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PRESS RELEASE

ANALYSIS OF THE SEPTEMBER 2022 REGULATIONS TO THE AFFIRMATIVE ACTION (EMPLOYMENT) ACT AND EMPLOYMENT SERVICES ACT

Background

During September 2022 the Honourable Minister of Labour issued regulations to both the Affirmative Action (Employment) Act and the Employment Services Act. The effect of these regulations is that that “relevant employers” and “designated employers” as defined in these acts respectively will now include all employers who employ 10 or more employees. The previous threshold was 25, and before that, 50.

EPRA is in the process of drafting a comprehensive research report on the desirability of these regulations, and the possible impact thereof on the Namibian economy. As part of our research EPRA requested 486 businesses to participate in a survey on the topic. A total of 163 responses were received, and excellent response rate for an online survey.

The results reported herein will form part of the comprehensive research report which will be finalised within the next week. The report will be available at www.epra.cc/downloads.

Results of the Survey

1. **54%** of respondents employ **9 or less employees**. **32% employ between 10 to 24 employees** - thus, close to a third of the employers are now directly affected by the regulatory amendments. **14% of respondents employ 25 or more employees**. As is reported in more detail in the comprehensive report, more than half of Namibian businesses (those employing 9 or less employees) will now be deterred from increasing the number of persons they employ to ten or more.
2. **89%** of respondents are **not aware of any consultations** that took place. 6% did not know enough to give an opinion.
3. Just **over half** of the respondents are **not aware of their duties** under the Affirmative Action (Employment) Act.

4. **71%** of respondents **are aware** that an employer with ten or more employees **may not fill any vacancy or new position** unless same is reported to the Employment Services Bureau and may not fill such vacancy or a new position without considering in “good faith” any suitably qualified job-seeker referred by that Bureau.
5. **41%** of respondents are **not aware** that non-compliance with the Affirmative Action (Employment Act) and Employment Services Act is a **criminal offence punishable by direct imprisonment**.
6. **99.4%** of respondents **do not agree** that **Government should regulate private sector in filling vacancies and new positions**. Only one respondent agreed somewhat.
7. **100%** of respondents **disagree** that **business owners should be punishable by criminal sanction** for not considering in “good faith” the candidates recommended by Government.
8. **88%** of respondents **disagree** that the system of compelling employers to register with the Employment Services Bureau and to first consider the Bureau’s recommended candidates **will reduce unemployment**.
9. **93%** of respondents **do not believe** that the mandatory use of the Employment Services Bureau **will simplify the recruitment process** in their organisation.
10. **94%** of respondents **disagree** that the mandatory use of the Employment Services Bureau **will enable them to appoint better skilled / qualified employees**.
11. When the Honourable Minister of Labour appointment of the current Employment Services Board, which board advised on the reduction of the threshold from 25 to 10 employees, the Minister of Labour stated: *“[the]reduction in the threshold will help capture the informal economy operators and will result in the increase of employees registered on the Namibia Integrated Employment Information System (NIEIS), which will lead to an increase in the notifications of vacancies, as well as an increase in the placement of job-seekers”*.
 - 11.1. **93%** of respondents **disagree** that it **will be beneficial for the informal economy operators** to be “captured” in the mandatory Employment Information System whereby Government recommended candidates must receive first option of employment by informal business operators. 5% did not know whether it will be beneficial for the informal sector or not.
 - 11.2. **93%** of respondents **disagree** that an “increase in the notifications of vacancies, as well as an increase in the placement of jobseekers” on the government operated Employment Information System **will reduce unemployment in Namibia**.
12. **90%** of respondents **disagree** that the compliance requirements under the Affirmative Action (Employment) Act and Employment Services Act serve a **justifiable purpose**. 4% did not know enough to give an opinion. **97%** believe the

- new regulations **are politically motivated** (while 2% did not know). **98%** of respondents are **of the opinion** that that the forced system of considering Government recommended candidates first is for the **purpose of creating the impression amongst jobseekers that Government is the provider of employment.**
13. **94%** of respondents **agree** that compliance with the Affirmative Action (Employment) Act and Employment Services Act **adds to the cost of doing business.**
 14. **92%** of respondents **agree** that compliance with the Affirmative Action (Employment) Act and Employment Services Act is **an obstacle to grow a business**, while **91%** of respondents are of the opinion that the latest regulatory changes are **likely to deter them from establishing a new business entity.**
 15. **98%** of respondents **agree** that the system of forced consideration of Government recommended candidates is **open to corruption**, while **95%** agree that the forced system of considering Government recommended candidates first is for the **purpose of advancing a system of cadre employment / favouritism.** **97%** of respondents **agree** that the Employment Services Bureau **could manipulate the recommendation of candidates**, by for instance not providing details of all qualifying candidates in order to improve the chances of employment of certain registered candidates above others, or by recommending the best skilled candidates to only personally preferred employers.
 16. **96%** of respondents **agree** that the forced system of considering Government recommended candidates **discriminates against job applicants** who prefer not to register with the Employment Services Bureau.
 17. **82%** of respondents **disagree** that the **regulation of private employment agencies is justified**, while 94% believe that the regulation of private employment agencies is an obstacle to creating employment (6% did not know).
 18. **97%** of respondents **agree** that, as they are forced to first consider Government recommended candidates, **Government should also be held liable for all damages** suffered as a result of false information provided by registered candidates in their CV's. Government obviously does not have the capacity to vet candidates, which is standard practice with reputable private sector employment agencies.
 19. **85%** of respondents are **likely to seek ways not to be regarded as "relevant employer" and "designated employer"**, by for instance reducing the number of employees, or establishing multiple business entities to split their staff component. Only 13% stated that they are unlikely to do so.
 20. **Less than 2%** of respondents have in the **past appointed candidates recommended by the Employment Services Bureau.**
 21. Generally, **96%** of respondents **are dissatisfied** with the reduction of the threshold of employees employed to be designated as "relevant employer" and "designated

employers” from 25 to 10, despite the fact only 32% of respondents are now directly affected as the employ between 10 and 24 employees.

Conclusion

Business’s general view of the latest regulations is quite damning and not a single aspect of the forced recruitment system is viewed in a positive light. Business is of the view that the system will be a further obstacle and cost to doing business, will deter the formation of new business and is fertile ground for more corruption and nepotism. The system is thus likely to increase unemployment, apart from it obviously discriminating against jobseekers who do not register on Government’s recruitment portal.

EPRA looks forward to sharing the comprehensive research report on these regulations, and on affirmative action in general.

Yours faithfully

EPRA Management Committee

To the editor:

EPRA was established as a voluntary association in 2017. EPRA’s objectives are to advocate for pragmatic, sustainable, pro-growth and investment friendly economic policy. By extension, EPRA advocates for pragmatic job creation and equality improvement. EPRA published several reports on proposed legislation which we believe are unconstitutional and toxic to economic growth.

For more on past reports by EPRA visit www.epra.cc/downloads

Contact person: Eben de Klerk – eben@isgnamibia.com - 0811222181