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THE PRESIDENCY

No. 768 02 August 2017

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 5 of 2017: Protected Disclosures Amendment Act, 2017

DIE PRESIDENSIE

No. 768 02 Augustus 2017

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 5 van 2017: Wysigingswet op die Beskermde Bekendmakings, 2017

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 31 July 2017)

ACT

To amend the Protected Disclosures Act, 2000, so as to extend the application of the Act to any person who works or worked for the State or another person or who in any manner assists or assisted in carrying on or conducting the business of an employer or client as an independent contractor, consultant, agent or person rendering services to a client while being employed by a temporary employment service; to regulate joint liability of employers and their clients; to introduce a duty to inform employees or workers who have disclosed information regarding unlawful or irregular conduct; to provide for immunity against civil and criminal liability flowing from a disclosure of information which shows or tends to show that a criminal offence has been committed, is being committed or is reasonably likely to be committed; to create an offence for the disclosure of false information; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 26 of 2000

1. Section 1 of the Protected Disclosures Act, 2000 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion of the following definition before the definition of ''*disclosure*'':

'' ***'business'*** includes the whole or part of any business, trade, undertaking or service;'';

(b) by the substitution for the definition of ''*disclosure*'' of the following definition:

'' ***'disclosure'*** means any disclosure of information regarding any conduct of an *employer*, or of an *employee* or of a *worker* of that *employer*, made by any *employee* or *worker* who has reason to believe that the information concerned shows or tends to show one or more of the following:

(a) That a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk in vierkantige hakies, dui skrappings uit bestaande verordeninge aan.

__________ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 31 Julie 2017)

WET

Tot wysiging van die Wet op Beskermde Bekendmakings, 2000, ten einde die toepassing van die Wet uit te brei na enige persoon wat vir die Staat of 'n ander persoon werk of gewerk het of wat op enige wyse in die uitvoer of bedryf van 'n besigheid van 'n werkgewer of kliënt behulpsaam is as 'n onafhanklike kontrakteur, konsultant, agent of persoon wat dienste aan 'n kliënt verskaf terwyl hy of sy deur 'n tydelike indiensnemingsdiens in diens geneem is; ten einde die gesamentlike aanspreeklikheid van werkgewers en hul kliënte te reguleer; ten einde 'n verpligting in te stel om werknemers of werkers wat inligting met betrekking tot onwettige of onreëlmatige gedrag bekend gemaak het, in te lig; ten einde voorsiening te maak vir vrywaring teen siviele of strafregtelike aanspreeklikheid wat uit die bekendmaking van inligting wat daarop dui of neig om daarop te dui dat 'n misdryf gepleeg is, gepleeg word of redelikerwys gepleeg gaan word; ten einde 'n misdryf vir die bekendmaking van vals inligting te skep; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

BEPAAL die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 26 van 2000

1. Artikel 1 van die Wet op Beskermde Bekendmakings, 2000 (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die vervanging van die woordomskrywing van *"bekendmaking"* deur die volgende woordomskrywing:

" **'*bekendmaking*'** enige bekendmaking van inligting rakende enige optrede van 'n *werkgewer*, of van 'n *werknemer* of van 'n *werker* van daardie *werkgewer*, wat gedoen word deur 'n *werknemer* of *werker* wat rede het om te glo dat die betrokke inligting een of meer van die volgende aantoon:

(a) Dat 'n misdaad gepleeg is, gepleeg word of waarskynlik gepleeg gaan word;

(b) dat 'n persoon versuim het, besig is om te versuim of waarskynlik gaan versuim om aan 'n regsplig, waaraan daardie persoon onderhewig is, te voldoen;

(c) dat 'n onreg in die regspleging plaasgevind het, plaasvind of waarskynlik gaan plaasvind;

(d) that the health or safety of an individual has been, is being or is likely to be endangered;

(e) that the environment has been, is being or is likely to be damaged;

(f) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or

(g) that any matter referred to in paragraphs *(a)* to *(f)* has been, is being or is likely to be deliberately concealed;'';

(c) by the substitution for the definition of ''*employee*'' of the following definition:

'' ***'employee'*** means—

(a) any person, excluding an independent contractor, who works or worked for another person or for the State, and who receives or received, or is entitled to receive, any remuneration; and

(b) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an *employer*;'';

(d) by the substitution for the definition of ''*occupational detriment*'' of the following definition:

'' ***'occupational detriment'***, in relation to **[the working environment of]** an *employee* or a *worker*, means—

(a) being subjected to any disciplinary action;

(b) being dismissed, suspended, demoted, harassed or intimidated;

(c) being transferred against his or her will;

(d) being refused transfer or promotion;

(e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;

(f) being refused a reference, or being provided with an adverse reference, from his or her *employer*;

(g) being denied appointment to any employment, profession or office;

(h) being subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the *disclosure* of—

(i) a criminal offence; or

(ii) information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;

[*(h)*] *(i)* being threatened with any of the actions referred to in paragraphs *(a)* to **[*(g)*]** *(h)* above; or

[*(i)*] *(j)* being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, **[and]** work security and the retention or acquisition of contracts to perform work or render services;'';

(e) by the substitution in the definition of ''*protected disclosure*'' for the words following paragraph *(e)* of the following words:

''but does not, subject to section 9A, include a *disclosure*—

(i) in respect of which the *employee* or *worker* concerned commits **[an]** a criminal offence by making that *disclosure*; or

(ii) made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5;'';

(f) by the insertion of the following definition after the definition of ''*protected disclosure*'':

'' ***'temporary employment service'*** means any person who, for reward, procures for or provides to a client other persons who—

(a) render services to, or perform work for, the client; and

(b) are remunerated by the *temporary employment service*;''; and

(d) dat die gesondheid of veiligheid van 'n individu in gevaar gestel is, in gevaar gestel word of waarskynlik in gevaar gestel gaan word;
(e) dat die omgewing beskadig is, beskadig word of waarskynlik beskadig gaan word;
(f) onbillike diskriminasie soos beoog in Hoofstuk II van die 'Employment Equity Act, 1998 (Act No. 55 of 1998)', of die 'Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)'; of
(g) dat enige aangeleentheid bedoel in paragrawe *(a)* tot *(f)* opsetlik verberg is, verberg word of waarskynlik verberg gaan word;'';

(b) deur die vervanging van die woordomskrywing van ''*beroepsnadeel*'', deur die volgende woordomskrywing:
'' **'*beroepsnadeel*'**, in verhouding tot die **[beroepsomgewing van die]** *werknemer* of *werker*—
(a) om aan dissiplinêre stappe onderwerp te word;
(b) om ontslaan, geskors, gedegradeer, geteister of geïntimideer te word;
(c) om teen sy of haar wil verplaas te word;
(d) om verplasing of bevordering geweier te word;
(e) om aan 'n beding of voorwaarde van diens of aftrede onderwerp te word wat tot sy of haar nadeel verander, of onveranderd gehou, word;
(f) om 'n getuigskrif geweier te word, of van 'n nadelige getuigskrif voorsien te word, deur sy of haar *werkgewer*;
(g) om aanstelling in 'n werk, professie of amp geweier te word;
(h) om aan enige siviele eis onderwerp te word vir die beweerde verbreking van 'n vertroulikheidsplig of vertroulikheidsooreenkoms na aanleiding van die *bekendmaking* van—
(i) 'n misdaad; of
(ii) inligting wat aantoon of neig om aan te toon dat 'n wesenlike oortreding van, of versuim om te voldoen aan, die reg voorgekom het of waarskynlik gaan voorkom;
[*(h)*] *(i)* om met enige optrede bedoel in paragrawe *(a)* tot **[*(g)*]** *(h)* hierbo gedreig te word; of
[*(i)*] *(j)* om andersins nadelig geraak te word met betrekking tot sy of haar diens, professie of amp, met inbegrip van werkgeleenthede, **[en]** werksekerheid en die behoud of verkryging van kontrakte om werk te verrig of dienste te lewer;'';

(c) deur die invoeging van die volgende woordomskrywing na die woordomskrywing van *''bekendmaking''*:
'' **'*besigheid*'** met inbegrip van die geheel of 'n gedeelte van enige besigheid, professie, onderneming of diens;'';

(d) deur die vervanging in die woordomskrywing ''*beskermde bekendmaking*'' van die woorde wat op paragraaf *(e)* volg deur die volgende woorde:
''gedoen word, maar, onderhewig aan artikel 9A, sluit nie 'n *bekendmaking* in nie—
(i) ten opsigte waarvan die *werknemer* of *werker* 'n misdryf pleeg by die doen daarvan; of
(ii) wat gedoen word deur 'n regsadviseur aan wie die betrokke inligting bekend gemaak is in die loop van die inwin van regsadvies ooreenkomstig artikel 5;'';

(e) deur die invoeging van die volgende woordomskrywing na die woordomskrywing van ''*staatsorgaan*'':
'' **'*tydelike-indiensnemingsdiens*'** enige persoon wat, teen beloning, ander persone werf vir of verskaf aan 'n kliënt, wat—
(a) dienste lewer aan, of werk verrig vir, die kliënt; en
(b) besoldig word deur die *tydelike-indiensnemingsdiens*;'';

(f) deur die invoeging van die volgende woordomskrywing na die woordomskrywing van ''*voorgeskryf*'':
'' **'*werker*'**—
(a) enige persoon wat vir die Staat of 'n ander persoon werk of gewerk het; of

(g) by the insertion of the following definition after the definition of ''*this Act*'':

'' ***'worker'*** means—

(a) any person who works or worked for another person or for the State; or

(b) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an *employer* or client, as an independent contractor, consultant, agent; or

(c) any person who renders services to a client while being employed by *a temporary employment service*.''.

Amendment of section 2 of Act 26 of 2000

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) The objects of *this Act* are—

(a) to protect an *employee* or *worker*, whether in the private or the public sector, from being subjected to an *occupational detriment* on account of having made a *protected disclosure*;

(b) to provide for certain remedies in connection with any *occupational detriment* suffered on account of having made a *protected disclosure*; and

(c) to provide for procedures in terms of which an *employee* or *worker* can, in a responsible manner, disclose information regarding *improprieties* by his or her *employer*.''; and

(b) by the substitution for subsection (3) of the following subsection:

''(3) Any provision in a contract of employment or other agreement between an *employer* and an *employee* or *worker* is void in so far as it—

(a) purports to exclude any provision of *this Act*, including an agreement to refrain from instituting or continuing any proceedings under *this Act* or any proceedings for breach of contract; or

(b) (i) purports to preclude the *employee* or *worker*; or

(ii) has the effect of discouraging the *employee* or *worker*,

from making a *protected disclosure*.''.

Substitution of section 3 of Act 26 of 2000

3. The following section is hereby substituted for section 3 of the principal Act:

''**Employee or worker making protected disclosure not to be subjected to occupational detriment**

3. No *employee* or *worker* may be subjected to any *occupational detriment* by his or her *employer* on account, or partly on account, of having made a *protected disclosure*.''.

Insertion of sections 3A and 3B in Act 26 of 2000

4. The following sections are hereby inserted after section 3 of the principal Act:

''**Joint liability**

3A. Where an *employer*, under the express or implied authority or with the knowledge of a client, subjects an *employee* or a *worker* to an *occupational detriment*, both the *employer* and the client are jointly and severally liable.

(b) enige ander persoon wat op enige wyse hulp verleen of hulp verleen het om die besigheid van 'n *werkgewer* of kliënt voort te sit of te bedryf of bedryf het,

as 'n onafhanklike kontrakteur, konsultant, agent; of

(c) enige persoon wat dienste aan 'n kliënt verskaf terwyl hy of sy deur 'n *tydelike-indiensnemingsdiens* in diens geneem is;''; en

(g) deur die vervanging van die woordomskrywing van ''*werknemer*'' deur die volgende woordomskrywing:

'' **'*werknemer*'—**

(a) 'n persoon, uitgesonderd 'n onafhanklike kontrakteur, wat vir iemand anders of vir die Staat werk of gewerk het en wat besoldiging ontvang of ontvang het of daarop geregtig is om besoldiging te ontvang; en

(b) enige ander persoon wat op enige wyse help of gehelp het om die besigheid van 'n *werkgewer* voort te sit of te bedryf of bedryf het.''.

Wysiging van artikel 2 van Wet 26 van 2000

2. Artikel 2 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

''(1) Die oogmerke van *hierdie Wet* is—

(a) om 'n *werknemer* of *werker*, hetsy in die privaat of openbare sektor, te beskerm teen onderwerping aan 'n *beroepsnadeel* omrede hy of sy 'n *beskermde bekendmaking* gedoen het;

(b) om voorsiening te maak vir sekere remedies in verband **[niet]** met 'n *beroepsnadeel* wat gely is as gevolg van 'n *beskermde bekendmaking* wat gedoen is; en

(c) om voorsiening te maak vir prosedures ingevolge waarvan 'n *werknemer* of *werker*, op 'n verantwoordelike wyse, inligting aangaande *onbehoorlikhede* deur sy of haar *werkgewer* bekend kan maak.''; en

(b) deur die vervanging van subartikel (3) deur die volgende subartikel:

''(3) 'n Bepaling in 'n werkskontrak of ander ooreenkoms tussen 'n *werkgewer* en 'n *werknemer* of 'n *werker* is nietig vir soverre dit—

(a) die strekking het om 'n bepaling van *hierdie Wet*, met inbegrip van 'n ooreenkoms om regstappe kragtens *hierdie Wet* of regstappe vir kontrakbreuk in te stel of voort te sit, uit te sluit; of

(b) (i) die strekking het om die *werknemer* of *werker* daarvan te weerhou; of

(ii) die uitwerking het om die *werknemer* of *werker* te ontmoedig,

om 'n *beskermde bekendmaking* te doen.''.

Vervanging van artikel 3 van Wet 26 van 2000

3. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Werknemer of werker wat beskermde bekendmaking doen, word nie aan beroepsnadeel onderwerp nie**

3. Geen *werknemer* of *werker* mag deur sy of haar *werkgewer* aan 'n *beroepsnadeel* onderwerp word op grond daarvan, of gedeeltelik op grond daarvan, dat hy of sy 'n *beskermde bekendmaking* gedoen het nie.''.

Invoeging van artikels 3A en 3B in Wet 26 van 2000

4. Die volgende artikels word hierby na artikel 3 van die Hoofwet ingevoeg:

''**Gesamentlike aanspreeklikheid**

3A. Waar 'n *werkgewer*, kragtens die uitdruklike gesag of gesag by noodwendige implikasie of met die medewete van 'n kliënt, 'n *werknemer* of 'n *werker* aan 'n *beroepsnadeel* onderwerp, is beide die *werkgewer* en die kliënt gesamentlik en afsonderlik aanspreeklik.

Duty to inform employee or worker

3B. (1) Any person or body to whom a *protected disclosure* has been made in terms of section 6, 7 or 8, respectively, must, subject to subsection (3), as soon as reasonably possible, but in any event within 21 days after the *protected disclosure* has been made—

(a) decide whether to—
   (i) investigate the matter or not; or
   (ii) refer the *disclosure* to another person or body if that *disclosure* could be investigated or dealt with more appropriately by that other person or body; and

(b) in writing acknowledge receipt of the *disclosure* by informing the *employee* or *worker* of the decision—
   (i) to investigate the matter, and where possible, the time-frame within which the investigation will be completed;
   (ii) not to investigate the matter and the reasons for such decision; or
   (iii) to refer the *disclosure to* another person or body.

(2) The person or body to whom a *disclosure* is referred as contemplated in subsection (1)*(a)*(ii) must, subject to subsection (3), as soon as reasonably possible, but in any event within 21 days after such referral—

(a) decide whether to investigate the matter or not; and

(b) in writing inform the *employee* or *worker* of the decision—
   (i) to investigate the matter, and where possible, the time-frame within which the investigation will be completed; or
   (ii) not to investigate the matter and the reasons for such decision.

(3) The person or body, referred to in subsection (1) or (2), who is unable to decide within 21 days whether a matter should be investigated or not, must—

(a) in writing inform the *employee* or *worker*—
   (i) that he, she or it is unable to take the decision within 21 days; and
   (ii) on a regular basis, at intervals of not more than two months at a time, that the decision is still pending; and

(b) as soon as reasonably possible, but in any event within six months after the *protected disclosure* has been made or after the referral has been made, as the case may be, in writing inform the *employee* or *worker* of the decision—
   (i) to investigate the matter, and where possible, the time-frame within which the investigation will be completed; or
   (ii) not to investigate the matter and the reasons for such decision.

(4) The person or body, referred to in subsection (1) or (2), must, at the conclusion of an investigation, inform the *employee* or *worker* of the outcome thereof.

(5) The person or body, referred to in subsection (1) or (2), does not have to comply with—

(a) subsection (1)*(b)*, (2)*(b)*, (3) or (4) if that person or body does not know the identity and contact details of the *employee* or *worker* who has made the disclosure; or

(b) subsection (1)*(b)*, (2)*(b)* or (3) if it is necessary to avoid prejudice to the prevention, detection or investigation of a criminal offence.''.

Amendment of section 4 of Act 26 of 2000

5. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

``Any *employee* who has been subjected, is **[subject]** subjected or may be subjected, to an *occupational detriment* in breach of section 3, or anyone acting on behalf of an *employee* who is not able to act in his or her own name, may—'';

Plig om werknemer of werker in te lig

3B. (1) 'n Persoon of liggaam aan wie 'n *beskermde bekendmaking* ingevolge artikel 6, 7 of 8 gedoen word, moet, onderhewig aan subartikel (3), so gou as redelikerwys moontlik, maar in elk geval binne 21 dae nadat die *beskermde bekendmaking* gedoen is—

(a) besluit om—

(i) die aangeleentheid te ondersoek al dan nie; of

(ii) die *bekendmaking* na 'n ander persoon of liggaam te verwys indien daardie *bekendmaking* meer gepas deur daardie ander persoon of liggaam ondersoek of mee gehandel kan word; en

(b) skriftelik ontvangs van die *bekendmaking* erken deur die *werknemer* of *werker* in te lig van die besluit om—

(i) die aangeleentheid te ondersoek, en waar moontlik, die tydskaal waarbinne die ondersoek voltooi sal word;

(ii) nie die aangeleentheid te ondersoek nie en die redes vir sodanige besluit; of

(iii) die *bekendmaking* na 'n ander persoon of liggaam te verwys.

(2) Die persoon of liggaam bedoel in subartikel (1)*(a)*(ii) moet, behoudens subartikel (3), so gou as redelikerwys moontlik, maar in elk geval binne 21 dae na sodanige verwysing—

(a) besluit om die aangeleentheid te ondersoek al dan nie; en

(b) die *werknemer* of *werker* skriftelik van die besluit inlig om—

(i) die aangeleentheid te ondersoek, en waar moontlik, die tydskaal waarbinne die ondersoek voltooi sal word; of

(ii) nie die aangeleentheid te ondersoek nie en die redes vir sodanige besluit.

(3) Die persoon of liggaam, bedoel in subartikel (1) of (2), wat nie daartoe in staat is om binne 21 dae te besluit of die aangeleentheid ondersoek behoort te word al dan nie, moet—

(a) die *werknemer* of *werker* skriftelik in kennis stel—

(i) dat hy, sy of die liggaam nie daartoe in staat is om 'n besluit binne 21 dae te neem nie; en

(ii) op 'n gereelde basis, met tussenposes van hoogstens twee maande op 'n keer, dat die beslissing steeds hangend is; en

(b) so gou as redelikerwys moontlik, maar in elk geval binne ses maande nadat die *beskermde bekendmaking* gedoen is of nadat die verwysing gedoen is, na gelang van die geval, die *werknemer* of *werker* skriftelik van die besluit inlig om—

(i) die aangeleentheid te ondersoek, en waar moontlik, die tydskaal waarbinne die ondersoek voltooi sal word; of

(ii) nie die aangeleentheid te ondersoek nie en die redes vir sodanige besluit.

(4) Die persoon of liggaam, bedoel in subartikel (1) of (2), moet, by die afhandeling van die ondersoek, die *werknemer* of *werker* van die uitslag daarvan in kennis stel.

(5) Die persoon of liggaam, bedoel in subartikel (1) of (2), hoef nie te voldoen aan—

(a) subartikel (1)*(b)*, (2)*(b)*, (3) of (4) nie, indien die persoon of liggaam nie die identiteit of kontakbesonderhede van die *werknemer* of *werker* wat die bekendmaking gedoen het, ken nie; of

(b) subartikel (1)*(b)*, (2)*(b)* of (3) indien dit noodsaaklik is om benadeling aan die voorkoming, bespeuring of ondersoek van 'n misdaad te vermy.''.

Wysiging van artikel 4 van Wet 26 van 2000

5. Artikel 4 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van die woorde wat paragraaf *(a)* in subartikel (1) voorafgaan deur die volgende woorde:

'' 'n *Werknemer* wat in stryd met artikel 3 aan 'n *beroepsnadeel* onderwerp is, word of kan word, of enige persoon namens 'n *werknemer* wat nie in staat is om in sy of haar eie naam op te tree nie, kan—'';

(b) by the insertion of the following subsections after subsection (1):

''(1A) Any *worker* who has been subjected, is subjected or may be subjected, to an *occupational detriment* in breach of section 3, or anyone on behalf of a *worker* who is not able to act in his or her own name, may approach any court having jurisdiction for appropriate relief.

(1B) If the court or tribunal, including the Labour Court is satisfied that an *employee* or *worker* has been subjected to or will be subjected to an *occupational detriment* on account of a *protected disclosure*, it may make an appropriate order that is just and equitable in the circumstances, including—

(a) payment of compensation by the *employer* or client, as the case may be, to that *employee* or *worker*;

(b) payment by the *employer* or client, as the case may be, of actual damages suffered by the *employee* or *worker*; or

(c) an order directing the *employer* or client, as the case may be, to take steps to remedy the *occupational detriment*.'';

(c) by the substitution in subsection (2) for paragraphs *(a)* and *(b)* of the following paragraphs:

''*(a)* any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of that Act, and the dispute about such a dismissal **[must]** may follow the procedure set out in Chapter VIII of that Act or any other process to recover damages in a competent court; and

(b) any other *occupational detriment* in breach of section 3 is deemed to be an unfair labour practice as contemplated in **[Part B of Schedule 7 to]** section 186(2) of that Act, and the dispute about such an unfair labour practice must follow the procedure set out in **[that Part]** section 191: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.''; and

(d) by the substitution for subsection (4) of the following subsection:

''(4) The terms and conditions of employment of a person transferred in terms of subsection **[(2)]** (3) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.''.

Substitution of section 6 of Act 26 of 2000

6. The following section is hereby substituted for section 6 of the principal Act:

''**Protected disclosure to employer**

6. (1) Any *disclosure* made in good faith—

(a) and substantially in accordance with any procedure **[*prescribed*, or]** authorised by the *employee's* or *worker's* *employer* for reporting or otherwise remedying the *impropriety* concerned and the *employee* or *worker* has been made aware of the procedure as required in terms of subsection (2)*(a)*(ii); or

(b) to the *employer* of the *employee* or *worker*, where there is no procedure as contemplated in paragraph *(a)*,

is a *protected disclosure*.

(2) *(a)* Every *employer* must—

(i) authorise appropriate internal procedures for receiving and dealing with information about *improprieties*; and

(ii) take reasonable steps to bring the internal procedures to the attention of every *employee* and *worker*.

(b) Any *employee* or *worker* who, in accordance with a procedure authorised by his or her *employer*, makes a *disclosure* to a person other than his or her *employer*, is deemed, for the purposes of *this Act*, to be making the *disclosure* to his or her *employer*.''.

(b) deur die invoeging van die volgende subartikels na subartikel (1):

"(1A) 'n *Werker* wat in stryd met artikel 3 aan 'n *beroepsnadeel* onderwerp is, word of kan word, of enige persoon namens 'n *werker* wat nie in staat is om in sy of haar eie naam op te tree nie, kan enige hof wat jurisdiksie het om gepaste regshulp nader.

(1B) Indien die hof of tribunaal, met inbegrip van die Arbeidshof, oortuig is dat 'n *werknemer* of *werker* aan 'n *beroepsnadeel* as gevolg van 'n *beskermde bekendmaking* onderwerp is of sal word, kan die hof of tribunaal 'n gepaste bevel gee wat, onder die omstandighede, regverdig en billik is, met inbegrip van—

(a) betaling van skadevergoeding deur die *werkgewer* of kliënt, na gelang van die geval, aan die *werknemer* of *werker*;

(b) betaling deur die *werkgewer* of kliënt, na gelang van die geval, van werklike skade wat deur die *werknemer* of *werker* gely is; of

(c) 'n bevel wat die *werkgewer* of kliënt, na gelang van die geval, gebied om stappe te doen om die *beroepsnadeel* reg te stel.";

(c) deur die vervanging in subartikel (2) van paragrawe *(a)* en *(b)* deur die volgende paragrawe:

"*(a)* word 'n ontslag in stryd met artikel 3 geag 'n outomaties onbillike ontslag soos beoog in artikel 187 van daardie Wet te wees, en die geskil oor sodanige ontslag **[volg]** kan die prosedure in Hoofstuk VIII van daardie Wet uiteengesit, volg of enige ander proses om skadevergoeding in 'n bevoegde hof te verhaal; en

(b) word enige ander *beroepsnadeel* in stryd met artikel 3 geag 'n onbillike arbeidspraktyk soos beoog in **[Deel B van Bylae 7 tot]** artikel 186(2) van daardie Wet te wees, en die geskil oor sodanige onbillike arbeidspraktyk volg die prosedure in **[daardie Deel]** artikel 191 uiteengesit: Met dien verstande dat indien die aangeleentheid nie deur versoening besleg word nie, dit na die Arbeidshof vir beregting verwys kan word."; en

(d) deur die vervanging van subartikel (4) deur die volgende subartikel:

"(4) Die bedinge en voorwaardes van diens van 'n persoon wat ingevolge subartikel **[(2)]** (3) verplaas word, mag nie sonder sy of haar skriftelike toestemming minder gunstig wees as die bedinge en voorwaardes wat onmiddellik voor sy of haar verplasing op hom of haar van toepassing was nie.".

Vervanging van artikel 6 van Wet 26 van 2000

6. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Beskermde bekendmaking aan werkgewer**

6. (1) 'n *Bekendmaking* wat in goeie trou gedoen word—

(a) en wat wesenlik in ooreenstemming is met 'n prosedure wat **[voorgeskryf is, of wat]** deur die *werknemer* of *werker* se *werkgewer* gemagtig is vir doeleindes van die aanmelding of ander regstelling van die betrokke *onbehoorlikheid* en die prosedure is onder die aandag van die *werknemer* of *werker* gebring soos ingevolge subartikel (2)*(a)*(ii) vereis; of

(b) aan die *werkgewer* van die *werknemer* of *werker*, waar daar geen prosedure soos in paragraaf *(a)* beoog is nie,

is 'n *beskermde bekendmaking*.

(2) *(a)* Elke *werkgewer* moet—

(i) behoorlike interne prosedures vir die ontvangs en die hantering van inligting aangaande *onbehoorlikhede*, magtig; en

(ii) redelike stappe doen om die interne prosedures onder die aandag van elke *werknemer* en *werker* te bring.

(b) 'n *Werknemer* of *werker* wat, in ooreenstemming met 'n prosedure wat deur sy of haar *werkgewer* gemagtig is, 'n *bekendmaking* aan 'n ander persoon as sy of haar *werkgewer* doen, word, vir die doeleindes van *hierdie Wet*, geag 'n *bekendmaking* aan sy of haar *werkgewer* te doen.".

Amendment of section 7 of Act 26 of 2000

7. Section 7 of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

‘‘Any *disclosure* made in good faith to a member of Cabinet or of the Executive Council of a province is a *protected disclosure* if the *employee's* or *worker's* *employer* is—’’.

Amendment of section 8 of Act 26 of 2000

8. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

‘‘(1) Any *disclosure* made in good faith to—

(a) the Public Protector;

*(a*A*)* the South African Human Rights Commission;

*(a*B*)* the Commission for Gender Equality;

*(a*C*)* the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;

*(a*D*)* the Public Service Commission;

(b) the Auditor-General; or

(c) a person or body *prescribed* for purposes of this section; and

in respect of which the *employee* or *worker* concerned reasonably believes that—’’; and

(b) by the substitution for subsection (2) of the following subsection:

‘‘(2) A person or body referred to in, or *prescribed* in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or *prescribed* in terms of, that subsection, must render such assistance to the *employee* or *worker* as is necessary to enable that *employee* or *worker* to comply with this section.’’.

Amendment of section 9 of Act 26 of 2000

9. Section 9 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

‘‘Any *disclosure* made in good faith by an *employee* or *worker*—’’;

(b) by the substitution for subsection (2) of the following subsection:

‘‘(2) The conditions referred to in subsection (1)(i) are—

(a) that at the time the *employee* or *worker* who makes the *disclosure* has reason to believe that he or she will be subjected to an *occupational detriment* if he or she makes a *disclosure* to his or her *employer* in accordance with section 6;

(b) that, in a case where no person or body is *prescribed* for the purposes of section 8 in relation to the relevant *impropriety*, the *employee* or *worker* making the *disclosure* has reason to believe that it is likely that evidence relating to the *impropriety* will be concealed or destroyed if he or she makes the *disclosure* to his or her *employer*;

(c) that the *employee* or *worker* making the *disclosure* has previously made a *disclosure* of substantially the same information to—

(i) his or her *employer*; or

(ii) a person or body referred to in section 8,

in respect of which no action was taken within a reasonable period after the *disclosure*; or

(d) that the *impropriety* is of an exceptionally serious nature.’’;

(c) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

‘‘In determining for the purposes of subsection (1)(ii) whether it is reasonable for the *employee* or *worker* to make the *disclosure*, consideration must be given to—’’; and

Wysiging van artikel 7 van Wet 26 van 2000

7. Artikel 7 van die Hoofwet word hierby gewysig deur die vervanging van die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde:

“ ’n *Bekendmaking* wat in goeie trou aan ’n lid van die Kabinet of die Uitvoerende Raad van ’n provinsie gedoen is, is ’n *beskermde bekendmaking* indien die *werknemer* of *werker* se *werkgewer*—’’.

Wysiging van artikel 8 van Wet 26 van 2000

8. Artikel 8 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

“(1) ’n *Bekendmaking* wat in goeie trou gedoen word aan—

(a) die Openbare Beskermer;

(aA) die Suid-Afrikaanse Menseregtekommissie;

*(a*B*)* die Kommissie vir Geslagsgelykheid;

*(a*C*)* die Kommissie vir die Bevordering en Beskerming van die Regte van Kultuur-, Godsdiens- en Taalgemeenskappe;

*(a*D*)* die Staatsdienskommissie;

(b) die Ouditeur-generaal; of

(c) ’n persoon of liggaam wat vir die doeleindes van hierdie artikel *voorgeskryf* is; en

ten opsigte waarvan die betrokke *werknemer* of *werker* redelikerwys glo dat—’’; en

(b) deur die vervanging van subartikel (2) deur die volgende subartikel:

“(2) ’n Persoon of liggaam bedoel in, of *voorgeskryf* ingevolge, subartikel (1) wat van mening is dat die aangeleentheid meer gepas gehanteer kan word deur ’n ander persoon of liggaam bedoel in, of *voorgeskryf* ingevolge, daardie subartikel, moet sodanige hulp aan die *werknemer* of *werker* verleen as wat nodig is ten einde die *werknemer* of *werker* in staat te stel om aan hierdie artikel te voldoen.’’.

Wysiging van artikel 9 van Wet 26 van 2000

9. Artikel 9 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde:

“’n *Bekendmaking* wat in goeie trou deur ’n *werknemer* of *werker* gedoen word—’’;

(b) deur die vervanging van subartikel (2) deur die volgende subartikel:

“(2) Die voorwaardes bedoel in subartikel (1)(i) is—

(a) dat die *werknemer* of *werker* wat die *bekendmaking* doen ten tye daarvan rede het om te glo dat hy of sy aan ’n *beroepsnadeel* onderwerp sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* ooreenkomstig artikel 6 sou doen;

(b) in die geval waar geen persoon of liggaam vir doeleindes van artikel 8 in verband met die betrokke *onbehoorlikheid voorgeskryf* is nie, dat die *werknemer* of *werker* wat die *bekendmaking* doen, rede het om te glo dat dit waarskynlik is dat bewysmateriaal met betrekking tot die *onbehoorlikheid* verberg of vernietig sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* sou doen;

(c) dat die *werknemer* of *werker* wat die *bekendmaking* doen voorheen ’n *bekendmaking* van wesenlik dieselfde inligting gedoen het aan—

(i) sy of haar *werkgewer*; of

(ii) ’n persoon of liggaam bedoel in artikel 8,

ten opsigte waarvan geen stappe binne ’n redelike tyd na die *bekendmaking* gedoen is nie; of

(d) dat die *onbehoorlikheid* van ’n buitengewone ernstige aard is.’’;

(c) deur die vervanging in subartikel (3) van die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde:

“By die vasstelling vir die doeleindes van subartikel (1)(ii) of dit redelik is vir die *werknemer* of *werker* om die *bekendmaking* te doen, moet oorweging geskenk word aan—’’; en

(d) by the substitution in subsection (3) for paragraph *(f)* of the following paragraph:

"*(f)* in a case falling within subsection (2)*(c)*(i), whether in making the *disclosure* to the *employer* the *employee* or *worker* complied with any procedure which was authorised by the *employer*; and".

Insertion of sections 9A and 9B in Act 26 of 2000

10. The following sections are hereby inserted after section 9 of the principal Act:

"**Exclusion of civil and criminal liability**

9A. (1) A court may find that an *employee* or *worker* who makes a *protected disclosure* of information—

(a) referred to in paragraph *(a)* of the definition of *disclosure*; or

(b) which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur,

shall not be liable to any civil, criminal or disciplinary proceedings by reason of having made the *disclosure* if such *disclosure* is prohibited by any other law, oath, contract, practice or agreement requiring him or her to maintain confidentiality or otherwise restricting the *disclosure* of the information with respect to a matter.

(2) Exclusion of liability as contemplated in subsection (1) does not extend to the civil or criminal liability of the *employee* or *worker* for his or her participation in the disclosed *impropriety*.

Disclosure of false information

9B. (1) An *employee* or *worker* who intentionally discloses false information—

(a) knowing that information to be false or who ought reasonably to have known that the information is false; and

(b) with the intention to cause harm to the affected party and where the affected party has suffered harm as a result of such *disclosure*,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) *(a)* The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the Director of Public Prosecutions.

(b) The Director of Public Prosecutions concerned may delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.".

Amendment of section 10 of Act 26 of 2000

11. Section 10 of the principal Act is hereby amended by the substitution in subsection (4) for paragraphs *(a)* and *(c)* of the following paragraphs, respectively:

"*(a)* The *Minister* must, after consultation with the Minister for the Public Service and Administration, issue practical guidelines which explain the provisions of *this Act* and all procedures which are available in terms of any law to *employees* or *workers* who wish to report or otherwise remedy an *impropriety*.

(c) All organs of state must give to every *employee* or *worker* a copy of the guidelines referred to in paragraph *(a)* or must take reasonable steps to bring the relevant notice to the attention of every *employee* or *worker*.".

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(d) deur die vervanging van paragraaf *(f)* in subartikel (3) deur die volgende paragraaf:

"*(f)* in 'n geval vermeld in subartikel (2)*(c)*(i), of die *werknemer* of *werker* by die doen van die *bekendmaking* aan die *werkgewer* aan enige prosedure wat deur die *werkgewer* gemagtig is, voldoen het; en".

Invoeging van artikels 9A en 9B in Wet 26 van 2000

10. Die volgende artikels word hierby na artikel 9 in die Hoofwet ingevoeg:

"**Vrywaring teen siviele en strafregtelike aanspreeklikheid**

9A. (1) 'n Hof kan bevind dat 'n *werknemer* of *werker* wat 'n *beskermde bekendmaking* doen van inligting—

(a) bedoel in paragraaf *(a)* van die woordomskrywing van *bekendmaking*; of

(b) wat aantoon of geneig is om aan te toon dat 'n wesenlike oortreding van of versuim in die nakoming van die reg plaasgevind het, plaasvind of waarskynlik gaan plaasvind,

sal nie vir die doen van 'n *bekendmaking* aan enige siviele, strafregtelike of dissiplinêre verrigtinge aanspreeklik wees nie indien sodanige *bekendmaking* belet word deur enige ander wet, eed, kontrak, gebruik of ooreenkoms wat van hom of haar vereis om vertroulikheid te handhaaf of andersins die *bekendmaking* van die inligting met betrekking tot die aangeleentheid beperk.

(2) Vrywaring teen aanspreeklikheid soos beoog by subartikel (1) strek nie tot die siviele of strafregtelike aanspreeklikheid van die *werknemer* of *werker* vir sy of haar deelname in die geopenbaarde *onbehoorlikheid* nie.

Bekendmaking van valse inligting

9B. (1) 'n *Werknemer* of *werker* wat opsetlik valse inligting bekendmaak—

(a) wetende dat die inligting vals is of wat redelikerwys moes geweet het dat die inligting vals is; en

(b) met die bedoeling om die betrokke party nadeel te berokken en die betrokke party het nadeel gely as gevolg van sodanige *bekendmaking*,

is skuldig aan 'n misdryf en is by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf van hoogstens twee jaar of met beide sodanige boete en sodanige gevangenisstraf.

(2) *(a)* Die instelling van 'n vervolging van 'n misdryf in subartikel (1) bedoel, moet skriftelik deur die Direkteur van Openbare Vervolgings gemagtig word.

(b) Die betrokke Direkteur van Openbare Vervolgings mag sy of haar bevoegdheid om te besluit of 'n vervolging ingevolge hierdie artikel ingestel behoort te word al dan nie, delegeer.".

Wysiging van artikel 10 van Wet 26 van 2000

11. Artikel 10 van die Hoofwet word hierby gewysig deur die vervanging van paragrawe *(a)* en *(c)* van subartikel (4) deur die volgende paragrawe:

"*(a)* Die *Minister* moet, na oorleg met die Minister vir die Staatsdiens en Administrasie, praktiese riglyne uitreik ter verduideliking van die bepalings van *hierdie Wet* en alle prosedures wat ingevolge enige wet beskikbaar is aan *werknemers* of *werkers* wat 'n *onbehoorlikheid* wil aanmeld of andersins wil regstel.

(c) Alle *staatsorgane* moet aan elke *werknemer* of *werker* 'n afskrif van die riglyne bedoel in paragraaf *(a)* verskaf of moet redelike stappe doen om die betrokke kennisgewing onder die aandag van elke *werknemer* of *werker* te bring.".

Amendment of long title of Act 26 of 2000

12. The following long title is hereby substituted for the long title of the principal Act:

> ''**To make provision for procedures in terms of which employees and workers in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees or workers in the employ of their employers; to provide for the protection of employees or workers who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.**''.

Amendment of Preamble to Act 26 of 2000

13. The Preamble of the principal Act is hereby amended by the substitution for the fourth, fifth, sixth and seventh paragraphs of the following paragraphs, respectively:

''• neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees or workers may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector;
• every employer, **[and]** employee and worker has a responsibility to disclose criminal and any other irregular conduct in the workplace;
• every employer has a responsibility to take all necessary steps to ensure that employees and workers who disclose such information are protected from any reprisals as a result of such disclosure;

And in order to—

• create a culture which will facilitate the disclosure of information by employees and workers relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures;''.

Short title

14. This Act is called the Protected Disclosures Amendment Act, 2017.

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Wysiging van lang titel van Wet 26 van 2000

12. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:

> "**Om voorsiening te maak vir prosedures ingevolge waarvan werknemers en werkers in beide die privaat en die openbare sektor inligting in verband met onwettige of onreëlmatige optrede deur hul werkgewers of ander werknemers of werkers in die diens van hul werkgewers kan bekend maak; om voorsiening te maak vir die beskerming van werknemers of werkers wat 'n bekendmaking doen wat ingevolge hierdie Wet beskerm word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**".

Wysiging van Aanhef van Wet 26 van 2000

13. Die aanhef van die Hoofwet word hierby gewysig deur die vervanging van die vierde, vyfde, sesde en sewende paragrawe deur, onderskeidelik, die volgende paragrawe:

"• nóg die Suid-Afrikaanse gemene reg nóg die statutêre reg voorsiening maak vir meganismes of prosedures ingevolge waarvan werknemers of werkers, sonder vrees vir vergelding, inligting kan bekend maak wat verband hou met vermoedelik of beweerde kriminele of ander onreëlmatige gedrag deur hul werkgewers, hetsy in die privaat of die publieke sektor;
- elke werkgewer, **[en]** werknemer en werker 'n verantwoordelikheid het om kriminele en ander onregmatige gedrag in die werkplek bekend te maak;
- elke werkgewer 'n verantwoordelikheid het om alle nodige stappe te doen ten einde te verseker dat werknemers en werkers wat sodanige inligting bekend maak van weerwraak as gevolg van sodanige bekendmaking beskerm word;

En ten einde—

- 'n kultuur te skep wat die bekendmaking van inligting deur werknemers en werkers met betrekking tot kriminele en ander onreëlmatige optrede in die werkplek op 'n verantwoordelike wyse sal fasiliteer deur die daarstelling van omvattende statutêre riglyne vir die bekendmaking van sodanige inligting en beskerming teen vergelding as gevolg van sodanige bekendmakings;".

Kort titel

14. Hierdie Wet heet die Wysigingswet op Beskermde Bekendmakings, 2017.

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