

IMPACT OF RECENT LEGISLATION

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PAPER

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TOPIC

SDA - SKILLS DEVELOPMENT ACT

Purpose of the SDA

- Encourages businesses to improve the skills their workers.
- Invests in the education and training of workers.
- Redresses imbalances of the past through education and training.
- Improves the chance of getting a job previously disadvantaged people.

Impact of the SDA

- ✚ Business could become globally more competitive.
- ✚ Increases the return on investment (ROI) in education and training
- Increases the costs as the process requires a large amount of paperwork.
- Implementation of the SDA can be difficult to monitor and control.

Actions regarded as Non-compliance of the SDA

- Preventing employees from signing for a learnership due to their age or position in the workplace.
- Furnishing false information in any prescribed document.
- Unfair promotion of skills and development/training to certain employees.
- Providing employment services for gain without being registered as an employer.

Penalties / Consequences of non-compliance of the SDA

- A labour inspector could order the business to stop operating should the business be found guilty of illegal practices.
- Businesses that do not pay the SDL may not offer learnerships / claim grants from the SDA.

Ways in which a business can comply with the SDA

- Encourage employees to participate in learnerships and other training programmes.
- Provide all employees with the opportunity to improve their skills.
- Assess the skills of employees to determine the areas in which skills development are needed.
- Employers who collect PAYE should register with SETA.

Role/Function of SETA in supporting SDA

- Register learnership agreements and learning programmes.
- Promote and establish various learnerships.
- Approve the workplace skills plans and annual training reports.
- Draw up skills development plans for their specific economic sectors.

Funding of SETA

- Skills Development levies are paid by employers to SARS as a collecting agency for the government.
- Donations/Grants received from the public/businesses/CSI programmes.
- Surplus funds from government institutions.
- Funds received from rendering their services.

Meaning of Learnerships

- Learnerships are theoretical/practical training opportunities that lead to a recognised occupational qualification.
- It includes a training course with learning material as well as practical work experience.

National Skills Development Strategy (NSDS)

- Increases access to programmes that train people.
- Makes better use of workplace-based skills development.
- Improves social development through economic development.
- Sets out the responsibilities of other education and training stakeholders.

Human Resources Development Strategy (HRDS)

- Improves the supply of skills.
- Promotes social development/social justice and helps to reduce poverty.
- Addresses skills shortages in the South African workplace.
- Increases employee participation in lifelong learning.

LRA – LABOUR RELATIONS ACT

Purpose of the LRA

- Provides framework / structure for labour relations between employers and employees.
- Promotes collective bargaining at the workplace.
- Promotes fair labour practices between employers and employees.
- Established the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court for dispute resolution.

Impact of the LRA

- ✚ Protects the rights of businesses in labour-related issues.
- ✚ Labour disputes are settled quicker and are less expensive.
 - Cost of labour increases because of legal strikes.
 - Reduced global competitiveness due to lower productivity.

Actions regarded as Non-compliance of the LRA

- Unfair / Illegal dismissal of employees.
- Refusing the establishment of workplace forums.
- Refusing leave to trade union representatives to attend trade union activities.
- Forcing employees to give up trade union membership.

Penalties / Consequences of non-compliance of the LRA

- The employer may be forced to enter into a dispute resolution process.
- Businesses will be fined if they fail to comply with the agreements reached during the dispute resolution process.
- Businesses that fail to comply with the LRA may risk financial costs such as legal /CCMA fees.

Ways in which a business can comply with the LRA

- Employees should not be unfairly / illegally dismissed.
- Employees must be allowed to form trade unions / participate in trade union-related activities / legal strikes.
- Allow the establishment of workplace forums.
- Employers should not breach / ignore any collective agreement.

Rights of EMPLOYERS in terms of LRA

- Lockout employees who engage in unprotected / illegal strike / labour action.
- dismiss employees who engage in unprotected strikes/misconduct such as violence or intimidation during strike action.
- Form bargaining councils for of collective bargaining purposes.
- not remunerate an employee who has participated in a protected strikes for work they did not do during the strike.

Rights of EMPLOYEES in terms of LRA

- Employees may join a trade union of their choice.
- Establish a workplace forum where a business has 100 or more employees to resolve work-related issues.
- Refer unresolved workplace disputes to the CCMA.
- Refer unresolved CCMA disputes to the Labour Court for an appeal.

EEA – EMPLOYMENT EQUITY ACT

Purpose of the EEA

- Ensures equal representation in the workplace through the implementation of affirmative action.
- EEA allows employees who do the same work to be paid equally.
- Promotes equal opportunity and fair treatment in the workplace.
- Eliminates discrimination on the grounds of gender/race/disability in the workplace.

Impact of the EEA

- ✚ Encourages diversity in the business by employing people from various racial backgrounds.
- ✚ Encourages consultation between employers and employees.
- Diversity in the workplace may lead to conflict / unhappiness.
- Often positions go unfilled because there are no suitable EE candidates.

Actions regarded as Non-compliance of the EEA

- Denying people access to the workplace, based on the gender / race / culture etc and treating them unfairly.
- Refusing to employ a person because he / she has strong religious beliefs / has a disability
- Not employing a young woman because she would want to have children in the future.
- Doing HIV testing unless justified by the Labour Court.

Penalties / Consequences of non-compliance of the EEA

- Businesses may face heavy fines for non-compliance.
- They can be ordered to pay compensation and damages to the employee.
- A compliance order may be issued to businesses that do not comply with the EEA.
- Labour inspectors may ask questions about complaints.

Ways in which a business can comply with the EEA

- Promote equal opportunities and fair treatment.
- Implement an employment equity plan.
- Businesses must guard against discriminatory appointments.
- Ensure that there is equal representation of all racial groups in every level of employment.

BCEA – BASIC CONDITIONS OF EMPLOYMENT ACT

Purpose of the BCEA

- Provides clear terms and conditions of employment for employers and employees.
- Regulates the right to fair labour practices as set out in the Constitution.
- Sets minimum requirements/standards for the employment contracts.
- Advance economic development and social justice.

Provisions of the BCEA

• Hours of work / work hours

- Workers may not work for more than 45 hours in any week.
- Employees may work 9 hours a day if they work five days or less per week.
- Ordinary work hours may be reduced to a maximum of 40 hours per week.

• Overtime

- Workers must agree to overtime.
- Workers cannot work more than 3 hours overtime per day, or 10 hours per week.
- Overtime is compensated as follows:
 - One and a half times the normal rate of pay for overtime worked on weekdays and Saturdays.
 - Double the normal rate of pay for overtime worked on Sundays and public holidays.

• Meal breaks and rest periods

- Employees must have a meal break of 60 minutes after five continuous hours of work.
- The meal break can be reduced to 30 minutes by written agreement when working less than 6 hours per day.

• Termination of employment

- An employment contract may only be terminated following one weeks' notice if the worker has been employed for six months or less.
- A minimum of four weeks' notice must be given, if the worker has been employed for a year or longer.

- **Prohibition of employment of children and forced labour**

- It is illegal to employ a child younger than 15 years of age.
- It is also illegal to force an employee to work.

- **Public holidays**

- Workers must be paid for any public holiday that falls on a working day.
- Work on public holidays is by agreement and paid at double the rate.

- **Particulars of employment and remuneration**

- Employees must be paid on a regular basis.
- Remuneration must be in line with the number of working hours including overtime.

- **Leave**

- **Annual leave**

- Workers are entitled to 21 consecutive days annual leave per year or one day for every 17 days worked/1 hour for every 17 hours worked.
- An employer can only pay a worker in lieu/instead of granting leave if that worker leaves the job/terminates the employment contract.

- **Sick leave**

- Employees are entitled to 30 days/6 weeks paid sick leave in a 3 year/36 months cycle.
- 1 day paid sick leave for 26 days worked during the first 6 months of employment.

- **Maternity leave**

- Pregnant employees are entitled to four consecutive months' leave.
- Pregnant employees may not be allowed to perform work that may be hazardous to her unborn child.

- **Parental leave**

- An employee who is a parent is entitled to 10 consecutive days parental leave after the birth of his/her child, irrespective of gender.
- Parental leave is unpaid but the employee/parent may claim from the Unemployment Insurance Fund/UIF.

- **Adoption leave**

- Adoption leave applies to the adoption of a child below the age of 2 years.
- One parent of the adopted child is entitled to 10 weeks of adoption leave to take care of the child, while the other parent is entitled to 10 consecutive days normal parental leave.

- **Family responsibility leave**

- An employee may receive 3 to 5 days paid leave per year on request, in the event of the death of the employee's spouse/life partner/parent/adoptive parent/grandparent/child/adoptive child/grandchild/sibling.
- An employer may require reasonable proof before granting this leave.

Impact of the BCEA

- ✚ Outlines the minimum requirements that form the basis for employment contracts.
- ✚ Work hours are specified so that the employer cannot exploit employees.
- Developing a formal employment contract may be time-consuming.
- Hiring cheap labour is no longer possible, so businesses cannot exploit workers.

Actions regarded as Non-compliance of the BCEA

- Forbidding workers to discuss wage / salaries with co-workers.
- Preventing workers from having access to employment contracts.
- Refusing to grant some workers family responsibility leave to support a sick family member.
- Refusing to accept a valid medical certificate of a sick employee.

Penalties / Consequences of non-compliance of the BCEA

- Labour inspectors may serve a compliance order by writing to the Department of Labour.
- Businesses that are found guilty of non-compliance may face heavy fines.
- Businesses may be taken to the Labour Court for a ruling.
- Labour inspectors may ask questions about complaints and remove records as evidence.

Ways in which a business can comply with the BCEA

- Remunerate/pay employees for working overtime, as stipulated in the provisions of the BCEA.
- Ensure that employees do not exceed the stipulated working hours of 45 hours per week.
- Provide maternity leave for pregnant employees.
- Allow sick employees to take off the required amount of sick leave i.e, six weeks in a three year cycle.

COIDA – COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT

Purpose of the COIDA

- COIDA applies to all casual and full-time employees who become injured/disabled/killed due to a workplace accident/disease.
- COIDA excludes employees who are guilty of wilful misconduct/workers working outside South Africa for at least twelve months/members of the SA Defence Force/ Police Services.
- Provides a comprehensive protection to employees who were injured in the course of performing their duties
- It provides for the establishment of a Compensation Board whose function is to advise the Minister of Labour on the application of COIDA.

Impact of the COIDA

- + Promotes safety in the workplace.
- + Claiming processes are relatively simple.
- Claiming processes can be time consuming.
- Domestic / military workers are not covered.

Actions regarded as Non-compliance of the COIDA

- Employers who bribe employees from reporting the accident / injury.
- Employers who do not contribute to the Compensation Fund.
- Employers who do not allow claims for injuries, discriminates against injured employees.
- Employers that take too long to process claims / delay the claiming process.

Penalties / Consequences of non-compliance of the COIDA

- Businesses can be fined for refusing to lodge the claim.
- Businesses can be forced to make large payments if it did not take the necessary precautions according to the Act.
- Businesses may be forced to pay recovery costs required by the Compensation Fund.
- Employees may take a business to court for not registering with the Commissioner of the Compensation Fund.

Ways in which a business can comply with the COIDA

- Businesses should provide a healthy / safe working environment.
- Register with Compensation Commissioner and provide the particulars of the business.
- Levies must be paid to the Compensation Fund.
- Report all incidents causing death / injury / illness of employees.

BBBEE – BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Purpose of the BBBEE

- Enables wealth to be spread more broadly across all population groups.
- Aims at targeting inequality in the South African economy.
- Allows for the development of Codes of Good Practice.
- Outline areas that would give the government a platform for bringing equitable spread of wealth.

Difference between BEE and BBBEE

BEE	BBBEE
A government policy that may not always be enforced.	An Act that is enforced/must be complied with by businesses.
Benefitted only a few previously disadvantaged people in the economy	Encourages a wider group of previously disadvantaged people – which includes black women, people who are physically challenged, youth, and people in rural areas – to participate in the economy.

BBBEE Pillars

1. Management control

Implications / Business must:

- Business must ensure that transformation is implemented at all levels.
- Appoint black people in senior executive positions/to management

2. Ownership

Implications / Business must:

- Include black people in shareholding/partnerships/franchises.
- Create more opportunities for black people to become owners and entrepreneurs.

3. Enterprise and supplier development (ESD)

Implications / Business must:

- Be encouraged to invest in and support black-owned SMMEs.
- Outsource services to suppliers that are BBBEE compliant.

4. Skills Development

Implications / Business must:

- Engage/involve black employees in various skills development initiatives.
- Provide learnerships and learning programmes to black employees

5. Socio-economic development / Social responsibility

Implications / Business must:

- They should distribute scarce CSI resources to selected beneficiaries in the community.
- Businesses should focus on critical areas which can affect growth and development in the country eg. housing, poverty.

Identify BBBEE pillars from scenarios.

Impact of the BBBEE

- ✚ Businesses who are BBBEE-compliant will be rated high on the BBBEE scorecard/may get government tenders/may attract other BBBEE business partners/suppliers.
- ✚ Encourages businesses to address the demands for redress/equity directly.
- Businesses that want to do business with the government must have their BEE status assessed annually.
- Processes may lead to corruption / nepotism if not monitored properly.

Actions regarded as Non-compliance of the BBBEE

- Failing to implement affirmative action to meet BBBEE responsibilities.
- Promoting unsuitable people into management positions at the expense of qualified previously disadvantaged people (PDP's)
- Refusing to award tenders to black suppliers who are BEE compliant.

Penalties / Consequences of non-compliance of the BBBEE

- Businesses may face imprisonment for non-compliance and fronting practices.
- A business can be banned from participating in government contracts for a period of 10 years.
- The penalty could be a fine of up to 10% of the company's annual turnover.
- Business licenses may not be renewed, and authorisation may not be issued.

Ways in which a business can comply with the BBBEE

- Outsource their services to BEE compliant suppliers.
- Send black people for skills development training.
- Business must sell shares to back employees.
- Businesses must appoint black employees in managerial positions.

NCA – NATIONAL CREDIT ACT

Purpose of the NCA

- Promotes the social and financial interests of consumers.
- Ensures that consumers know what is included in their credit contracts.
- Promotes a fair but competitive credit market.
- Prevent discrimination and ensure credit is available to all consumers.

Impact of the NCA

- ✚ The NCA protects businesses against non-paying customers.
- ✚ Authorised credit providers may attract more customers.
- Businesses can no longer carry out credit marketing.
- Debt collection procedures are more complex and expensive.

Actions regarded as Non-compliance of the NCA

- Refusing credit to customers based on gender / race.
- Charging different interest rates to different consumers based on gender / race.
- Blacklisting customers without making efforts to recover the debt.

Penalties / Consequences of non-compliance of the NCA

- The National Credit Regulator (NCR) may impose a fine/penalty on the business for non-compliance.
- Businesses/credit providers may not charge any fee/interest/other charges under that specific credit agreement.
- The court may declare the granting of credit by the business as reckless, and may order consumers not to repay the credit/or part thereof to the business.
- Businesses may not demand payment, sue or attach the clients/consumer's salaries/assets.

Ways in which a business can comply with the NCA

- Offer applicants pre-agreement statements.
- Disclose all costs of the loan.
- Businesses should be registered with the National Credit Regulator.
- Conduct affordability assessments to ensure that consumers can meet their obligations.

Rights of CONSUMERS in terms of NCA

- Apply for credit and to be free from discrimination.
- Obtain reasons for credit being refused.
- Fair and responsible marketing.
- Refuse a credit limit increase.

CPA – CONSUMER PROTECTION ACT

Purpose of the CPA

- Promotes fair/accessible and sustainable places for producers to sell their products.
- Promotes responsible consumer behaviour.
- Establish national standards to protect consumers.
- Promotes the rights and full participation of historically disadvantaged individuals as consumers in the economy.

Impact of the CPA

- ✚ Protects businesses if they are regarded as consumers.
- ✚ Safeguards businesses from dishonest competitors.
 - Confidential business information may become available to competitors.
 - Penalties for non-compliance may be very high.

Actions regarded as Non-compliance of the CPA

- Treating customers differently based gender / age / race.
- Charging different and unfair prices to consumers for the same goods and services.
- Denying/refusing customers proper information about the goods and services.
- Varying the quality of goods when selling in different areas.

Penalties / Consequences of non-compliance of the CPA

- A contract may be rendered void or a fine or term of direct imprisonment may be imposed.
- Businesses may face fines or imprisonment for a period not exceeding 10 years.
- Government agencies may conduct audits, enact fines or even dissolve your business entirely.
- Businesses will be forced to compensate consumers in line with the extent to which their rights have been violated.

Ways in which a business can comply with the CPA

- Display the name of the business all business documentation, for example, letterheads/invoices/contracts.
- All agreement must provide for a five-day cooling off period.
- Disclose prices of all products that are on sale.
- Ensure that the quality of the goods and services is standardised / of the same quality.

Rights of CONSUMERS

- Right to choose
- Right to privacy and confidentiality
- Right to fair and honest dealings
- Right to disclosure and information
- Right to fair marketing
- Right to accountability from suppliers
- Right to fair terms and conditions
- Right to equality in the consumer marketplace
- Right to return goods
- Right to complain
- Right to fair value, good quality and safety