Regulatory submission

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Comments on the Labour Law Amendment Bill 2025

Just Share

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Dear Sirs

Just Share comments on the Labour Law Amendment Bill 2025

1. Introduction

1.1. Just Share NPC welcomes the opportunity to comment on the Labour Law Amendment Bill, 2025 ("the Bill"). As a shareholder activism organisation focused on corporate accountability, inequality, and responsible investment, our interest in this Bill arises from the rapid expansion of non-standard and platform-mediated work, particularly in last-mile delivery services.

1.2. The growth of the gig economy in South Africa has occurred within a broader socio-economic context characterised by high unemployment, informality, and worker vulnerability. As it is widely observed, in the gig economy delivery sector, companies increasingly rely on delivery drivers who are classified as independent contractors, despite performing core operational functions.

1.3. This model enables firms to circumvent labour protections and externalise costs onto workers and the state, raising significant concerns from both a labour rights and governance perspective.

1.4. The Bill introduces important reforms relating to non-standard work, including provisions addressing workers required to be available for work through the **insertion of section 9B into the Basic Conditions of Employment Act, 1997 (BCEA)**.

1.5. This represents a welcome recognition of the vulnerabilities associated with **availability-based and on-demand labour**.

1.6. However, the Bill does not adequately address the central issue of **worker misclassification,** as workers classified as independent contractors remain excluded from the scope of labour protections and enforcement mechanisms.

1.7. As a result, the protections introduced in section 9B do not extend to **platform-mediated work arrangements**, where similar dynamics of control, dependency, and economic vulnerability exist.

1.8. This submission therefore focuses on **strengthening section 9B** to ensure that it meaningfully addresses misclassification and platform-mediated labour, and remains fit for purpose in an evolving labour market.

2. Legal and constitutional framework

The Constitution

2.1. Section 23(1) of the Constitution of the Republic of South Africa, 1996 guarantees that: “Everyone has the right to fair labour practices."

2.2. This right must be interpreted purposively to protect workers in vulnerable and atypical forms of employment, including those engaged in platform-based work.

The Labour Relations Act 66 of 1995 (LRA)

2.3. The LRA’s purpose is to advance economic development, social justice, labour peace, and the democratisation of the workplace by fulfilling the primary objectives of the Act, which include:

(a) to give effect to and regulate the fundamental rights conferred by the Constitution.

(b) to give effect to international labour standards; and

(c) to provide a framework for collective bargaining and dispute resolution.

3. Misclassification and limitations of the current labour law framework

3.1. The current framework of the LRA is premised on the traditional distinction between “employees” and “independent contractors.” In practice, this distinction has proven increasingly inadequate, as it permits the classification of workers – and therefore of their rights - in a manner that may not reflect the **substance of the working relationship**.

3.2. The implications of this distinction are significant, as they limit the application of labour protections, thereby constraining the rights available to workers and the legal obligations imposed on employers.

3.3. Section 213 of the LRA defines an “employee” as:

> “any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

any other person who in any manner assists in carrying on or conducting the business of an employer".

3.4. This definition explicitly excludes independent contractors, thereby limiting access to labour protections.

3.5. The BCEA adopts the same definition of "employee" (section 1), reinforcing the **traditional distinction across labour legislation**.

3.6. To address ambiguity, the LRA introduced section 200A, which establishes a rebuttable presumption of employment where certain factors are present, including:

(a) control or direction over work;

(b) control over working hours;

(c) economic dependence;

(d) integration into the organisation; and

(e) provision of tools of trade or equipment.

3.7. While section 200A is a critical safeguard, its application has been limited in practice, particularly in platform-based work arrangements where contractual terms designate workers as independent contractors and corporate structures obscure the identity of the employer.

3.8. As a result, workers who meet several of these indicators may nonetheless be **misclassified**, remaining excluded from labour protections despite the substantive nature of their working relationship.

4. Limitations of the Labour Law Amendment Bill, 2025

4.1. The Bill introduces section 9B to regulate workers required to be available for work.

4.2. However, it does not address worker misclassification, nor does it operationalise section 200A in a manner that extends protections to platform-mediated work.

4.3. Section 9B remains contingent on the existence of an employment relationship, thereby excluding workers who are classified as independent contractors.

4.4. The effect is a continued gap between the recognition of employment indicators in law and their application in practice, leaving platform workers in a legal grey area.

5. Misclassification and worker vulnerability in platform-mediated work

5.1. The central issue in the gig economy is the misclassification of workers as independent contractors. In practice, delivery drivers:

(a) perform work that is integral to company operations,

(b) are subject to control through digital platforms and performance monitoring systems,

(c) depend economically on platform companies for income, and

(d) lack meaningful bargaining power.

5.2. Despite these characteristics, they are excluded from the protections afforded to employees under the LRA and BCEA. This situation is not remedied by the Bill as currently drafted.

5.3. This model allows companies to: avoid employer obligations such as contributions to the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries and Diseases Act (COIDA), and the Skills Development Levy (SDL); shift operational costs (fuel, vehicle maintenance, data) onto workers; and reduce labour costs at the expense of worker welfare

5.4. This results in a form of structural precarity, undermining both labour protections and social security systems.

6. International developments

6.1. Global developments indicate a clear regulatory shift toward protecting gig workers. These include:

(a) recogition of platform workers as employees in multiple jurisdictions;

(b) the introduction of presumptions of employment where indicators of control and direction are present; and

(c) regulatory frameworks addressing platform governance, including algorithmic management.

6.2. In the European Union, the Platform Work Directive introduces measures to ensure the correct classification of employment status and to address false self-employment, while also establishing rules governing the use of algorithms in the

workplace . It further provides that platforms may contest employment status, but must demonstrate the absence of an employment relationship.[1]

6.3. These developments reflect growing recognition that labour protections must be determined by the substance of the working relationship, rather than its contractual form, particularly where elements of control, supervision, and dependency are present.[2]

7. Recommendations

7.1. Apply section 9B based on substance, not contractual form

Section 9B should apply irrespective of contractual classification, where the substantive features of an employment relationship are present. This aligns with section 200A and international standards that support a broad interpretation of "worker" to address protection gaps.[3]

7.2. Introduce a rebuttable presumption of employment

Section 9B should incorporate a rebuttable presumption of employment where indicators of control and economic dependence are present, including algorithmic allocation of work and performance monitoring. Correct classification is central to ensuring labour protections in platform work.[4]

7.3. Extend section 9B to platform-mediated work

Section 9B should explicitly apply to platform-mediated and digitally managed work arrangements, including workers required to be available through digital platforms. This ensures that workers subject to availability requirements, income volatility, and algorithmic control are not excluded from protection.[5]

7.4. Extend core labour protections and transparency obligations

Section 9B should ensure access to minimum labour protections, including fair remuneration, occupational health and safety, social security contributions, and dispute resolution. Companies should also be required to disclose the use of platform workers in workforce reporting, including pay structures, injuries, and access to protections, to strengthen transparency and accountability.

[1] https://www.europarl.europa.eu/news/en/press-room/20240419IPR20584/parliament-adopts-platform-work-directive
[2] https://www.consilium.europa.eu/en/policies/platform-work-eu/
[3] International Labour Organiation. Realizing decent work in the platform economy International Labour Conference 113th Session, 2025. p.19-20.
[4] Ibid.
[5] Ibid.

8. Proposed legislative amendment: additional provisions for section 9B

8.1. It is proposed that section 9B be strengthened by the insertion of the following provisions:

(a) This section applies to any person required, in practice, to be available for work, including through digital or platform-mediated systems, irrespective of classification.

(b) A person to whom this section applies is presumed to be an employee where one or more of the factors in section 200A are present.

(c) Where work is organised through a digital platform or intermediary, any person exercising control is jointly and severally liable.

(d) An employer must disclose the number of such persons, their working arrangements, remuneration structures and occupational injuries.

(e) A person to whom this section applies is entitled to access social security and dispute resolution mechanisms under this Act.

9. Conclusion

9.1. The rise of gig-economy work presents a significant challenge to South Africa's labour regulatory framework. While the Labour Law Amendment Bill, 2025 represents a positive step, it does not adequately address the structural realities of platform-mediated work.

9.2. Without further reform, the current framework risks:

- entrenching precarious employment,
- undermining social protection systems, and
- exacerbating inequality.

9.3. We therefore urge Parliament and the Department of Employment and Labour to adopt the recommendations outlined above to ensure that labour protections apply to all workers in substance, rather than in form, in line with the Constitution and the objectives of the LRA.

9.4. We would be happy to provide more detail on any aspect of these submissions, and would be grateful to be placed on all relevant databases relating to progress on the Bill.

Yours faithfully
JUST SHARE

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