COLLECTIVE BARGAINING AGREEMENTS [CBAs]

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Did you know…?

Section 2 of the Labour Relations Court Act defines a collective bargaining agreement ("**CBA**") as a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organisation of employers.

Once a recognition agreement is entered into between an employer (or group of employers or employers' organisation) and a trade union, a CBA should be entered into setting out the terms and conditions of service for all unionisable employees covered by the recognition agreement.

Of note is that the terms of a CBA should be incorporated into the contract employment of every employee who is covered by the CBA. The law provides that CBAs have to be registered with the Employment and Labour Relations Court (the "**ELRC**") for them to have effect in law. They should be submitted within 14 days of their conclusion.

Submission of the agreement to the court for registration is made by the employer or employer's organisation, although the submission can also be made by the trade union if the employer fails, or is not willing, to do so.

The court may decline to register a CBA that conflicts with the Labour Relations Act or any other law, or if it does not comply with any of the guidelines concerning wages, salaries and other conditions of employment issued by the Cabinet Secretary in charge of labour.

In the case of **Kenya Plantation & Agriculture Workers Union v Coffee Research Foundation (2014) eKLR** the Union brought that claim on behalf of ten (10) Claimants who were the Respondent's security guards. Here, the ten (10) Claimants had worked for the Respondent for periods exceeding five (5) years, during which the Respondent had concluded a CBA with the Union. The CBA contained a thirteen per cent (13%) wage increment for each year and benefits including termination benefits under the retrenchment clause, which the Respondent chose to ignore when it terminated the Claimants' services. The ELRC found that the Respondent had discriminated against the Claimants and ordered implementation of the CBA with respect to pay in arrears underpayment of wages and pay of redundancy benefits.

Cases such as the above set strong precedents for the notion that there are no shortcuts to implementing a CBA.

Collective bargaining is a legally guaranteed right, enshrined in the Bill of Rights, and cannot be avoided. At the CBA bargaining table, both sides should be attentive so that they completely grasp what they are agreeing to. If any terms are complex or difficult to understand, it is recommended that legal counsel be sought so that such clauses are fully read and understood by the parties prior to consenting to the same.

Employers also need to consider the long-term financial effects of CBAs before negotiation and execution, as it is no defence to blame a third party for non-compliance with a CBA. Unions also need to be aware of the necessary steps to be taken to ensure that a CBA is legally valid and enforceable, so as not to become unstuck at the crucial time of agitating for implementation of the CBA.

NOW YOU KNOW: Do not hesitate to contact us in case of any questions.