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SOLLY MOENG & MICHAEL BAGRAIM: What state capture could cost labour law amendments

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The devastating effects of state capture on our country's ability to collect tax revenue are now common knowledge, and it is widely understood that the impact will be felt for a lot longer than many dare to acknowledge.

There was a shortfall of R50.8bn in the 2017/18 financial year; the shortfall may be even greater in the next fiscal year. We should be asking ourselves what it all means for government's ability to fund its existing programmes and, importantly, to implement the latest amendments to the Labour Law legislation – particularly the Labour Relations Act 66 of 1995 (LRA); the Basic Conditions of Employment Act 75 of 1997 (BCEA); and, perhaps crucially for the labour unions and interested workers, the new National Minimum Wage Act (NMWA).

As the saying goes, 'Politicians make the promises and government has to deliver'. In the current case, the Commission for Conciliation, Mediation and Arbitration (CCMA) is the body whose mandate it is to implement, monitor and adjudicate the smooth integration of the amendments after Parliament has approved them and the President has signed them into law.

To do this, the CCMA needs trained and able officials; and to make sure that such officials are given the necessary training ahead of the implementation, scheduled for early 2019, the CCMA needs funds; funds it currently lacks.

Financial constraints
Mindful of the financial constraints facing him, CCMA Director Cameron Sello Morajane has already written to Labour Minister Mildred Oliphant to request an urgent intervention for what he described as "prompt resolution of the CCMA's request for additional funding for the 2018/19 midterm adjustment budget on the identified projects whose need remains critical in the efficient and effective implementation of the organisation's legislative mandate, in particular, the Labour Law Amendments (LLLA) approved by the National Council of Provinces on the 21st August 2018."
It's important to note that while government promised a R20 per hour minimum wage, domestic workers earn an average of R14/15 per hour, and people employed in the Expanded Public Works Program (EPWP) earn just above R11 per hour.

With weak economic growth and a still dysfunctional SARS – although with major repair works already said to be underway following the suspension and recent sacking of Tom Moyane – as well as steep revenue shortfalls of recent years, it is hard to say where the money is going to come from.

At this rate, something will have to give. Cuts will have to be carried out somewhere in order for the those who remain employed to benefit from the new minimum wage.

But it's also unrealistic to expect that the required training for the implementation, monitoring and adjudication of any disputes arising from the amended Acts to be completed in time. The course of training will require almost a year to complete.

This leaves government with two options; either postpone the implementation of the minimum wage bill for another year, to the beginning of 2020 – to allow time for CCMA officials to be trained – or go ahead with the planned early 2019 implementation and hope for the best.

Impending embarrassment?

This being South Africa, the latter option is rather risqué and might come back to financially embarrass President Ramaphosa's new dawn administration if anything were to go wrong. As things stand, some 750 000 employees risk losing their jobs when the minimum wage bill gets implemented, whether it happens in 2019 or in 2020.

It is one thing for government to promise and fix a minimum wage – however humanely justified. It's another to get employers to afford it in the current economic climate.

To complicate matters further, several welfare institutions have already made representations to Minister Oliphant stating that their government grant does not allow them to pay above R11 per hour because that's what government pays.

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Her answer was that they could apply for an exemption. But considering existing regulations for exemptions, it all means that the Minister is only allowing a 10% discount if such an exemption is granted.

This would mean that instead of paying the approved R20 per hour, said institutions will only be in a position to pay R18 per hour. Needless to say, this also means that the welfare institutions will have to close many of their workshops for financial reasons.

Again, something will have to give. Fat added in one area will have to be taken from elsewhere.

Elections ahead

All of this, ahead of crucial general elections and in the face of labour unions and government employees on edge, wondering whether the touted reduction of the country's bloated civil service will indeed happen or not, might spell trouble for government.

From where we stand, the road ahead seems rather rocky indeed. Someone is going to have to rein in trouble and hope that it stays in until after the elections, when the votes would have been cast. It's going to be fun watching government kick this can further down the road, to only have to deal with it after the elections.

Ongoing commissions of inquiry and various hearings on state capture and other forms of corruption continue to shine the light into the dark crevices of what happened over the past ten years. But it's in the interests of our country to engage in conversations that go beyond replacing one set of people with another, rather proposing reliable checks and balances in place to make sure none of it ever happens again.

The journey to recovery will be long.

** Views expressed are the authors' own.*