

WORKERS UNDER ATTACK!

CHANGES TO LABOUR LAWS ARE A DEFEAT FOR WORKERS

On 17 November 2017 the government said it wants to make big changes to the rights of workers by changing the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA). Government also brought in the National Minimum Wage (NMW) bill. Together these changes (called amendments in the law) will roll back the hard won rights of workers. What's more, the details from these bills make clear that the bosses may be able to ignore the national minimum wage the state wants to give to workers.

It will be more difficult for workers to strike

One of the most important rights for workers is the right to strike, a right that is protected in the constitution. The proposed amendments to the LRA will add many new procedures and make it more difficult for workers to go on a protected strike.

One of the proposed changes to the LRA says that **trade unions must now hold secret ballots to decide on strike action**. A secret ballot means each worker will have to decide for themselves if they will strike or not. But a strike is always about workers acting together. It will be more difficult for workers to unite in action if they don't know what their comrades are thinking. This change to secret ballot does not apply to unregistered trade unions.

The LRA amendments also say the **conciliation period of 30 days can now be stretched to 35 days**. This will give bosses more time to fill up their warehouses, victimise workers and prepare to bring in scab workers.

The amendments also say **there can now be 'advisory arbitration' to settle strikes**. The people on the advisory arbitration panel will not have the power to say if a strike can continue or not. But the striking workers or their unions must say if they agree with the outcome of the advisory arbitration. If they don't agree they must give reasons for not agreeing. But only after they have consulted with the members on strike. If they don't give a reply to

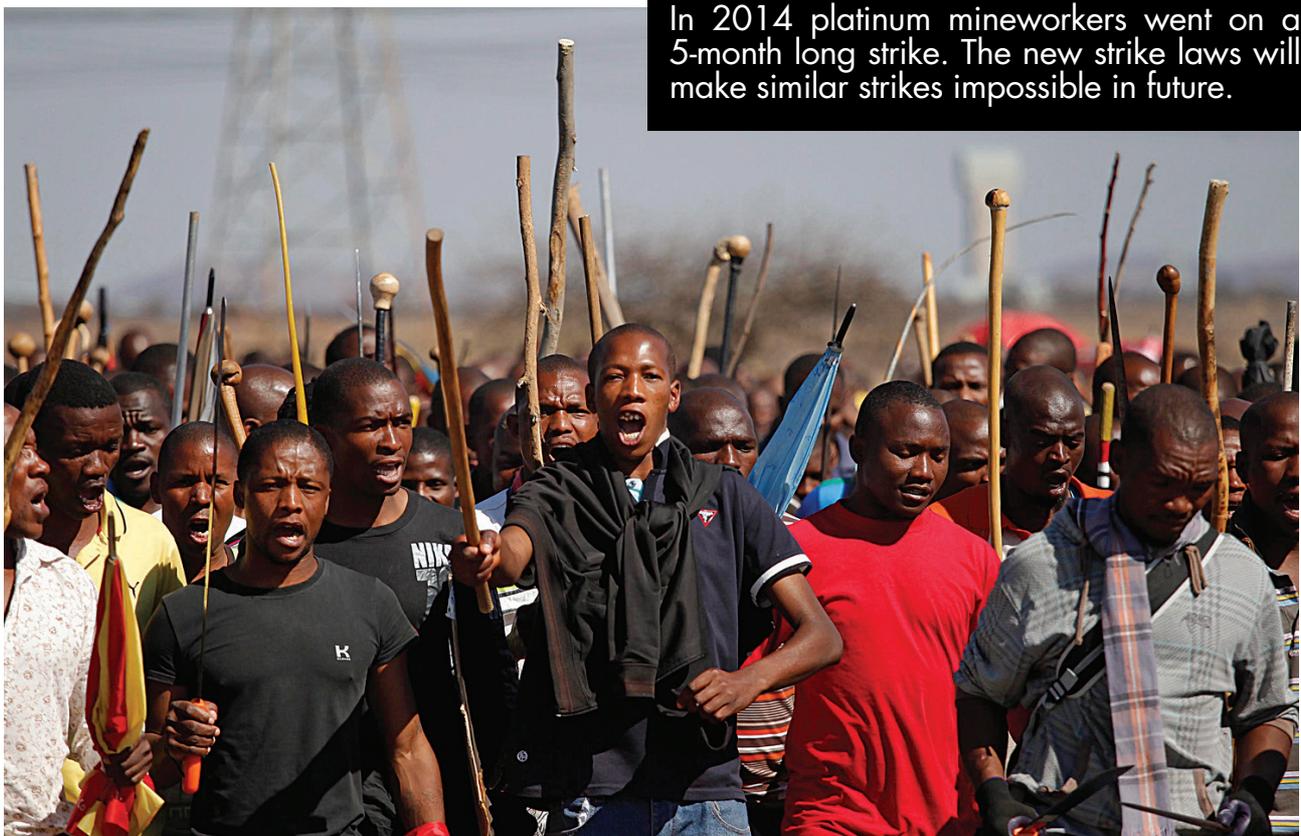
the decision of the advisory panel then its advice becomes like an instruction and workers must accept it. The strike will then have to stop if that is what the advisory panel decides.

An advisory arbitration panel can be set up if the Minister of Labour or the Director of the CCMA thinks it is in the 'public interest' or if it is asked for by any party to the disputes, including the bosses. This means almost any strike could be open to advisory arbitration.

On top of this, **bosses will be able to take trade unions to the Labour Court with interdicts all along the more difficult steps that must now be followed before a strike.** All these changes are meant to make workers feel that it is too difficult to strike. Yet, strikes are the strongest weapon workers have to fight for a living wage and a better life in an exploitative system. By making it more difficult for workers to strike, the government is showing that it stands clearly on the side of the bosses!

A national minimum wage of R20 per hour

Many workers laughed at the idea of a national minimum wage of R3 500 when this figure was first reported. They know they cannot live off this little money. They also remember the Marikana workers who died for a living wage of R12 500. The NMW bill says there will be no monthly minimum wage, only an hourly minimum wage of R20 p/h. This means workers who work flexible hours or part time may not even get the R3 500, if they work under 40 hours a week. If you're a domestic worker or farm worker the news is worse: farm workers will earn R18 p/h, while domestic workers will receive only R15 p/h. Only in 2020 will these workers get the full minimum wage.



In 2014 platinum mineworkers went on a 5-month long strike. The new strike laws will make similar strikes impossible in future.

Bosses will get away with not paying the National Minimum Wage

What is not mentioned in the discussion about the NMW is that some sectors in South Africa, including domestic work and farm work, already have minimum wages, set out in sectoral determinations. But as many as 50% of the bosses in those sectors pay less than these minimums. There is no reason to think that bosses will now follow the NMW. In fact, the ability of workers to get justice will become much more difficult.

If the amendments are passed, it will become the job of the CCMA to make sure bosses pay the NMW, not the Department of Labour. This will add to the workload of the CCMA at a time when it is already overburdened – in 2016/2017 an average of 745 cases were referred every day!

If a worker is being paid below the incoming NMW they will have to refer a case to the CCMA for conciliation and arbitration. The average time for a case to reach arbitration is around 90 days. Even if a worker is successful and gets an arbitration award experience has shown that many employers simply choose to ignore these awards. The next step is for the worker to have the award certified by the CCMA. If the employer still refuses to abide by the award the worker has to get a 'writ of execution', which is then served by a sheriff but often only after the demand for a deposit has been met.

Workers will face many legal and practical difficulties trying to win the national minimum wage and the whole process of policing and enforcing it be unworkable.

Taking away hard won rights in sectoral determinations

It gets even worse! The proposed amendments to the BCEA will actually do away with important rights for some workers. Sectoral determinations do not only set minimum wages but also give important protections for workers. For example, the Farm Worker sectoral determination gives farmworkers the right to housing on the farms. Amendments to the BCEA say the sectoral determinations will disappear over time and will be replaced with the NMW Act. Important rights and protections will disappear with them.

Why is this happening and what are the unions doing about it?

All these changes are a clear attack on workers and their communities. Yet, all the changes were agreed to at Nedlac by the trade union federations Cosatu, Fedusa and Nactu.

Why would the trade unions weaken themselves in this way?

Trade union membership has been falling and now only about a quarter of the workforce is unionised. Of those that are unionised most are in full time, permanent, professional or skilled jobs. The simple truth is that unions do not

organise workers that will benefit from the NMW and are therefore not worried about its enforcement.

The deal that unions have made is to compromise on the right to strike in exchange for keeping them alive within bargaining councils. Many of the trade unions within the 3 federations would collapse very quickly if they were not part of these councils. As trade union membership has been falling some trade unions have been at risk of no longer being representative as required by the LRA. The amendments change what is meant by representativeness.

Firstly, for trade unions in bargaining councils to be 'sufficiently representative' the registrar of trade unions won't have to count labour broker, contract and other workers in the sector. In some sectors these workers are by far the majority or at least a very big minority. But unions organising only permanent workers will still be regarded as 'sufficiently representative', not just of the permanents but of the whole sector. **The changes will keep minority unions in control of whole sectors and they will have no need to organise the other workers.**

At the moment the LRA says the employer organisations must employ the majority of workers **and** unions must have the majority of employees as members for collective agreements to be extended to cover non-union members. With the amendments, unions now do not have to represent a majority of workers in a sector as long as the employer organisations employ the majority of workers. **This will allow the Minister of Labour to say the bargaining council agreements made by minority unions can also cover non-party (non-unionised) workers and bosses.** This will keep unions alive within bargaining councils.

If all of these proposed amendments become law it will be a very big defeat for workers and the working class as a whole.



CWAO

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