

IMPACT OF RECENT LEGISLATION



PAPER



TOPIC

SDA - SKILLS DEVELOPMENT ACT

Purpose of the SDA

- Encourages businesses to improve the skills of new and existing workers.
- Invests in the education and training of the South African workforce.
- Purposefully redresses imbalances of the past through education and training.
- Improves the job prospects of previously disadvantaged people.

Impact of the SDA

- ✚ Increases the number of skilled employees with scarce skills.
- ✚ Improves the return on investment (ROI) in education and training
- The implementation of the SDA is time-consuming, expensive, prescriptive and administratively burdensome.
- Businesses find it difficult to monitor/control the implementation of this Act.

Actions regarded as Non-compliance of the SDA

- Preventing qualified employees from gaining access to training opportunities and learnerships.
- Preventing employees access to learnerships based on any discriminatory grounds such as pregnancy, age, position, language, gender, sexual orientation, culture or religion.
- Promoting skills development unfairly, for example, where only certain employees' benefit.
- Falsifying information in any documentation such as tax documentation submitted to SARS and workplace skills plans

Penalties / Consequences of non-compliance of the SDA

- Businesses that do not comply with the SDA may receive a compliance order from the Labour Court. This order forces the business to comply with the SDA.
- Businesses who neglect to comply with the SDA may receive large fines and may be given a jail sentence (imprisonment), which will be dependent on the severity of the non-compliance.
- Businesses that do not pay the SDL may not offer learnerships to employees or claim grants from the SDA.
- The business's operating licence may be revoked, which may prevent the business from continuing any form of operations.

Ways in which a business can comply with the SDA

- Display a summary of the SDA in the business where it is visible to all employees.
- Provide opportunities to all employees to improve their skills.
- Assess the skills of employees to determine/ascertain the areas in which skills development is needed.
- Employers who collect PAYE (Pay As You Earn tax) should register with SETA.

Role/Function of SETA

- register various learnerships and learning programmes.
- promote and establish various learnerships.
- approve the workplace skills plans and annual training reports submitted by businesses.
- develop/build skills development plans for the various 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.
- Addresses the shortage of language and mathematical skills among the youth and adults.
- Increases/improves the skills of the public sector to improve service delivery.
- Builds career guidance.

Human Resources Development Strategy (HRDS)

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

LRA – LABOUR RELATIONS ACT

Purpose of the LRA

- Provides an enabling framework and structure for labour relations between employees and employers, trade unions and employer organisations.
- Promotes collective bargaining at the workplace/sectoral level
- Promotes fair labour practices between employers and employees.
- Established the Commission for Conciliation, Mediation and Arbitration (CCMA), Labour Court and Labour Appeal Court.

Impact of the LRA

- ✚ Protects the rights of businesses and employer organisations in labour-related issues.
- ✚ Promotes quick and less expensive labour dispute resolutions
- The implementation of the LRA may be very costly and time-consuming – especially the dispute resolution process.
- Decreased profitability of businesses because of a decline in productivity and sales.

Actions regarded as Non-compliance of the LRA

- Dismissing employees unfairly or illegally.
- Preventing employees from participating in legal strikes.
- Dismissing employees who participate in legal strikes.
- Preventing employees from forming and joining trade unions.

Penalties / Consequences of non-compliance of the LRA

- Businesses that do not comply with the LRA may receive a compliance order from the Labour Court that forces the business to comply.
- Businesses who neglect to comply with the LRA may receive large fines if they fail to meet the agreements reached during the dispute resolution process.
- The business's licence may be revoked, which may prevent the business from continuing any form of operations.
- Businesses that fail to comply with the LRA may incur financial costs such as legal fees/CCMA fees.

Ways in which a business can comply with the LRA

- Display a summary of the LRA in the workplace where it is visible to all employees.
- Employees must be allowed to form trade unions and participate in trade union-related activities or legal strikes.
- The establishment of workplace forums must be supported by employers.
- Any agreements made during collective bargaining should not be ignored employers.

Rights of EMPLOYERS in terms of LRA

- form employer organisations.
- dismiss employees who engage in unprotected strikes/misconduct such as violence or intimidation during strike action.
- form bargaining councils for the purpose of collective bargaining.
- not remunerate employees who participate in protected strikes and for work that was not completed during protected strikes.

Rights of EMPLOYEES in terms of LRA

- 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 Commission for Conciliation, Mediation and Arbitration (CCMA).
- refer unresolved CCMA disputes to the Labour Court for an appeal.

EEA – EMPLOYMENT EQUITY ACT

Purpose of the EEA

- Ensures equal representation of all population groups of South Africa in the workplace through the effective promotion and implementation of affirmative action.
- Advocates that employees who do work of the same or equal value must be paid equally.
- Promotes equal opportunity and fair treatment for all workers in the workplace.
- Prevents 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.
- The implementation of the EEA is time-consuming, expensive, prescriptive and administratively burdensome because employment equity reports must be submitted to the Department of Labour every two years.
- Businesses find it difficult to make appointments because of the unsuitability of candidates, which results in the position not being filled.

Actions regarded as Non-compliance of the EEA

- Denying people access to the workplace, based on the grounds of any form of discrimination such as gender, race, culture, religion, language and gender.
- Treating workers unfairly and incorrectly promoting affirmative action in the workplace.
- Refusing to employ young women because they would choose to have children in the future.
- Conducting HIV testing unless the testing is justified by the Labour Court.

Penalties / Consequences of non-compliance of the EEA

- Businesses that do not comply with the EEA may receive a compliance order from the Labour Court that forces the business to comply with the EEA.
- Businesses that do still not comply after the compliance order has been issued may then be charged/prosecuted by the Labour Court for non-compliance.
- Businesses who neglect to comply with the EEA may receive large fines, which will be dependent on the degree of non-compliance, especially in the context of fronting.
- Labour inspectors can visit the business and conduct interviews with employees to determine whether the information supplied on the employment equity plans is true or has been falsified.

Ways in which a business can comply with the EEA

- Display a summary of the EEA in the workplace where it is visible to all employees.
- Provide equal opportunities to all employees in the workplace.
- Businesses should ensure that employees are paid equally for work of equal value.
- Implement affirmative action measures to promote diversity in the workplace

BCEA – BASIC CONDITIONS OF EMPLOYMENT ACT

Purpose of the BCEA

- Outlines clear terms and conditions of employment for employers and employees.
- Regulates and promotes the right to fair labour practices as outlined in the Constitution of South Africa.
- Provides minimum requirements/standards for the creation of employment contracts.
- Advances the economic development and social justice of employees.

Provisions of the BCEA

Hours of work / work hours

- Employees are not allowed to work for more than 45 hours per week.
- Employees may work 9 hours a day if they work five days or less per week.
- Employees may work 8 hours a day if they work more than five days a week.

Overtime

- Employees cannot be forced to work overtime but must agree to work overtime.
- Employees cannot work more than 3 hours overtime per day, or 10 hours per week.
- 1½ times/One and a half times the normal rate of pay for overtime worked on weekdays and Saturdays.
- 2 times/ Twice/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 5 continuous hours of work.
- The meal break can be reduced to 30 minutes/half an hour by a mutual written agreement when employees work less than 6 hours per day.

Termination of employment

- An employment contract may only be terminated following 1 weeks' notice if the employee has been employed for 6 months or less.
- A minimum of 4 weeks' notice must be given to the business if the employee has been employed for a year or longer.

Child and forced labour

- It is illegal to employ a child younger than 15 in South Africa.
- It is also illegal to force an employee to work.

- **Public holidays**

- Employees must be paid for any public holiday that falls on a working day.
- Employees may work on public holidays when there is a mutual agreement, and they are paid 2 times/twice/double their normal rate.

- **Leave**

- **Annual leave**

- 21 consecutive days annual leave per year or 1 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**

- 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 of maternity leave.
- Pregnant employees are prevented from performing work that may be hazardous to themselves and the unborn child.

- **Parental leave**

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

- **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 approving this type of leave such as a death certificate of the family member whose funeral will be attended

Impact of the BCEA

- ✚ Outlines the minimum/basic requirements for employment contracts.
- ✚ Specifies work hours to prevent exploitation of employees.
- The implementation of the BCEA is time-consuming, expensive, prescriptive and administratively burdensome, especially the drafting of formal/legal contracts.
- Employers cannot hire cheap labour, and therefore cannot exploit employees.

Actions regarded as Non-compliance of the BCEA

- Forbidding employees to discuss remuneration/wages and salaries matters with other workers.
- Preventing employees from gaining access to employment contracts.
- Preventing pregnant employees from legally taking maternity leave.
- Refusing acceptance of a valid medical certificate of a sick employee.

Penalties / Consequences of non-compliance of the BCEA

- Businesses that do not comply with the BCEA may receive a compliance order from the Labour Court, that forces the business to comply with the BCEA.
- Businesses who neglect to comply with the BCEA may receive large fines and may even be given a jail sentence, which will be dependent on the severity of the non-compliance.
- Businesses may be taken to the Labour Court for a ruling.
- Labour inspectors may conduct investigations and inquiries about complaints in the context of the BCEA 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 3 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 such as horseplay in the workplace/employees working outside South Africa for at least twelve months/members of the South African Defence Force/members of the Police Services.
- Employers make monthly contributions towards the Compensation Fund, which is based on the number of employees in the workplace/the level of risk to which employees are exposed.
- The type and severity of the injury will dictate the medical expenses and other compensation that will be paid to employees.

Impact of the COIDA

- ✚ Promotes health and safety in the workplace.
- ✚ Creates an enabling framework for acceptable employment practices/safety regulations
- South Africans who are temporarily/permanently employed in foreign countries are not covered by COIDA.
- COIDA does not cover employees in the South African National Defence Force.

Actions regarded as Non-compliance of the COIDA

- Bribing employees not to report the accident/injury based on the grounds of race/religion/culture/language/gender/sexual orientation.
- Falsifying information about previous, serious accidents/occupational diseases on the grounds of race/religion/culture/language/gender/sexual orientation.
- Failing to disclose all information to the Compensation Board when accidents or injuries occur for specific employees.
- Refusing to lodge the claims of domestic workers.

Penalties / Consequences of non-compliance of the COIDA

- Businesses that do not comply with COIDA may receive a compliance order from the Labour Court, which forces the business to comply with COIDA.
- Businesses who neglect to comply with COIDA may receive large fines for refusing to lodge claims and may even be given a jail sentence/imprisonment, which will be dependent on the severity of the non-compliance.
- 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

- Display a summary of COIDA in the workplace where it is visible to all employees.
- Register with Compensation Board and Compensation Commissioner.
- Pay the required levies to the Compensation Fund.
- Report all accidents, injuries, illnesses and fatalities to the Compensation Commissioner as they occur

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.
- Increases the number of black people that manage/control South African businesses.

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:

- 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 Small Medium and Micro Enterprises (SMMEs).
- Create jobs as ESD promotes and supports local manufacturing.

4. Skills Development

Implications / Business must:

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

5. Socio-economic development / Social responsibility

Implications / Business must:

- Contribute towards social investment projects and community development.
- Focus on critical areas of CSI such as development in the country, for example, environmental awareness/education/housing/poverty/unemployment, and so on.

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 in the workplace.
- The implementation of BBBEE is time-consuming, expensive, prescriptive and administratively burdensome, especially attaining BBBEE Scorecard ratings and training of employees.
- Some processes associated with BBBEE – if not monitored properly – may lead to corruption/nepotism/cronyism.

Actions regarded as Non-compliance of the BBBEE

- Employers who fail to correctly implement affirmative action in the context of employment equity to meet BBBEE responsibilities.
- Employers who promote unsuitable people into management positions at the expense of qualified previously disadvantaged people.
- Employers who are deliberately involved in fronting, corruption, nepotism and cronyism, and because of this, certain individuals benefit at the expense of other individuals.
- Refusing to award government tenders to BBBEE-compliant vendors

Penalties / Consequences of non-compliance of the BBBEE

- Businesses that do not comply with BBBEE may receive a compliance order from the Labour Court, which forces the business to comply with BBBEE.
- Businesses who neglect to comply with BBBEE may receive large fines for fronting practices and may even be given a jail sentence (imprisonment), which will be dependent on the severity of the non-compliance.
- Businesses may be fined with a penalty of up to 10% of the annual turnover of businesses.
- The state may decide not to renew business licences, revoke the business licence, or refuse to grant authorisations to conduct business activities.

Ways in which a business can comply with the BBBEE

- Businesses need to find all means to achieve the requirements of the five BBBEE pillars, such as promoting affirmative action when making appointments.
- Conduct regular skills development training with black employees.
- Sell shares to more black individuals within and outside the organisation.
- Appoint and promote more black employees into managerial positions.

NCA – NATIONAL CREDIT ACT

Purpose of the NCA

- Promotes the social and financial interests of South African consumers, and by extension the South African economy.
- Ensures that consumers of credit are well informed about the details included in their credit contracts.
- Promotes the responsible granting of credit by credit providers.
- Ensures that credit is equally available to all qualifying consumers.

Impact of the NCA

- ✚ The NCA protects businesses against non-paying customers.
- ✚ Businesses that are authorised credit providers may attract more consumers.
- Businesses/credit providers cannot collect a debt from consumers who are under debt review.
- Businesses that grant credit recklessly cannot recover the debt.

Actions regarded as Non-compliance of the NCA

- Refusing to grant consumers credit based on any form of discrimination such as race, gender, age, religion, language, culture, sexual orientation.
- Charging different interest rates to different consumers based on discriminatory grounds such as race, gender, age, religion, language, culture, sexual orientation.
- Granting credit recklessly to consumers and failing to explain the credit contract to consumers.
- Blacklisting customers without exhausting all efforts to recover the debt from the consumer.

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 to repay debt.

Ways in which a business can comply with the NCA

- Conduct credit checks with a registered credit bureau and/or consult the National Credit Register.
- Register the business with the National Credit Regulator (NCR).
- Submit annual compliance reports to the NCR.
- 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 of any form.
- obtain reasons for credit being refused by credit providers.
- receive protection of their personal information.
- receive information in plain and understandable language

CPA – CONSUMER PROTECTION ACT

Purpose of the CPA

- Promotes fair/accessible and sustainable places for producers to sell their products.
- Promotes responsible consumer behaviour amongst consumers.
- Ensures the consistent application of laws relating to consumer transactions and agreements.
- 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.
- The implementation of the CPA is time-consuming, expensive, prescriptive and administratively burdensome, especially the implementation processes and procedures required by the CPA.
- Consumers can take advantage of businesses and return goods when it is not necessary to do so.

Actions regarded as Non-compliance of the CPA

- Treating customers unfairly based on any form of discrimination such as race, gender, age, religion, language, culture, disability, sexual orientation.
- Charging different and unfair prices to consumers for the same goods and services.
- Denying/refusing customers proper information about the goods and services.
- Varying/differentiating the quality of goods when selling in different areas – this is known as place discrimination.

Penalties / Consequences of non-compliance of the CPA

- Businesses that do not comply may receive a compliance order that forces the business to comply with the CPA.
- Businesses who neglect to comply with the CPA may receive large fines and may be given a jail sentence/imprisonment, which will be dependent on the severity of the non-compliance.
- Licences of businesses may be revoked for unfair consumer practices.
- Businesses may be compelled to pay interest or damages that are due to the consumer.

Ways in which a business can comply with the CPA

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

Rights of CONSUMERS

- Right to choose
- 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 market place