

DEPARTMENT OF LABOUR

NO. R. 1432

28 DECEMBER 2018

EMPLOYMENT SERVICES ACT NO 4, 2014

**DRAFT REGULATIONS ON THE REGISTRATION OF
PRIVATE EMPLOYMENT AGENCIES AND
TEMPORARY EMPLOYMENT SERVICES**

I, Mildred Oliphant, Minister of Labour, under section 52 of the Employment Services Act, No.4 of 2014, and after consultation with the Employment Services Board, hereby publish for public comment the regulations in the Schedule.

Interested parties are invited to submit written comments on the proposed regulations within 60 days after publication notice by:-

(a) Posting comments to: The Deputy Director General: PES
Mr S. Morotoba
Department of Labour
Private Bag X117
Pretoria
0001

(b) Faxing comments to: The Deputy Director General: PES
Mr S. Morotoba
Department of Labour
Private Bag X117
Pretoria
0001

(c) Delivering comments to: Room 310
Third Floor
Laboria House Building
215 Francis Baard Street
Pretoria

(d) E-mailing comments to: privateeaservices@labour.gov.za


M. OLIPHANT
MINISTER OF LABOUR

05/12/2018

SCHEDULE

1. Definitions.
2. Registration of Private Employment Agencies and Temporary Employment Services.
3. Cancellation of registration of a Private Employment Agency or a Temporary Employment Service.
4. Procedure for lodging and considering complaints.
5. Repeal of Regulations.

Definitions

1. In these regulations any word or expression to which a meaning is assigned in the Act has the same meaning and unless inconsistent with the context-

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“certificate of registration” means a certificate issued to a Private Employment Agency or a Temporary Employment Service which fully satisfies the prescribed registration criteria, and is valid for a period of **three (3) years** (unless revoked) from the date of issue.

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008);

“entity” means an organisation that is registered in terms of relevant legislation such as but not limited to Companies Act, Cooperatives Act etc.

“employee” bears the same meaning as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“employment services” includes the provision of the following services —

- (a) advising or counselling of workers on career choices either by the provision of information or other approaches;
- (b) assessment of work seekers for—
 - (i) entry or re-entry into the labour market; or
 - (ii) education and training;
- (c) referring work seekers—
 - (i) to employers to apply for vacancies; or
 - (ii) to training providers for education and training;
- (d) assisting employers by—
 - (i) providing recruitment and placement services;
 - (ii) advising employers on the availability of work seekers with skills that match their needs;
- (e) performing the functions of Temporary Employment Services; or
- (e) any other prescribed employment service;

“fees” means all charges that a Private Employment Agency or a Temporary Employment Service may charge a work seeker and is inclusive of registration fees, administration fees and fees for any other service offered by the agency to a work seeker;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“owner” bears the same meaning as **“proprietor”**;

“private employment agency” means any person who provides employment services for gain;

“proprietor” means the person by whom or on whose behalf the Private Employment Agency or Temporary Employment Service is being or is to be operated.

“registrar” means the official designated as a registrar in terms of section 13;

“Skills Development Act” means the Skills Development Act, 1998 (Act No. 97 of 1998)

“submit” means to serve by hand, registered post or telefax or to transmit by electronic mechanism as a result of which the recipient is capable of printing the communication;

“temporary certificate of registration” means a certificate of registration valid for a period of two (2) months (unless revoked) from the date of issue and issued to a private employment agency for whom additional information is required in order to make a decision upon the application.

“temporary employment service” means any person who, for reward, procures for or provides to a client other persons:

- (i) who perform work for the client; and
- (ii) who are remunerated by the temporary employment service.

“temporary service” means work for a client by an employee:

- (i) for a period not exceeding three months;
- (ii) as a substitute for an employee of the client who is temporarily absent; or
- (iii) in a category of work and for any period of time which is determined to be temporary services by a collective agreement concluded in a bargaining council, a sectoral determination or a notice published by the Minister, in accordance with the provisions of subsections (6) to (8) of the Labour Relations Act, 1995;

“this Act” means the Employment Services Act, No.4 of 2014 and its regulations;

“Unemployment Insurance Act” means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

“work opportunity” means a vacancy or opportunity for employment or work experience, self-employment or community service;

“work seeker” means any person who is unemployed and looking for work.

Registration of Private Employment Agencies and Temporary Employment Services

- (2) (1) These regulations apply to all Private Employment Agencies, Temporary Employment Services, categories of employees, and economic sectors in South Africa.
- (2) (a) Applicants for registration as a private employment agency or a temporary employment service shall apply to the Registrar in the form prescribed in **Annexure 1**.
- (b) A Private Employment Agency or a Temporary Employment Service shall only operate upon being issued with a certificate by the Registrar.
- (c) The Registrar shall issue the applicant for registration as a private employment agency or temporary employment service with a registration certificate within 60 days of receipt of the application provided that the necessary requirements for successful registration are met.
- (d) If the Registrar is not satisfied that the applicant meets the registration requirements of a private employment agency or temporary employment service, the Registrar:
 - (i) shall inform the applicant by issuing it with a letter containing reasons for its refusal of registration;
 - (ii) shall inform the applicant in the letter issued to it, that it has 30 days from the date of the letter to meet the requirements;
 - (iii) shall register the applicant if within the 30-day period, it meets the requirements.
- (3) If the applicant fails to meet the requirements within the 30-day notice period stipulated in clause (2)(c), the Registrar shall:
 - (a) refuse to register the applicant; and
 - (b) notify the applicant of its decision.
- (4) (a) Registration or renewal of registration of a Private Employment Agency or Temporary Employment Service is subject to the applicant paying a non-refundable application fee to the Department as indicated.
- (b) Late application for renewal of registration will be subject to the charge of a penalty fee.
- (5) (a) Any private employment agency registered in terms of section 24(1) of the Skills Development Act is deemed to be registered as a private employment agency in terms of section 13 of this Act.

2(5)(a) must apply for registration under section 13 of this Act:

- (i) within two years of this Act coming into effect or before the expiry date of its existing certificate, whichever comes first, if it provides temporary employment services; or
- (ii) within three years of this Act coming into effect or before the expiry date of its existing certificate, whichever comes first, if it **does not** provide temporary employment services.

(6) The application referred to in sub-regulation 2(2)(a) shall comply with the following prescribed registration criteria:

- (a) a verifiable physical business address where the applicant will operate from;
- (b) proof that the agency is registered as an applicant with the CIPC (company, cc, co-operative etc.) in terms of the Companies Act, 2008 (Act No. 71 of 2008) or any other relevant legislation;
- (c) proof of a tax clearance certificate;
- (d) proof that the entity is registered with a bargaining council where applicable;
- (e) proof of payment of application fee and/or late renewal fee, where applicable, as per sub-regulation 2(3)(a)-(b);
- (f) certified copies of identity documents of the owner, partners, or shareholders of the entity;

- (7) (a) The registration certificates issued in terms of section 13(5)(a) of the Act shall be in the form prescribed in **Annexure 2 (a) or 2 (b)**.
- (b) The registration certificate shall be valid for three years except in the event of cancellation
- (c) A temporary certificate of registration is valid for six months.
- (d) To ensure continuity of registration, holders of certificates of registration should renew their registration at least sixty (60) days before the expiry date of their certificates. The Registrar cannot guarantee a response before the certificate expiry date if applications for renewal are not submitted on time. Holders of temporary certificates of registration need **not** apply for re-registration, as their certificates shall be automatically reviewed by the Registrar. If a certificate of registration is issued to a holder of a temporary certificate of registration, the expiry date thereof shall be calculated from the date of issue of a temporary

- (e) To ensure that members of the public are able to access and identify registered private and temporary employment services, the Department shall upload its information onto its electronic database.
- (8) A Private Employment Agency or Temporary Employment Service must display its certificate of registration in a visible place at the premises where it operates and/or on the home page of its web site address.
- (9) A registered Private Employment Agency or Temporary Employment Service may **not**-
 - (a) operate except in accordance with the provisions of this Act and the terms of its registration.
 - (b) allow any other person other than the applicant to conduct its business on its behalf without the prior written approval of the Registrar;
 - (c) register for employment any non-citizen, unless the non-citizen has been issued with a Republic of South Africa identity document for permanent residence or granted Asylum by the Department of Home Affairs;
 - (d) directly or indirectly, divulge or provide to any person any information whatsoever regarding any client, which was acquired or requested from the client in the course of business, unless with the client's written consent and where such information is required in terms of any statute.
 - (e) directly or indirectly charge a fee to any work-seeker for providing employment services to that work seeker other than the fees specified in the Government Gazette for specified categories of employees or for the provision of specialized services;
 - (f) deduct any amount from the remuneration of an employee or require or permit an employee to pay any amount in respect of the placing of that employee with an employer;
 - (g) provide false employment services information;
 - (h) provide any employment service that it is not authorized to perform in terms of its certificate of registration;
 - (i) counterfeit, alter or transfer its registration certificate;
 - (j) retain the original identity documents or original qualification certificates of work seekers;
 - (k) fail to comply with any directive issued by the Registrar or any officer duly authorized in writing by the Director General within such time as stated therein.

- (l) use the name of another person, registered entity, registered trademark or logo, as if it belongs to his/her entity.
 - (m) induce work seekers or potential employees by paying them either money or any other incentives for them to take up a work opportunity.
- (10) (a) If a private employment agency or a temporary employment service relocates with a consequent change to its physical address, or changes form of ownership (entity type) after receiving a certificate of registration from the Registrar in terms of section 13(5)(a) of the Act, such agency must reapply to the Registrar as prescribed in sub-regulations 2(2) and 2(3) above.
- (b) If a Private Employment Agency or a Temporary Employment Services changes its web site address, or telephonic contact details after receiving a certificate of registration from the Registrar in terms of section 13(5)(a) of the Act, such an agency must notify the Registrar by completing a "Change in Particulars Form (**Annexure 3**) within thirty (30) days of the said change.
- (11) Private Employment Agencies and Temporary Employment Services must keep, for a minimum period of three years, an electronic or manual register in the form prescribed in **Annexure 4** reflecting-
- (a) the work seekers registered with them;
 - (b) work seekers that have been placed in employment, including the nature of employment; and
 - (c) particulars of the employer where the work seeker was placed.
- (12) A private employment agency or a temporary employment service must by not later than the 5th of each month following the Department's performance quarters (i.e. by 5 July, 5 October, 5 January and 5 April of each year) submit a quarterly performance report to the Registrar in the form prescribed in **Annexure 5** reflecting-
- (a) the work seekers registered with them (classified according to race and gender);
 - (b) work seekers that have been placed in employment (including the nature of employment); and
 - (c) particulars of the employer where the work seeker was placed.

Cancellation of registration of a Private Employment Agency or a Temporary Employment Service

3. (1) The Registrar may cancel the registration of a Private Employment Agency or a Temporary Employment Service if-
- (a) it fails to comply with any of the various pieces of labour legislation as stipulated in sub-regulation 2(5)(h) of these regulations after registration;

- (b) the conditions of registration stipulated in sub-regulation 2(8)(a)-(m) of these regulations are not complied with;
- (c) it fails to keep the records as stipulated in sub-regulation 2(10)(a)-(c) of these regulations;
- (d) it fails to display its certificate of registration in a conspicuous place at the premises where it operates and/or on the home page of its web site address;
- (e) it changes form of ownership or physical address after receiving a certificate of registration from the registrar in terms of section 13(5) (a) of the Act, and fail to re-apply to the Registrar for re-registration in terms of sub-regulation 2(9)(a);
- (f) it changes its web site address, or telephonic contact details after receiving a certificate of registration and fail to notify the Registrar accordingly in terms of sub-regulation 2(9)(b);
- (g) it fails to provide its quarterly performance reports to the registrar in terms of sub-regulation 2(11)(a)(b)(c) of these regulations;
- (h) it is not carrying on, or has ceased to operate its business;
- (i) the entity is dissolved, deregistered, wound up or liquidated in terms of the relevant legislation;
- (j) requested in writing (and subjected to investigation and representation where necessary) by-
 - (i) the owner or manager of an entity;
 - (ii) any interested person;
 - (iii) judicial manager of the company; or
 - (iv) Master of the High Court
- (k) Notwithstanding all of the above general conditions for de-registration, a Temporary Employment Service may also be de-registered for non-compliance with any of the provisions in section 198 of the Labour Relations Act.

- (2) A Private Employment Agency or a Temporary Employment Service that has applied for a review to the Labour Court against the Registrar's decision to refuse to renew or cancel its registration shall be allowed to operate until the Court makes a final determination.

Procedure for lodging and considering complaints

- 4. (1) Any person may lodge a written complaint to the Registrar concerning the operation of Private Employment Agencies or Temporary Employment Services at the following address:

Postal Address: The Registrar: Private Employment Agencies
 Department of Labour
 Private Bag X117
 Pretoria
 0001

Physical Address: The Registrar: Private Employment Agencies
 Department of Labour

215 Francis Baard Street
Pretoria

Fax Number: (012) 309 - 4751

E-mail Address: pes@labour.gov.za

- (2) The Registrar must within 30 days of receipt of a written complaint referred to in sub-regulation 5(1), provide a written response to such complaint.

Repeal of Regulations

5. The Regulations referred to in **Annexure 6** are hereby repealed to the extent specified therein.

ANNEXURE 1

EMPLOYMENT SERVICES ACT, 2014

[REGULATION 2(2)]

APPLICATION FORM FOR THE REGISTRATION OF A PRIVATE
EMPLOYMENT AGENCY OR A TEMPORARY EMPLOYMENT SERVICE

INSTRUCTIONS:

- Complete this form in full, legibly and in black ink.
- Applications without prescribed supporting documents attached will not be processed.
- Find the registration/renewal of registration fee payment procedure at the end of this application form.
- Submit the completed application form to the nearest Labour Centre of the Department of Labour (see contact details in Annexure 6).
- For more information or assistance, please see our contact details in Annexure 6.

The Registrar: Private Employment Agencies/Temporary Employment Services
Department of Labour

Address to the nearest Labour Centre of the Department of Labour as per contact details in Annexure 6.

Dear Sir/Madam

In terms of section 13(4) of the Employment Services Act, 2014, I hereby apply for the registration of a private employment agency/ temporary employment service.

TYPE OF APPLICATION	TICK APPROPRIATELY WITH AN "X"
New registration	
Renewal of registration	

A:	Particulars of applicant
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Title: Mr Ms Mrs Dr Prof

Adv Other Specify:

Full name of applicant:

Identity number:

Designation:

Residential (Physical) address of applicant:

.....

Postal address of applicant:

.....Postal Code:

Telephone number:

E-mail address:

B: Particulars of Private Employment Agency or Temporary Employment Service

Registered name:

Trading name:

Physical address:

.....

Postal address:

.....**Postal Code:**

Telephone number:

Web Site address:

E-mail address:

Location of private employment agency/ temporary employment service (tick the appropriate box with an "X"):

South Africa

Other

Specify.....

Type(s) of employment services or placements to be provided (tick the appropriate box with an "X"):

Temporary Employment Services	
Private Employment Services	
Both PEA/TES	

Type of entity (tick the appropriate box with an "X"):

Proprietary Limited (Pty) Ltd

.....

Close Corporation

.....

Sole Proprietor

.....

Trust

.....

NGO

.....

CBO

.....

Cooperative

Other

Specify.....

C: The following documents must be attached to the application form

1. Institutional Registration Certificate (Company, CC, Co-op etc.) (**Compulsory**);
2. A Tax Clearance Certificate from SARS (**Compulsory**);
3. Proof of payment of registration/re-registration fee (**Compulsory**);
4. Employer Registration Certificate from the Bargaining Council (if applicable);
5. Letter of good standing (**Compulsory**);
6. Police Clearance Certificate (**Compulsory**);

Signature of applicant

Date

For Official Use:

Application: Approved / Rejected

Comments.....

Signature:

Date:

APPLICATION FEE PAYMENT PROCEDURE

For your convenience payment can be made to the bank details provided below via the following options:

- By Debit or Credit card;
- By Cash deposit, Electronic Funds Transfer, or Internet Banking.

Account Name		Account Number	
Bank		Bank Code	
Branch		Account Type	

- For a new application, please use your agency's name as the reference when making payment.
- For renewal of registration, agencies should use their registration numbers as the reference.
- Please note that the Department of Labour **does not** accept cash or cheque payments over the counter and via post/ courier.

Note:

- *In terms of Sub-section 50(1)(d) of the Employment Services Act, 2012, it is an offence to operate a private employment agency without being duly registered or in violation of its registration.*
- *In terms of Section 50(3) of the Employment Services Act, 2012, a court that convicts a person of an offence contemplated in subsection 50(1)(d) may impose a term of imprisonment not exceeding 24 months or such fine as is permitted by the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or both such fine and imprisonment.*
- *In terms of Section 198 (4F) of the Labour Relations Act 1995, as amended, no person must perform the functions of a temporary employment service unless it is registered in terms of any applicable legislation, and the fact that a temporary employment service is not registered will not constitute a defence to any claim instituted.*

ANNEXURE 2(a)
EMPLOYMENT SERVICES ACT, 2014
[REGULATION 2(7)]
CERTIFICATE OF REGISTRATION

This is to certify that:

Trading as:

Physical address:

Postal address:

.....Postal Code:

Web Site address:

E-mail address:

Telephone number:

has in terms of section 13(5)(a) of the Employment Services Act, 2014, been duly registered and certified to provide the following type(s) of employment services:

Type(s) of employment services to be provided (tick the appropriate box with an "X"):

Temporary Employment Services	
Private Employment Services	
Both PEA/TES	

This certificate is **valid for a period of three years** from the date of issue, and is issued subject to the conditions stipulated in sub-regulation 2(9)(a)-(j). The Registrar may cancel the registration of any agency subject to sub-regulation 3(1)(a)-(j).

.....
Registrar: Private Employment Agencies

Date:

ANNEXURE 2(b)

EMPLOYMENT SERVICES ACT, 2014

[REGULATION 2(7)]

TEMPORARY CERTIFICATE OF REGISTRATION

This is to certify that:

Trading as:

Physical address:

Postal address:

.....Postal Code: ...:

Web Site address:

E-mail address:

Telephone number:

has in terms of section 13(5)(a) of the Employment Services Act, 2014, been duly registered and certified to provide the following type(s) of employment services:

Type(s) of employment services to be provided (tick the appropriate box with an "X"):

Temporary Employment Service	
Private Employment Agency	
Both PEA/TES	

This is a temporary certificate of registration **valid for a period of six months** from the date of issue, and is issued subject to the conditions stipulated in sub-regulation 2(9)(a)-(j). The registrar may cancel this registration subject to sub-regulation 3(1)(a)-(j). Please note that the following documents are outstanding and must be submitted **urgently**:

.....

.....
Registrar: Private Employment Agencies

ANNEXURE 4

EMPLOYMENT SERVICES ACT, 2014

[REGULATION 2(11)]

PRIVATE EMPLOYMENT AGENCY'S/ TEMPORARY EMPLOYMENT
SERVICES RECORDING AND REPORTING TEMPLATE

Name of private employment agency/ Temporary employment service:

ATTENTION: The Deputy Director: Labour Centre Operations
Department of Labour

Address to the nearest Labour Centre of the Department of Labour as per contact details in
Annexure 5.

Reporting year:

Reporting period:

Names of work seekers registered	Gender	Disability Yes/No	Race	ID & Age	Placed: Yes/ No	Nature of placement (permanent or temporary)	Particulars of employer
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							

SUMMARY:

TOTAL NUMBER OF WORK SEEKERS REGISTERED	
TOTAL NUMBER OF WORK SEEKERS PLACED	
TOTAL NUMBER OF WORK SEEKERS PLACED IN PERMANENT EMPLOYMENT	
TOTAL NUMBER OF WORK SEEKERS PLACED IN TEMPORARY EMPLOYMENT	

Name and Surname:

Designation:

Signature:

Date:

ANNEXURE 6

EMPLOYMENT SERVICES ACT, 2014

REGULATIONS REPEALED

Government Notice No.	Date	Title	Extent of Repeal
R608	13 June 2000	Skills Development Act, 1998 (Act No.97 of 1998) Regulations with regard to private employment agencies	As a whole