circular are the amendments to the Labour Relations Act and recent judgements concerning representivity.

There are three requirements in the Labour Relations Act relating to representativeness of councils. These are:

i. Section 49 (2) requirements:

Bargaining councils with collective agreements that have been extended, in terms of section 32, must inform the Registrar annually of the number of employees;

- Covered by the collective agreement;
- Members of trade unions that are parties to the agreement, and;
- Employed by members of employers' organisations that are party to the agreement.

This information is to be submitted annually on the form LRA 3.20 A.

The amendment to section 49 in the Labour Relations Amendment Act (no 6 of 2014) requires that the information specified in section 49 (3) (see below) must also be submitted by councils. This means that, in terms of section 49 (2), councils with agreements that have been extended submit information in relation to the scope of their agreement as well as information in relation to the registered scope of the council.

ii. Section 49 (3) requirements:

All bargaining councils must inform the Registrar of the following information:

- The number of employees employed within the registered scope of the council;
- Members of trade unions that are parties to the council;
- The number of employees who are employed by members of the employers' organisations that are party to the council.

This information is to be submitted annually on the form LRA 3.20. In terms of the amendment to section 49 (3), this requirement applies to all councils other than those contemplated in sub-section (2), that is, all councils that do not have collective agreements that have been extended.

All the relevant information in relation to section 49 (2) and (3) requirements should be submitted by 31 March 2015. Thereafter, it should be submitted annually by 31st January.

A final amendment, to sub-section 49 (4) ensures that a determination of representativeness of a bargaining council will remain valid as sufficient proof of the representativeness of the council for the year following the determination "for any purpose in terms of this Act, including a decision by the Minister in terms of sections 32(3)(b), 32(3)(c) and 32 (5).

In other words, the validity of certificates of representativeness issued by the Registrar will remain valid for 12 months and no verification or updates will be required during this period. This is the practice that was adhered to in the past and which will now be reinstated from 1st January 2015.

iii. Section 32 requirements:

In cases where councils request the Minister to extend a collective agreement in terms of section 32, there is no change to the information requirements in relation to section 32 (3) (b) and (c).

If a council is sufficiently representative and requests the Minister to extend a collective agreement, the Minister may exercise discretion. An amendment to section 32 (5) indicates

that when determining whether the parties to the bargaining council are sufficiently representative, the Minister may take into account the composition of the workforce in the sector including the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term and employees in other forms of non-standard employment.

Councils will be required to collect information relating to non-standard employment and to submit it on the LRA 3.5 forms which now make provision for this information.

B. Approach to representativeness

In light of the amendments to the LRA and recent Labour Court judgments, the Department intends to take the following approach as from 1st January 2015:

- i. To use certificates of representativeness for councils who have extended collective agreements for a twelve month period.

Verifying information on representivity of councils is to ensure that the Department has credible information for the purposes of sections 49 and 32 of the Labour Relations Act (no 6 of 2014).

C. Method used

The verification of representativeness of councils will be carried out by officials of the Collective Bargaining Directorate at the offices of councils. The department will not conduct verification at the offices of the parties except in exceptional circumstances.

The Council must first verify the figures of the parties in terms of the scope of the different agreement(s) and in respect of the whole registered scope of the Council. The LRA Form 3.20 for the whole registered scope and the LRA Form 3.20A for a particular agreement must be completed by the council using the verified figures to be submitted to the Department. In this regard, proof of updated membership that should not be older than six months from the date of submission should be taken into consideration.

In addition, the Council should obtain membership data from its parties, preferably in Excel Format. The Council data should also be in Excel Format. The Council should submit the data in Excel Format in respect of the registered scope of the Council and in respect of the

scope of any agreement. All the data of the parties and of the Council should be valid as of a certain date or month (cut off point) (e.g as at end of January) to make it easy for comparison and verification. The Department prefers the data of the parties and the Council not to be older than six (6) months.

Furthermore, the council is expected to conduct checks on proof of payment of party members. The parties to the council and to agreements must therefore provide proof of payment of membership (such as in the Form of Returns and Proof of payment of membership and bank statements) to the Council.

The Council should timeously inform this Office should any party withdraw as a party to the Council or if any new parties joined the Council since its last representivity exercise.

When an appointment has been made with the Council, a knowledgeable person, well informed on the record keeping system including the use of Excel should be able to assist the officials from the Department in this exercise.

Four (4) elements would be used in order of preference, namely:

- 1) ID number of workers (member) (13 digit SA ID, or passport number or work permit number)
- 2) Firm Number (BC number)
- 3) Workers name
- 4) Company name

In order for a member to be counted it is required that at least (1) and (2) above are captured in the council's records and are present in the figures that are made available to the Department. There must be order to the data – that is data should be well sorted by party and/or by agreement and/or by registered scope of the council.

In order for this office to expedite the processing of an agreement it is imperative that parties to the council ensure that particulars of new members are added to the council database and ex-members are removed from the system. This updating of the council information should happen on a regular basis.

Further requirements for maintaining information by councils and party organisations are as follows.

The Council provides and confirms:

Each firm should be allocated a Firm Number by the Council upon registration with the Council. This should be a unique number.

- (a) The number of companies that are registered with the Council falling within the registered scope of the Council and falling within the scope of each collective agreement. Each company should have a unique Firm Number.
- (b) The number of employees that are employed by such a company in total and how many of those employees fall within the scope of a particular agreement.

The employer organisation(s) party to a council:

For a company to be counted to the credit of an employers' organisation that is party to a council -

- (a) That company must be in the list of the registered Firms according to the Council database and must have a Firm Number.
- (b) The number of employees as reflected by the Company registered with the Council must correlate with the Council database (in the scope of the collective agreement and in the registered scope of the council)

The trade union party:

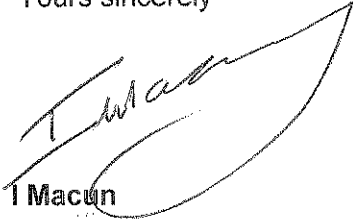
For a member to be counted to the credit of a trade union party-

- (a) That member must have an ID number that can be matched to the Council data and must be found to be employed by a company registered with the Council which is in the list of registered Firms according to the Council database and must have a Firm No.

Regarding members in good standing, the Department is of the view that this should be defined in accordance with the relevant provisions in the constitution of the council and/or the employer and trade union parties.

It is hoped that the above information will assist in guiding councils in relation to the information that they need to take responsibility for and what to expect in interactions between councils and the Department around verification of representativeness.

Yours sincerely



T Macdon

DIRECTOR: COLLECTIVE BARGAINING

DATE: 2/12/2014