

LEPPARD LEGISLATION WATCH

FEBRUARY 2020

After quite a long break from regular newsletters (did you miss us?), we're back with the latest issue of Leppard Legislation Watch. Part of the reason for the lack of newsletters in the second half of 2019 was due to the general election in May (which appeared to close down Parliament and the passing of laws) and when Parliament finally got back into the swing of things, it seems that the major focus was on Commissions of Inquiry, State capture and who is responsible for the failing Eskom and SAA. This didn't deter Parliament from resorting to their age-old trick of publishing important legislation for comment in December when everyone was away from the office – the two glaring examples being proposed amendments to the Constitution allowing for expropriation of property without compensation and the National Sport and Recreation Act, where it would appear that the State wishes to be in control of all sport and sporting bodies.

Legislation for YOU

Insurance Act 18 of 2017

An application for a licence to conduct insurance business in SA guideline and form is available from the FSCA.

Legislation for YOU and YOUR CLIENT

Basic Conditions of Employment Act 75 of 1997

The Labour Laws Amendment Act 10 of 2018, amended the main Act on 1 January 2020 to provide for further parental leave (10 days parental leave from date child is born, adoption order is granted, or child is placed in the care of a prospective adoptive parent), adoption leave (10 consecutive weeks or parental leave for adoptive parent of a child below the age of two); and commissioning parental leave (10 consecutive weeks or parental leave for a commissioning parent in a surrogate motherhood agreement).

Companies Act 71 of 2008: Annual return compliance checklist

A notice 52 companies compliance checklist on e-services, to be completed as from 1 January 2020 before an annual return is submitted, is available from the CIPC. The notice: • Includes a reminder of the section 215(2) offence to knowingly provide false information to the CIPC and related section 216(b) penalty; and • Refers to

compliance during the previous calendar year. **Note:** The purpose of the checklist is to declare the compliance status of a company to the following sections of the Companies Act: • Section 4 (solvency and liquidity test); • Section 15 (MoI, shareholders agreement and rules of company); • Section 26 (access to company records); • Section 27 (financial year of company); • Section 28 (accounting records); • Section 29 (financial statements); • Section 30 (annual financial statements); • Section 32 (use of company name and registration number); • Section 33 (annual return); • Section 44 (financial assistance for subscription of shares); • Section 45 (loans or other financial assistance to directors); • Section 50 (securities register and numbering); • Section 61 (shareholders meetings); • Section 66 (board, directors and prescribed officers); • Section 69 (ineligibility and disqualification of persons to be director or prescribed officer); • Section 70 (vacancies on board); • Section 71 (removal of directors); • Section 86 (mandatory appointment of company secretary); • Section 90 (appointment of auditor); • Section 92 (rotation of auditors); • Section 94 (audit committees); • Regulation 21 (registered office of company); • Regulation 43 (social and ethics committee); and • Schedule 1 (provisions concerning non-profit companies).

Occupational Health and Safety Act 85 of 1993: Ergonomics Regulations

Application The Ergonomics Regulations commenced 6 December 2019 and apply to: (i) Any employer or self-employed person who carries out work at a workplace, which may expose any person to ergonomic risks in that workplace; and (ii) A designer, manufacturer, importer or supplier of machinery, plant or work systems for use at a workplace. **Ergonomic risks** Ergonomic risks are defined as a characteristic or action in the workplace, workplace conditions, or a combination thereof that may impair overall system performance and human well-being. **Note:** A regulation is subject to a section of an Act, and the ergonomics considerations represent a sub-consideration of the general duty to, as far as reasonably possible, consider the safety of employees and safety of persons on the premises (and manufacturer/supplier duty where relevant). In other words, the ergonomics regulations suggest more specific means to manage the general duty, and every regulation requirement should preferably echo the key phrase and principle of the Act which is “as far as reasonably practicable”. **Requirements** The Ergonomics Regulations, amongst others: (i) Defines adverse health effect widely, for the purpose of an ergonomic risk assessment (which is also defined vaguely), as the causation, promotion, facilitation or exacerbation of a structural or functional abnormality, with the implication that the abnormality produced has the potential of lowering the quality of life, contributing to a disabling illness or leading to premature death; (ii) Require that an employer must: After consultation with health and safety committees or representatives, if applicable, establish a training programme as prescribed for all employees, mandatorily or persons other than employees who may be affected or potentially exposed to ergonomic risks; and such training must be conducted prior to the placement of every relevant employee in the workplace. The Ergonomics regulations appear to be rather onerous, particularly for smaller businesses and it would be desirable that the Department of Employment and Labour give further guidance on: • the parameters of the

regulations (borderless responsibility is not practical or feasible or justifiable); and • the possibility of being granted an exemption in cases where ergonomics risk factors may exist but are practically low in likelihood and do not reasonably warrant the costs associated with a trainer etc. (iii) Reiterates the duty of persons exposed to ergonomic risk factors to obey lawful ergonomic instructions. (iv) Create a duty for any designer, manufacturer, importer or supplier of machinery, plant or work systems for use at work to, as far as is reasonably practicable: • Ensure optimisation of human well-being and overall system performance, including when installing, transporting, receiving, storing or handling such items; • Provide information, instruction and training as deemed necessary to allow potential users to achieve optimal human well-being and overall system performance during use thereof; and • Provide information to potential users on the appropriate maintenance thereof to ensure safe operation and use. (v) Require that an employer must, after consultation with the relevant health and safety committee or representative, have a competent person conduct a prescribed risk assessment, before the commencement of any work that may expose employees to ergonomic risks. (vi) Require that an employer must conduct the prescribed risk assessment every two years and review the prescribed risk assessment should prescribed events take place, such as: • Technological or scientific advances allow for more effective control methods; or • An incident occurs or medical surveillance reveals an adverse health effect, where ergonomic risks are identified as a contributing factor; (vii) Require that employers and self-employed persons must ensure that the exposure of a person (i.e. not only an employee) to ergonomic risks is prevented or, where this is not reasonably practicable, adequately controlled by, as far as is reasonably practicable, removing or reducing exposure to ergonomic risks by implementing control measures in accordance with the hierarchy of controls. (viii) Require that an employer places an employee under medical surveillance, overseen by an occupational medicine practitioner, if the ergonomic risk assessment shows such need or if an occupational medicine practitioner recommends that relevant employees be under medical surveillance (and an occupational medicine practitioner ratifies such recommendation. (ix) Require that every employer or self-employed person must, as far as is reasonably practicable, ensure that any control provided for the benefit of employees, complies with the regulations, is fully and appropriately implemented, and is maintained in good working order. (x) Introduce ergonomics specific record-keeping of up to 40 years (assessment and surveillance).

Unemployment Insurance Act 63 of 2001

Definitions for adoption order and prospective adoptive parent were introduced on 1 January 2020.

*Leppard Legislation Watch is a monthly newsletter providing selected updates on legislation which could have an impact on the business of Leppard Underwriting and its clients. **Leppard Legislation Watch** is not intended as legal or professional advice and is published for general information purposes only. This newsletter is not a substitute for legal or other professional advice.*