

9 May 2016

Dear Members,

BUSINESS UNITY SOUTH AFRICA vs DEPT OF HIGHER EDUCATION & TRAINING

BUSA has successfully brought an application against the Minister of Higher Education and Training, the National Skills Authority, and the National Skills Fund challenging the Seta grant amendments of 2012. This was a significant victory on the part of Business in protecting the use and allocation of the Skills Development Levy.

In a judgement delivered on 7 August 2015, the Labour Court made the following order:

“130.3 Regulations 3(12) and 4(4) of the Sector Education and Training Authorities (SETAs) Grant Regulations Regarding Monies Received by a SETA and Related Matters promulgated in terms of section 36 of the Skills Development Act 97 of 1998 in Government Notice R.990 of 3 December 2012 are declared invalid and set aside.

A timetable for dealing with the appeal on an expedited basis was agreed between the parties and adopted as a directive by the Court, however no appeal was filed by close of business on 18 November 2015. Rule 5(17) provides as follows regarding the failure to file the record on time:

“(17) If the appellant fails to lodge the record within the prescribed period, the appellant will be deemed to have withdrawn the appeal”

Given the status of the matter to date, BUSA is entitled to treat the Labour Court order as final and treat Regulations 3(12) and 4(4) of the Sector Education and Training Authorities (SETAs) Grant Regulations as having no effect. The Minister of Higher Education and Training has, however, not given the SETA's a directive to revert to the previous grant regulations including a Mandatory Grant of 50%.

It is on this basis, that it is now necessary for BUSA to return to the Labour Court in order to secure an “Enforcement Order” which will compel the Minister of Higher Education and Training to abide by the outcomes of the Labour Court ruling.

It is estimated that this action will cost BUSA (in cash flow) approximately R300 000 to R500 000. The legal team is confident that costs against the Minister shall be ordered and most of the amount will be reversed. BUSA is currently in no position to allocate such an amount towards legal costs and as such, a request is being made to members to assist with the funding of the process, which will be to the benefit of business as a whole. Not to follow through on this will be a big blow to business.



Members who are willing to contribute to the aforementioned legal process are kindly requested to contact the CEO, Ms Khanyisile Kweyama (khanyisile.kweyama@busa.org.za).

Kind regards

A handwritten signature in black ink, appearing to read 'K. Kweyama', is written over a light grey rectangular background.

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KHANYISILE KWEYAMA
CHIEF EXECUTIVE OFFICER



BUSA
BUSINESS UNITY SOUTH AFRICA