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**Careers**

**Managing the transition to cost-to-company packages**

**LABOUR MATTERS**

31 July 2005

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THERE is a growing trend among employers to move away from compensating their employees' on a "basic plus benefits" basis to a "total cost to company" basis.

A basic-plus-benefits package remunerates an employee with a basic salary as well as certain contributions for the employee's benefit, such as pension or provident fund and medical-aid contributions and an allowance for car insurance, fuel and maintenance.

A total-cost-to-company package represents the total employment cost for an employee, who is then responsible for any contributions towards his benefits.

This system enables an employer to manage exposure to rising medical-aid costs and cap its total employment cost. It also makes it easier for employers to prepare for wage negotiations.

Remuneration constitutes an essential term of an employment contract and arguably any change to the employees' remuneration and benefits must be agreed between the parties.

There are three options for employers if employees reject the employer's proposal:

1. A unilateral implementation of its proposal without the employees' consent;
2. Lockout of employees until such time as they accept the proposed change to their contracts, but the risk is that during the lockout the employer may not employ replacement labour;
3. In light of the recent Numsa vs Fry's Metals decision, it may be possible for the employer to dismiss its employees based on its operational requirements and to employ employees willing to be engaged on the employer's terms.

Employees, in turn, have four options where an employer implements or threatens to implement its proposals.

They can:



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1. Lodge a dispute and refer it to the CCMA if the employer unilaterally implements the proposed changes. The employer could be required to restore the status quo for 30 days pending the conciliation meeting. After that, the employees may embark on a strike;

2. Approach the Labour Court for an urgent interdict to stop the employer implementing the proposed changes;

3. Refer an unfair labour practice dispute to the CCMA on the basis that the employer's actions constitute unfair conduct related to the provision of a benefit.

However, it is debatable whether the legislature contemplated the provision of a benefit to include the conversion of employees' remuneration packages;

4. Claim the employer's actions constitute an unfair dismissal or constructive dismissal and seek relief against the employer on these grounds.

Preferably, an employer should deal with the conversion and any matters related to remuneration and changes in terms and conditions of employment in a holistic manner rather than piecemeal. It is also recommended that a task team be established, made up of various specialists, to oversee the entire process. — Priyesh Modi, attorney, Bowman Gilfillan Attorneys

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