**LABOUR RELATIONS AMENDMENT ACT: 2014**

**IMPLICATIONS FOR RHODES UNIVERSITY**

1. **Status of the law**

The amendments have been signed off by the President and will come into effect from 1 October 2014. In the case of certain amendments, employers have 3 months to effect changes to current practices and contracts.

2. **Changes to the law occur in the following areas:**

2.1 Changes to the rights of unions (not covered in this document but will be explored in due course

with the unions and the implications of these, if any, for our recognition agreements);

2.2 Legislating temporary employment services (labour brokering). Rhodes does not use this sort of

labour arrangement, so this is not applicable to us (and therefore is not covered in this document). It

should be noted that the security guards on campus employed by Hi-tec do not fall under the ambit of

temporary employment services i.e. Hitec is a service provider/independent contractor and not a labour

broker; and

2.3 Protection of non-standard employees. This impacts us and will be dealt with in this report.

3. **Changes in terms of Section 198**

3.1 Section 198 of the Labour Relations Act No 66 of 1995 ("the Act") falls under chapter (IX),

which deals with the regulations of non-standard employment and the general provisions relating

thereto. The purpose of the provisions in chapter (IX) is to protect three categories of non-standard

employees. Sections 198A, 198B and 198C give extensive protection to employees earning under the

earnings threshold as provided for in Section 6(3) of the Basic Conditions of Employment Act, ("BCEA").

What this means for Rhodes:

* The earnings threshold is determined by the Minister of Labour and is presently R205 433.00 per annum. This amount changes from year to year;
* Earnings" means gross pay before deductions, such as income tax, pension, medical and similar payments but excluding similar payments (contributions) made by the employer in respect of the employee. In Rhodes’ remuneration terms, this would be the basic salary, housing allowance, service bonus.
* This earnings threshold thus will not apply to academic staff and support staff, grade 11 and above who work on a full-time basis. The threshold only relates to Rhodes as an employer and does not take into account if the person is employed elsewhere e.g. an academic from UCT doing temporary teaching at Rhodes earning less than the threshold would be entitled to certain provisions (as per the Act) irrespective of what s/he earns at UCT.

3.2 Section 198B deals with fixed-term contract employees earning below the earnings

threshold. The definition of a "fixed-term contract" is one which terminates on a specific event,

completion of a specific task or project or a fixed date (other than the employees’s normal or agreed

retirement age;

3.2.1 An employer may employ an employee on a fixed-term contract or successive fixed-term

contracts for longer than three months of employment only if the nature of the work for which the

employee is employed is of a limited or definite duration; or the employer can demonstrate any justifiable

reason for fixing the term of the contract e.g

* replacing another employee who is temporarily absent from.

At Rhodes this would include replacements for staff on maternity leave, annual leave, academic leave, sick leave.

* work, employed on account of a temporary increase in the volume of work which is not expected to endure beyond twelve (12) months

At Rhodes this would include hiring staff in the Registrar’s area over graduation, orientation, hiring of staff by the Conference Office during Festival.

* is a 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

At Rhodes this would cover student employment such sub-wardening, teaching assistants, tutors, student assistants in places such as library, Registrar and interns.

* is employed to work exclusively on a specific project that has a limited or defined duration.

At Rhodes this could refer to contracts linked to specific research funds raised;

* is a non-citizen who has been granted a work permit for a defined period;
* is employed in a position which is funded by an external source for a limited period;

This notion of a limited period is an interesting one as some staff paid for by external funds have been employed for continuous periods, albeit on different funding raised;

* has reached the normal or agreed retirement age.

This would refer to Rhodes’ post retirement contracts.

In addition, HR would argue that the following also constitute justifiable reasons:

* Staff employed against vacancies and particularly where such employment may be lengthy due to difficulties in finding equity candidates;
* Staff employed on fixed term contract in order to find suitable equity candidates from under-represented groups;
* Staff employed against vacancies because restructuring is taking place and where such posts are unlikely to exist in the future. Legal advice has indicated that any such contracts for more than 12 months are likely to constitute a risk for Rhodes.

3.2.2 An offer to employ an employee on a fixed-term contract or to renew or extend a fixed-term contract, must be in writing and state the reasons why the employee is employed for a limited or for a definite duration, covering the nature of the work, and full reasons must be given to demonstrate the justifiable reasons for fixing the term of the contract. This already happens at Rhodes.

3.3 Any employee employed in terms of a fixed-term contract **for longer than three months**

must not be treated less favourably than an employee employed on a permanent basis performing the

same or similar work, unless there is a justifiable reason for different treatment. **This right only vests**

**three months after the commencement of the Act.**

To treat such staff no less favourably means the following:

* The employee must also be given equal access to opportunities to apply for vacancies as those who apply to full-time employees.

Currently, the R+S policies already allow staff who have worked for three months (or close thereto) to apply for permanent or fixed term contract posts.

* An employee employed for a specific project that has a limited or defined duration, exceeding twenty four months must, subject to any collective agreement, pay the employee on expiry of the contract one week's remuneration for each completed year of the contract calculated in accordance with Section 35 of the BCEA. This is the calculation of remuneration and wages having regard to hours of work in a week, how many days work per month, and the value or formula to determine remuneration.

This is new and will have cost implications. Remember this only applies to those earning below the threshold. For example, at the grade 9 level, this will mean R4182 for each year.

* Any employee employed in terms of a fixed-term contract, for a specific project, before the amendment, is entitled to the remuneration contemplated above (one week's remuneration for each completed year) in respect of any period worked after the commencement of the Act. However, the employee is not entitled to payment of the one week per year completed formula if the employer offers the employee employment or procures employment for the employee with a different employer, which commences at the expiry of the contract and on the same or similar terms, (within 30 days of termination). Given that Rhodes is the main employer in town, this is an unlikely alternative.

3.4 Section 198C deals with part-time employment of employees earning below the earnings

threshold. This will only apply once someone is employed for more than 3 months. This is an employee who is

remunerated wholly or partly by reference to the time that the employee works and who works less hours than a

comparable full-time employee. A full-time employee is an employee who is identified in terms of the custom and

practice of the employer as full-time. This does not cover those who work less than 24 hours a month. On the other

hand, all staff working more than 24 hours per month are regarded as part-time staff and the new provisions related

to such staff apply.

3.4.1 At Rhodes there are not many currently permanent part-time staff. Such staff are typically in the

administrative area. Other part-time staff include those employed as temporary teachers e.g. on the PGDE

programme in Education, as music instrument teachers in the Department of Music and Musicology, teaching

assistants who by definition usually only teach 1000 hours or less.

3.4.2 Irrespective of when the employee was employed an employer must treat a part-time employee on

the whole not less favourably than a comparable full-time employee unless there is a justifiable reason.

Access to training and skills development must also be extended to this category of employee. At Rhodes,

permanent staff are not treated less favourably. Part-time staff on short-term contract are treated the

same as full-time staff on short-term contracts in that the hourly rate of pay is used and staff are paid

accordingly to the number of hours worked.

3.5 In terms of Section 198D all disputes are referred to the CCMA and a "justifiable reason"

includes a system that takes into account seniority, experience or length of service, merit, the quality or

quantity of work performed; or any other criteria of a similar nature.

In other words, paying people differently for the same work would be justifiable on the basis of the above

distinctions. However, at Rhodes, none of these criteria are currently used to differentiate individual

remuneration.

3.6 The employee has six months to refer the matter to the CCMA after an act or omission

occurs. This is the same period as the period promulgated in the Employment Equity Act and deviates

from the usual thirty days for referrals in terms of the Labour Relations Act.

3.7 Special circumstances

The following where specific issues explored by HR:

* Does the 3 month rule of treat no less favourably apply if someone is employed in consecutive but different contracts e.g. grade 6 in Politics, then grade 7 in Res Ops? The 3 month rule will apply such that this person must be treated no less favourably. Furthermore, for each contract, a justifiable reason for offering a contract needs to be provided;
* Does the 3 months rule apply to breaks in service (as per BCEA break in service ruling) e.g. person works for 3 months, then does not work for 6 months and then comes backs and works for 3months – do we need to treat no less favourably for second 3 months? The break in service ruling would not apply here.
* Does this apply to current staff receiving acting allowances? Such allowances do not fall within the ambit of Section 198 as this is additional pay and not new contracts of employment.

3.8 Way forward

HR is currently in process of establishing an action plan in relation to these amendments including:

* identifying all contract under the earnings threshold that will be impacted
* reviewing the cost implications of changes
* reviewing of current practices and how these need to change e.g. around annual leave, around filling of vacancies and the budget available
* engagement with relevant HoDs and managers.

In addition, the earnings threshold and legislative implications will create internal inequity problems and this will need to be reviewed. There are two examples below:

|  |  |  |
| --- | --- | --- |
| Person employed on annual contract | Grade 10 , below earnings threshold, paid the equivalent value of full benefits | Grade 11(full-time), historically paid on basic salary only, earning above threshold and therefore paid at temp rates |
| Remuneration | R243,744 p.a. | R194,085 p.a. |
| Annual leave | 2.5 days p.m. | 1.25 days p.m after 4 months can be taken. |

|  |  |  |
| --- | --- | --- |
| Person employed on annual contract | Grade 11 ( part-time (4hrs per day) basis) | Grade 11 ( appointed on full-time) |
| Remuneration | R132,743 p.a. or R127.62 p/hr. | R194,085 p.a. or R93.30 p/hr |
| Annual leave | 2.5 days p.m. | 1.25 days p.m |

**Written: Director, HR**

**Based on legal opinion received from Brin Brody, Wheeldon and Rushmere**

**Last updated:** 3 June 2014; 3 September 2014

**NEW LRA AMENDMENTS**

QUESTION TREE

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Does the employee earn less than the earnings threshold p.a.? | | | | | | |
| YES | | | | | | NO |
| Is the contract more than 3 months? | | | | | |
| YES | | | |  | NO |
| Justifiable reason for contract? | | | |
| YES | NO | | |
| Terminate or move to permanent. Can this be done in next 3 months? | | |
| NO | | YES |
| Part-time? | | |
| YES OR NO, treat no less favourably:   * Pay same * Annual leave same * T+D opportunities the same | | |
| Contract longer than 24 months? | | |
| YES | | NO |
| Plan for “contract cessation costs”, 1 week p.a | |