



**MINISTRY
EMPLOYMENT & LABOUR
REPUBLIC OF SOUTH AFRICA**

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NATIONAL ASSEMBLY

WRITTEN REPLY

QUESTION NUMBER: 1501 [NW1708E]

1501. Mr S L Ngcobo (IFP) to ask the Minister of Employment and Labour:

- (1) Whether, given the proliferation of e-hailing services, their extension into food deliveries, and in light of the developments on the regulation of these services in other jurisdictions, the Government intends to regulate e-hailing services to give the drivers legal protection as employees with benefits; if not, what is the position in this regard; if so, what are the specifics and estimated timelines;
- (2) whether, in light of the increasing youth unemployment rate which currently stands at more than 50%, the Government has any plans to reserve the employment of drivers for e-hailing services for South Africans; if not, why not; if so, what are the relevant details;
- (3) whether the Government has put any safeguards in place to protect drivers in the e-hailing services from exploitation by owners of vehicles; if not, why not; if so, what are the further relevant details?

NW1708E

Reply by Minister of Employment and Labour:

- (1) NEDLAC social partners are currently dealing with matters that are affecting e-hailing services workers the labour market will be informed as soon as this process is complete.

The Labour Relations Act of 1995 and the Basic Conditions of Employment Act of 1997 deal with the presumption of who is an employee. According to the two legislations, a person is presumed to be an employee if they are able to establish that one of seven listed factors in section 200A of the LRA and section 83A of the BCEA is present in their relationship with a person for whom they work or to whom they render services.

The presumption comes into operation if the applicant establishes that one of the following seven factors is present:

- the manner in which the person works is subject to the control or direction of another person;
- the person's hours of work are subject to the control or direction of another person;
- in the case of a person who works for an organisation, the person forms part of that organisation;
- the person has worked for that other person for an average of at least 40 hours per month over the last three months;
- the person is economically dependent on the other person for whom he or she works or renders services; and
- the person is provided with the tools of trade or work equipment by the other person; 'the person only works for or renders services to one person.

The presumption applies regardless of the form of the contract entered into. The issue of the applicant's employment status cannot be determined merely by reference to either the applicant's obligations as stipulated in the

contract or a 'label' attached to the relationship in a contract. Therefore, a statement in a contract that the applicant is not an employee or is an independent contractor is not a conclusive proof of the status of the applicant.

Any person believing that is an employee based on one of the presumption of who is an employee and feels that his employment rights were violated is free to approach the CCMA for help.

- 2. The Department, has been working closely with the International Labour Organisation in the commissioning and development of a National Labour Migration Policy. One of the recommendations emerging from a range of proposals, is the concept of introducing complete prohibitions or quarters on the number of foreign nationals that can be employed in any sector and this may include e-hailing transport. This will be in line with Section 36 of our Constitution to justify fair discrimination against foreign nationals as part of our efforts to address local high unemployment levels and to uphold existing minimum labour standards. I will release the Draft Policy and the proposed amendments for public discussion and consultation with the social partners as soon as internal government processes are completed.**
3. Honourable Mr Ngcobo, as I have alluded to the fact that NEDLAC social partners are already dealing with the matter of e-hailing service workers, let us allow NEDLAC time to deal with the issues and at the right time, the labour market will be kept abreast on the developments.