LERASA

LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

NEWSLETTER

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1ST EDITION

IN THIS EDITION

The Great Labour Law Shake-Up:

What South Africa Needs to Know

The Labour and Employment Relations Association of South Africa (LERASA) hosted an online webinar on 21 April 2026, bringing together labour law experts to reflect on the country's evolving legislative landscape. The discussions underscored that South Africa is on the cusp of one of the most significant labour law transformations in recent decades, driven by sweeping proposed amendments that are set to reshape how work, rights, and fairness are understood within a rapidly changing economic environment. Central to these reforms is a fundamental and pressing question: who, in today's labour market, should be formally recognised as a worker?

Historically, labour law has drawn a clear distinction between employees and independent contractors. However, the emergence of gig work, platform-based employment, and other forms of precarious work has increasingly blurred this boundary. In response, the proposed amendments introduce a broader and more inclusive definition of "employee" while also recognising the category of dependent contractors and individuals who occupy a space between traditional employment and self-employment. For the first time, these workers may be granted access to essential rights such as unionisation and collective bargaining. While they remain excluded from full employment protections, this development nonetheless represents a meaningful shift toward greater inclusivity within the legal framework.

In parallel, the reforms signal a significant constitutional shift in how family rights are conceptualised and protected. Following a Constitutional Court ruling that deemed existing parental leave provisions discriminatory, a more flexible and inclusive system has been proposed. Under this framework, parents are afforded the opportunity to share parental leave, adoption leave is extended to include children up to the age of six, and benefits are designed to apply across a broader range of family structures. Despite these advancements, notable concerns persist. Women in precarious forms of employment may continue to face challenges in accessing these benefits, and critical issues, such as the lack of provision for early pregnancy loss remain unresolved.

The amendments further aim to strengthen dignity within the workplace by expanding protections against harassment. Previously, only cases of sexual harassment could be fast-tracked to the Commission for Conciliation, Mediation and

Arbitration (CCMA). The proposed changes extend this mechanism to encompass all forms of harassment, including those based on race, disability, religion, or other protected grounds. This development represents a progressive step toward fostering equitable workplaces, although the absence of a clear legal definition of harassment may result in increased litigation and interpretive challenges.

Efforts to enhance access to justice also form a central component of the proposed reforms. In particular, the CCMA may be empowered to assist low-income workers in enforcing arbitration awards, thereby reducing the financial barriers that often hinder the realisation of legal entitlements.

However, certain aspects of the amendments have generated debate. Employees dismissed during probation periods may be left without recourse, while high-income earners are likely to face limitations in the remedies available to them. These provisions reflect an underlying tension between affording employers greater flexibility and safeguarding the rights of workers, a balance that may ultimately require judicial scrutiny. Although the amendments are still progressing through Parliament, their trajectory is evident: South Africa is moving toward a labour framework that seeks to accommodate modern work realities while remaining aligned with constitutional principles.

Nevertheless, the process is far from complete. Several gaps remain, and aspects of the reforms may yet be subject to constitutional challenge. For employers, employees, unions, and legal practitioners alike, this period presents a critical opportunity to engage with the evolving framework and contribute to shaping its final form.

Ultimately, the so-called “great labour law shake-up” extends beyond a mere legislative update. It represents a broader redefinition of work and the rights that attach to it. As the country navigates this transition, it is increasingly clear that the future of labour relations will differ markedly from the past, requiring adaptability, foresight, and continued dialogue among all stakeholders.

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Not Reportable
case no: C447/2024

In the matter between:

IMATU obo MOSES AND 13 OTHERS: Plaintiff

and

City of Cape Town: Defendant

Heard: 21 and 22 January 2026

Delivered: 7 August 2026

Summary: A contractual claim in terms of section 77(3) of the Basic Conditions of Employment Act 75 of 1997, challenging an employer's decision to stop paying overtime. Overtime is governed by a policy under which the employer reserved the right to amend it from time to time. No contractual right established.

JUDGMENT

GANDIDZE, J

Introduction

[1] The Independent Municipal and Allied Workers Union (the union) referred a claim to this court in terms of section 77(3), read with section 77A of the Basic Conditions of Employment Act (BCEA), against the City of Cape Town (the

City), the employer of fourteen of its members involved in this dispute (the employees). The dispute arose because, from the time the employees commenced employment with the City, they were paid overtime for all hours worked beyond 40 hours per week, or received time off in lieu of the overtime hours worked. However, in December 2023, the City advised the union that from January 2024, the employees would still be required to work overtime but would not be paid for it. The decision affected employees in Traffic Services, Metro Police and Events Management. The union launched an urgent application challenging the decision, but the application was dismissed on the ground that it lacked urgency. The current claim to this court followed in October 2024, and the City opposes it.

[2] The parties agreed to separate the quantum from the merits. Put differently, if the union and its members succeed with their claim, quantum would still need to be determined.

Brief background facts

[3] The employees involved in the dispute commenced employment with the City at various times before January 2024. They were employed at either Task Grade 14 (T14) or 15 (T15).

[4] The Letter of Permanent Employment (appointment letter) signed by the employees records that their employment is subject to (i) the City's Conditions of Employment for permanent employees, as set out in a summary attached to the letter, which provides that overtime work is 'as per BCEA provisions and Council's policy', and (ii) Delegated powers, relevant resolutions and HR Policies, as applicable and as amended from time to time. It is common cause that there is no document setting out 'Conditions of Service', other than the summary attached to the appointment letters.

[5] One of the City's policies is the Overtime and Payment for Work on Sundays and Public Holidays System and Procedure (Overtime Policy), now referred to as the System and Procedure. The versions before the court were 2007, 2013, 2017 and 2023, and copies are available on the City's intranet or on its landing page.

[6] From the commencement of their employment until December 2023, the employees worked in excess of 40 hours per week. Hours worked in excess of 40 hours per week were regarded as overtime, and, as consideration, the employees either received an amount equal to their normal hourly rate for the overtime worked, referred to as a straight time basis, or they could take time off in lieu of overtime. In December 2023, the employees were informed that, with effect from January 2024, they would be required to work more than 40 hours per week but would not be paid for overtime. The employees were informed that this was an instruction that they were required to comply with, failing which disciplinary proceedings would be instituted. The union advised the employees to heed the instruction, which they have done to date.

[7] The affected employees do not qualify for overtime pay in terms of the BCEA. The Overtime Policy provides that employees at T16 and above are not entitled to overtime pay, and that employees at T13 and below receive overtime in accordance with the BCEA.

[8] There is no collective agreement governing the payment of overtime at the City.

Oral evidence

[9] The union filed witness statements from two employees, Keith Moses (Moses) and Shoukard-Allie Rawoot (Rawoot). These employees also gave evidence and were cross-examined. It is unnecessary to set out all their evidence, as most of it was, in any event, common cause.

[10] Moses testified that when the dispute arose, he worked in traffic services. He was paid overtime for the 24 years he was employed by the City. The removal of overtime pay resulted in him losing between 12 and 15 per cent of his earnings. Working overtime affected his ability to meet family commitments, his social life and his wellbeing. He did not agree to work overtime without being remunerated for it. Had he been asked, he would have declined. Although they continued to receive the standby allowance after January 2024, they were required to work overtime regularly and were not paid for the hours worked. At the time of the trial proceedings, he had been appointed to the T16 level since January 2026, a level that does not qualify for overtime pay.

[11] Rawoot is employed in Events Management, performing duties that require his presence on site. Although his working hours are 08h30 to 17h00, most events assigned to him take place outside working hours, including evenings, weekends and public holidays, and

attendance is compulsory. He referred to events such as the Rugby Sevens, Cycle Tour, Freedom of the City, Two Oceans marathon, the memorial service of Nelson Mandela and the funeral and memorial service of Desmond Tutu, which they organised. They worked hours in excess of the prescribed 40 hours a week and were paid overtime. However, since January 2024, he has received only his normal salary, with no overtime pay or standby allowance. In any given month, overtime can range from 20 to 70 hours, given that Cape Town is considered the events capital of the country. As with Moses, the earnings loss is between 12 and 15 percent. Working overtime negatively impacts his ability to meet family commitments, his social life and wellbeing. He would never have agreed to work overtime without remuneration.

[12] The City did not lead any oral evidence.

<u>The union's contentions</u>

[13] It is the union's case that the employees' employment contracts entitle them to overtime pay, which was Council's policy until January 2024. The material term to be paid overtime is either express, implied, or tacit, because when interviewed for the positions they applied for, employees were expressly asked whether they were prepared to work overtime and consented on the basis that they would be remunerated. The employees agreed to work overtime in return for a consideration, given the effect overtime had on their lives. Remuneration for overtime was material, or an essentialia, or locatio conductio operarum of the employment contract. Because they were paid overtime over several years, it had become practice. The City could reduce or eliminate overtime but could not insist on employees working overtime when the correlative obligation to pay overtime had been removed.

[14] The employees did not agree to work overtime without compensation, nor did they agree that overtime pay could be withdrawn while they were still required to work overtime, given that overtime is an inherent part of their roles.

[15] The appointment letters record that employment is subject to HR Policies as amended from time to time, but that the conditions of service do not repeat the wording 'as amended from time to time'. Nowhere was it expressly stated that the City reserved the right to unilaterally amend substantive remunerative terms. The language of the provision had to be considered in the context, purpose and the circumstances surrounding the conclusion of the contract. This was the only sensible and businesslike meaning to be preferred.

[16] As regards the text, the phrase 'amended from time to time' was vague and capable of more than one meaning. The parties disagree on its meaning. While the City believes it can vary remunerative terms at its pleasure, the union and the employees believe that, although the City can change policies from time to time, it is bound by what it agreed when the appointment letters were issued to employees.

[17] The context of the provision is that an employment relationship is governed not only by the employment contract. An employer may change work practices but is prevented from making unilateral changes to the material terms and conditions of employment. The interpretation of an employment contract must be informed by the constitutional right to fair labour practices, which requires balancing the interests of the employer and those of the employees. An employer cannot instruct an employee to work overtime and, at the same time, strip the employee of the right to overtime pay.

[18] The Code of Good Practice on the Arrangement of Working Time (Code of Good Practice) aims to address the impact of extended working hours on employees, their families and the broader community, which explains why overtime must be compensated.

[19] Therefore, the instruction to work unpaid overtime is in breach of the employment contract and the Code of Good Practice. The City could not unilaterally withdraw the overtime pay.

[20] The union also denies that the Overtime Policy falls within the category of 'HR Policies as applicable and as amended from time to time'.

[21] It further alleges that since January 2024, the employees have been required to work hours

in excess of those worked and paid for before January 2024.

[22] The relief sought is a declarator that the City is in breach of the employment contracts and the Code of Good Practice, and that it must be ordered to pay the employees for all overtime worked since January 2024 on a straight time basis, with interest.

The City's contentions

[23] The summary of the conditions of employment attached to the appointment letter provides that overtime is dealt with in terms of the BCEA or the City's Policy. The Overtime Policy, which is an HR Policy and can be amended from time to time, regulates the issue of overtime. As it was entitled to do, it amended the Overtime Policy with effect from January 2024, with the consequence that overtime pay was abolished for employees at T14 and T15 levels. Hence, it has not breached the employment contracts.

[24] The City disputes that, since January 2024, the employees have been required to work hours in excess of those worked and paid for before January 2024, and also questions the relevance of that contention to the claim.

Discussion

[25] The parties signed a pre-trial minute in which it was agreed that the facts in dispute were (i) whether the City's Overtime Policy falls within the category of HR Policies as applicable and as amended from time to time, and (ii) whether, from January 2024 onwards, the City required employees to work unpaid overtime in excess of the overtime they had worked before overtime pay was abolished. The actual number of overtime hours worked by the employees goes to quantum, an issue that will be dealt with only if the employees succeed in their claim that they are entitled to be paid for overtime worked. That leaves the first fact in dispute, viz whether the Overtime Policy qualifies as an applicable HR Policy, as amended from time to time.

[26] The Overtime Policy is indeed an HR Policy, and the union's contention that it is not, which was not substantiated, must fail. The fact that since 2017 the policy has been referred to as System and Procedure, rather than the Overtime Policy, does not change the fact that it is an HR policy which regulates overtime.

[27] The pre-trial minute further records the three issues to be decided as (i) whether the issue that employees have been working more unpaid overtime since January 2024 is relevant to the employee's claim; (ii) whether, in applying the amended Overtime Policy, the City breached a material express, alternatively tacit, further alternatively an implied term of their employment contract, as agreed, to be remunerated for overtime worked; and (iii) whether the City could amend the Overtime Policy as it did.

[28] I have already determined that the actual overtime hours worked by the employees are relevant for purposes of determining quantum, an issue reserved for later determination if the employees are successful on the merits.

[29] The next issue is whether the employees have a contractual right to be paid overtime. No express provision was relied upon to the effect that the employee's overtime would be paid, and none exists. Rawoot's own version was that payment for overtime is not provided for in the appointment letter, but that there was an agreement that he would be paid overtime. In any event, in oral argument, Ms Harvey abandoned reliance on an express or implied term and submitted that payment of overtime was a tacit term of the employment contract.

[30] As correctly pointed out by Mr Leslie in a further reply, the union's heads of argument do not submit that the employees were relying on a tacit term. The submission was advanced only after the union had heard the City's arguments about the weaknesses of relying on an express term, alternatively an implied term, and, in the further alternative, a tacit term.

[31] Be that as it may, in SA Maritime Safety Authority v McKenzie (McKenzie), the court stated the following about tacit terms:

'[11] A tacit term is a term that arises from the actual or imputed intention of the parties as representing what they intended should be the contractual position in a particular situation or, where they did not address their minds to that situation, what it is inferred they would have intended had they applied their minds to the question.

[12] In our law as it stands at present the usual test for the existence of a tacit term is that of the interfering bystander who asks what is to happen in the particular situation and receives the answer: 'Of course X will be the position. It is too obvious for us to say so.'

[32] As it relates to paid overtime for the employees concerned, had a bystander asked whether they have a right to it in perpetuity, the obvious answer, based on the appointment letter and the summary of the conditions of service, would have been that it depends on whether the City decides not to amend the Overtime Policy. This is not a case where both parties considered the issue but did not declare their assent, or where they would have agreed on the matter had they thought about it. The City thought of the issue and decided that it would amend the Overtime Policy from time to time. It is the union(s) and the employees who did not think of the issue. A tacit term cannot be proved if 'common intention' is not established, as in this case. One cannot import a tacit term that ignores or contradicts an express provision that paid overtime is dependent on any amendments the City may make to the Overtime Policy. To do so would amount to creating a new contract for the parties, other than the one they entered into, which Natal Joint Municipal Pension Fund v Endumeni Municipality said a court must not do.

[33] There is no contractual right to paid overtime arising from a tacit term, which finding is dispositive of the union's claim.

[34] However, for completeness, the parties agreed that the court must also determine whether the City could amend the Overtime Policy from time to time. The issue has already been addressed above. To reiterate, the pre-trial minute records that the appointment letters issued to the employees state that employment was subject, inter alia, to HR Policies as applicable and as amended from time to time. As amended from time to time means that things can change, and nothing is guaranteed. There is no ambiguity in that phrase, as Ms Harvey argued.

[35] It has already been determined that the Overtime Policy is an HR policy. As employment is subject to HR policies as amended from time to time, and the Overtime Policy is not a product of collective bargaining, the City reserved the right to amend the Overtime Policy from time to time. There is no requirement to 'strike a new bargain' on the matter, nor is there any requirement to consult the union or the employees regarding amendments to the Overtime Policy. The union conceded as much in the urgent application, which was dismissed for lack of urgency. The concession was correctly made.

[36] In cross-examination, Moses also conceded that the City was entitled to amend the Overtime Policy, his only issue being that changes must be preceded by consultation, adding that amending does not mean 'take away completely'. None of those contentions has merit. There was no obligation on the City to consult on the issue before amending the Policy. Contrast this with amendments to key performance areas, which require consultation before any amendments are made.

[37] Ms Harvey also conceded that the City could amend the policy and abolish overtime pay, but that it cannot compel employees to work overtime. The difficulty with the submission is that the affected employees do not qualify for overtime pay in terms of the BCEA.

[38] Because the City was entitled to amend the Overtime Policy, by abolishing paid overtime for employees, it cannot be said to have unilaterally changed employees' conditions of employment. The decision in Sun International Limited and Another v SACCAWU and Others, which Ms Harvey relied on in oral argument, does not assist the union's case. In fact, the decision goes against the union's argument given the court's finding that:

'[14] On the evidence before me at this stage there is no suggestion that the parties have contracted on a basis that serves to fetter the employer's right to implement the work practice related to the upgrading of the Kronos system…'

[39] The same finding must apply in this matter, as the issue of overtime is governed not by an employment contract but by a policy that the City can amend from time to time, as it has done. There is no contractual right to overtime

pay.

[40] The evidence was also that the Overtime Policy was amended several times between 2007 and 2023. It was not the union's contention that it was consulted on any of those amendments.

[41] The union also alleged a breach of the Code of Good Practice on the Arrangement of Working Time but did not specify the provision relied upon. It is not for the court to go through an entire Code of Good Practice and figure out which provision was being relied upon. The City must have adopted the same approach given its silence on the contention.

[42] As I understood Ms Harvey, the submission was also that the Code of Good Practice requires overtime to be compensated, given its implications for family life. Again, the provision relied upon was not specified. The Code of Good Practice could not lay down a principle that contradicts what the BCEA provides on the issue. There are categories of employees who qualify for paid overtime and those who do not. The employees involved in this dispute do not qualify for paid overtime in terms of the BCEA.

[43] The further contention that the employees are being forced to work unpaid overtime is not a claim that can be pursued in terms of section 77(3) of the BCEA. The union was clear that its cause of action was a contractual breach, and that is the claim that has been determined. Ms Harvey also submitted that the union's case was not that the instruction to work unpaid overtime was unlawful. The submission was correct given the pleaded case.

[44] Relying on the constitutional right to fair labour practices and the right to fair dealing to bolster the union's case need not be considered, as the union is confined to the pleaded case. That finding renders it unnecessary to determine whether the principles enunciated in SA Maritime Safety Authority v McKenzie, which Mr Leslie relied on, preclude the union from relying on the constitutional right to fair labour practices. I note, however, that the decision reiterated, with reference to Gcaba v Minister for Safety & Security & others, that a case is determined based on the pleadings.

<u>Costs</u>

[45] The City sought costs against the union. As this was a breach of contract claim, the principle that costs follow the result applies. However, the parties have an ongoing relationship, and it is not inconceivable that the union brought the claim under pressure from its members. Taking those factors into account, each party must bear its own costs.

[46] In the premises, I make the following order:

<u>Order</u>

1. The plaintiffs' claim is dismissed.
2. Each party will pay its own costs.

____

T. Gandidze
Judge of the Labour Court of South Africa

Save the Date: ILERA 11th Africa Congress 2027

The Future of Work in Africa: Navigating Transformation, Inequality and Institutional Change

ILERA
AFRICA
11th Regional
Congress

The International Labour and Employment Relations Association (ILERA) Africa is proud to announce the 11th ILERA Africa Congress, taking place on 4 - 5 February 2027 at The Capital Hotel, Sandton, Johannesburg, South Africa.

As Africa's labour markets continue to evolve amid technological advancement, digitalisation, changing employment relationships, migration, economic transformation, and growing inequality, the Congress will provide an important platform for dialogue on the future of work and the institutions that shape it.

The Congress will bring together leading academics, researchers, labour practitioners, policymakers, trade union representatives, employers, dispute resolution specialists, and social partners from across Africa and beyond to explore innovative and sustainable responses to emerging labour market challenges.

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The ILERA 11th Africa Congress seeks to foster informed debate and practical solutions on how Africa's labour market institutions can respond to rapid economic, technological, and social change while promoting decent work and inclusive development.

For more information, visit: www.lerasa.org.za or contact Lerasa@pscbc.org.za.

Date: 4 - 5 February 2027
Venue: The Capital Hotel, Sandton, South Africa
Host: International Labour and Employment Relations Association (ILERA) Africa.

Vision

To become a vibrant Organisation enhancing Employment Relations through debate and dialogue.

Mission

- To facilitate an ongoing forum for constructive relationship building
- To deal with themes of relevance to the South African Employment Relations community
- To enhance the understanding, knowledge and practices of Employment Relations at National, Regional and branch levels in South Africa.

Objectives

- To promote basic rights and sound relations between the labour market partners including the state;
- To render a sustained, credible and valid service to the Labour and Employment Relations community;
- To advance the latest knowledge and research within the Labour and Employment Relations field;
- To promote skills transfer and training within the Labour and Employment Relations field;
- To promote and facilitate a representative Labour and Employment Relations profession;
- To assist other African Countries to establish similar associations.

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