

Request Details

PR No: 10251353

Type: ZDER - Deviation RQ

Cost Centre: 1688 - Grp HR Group Employee Relations (GROUP EMPLOYEE RELATIONS: GROUP

Vendor: 129221 - CLIFFE DEKKER HOFFMEYER INCORPORATE

Description: Urgent Legal Opinion: Min of Employment

Practitioner: 930 - LORNA MARTINS

Amount: 400,000.00 ZAR

BACKGROUND

On or about 23 January 2026 the Minister of Employment and Labour

("MEL") published the notice, in terms of section 83(2)(a) and (b) of

the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), of

her intention to deem all performers in the performance of advertising,

artistic and cultural activities as employees for specifically the

following provisions:-

Section 7: Regulation of working time;

Sections 9 to 19: Ordinary hours of work, overtime, rest periods,

meal intervals, and work on Sundays and public holidays;

Sections 20 to 25: Leave entitlements, including annual, sick, and

maternity leave, and application to occupational accidents or

diseases;

Section 29: Written particulars of employment;

Sections 31 to 35: Record-keeping, payment of remuneration, payslips,

and deductions;

* Sections 37 to 39: Notice and termination of employment; and

Section 41: Severance pay.

The notice by Minister of Employment and Labour presents a huge

financial and commercial risks to the SABC which uses more than x2 500

such performers (who are colloquially called freelancers in the SABC#s

parlance) and will create legal uncertainty and will go against and

dislodge the nucleus of the trite and settled law on the distinction

between an employee and a freelancer should the Minister of Employment

and Labour proceed to gazette that such performers are deemed to be

employees.

The SABC as an interested person is required to submit written representations regarding this proposal within 30 days of publication of the notice i.e. 23 February 2026.

The SABC has conducted an internal investigation of the impact of the intention of MEL and after a meeting was held between the Group Executive: HR and the Group Executive: LGR it was resolved that the internal opinion be strengthened by an external urgent legal opinion and a submission from Cliff Dekker Hofmeyer

REASON

ER have a need for urgent legal opinion.

On or about 23 January 2026 the Minister of Employment and Labour ("Minister") published the notice, in terms of section 83(2)(a) and (b) of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), of her intention to deem all performers in the performance of advertising, artistic and cultural activities as employees for specifically the following provisions:-

- # Section 7: Regulation of working time;
- # Sections 9 to 19: Ordinary hours of work, overtime, rest periods, meal intervals, and work on Sundays and public holidays;
- # Sections 20 to 25: Leave entitlements, including annual, sick, and maternity leave, and application to occupational accidents or diseases;
- # Section 29: Written particulars of employment;
- # Sections 31 to 35: Record-keeping, payment of remuneration, payslips, and deductions;
- # Sections 37 to 39: Notice and termination of employment; and
- # Section 41: Severance pay.

The notice by Minister presents a huge financial and commercial risks to the SABC which uses more than x2 500 such performers (who are colloquially called freelancers in the SABC's parlance) and will create

legal uncertainty and will go against and dislodge the nucleus of the trite and settled law on the distinction between an employee and a freelancer should the Minister proceed to gazette that such performers are deemed to be employees.

The SABC as an interested person is required to submit written representations regarding this proposal within 30 days of publication of the notice i.e. 23 February 2026.

The SABC has conducted an internal investigation of the impact of the intention of Minister and after a meeting was held between the Group Executive: HR and the Group Executive: LGR it was resolved that the internal opinion be strengthened by an external urgent legal opinion and a submission from Cliff Deker Hofmeyer.

ER have identified Cliffe Deker Hofmyer attorneys as the law firm that will expeditiously provide an urgent legal opinion, with the advantage that we already have Mr Thato Maruapula (who has been seconded to the ER Department from Cliffe Deker Hofmeyer) who has the background of the notice by the Minister, has dealt with the internal investigation and is familiar with the facts and circumstances surrounding the SABC's independent contractor/freelance dispensation and will result in a swift turnaround time in the provision of the legal opinion and a submission as opposed to appointing a legal firm that we still need to be familiarized with the SABC's independent contractor/freelance dispensation and its dynamics which is likely to be time consuming and may result in delays.

SCOPE OF WORK

Urgent Legal Opinion and a Submission

COST EFFECTIVENESS

ER have identified Cliffe Deker Hofmyer attorneys as the law firm that will expeditiously provide an urgent legal opinion, with the advantage that we already have Mr Thato Maruapula (who has been seconded to the ER Department from Cliffe Deker Hofmeyer) who has the background of the

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LEGAL IMPLICATIONS

The notice by Minister presents a huge financial and commercial risks to the SABC which uses more than x2 500 such performers (who are colloquially called freelancers in the SABC's parlance) and will create legal uncertainty and will go against and dislodge the nucleus of the trite and settled law on the distinction between an employee and a freelancer should the Minister proceed to gazette that such performers are deemed to be employees.

RISK & MITIGATIONS

The notice by Minister presents a huge financial and commercial risks to the SABC which uses more than x2 500 such performers (who are colloquially called freelancers in the SABC's parlance) and will create legal uncertainty and will go against and dislodge the nucleus of the trite and settled law on the distinction between an employee and a freelancer should the Minister proceed to gazette that such performers are deemed to be employees.

RECOMMENDATION

Based on the motivation provided, the business unit requests that:

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the Head of SCM Governance approves the deviation to appoint Cliffe Dekker Hofmyer attorneys for urgent legal opinion, for a period an indefinite period commencing from 17 February 2026, at an amount of R 400 000.00 excluding VAT.

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The head of SCM Governance signs the letter of award for Cliffe Dekker Hofmyer attorneys

NATURE OF DEVIATION

Urgent

VENDOR SELECTION

ER have identified Cliffe Deker Hofmyer attorneys as the law firm that will expeditiously provide an urgent legal opinion, with the advantage that we already have Mr Thato Maruapula (who has been seconded to the ER Department from Cliffe Deker Hofmeyer) who has the background of the notice by the Minister, has dealt with the internal investigation and is familiar with the facts and circumstances surrounding the SABC#s independent contractor/freelance dispensation and will result in a swift turnaround time in the provision of the legal opinion and a submission as opposed to appointing a legal firm that we still need to be familiarized with the SABC#sindependent contractor/freelance dispensation and its dynamics which is likely to be time consuming and may result in delays.

PERIOD

an indefinite period commencing from 17 February 2026.

PURPOSE

The purpose of this submission is to request to deviate from normal procurement process and make direct appointment Cliffe Deker Hofmeyer attorneys.

APPROVERS AND REVIEWERS

Date Actioned	User Name	Actioned By Full Name
17.02.2026	XAMASE	SELLO EMANUEL XAMA
17.02.2026	MASUKUR01	RACHEL MASUKU
17.02.2026	MTHEMBUMS	MICHAEL SENZOSENKOSI MTHEMBU