



the dpsa

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TO ALL HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS AND GOVERNMENT COMPONENTS

APPLICATION OF SECTION 198B OF THE LABOUR RELATIONS ACT 66 OF 1995 TO EMPLOYEES EMPLOYED IN TERMS OF THE PUBLIC SERVICE ACT, 1994

Following the recent amendments to the Labour Relations Act, 1995, section 198B of the Labour Relations Act was introduced and effected from 1 January 2015 to regulate the employment of fixed term contract employees who earn below the earnings threshold (currently determined at R205 433-30). Section 198B(3) of the Labour Relations Act provides *inter alia* that employment contracts for a period exceeding 3 months may only be concluded if the nature of the work for which the employee is employed is of a limited or definite duration or the employer can show that there is a justifiable reason for fixing the term of the contract. Section 198B(5) of the Labour Relations Act provides that “(e)mployment in terms of a fixed term contract concluded or renewed in contravention of subsection (3) is deemed to be of indefinite duration.”

The Public Service Act, 1994 provides that persons may be employed on a permanent basis or a temporary basis in the public service. The Public Service Regulations, 2001 further support the Public Service Act and contain specific regulation pertaining to employment additional to the establishment in the public service. Departments have, in terms of the provisions of the Public Service Act and its regulations, employed persons on fixed term contracts.

With the bringing into operation of the amendments to the Labour Relations Act, departments have expressed concern and requested guidance on the application of section 198B of the Labour Relations Act on employees employed in terms of the Public Service Act.

Pursuant to discussions between the Office of the Chief State Law Adviser, the Department of Labour and the DPSA, departments are advised that, in terms of section 198B(2)(c) of the Labour Relations Act, section 198B of the Labour Relations Act does not apply to employees employed in terms of the Public Service Act on a fixed term contract.

Departments are requested to contact the DPSA should they require any further assistance in this regard.



MR MASHWAHLE DIPHOFA
DIRECTOR-GENERAL

DATE: 06/07/2016