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TO: Zolani Sakasa, Portfolio Committee on Employment and Labour
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To whom it may concern,

EMPLOYMENT SERVICES AMENDMENT BILL, 2026

THE FREE MARKET FOUNDATION RECOMMENDS THAT THE BILL BE WITHDRAWN AND THAT DEREGULATION BE PRIORITISED AS A MEANS OF ADDRESSING THE UNEMPLOYMENT CRISIS.

ABOUT THE FREE MARKET FOUNDATION

1. The Free Market Foundation (FMF), founded in 1975, promotes and defends the principles of individual liberty, private property, free enterprise, and limited constitutional government. The FMF primarily engages with the policy environment by informing the public of the benefits of liberalisation and generating pressure on political authorities to lessen and cease their interference in market exchanges and private affairs.

INTRODUCTION

2. This submission is made in response to Parliament's invitation for public input on the Employment Services Amendment Bill [B16-2026], which seeks to amend the Employment Services Act (4 of 2014).
3. The FMF's position is grounded in the evidence and economic reasoning set out in its Liberty First policy paper, "Defusing the

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Board: G Daus-van Wyk (Chair), N Emerick (Deputy Chair), B Benfield, U Kwaza, W Hertzog, C Hattingh, T Markman, TA Nolutshungu, E Davie, M van Staden, D Ansara (Chief Executive Officer)

Joblessness Timebomb: Restoring Dignity and Choice Through Labour Regulation Exemption" (hereafter "the JSEC paper"), and its joint report with the Solidarity Research Institute (SRI), "The Costs of B-BBEE Compliance" (hereafter "the B-BBEE report"). It is additionally informed by data on South Africa's structural unemployment crisis, the political climate in which the Bill is being introduced, and the Department of Employment and Labour's own statement of the Bill's objective.

4. The FMF opposes the Bill's attempt to expand state interference in the South African economy through labour protectionism, a further increase in the already onerous administrative and compliance burden on enterprises, and the imposition of more punitive penalties for non-compliance. The Portfolio Committee and the Minister of Employment and Labour should, instead, recognise that the primary driver of the country's structural unemployment crisis is a highly restrictive labour regulatory regime that not only makes commercial activity costly, but also disincentivises enterprises from creating jobs on a large scale, particularly for scores of young, low-skilled South Africans.
5. Labour protectionism is no antidote to this crisis. Rather, it is a zero-sum exercise in determining who gets access to a dwindling pool of jobs in a shrinking economy where opportunity remains severely limited.
6. The appropriate response to the crisis is deregulation through the introduction of a voluntary Job Seekers Exemption Certificate that restores agency to the unemployed, incentivises enterprises to create jobs for them, and avoids increasing the already onerous administrative and compliance burden on commercial activity.

PROBLEM STATEMENT

The structural unemployment crisis and the failure of restrictive regulation

7. South Africa remains confronted by a structural unemployment crisis of massive proportions. According to the latest official data from Statistics South Africa's Quarterly Labour Force Survey for the second quarter of 2026 (released on 11 August 2026), the official unemployment rate rose to 33.6% from 32.7% in the first quarter of 2026. The number of unemployed people stood at 8.41 million.
8. Young people, particularly those who are low-skilled, remain disproportionately affected by this crisis. The unemployment rate among those aged 15-34 rose to 47.4%, while it reached 62.8% among those aged 15-24.
9. These figures reflect the consequences of a highly restrictive labour regulatory regime that makes commercial activity costly and disincentivises enterprises from creating jobs. As the JSEC paper notes, a policy instrument such as the minimum wage raises the cost of hiring above the marginal output of low-skilled labour and consequently prices it out of employment.
10. International organisations such as the International Monetary Fund (IMF) and the World Bank have also highlighted in their research how wage floors can benefit those already in formal employment (who enjoy the protections they provide), while doing little for those locked out of the labour market.
11. The JSEC paper additionally examines the broader issue of labour legislation that makes commercial activity costly and less attractive to enterprises by imposing an onerous administrative and compliance burden. The B-BBEE report further illustrates the scale of this burden in the context of a specific policy instrument.
12. Among its key findings is that the annual direct cost of B-BBEE compliance is estimated at between R145 billion and R290 billion

(equivalent to roughly 2% to 4% of South Africa's GDP), with the resulting economic effects estimated to reduce annual GDP growth by 1.5% to 3% and suppress between 96 000 and 192 000 jobs annually.

13. The existing approach is clearly failing, yet there appears to be little appetite for a change of course. Scores of unemployed South Africans are growing increasingly restless as they remain confined to the margins of society.
14. Anti-foreigner sentiment is on the rise, with anti-foreigner civil society organisations increasingly calling for labour protectionism against foreign nationals, who are perceived as competition for a dwindling pool of jobs. The Bill is arguably, at least in part, a response to the political pressure being generated by this sentiment.

The Bill: Labour protectionism

15. While the quota proposal originated in the 2022 draft version of the Bill, the argument that the current Bill is, at least in part, a response to the political pressure being generated by anti-foreigner sentiment rests not only on the Minister's introduction of it in Parliament in May 2026, but also on the Department's own statement of its objective. In a statement issued on 7 October 2026, the Department described the Bill as being "primarily aimed at strengthening the regulation of South Africa's labour market and ensuring that employment opportunities are better protected and managed in the interests of South African workers".
16. This objective is reflected in clause 4 of the Bill, which proposes to insert a new section 12B into the Employment Services Act. This provision, among other things, states:

> *"12B. (1) Subject to subsection (5), the Minister, after consulting the Board, may, by notice in the Gazette, specify a maximum quota for the employment of foreign nationals by employers in any sector".*

17. While this provision provides for safeguards through consultation with the Employment Services Board and public consultation, it nevertheless proposes to confer an extensive amount of discretionary power on the Minister to impose sectoral quotas for the employment of foreign nationals on employers with more than ten employees.
18. It must be borne in mind that a person's status as foreign or local is largely inborn, meaning this discretionary power reaches to a fundamental, and non-consensual, aspect of a person's identity. Great care must be exercised under such circumstances, as it implicates not only the rights to human dignity or equality at law found in the Bill of Rights, but the very foundational values of dignity, equality, and freedom specified in section 1 of the Constitution.
19. While the intention may be to make more jobs available to South Africans in a particular sector, such as construction, by restricting access to those jobs for foreign nationals, the FMF does not believe that this is the appropriate response to the unemployment crisis. Labour protectionism may, on the face of it, promise to create opportunities for South Africans by limiting competition for existing jobs. However, it cannot be the antidote to an unemployment crisis that is primarily the consequence of a restrictive labour regulatory regime.
20. Even if the Bill eventually enables the Minister to determine who may access jobs in a particular sector, it will not address the underlying barrier to job creation or generate jobs on the scale required to make a meaningful dent in unemployment.

The Bill: Administrative and compliance burden

21. Of concern are three other provisions in the Bill that could increase the already onerous administrative and compliance burden on enterprises and further disincentivise hiring. These are the proposed pre-employment skills check, the preparation of skills-transfer plans, and the increased penalties for non-compliance.

(1) Pre-employment skills check

22. Section 8(2)(a) of the Employment Services Act empowers the Minister, after consulting the Board, to introduce regulations that may require employers to satisfy themselves that no other persons in the Republic have suitable skills to fill a vacancy before recruiting a foreign national. The provision therefore authorises the introduction of such a requirement through regulations rather than imposing it directly on all employers as a statutory duty.
23. The Bill proposes to repeal section 8 and introduce a new section 12A(2)(b), which would expressly require employers to satisfy themselves, in such manner as may be prescribed, that there are no other persons in the Republic with the necessary skills to fill a vacancy before recruiting a foreign national. This requirement could add further costs, delays, and administrative steps to the recruitment process.
24. Depending on the measures prescribed, employers may have to undertake additional searches, document their efforts, and demonstrate compliance before filling a vacancy. The precise burden will depend on the regulations adopted, but the proposed statutory obligation creates the basis for additional compliance requirements.

(2) Skills-transfer plans

25. Section 8(2)(c) of the Act similarly empowers the Minister to introduce regulations that may provide for the preparation of skills-transfer plans by employers in respect of positions occupied by foreign nationals. The Bill proposes to replace this regulatory power with an express requirement under section 12A(2)(c), which would oblige employers to prepare a skills-transfer plan in respect of any position in which a foreign national is employed, subject to the Minister's power to exclude categories of employers, employees or workers where preparation is impracticable.

26. While skills development is important, its value does not in itself justify imposing a general statutory planning obligation on enterprises that may employ foreign nationals. The nature of the work, the skills involved and the practical scope for transferring those skills will differ between positions and workplaces. Requiring employers to prepare such plans may therefore impose additional administrative obligations without adequately accounting for the circumstances of individual enterprises.
27. The FMF is concerned that this approach places further regulatory responsibilities on enterprises rather than allowing them to determine how best to meet their operational needs and develop skills in accordance with their particular circumstances.

(3) Penalties for non-compliance

28. The Bill also proposes to increase the penalties applicable to certain contraventions. Section 49(2) of the Act provides for a maximum fine of R50 000 for contraventions of provisions listed in Schedule 3. The Bill proposes to increase this amount to R100 000 and introduce a new section 49(2A), which would provide for escalating fines for employers who contravene sections 12A, 12B(8), or 12E. For repeated contraventions, the maximum fine may reach the greater of R1 million or 10% of the employer's turnover in the previous financial year.
29. This proposed framework raises concerns about the financial risks associated with non-compliance. The prospect of substantial fines, alongside additional recruitment and skills-transfer obligations, could make employment a riskier proposition for enterprises.
30. The FMF is concerned that increasing the regulatory obligations imposed on employers while exposing them to significant financial penalties risks further discouraging hiring and commercial activity.

The appropriate response: The Job Seekers Exemption Certificate

31. The FMF submits that the appropriate response is the introduction of a Job Seekers Exemption Certificate (JSEC), as set out in detail in the JSEC paper.
32. Under this proposal, anyone who has been unemployed for six months or longer would be eligible to apply for a certificate free of charge at their local municipality.
33. The certificate would exempt its holder from all labour legislation, including the minimum wage, or a period of 24 months. It would be revocable by the holder at any time.
34. The JSEC would restore agency to the unemployed, particularly the young and low-skilled, while incentivising enterprises to create jobs and hire them. Rather than being a zero-sum exercise in determining who gets access to a dwindling pool of jobs, this approach would remove a key barrier to employment and create opportunities for those who are currently excluded from the labour market. These would be overwhelmingly South African. It would do so without adding to the already onerous administrative and compliance burden on enterprises.

RECOMMENDATIONS

In light of the foregoing, the FMF recommends that:

35. The Employment Services Amendment Bill be withdrawn in its entirety.
36. The Minister of Employment and Labour and the Portfolio Committee on Employment and Labour recognise that labour protectionism is not an appropriate response to South Africa's structural unemployment crisis, the primary driver of which is a highly restrictive labour regulatory regime that makes commercial activity costly and disincentivises job creation.

37. The Job Seekers Exemption Certificate be considered as the appropriate alternative. By restoring agency to the unemployed and incentivising enterprises to hire them, the JSEC addresses the underlying barrier to job creation rather than attempting to redistribute access to a dwindling pool of existing jobs.

The FMF wishes to indicate its interest in making a verbal presentation during the public hearings on the Bill and is available to elaborate on this submission and the accompanying research, which is submitted alongside the submission.