LABOUR LEGISLATION

1998
Cape Town approves new housing plan

Robyn Chalmers 28 6/7/98

CAPE Town’s city council has approved an innovative low-cost housing model which matches the housing subsidy with a combination of a municipal contribution, domestic savings and microcredit facilities.

The new policy, forged by former Cape Town housing director Billy Cobbert, has created a stir among financial institutions, many of which have shunned the low-cost housing market. Other cities and towns are understood to be considering adopting the plan.

Cape Town has approved R115m over five years as a municipal financial contribution. A portion of the R25m for the first year will go towards capitalising a separate legal entity or special purpose vehicle which will facilitate the provision of low-cost housing.

The policy document says delivery of new low-cost housing stock was at a record low in Cape Town and the quality and size were often rejected.

There was limited private sector involvement in the lower end of the market and the subsidy was used as the only source of housing finance. The new model was specifically designed to use the government subsidy as a lever to attract other resources. "In short, our aim must be to banish subsidy-only delivery in ... Cape Town," it said.

This would be achieved by introducing a municipal financial contribution, domestic savings and microcredit to government’s institutional subsidy — the recommended form of subsidy for the new policy.

The municipal contribution would be made available to prospective beneficiaries only on a conditional basis. They would qualify by establishing a specified savings record and maintaining the value of the contribution through a 100% rates payment record for four years.

Potential beneficiaries would have to save for between six months and a year with an accredited financial institution. The savings account would be ceded for up to four years as a risk buffer against default on rates.

For those able to satisfy a basic affordability profile, microcredit would also be made available against a further specified savings pattern.

The special purpose vehicle would be set up as an independent private company. Its functions would be to promote the construction of low-cost housing stock and to hold such stock for 48 months in line with the rules that governed the institutional subsidy.

‘Racist’ comments prompt walkout

Renée Grawitzky 28 6/7/98

A MISUNDERSTANDING over a presentation on the Employment Equity Bill sparked a row at last week’s 11th annual labour law conference in Durban and prompted a walkout by a group of delegates who claimed the presenters were racist.

The walkout followed a presentation by leading labour lawyer Martin Brassey and Institute of Race Relations researcher Anthea Jeffery on employment equity law within a conceptual matrix.

The group approached the conference organisers and demanded an apology. One delegate said the speakers had been insensitive to the experiences of blacks during apartheid. Another said the speakers justified the maltreatment of blacks during apartheid and implied blacks could not perform at the same level as whites.

Jeffery said the bill provided for an unnecessarily high degree of state intervention, focused on race and failed to address poverty and unemployment.

Brassey was deliberately provocative in his exploration of affirmative action. He attempted to highlight the need to look at individuals rather than groups of people who "are defined externally by others."

At the outset, he said, people tended to talk past each other when discussing employment equity. "There is an immense amount of silencing that goes on in this area, or fear of being accused of being racist or sexist," he said.

He raised a number of controversial issues, and compared groups on the basis of race, equality, the abilities of individuals, and differences between groups based on past maltreatment. "If I could demonstrate that whites did better for blacks on balance over the three or four centuries since whites have been here, would that change your attitude in relation to the question of maltreatment?" he asked.

The bill forced the examination of the abilities of one group as opposed to another. "If I am condemned and pilloried for this so be it. I have absolutely no doubt that groups are not the same. That groups are not all equal."

In the end, the group walked out of the conference, leaving Brassey and Jeffery defenceless.
Effect of act on small firms ‘will be limited’

Reneé Grawitzky

The Basic Conditions of Employment Act would have only a limited effect on small businesses, a study conducted on behalf of the labour department has shown.

The study of 49 small businesses operating mainly in the manufacturing sector found that most companies did not perceive the act as having a negative effect.

Some firms complained about the dearth of new regulations and the lack of government assistance.

The study also found that few small business owners knew about the act and its provisions — the bulk of which are expected to come into effect later this year.

The study by Jan Theron and Shane Godfrey was discussed during a workshop at the recent 11th annual labour law conference in Durban.

They said the study would complement a broader investigation by the department into the possible effects of the act on small businesses.

The study was launched following comments by Labour Minister Tito Mboweni. The minister said small businesses’ views would be considered before the act came into effect.

Theron and Godfrey said their specific study sought to assess the effect of the key provisions of the act on small companies, some of which were not complying with labour legislation.

The study showed that only 27 of the 49 companies surveyed complied with existing labour legislation.

The researchers focused on 10 key aspects of the legislation, including weekly hours of work, flexible work arrangements, the averaging of hours, overtime work and payment for overtime, family responsibility leave and maternity leave.

They found that the actual effect of the new act would be limited in respect of the ten conditions of employment.

Despite this, three standards were viewed as possibly having severe negative consequences. These included the payment of overtime, family responsibility leave and maternity leave.

The survey also showed many inconsistencies in the companies’ responses.

In terms of overtime, employers indicated they would reduce overall overtime but were unclear about the potential cost increases of the new provisions.

Most employers were opposed to the four-months’ unpaid maternity leave. The majority of companies did not have policies in this regard. However, this was largely because they employed only men.

There was mixed reaction to the three days’ family responsibility leave. Some said there would be significant cost implications because all workers would demand three days a year. Several companies indicated that they would not comply with this provision, but many said they did not have a problem with the concept of compassionate leave.

The Ntsiku Promotion Agency, established by government to promote small and micro-enterprises, was spearheading the overall study, which was mandated to look at a sample of 500 companies across all sectors of the economy.
None so silent as those afraid to speak

After apartheid, critics of new laws risk being branded racist

SOMETHING TO SAY
Protest makes way for...
academic mounds new law grey were plucked out assay the new gender warns

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risk

Awards bear testimony an argument feminists that it for all were huge ben- have to dic- e to ethical to tolerate eradicate it might en- equality the choice is one. We might equality of or recomb- say, or a dis- to need) is incontro- wrong, each is lin- ing on one’s and generally be struck be- this bal-

tic aptitude made notorious Our desire is to wish groups away and to make the individual the basis of comparison. The proposed Act, which is not liberal, forces us to break cover, however. It obliges us to make precisely the comparisons we consider so complex and odious. The sell is lifted and the debate, we are told, must pro- ceed. Most of us shrink from en- gaging in it, but a few hardy souls feel the field cannot be deserted without a fight. They soon discover the price they are immediately pilloried as racist and they recoil, dumb-}

SOMETHING TO SAY: Protest makes way for silence in the new South Africa

Picture: GREAT STOCK

African savour best in nights. Come to think of it, the -- prize in the world -- -- the smile that to be-- stretched, and held and mulled. It sat like a full - and feels like a snack of a read. And I conclude that she is like a bowl of honey-glazed almonds. And
Equity target is off beam

What are the chances of a constitutional challenge to the Employment Equity Act succeeding?

Labour lawyer Martin Brassey, who was attacked at the recent Labour law conference in Durban over his presentation on the legislation, looks at the issue (166) 80 14198

A POLITICAL challenge to the proposed Employment Equity Act seems inevitable. It provides a benefit for the majority at the expense of a minority and such initiatives always make good politics.

What hope exists of defeating the act then lies in a challenge under the constitution. The constitution has a clause that entrenches equality and outlaw unfair discrimination, but it does permit affirmative action, which can be group-based as well as individuated, in order to remedy the disadvantages caused by unfair discrimination in the past.

In the individual context, the criterion of past disadvantage envisages a comparison between the individual as he or she is and as he or she would have been but for the discriminatory conduct. If this reveals a disparity, the judge must consider whether it is the product of conduct that is unfair. The approach at the group level is the same. This provision envisages a comparison between groups (not only racial, but race is our concern here) and gives the one preferential treatment on the basis that it should be at the same level in some respect as the other.

Two suppositions underlie this approach. The first is that the groups would be the same but for some conduct by the one in relation to the other, the second is that the conduct is unjustifiable. A plea for the redistribution in favour of the Khoi-San would have failed both tests when Van Rebekeek first rowed ashore at the Cape. The groups did not start in the same place and there was no interaction between them that might be classified as oppressive. Much the same, presumably, can be said of the United Nations mission at a place like Rwanda, as between them and the indigenous Rwandans, no basis exists for a claim based on disadvantage.

Of course black and white South Africans are not meeting each other for the first time. They go back a long way. If we are to be conscientious in evaluating the degree of illegitimate oppression, which is the excuse on which we are now embarked, we must look at the period as a whole and compare our balance sheet accordingly. We must ask what extent the material deprivation of blacks is the consequence of their own conduct on the one hand and the product of unjustified white oppression on the other.

In the process we will be compelled, unpalatable though the task is, to judge the historical experiences of blacks and the behaviour towards them of whites. We will have to look at the starting points of each, trace their development, follow the decision made along the way, and weigh the result in the scales.

In making the assessment we might come to the conclusion that, as balance, blacks have done better rather than worse from their dealings with whites. This would depend, to an extent, on whether one thinks an exchange of land and an agrarian lifestyle for a sophisticated but materialistic European culture makes a good bargain. Personally, I have my doubts, but this is a matter on which the debate would unreasonably be keen.

Depending on our values a positive conclusion on this point might be decisive of the debate, the conclusion being that in life one takes the rough with the smooth provided the outcome is on balance benign. On the other hand, if we simply open another debate about whether the whites should not have behaved still better if it does, we must ask how we set the standards. If by reference to the conduct of other colonials, perhaps, such as the French in Central Africa? Or is it by some abstract standard of decency between races that colonialis can reasonably be expected to comply with? Either is tenable, but neither is obvious.

These, I suppose, are the sorts of problems with which a conscientious judge, deciding on the constitutionality of the act, might be expected to wrestle. They are difficult ones, posing as they do hard questions of whether people have been correctly grouped and whether the criterion for comparison (position in the hierarchy) is appropriate. They are the murder-trivial chaff on which constitutional adjudication proceeds.

Demographic testing

Difficult as they are, however, they pale into insignificance compared to the problems posed by the proposed Employment Equity Act with disadvantage, but with racial representivity, which it uses as its organising concept. Since demographic testing of this sort can find no justification in the constitution, the act can be rescued only if representivity is considered to be a legitimate proxy for past disadvantage. To prove this, the court will need to be satisfied that no reasonable alternative exists by which past disadvantage might be tested directly.

This is not an easy conclusion to reach. Sometimes recourse to race as a proxy may be necessary — in a school feeding scheme, it may serve to identify, in a hit and miss way, who is hungry when an individual enquiry is bureaucratically impractical. In the sphere of employment, however, degrees of disadvantage can be assessed in the course of appointing or promoting a person. True, it is said that the US Constitution requires before an employment affirmative action programme will be legitimate and the same is, arguably, true under ours. A statute that requires an assessment of disadvantage must be of a more complex than the Employment Equity Act, whose crude

ness makes it simple in form. It would be quite possible to construct, however.

An individuated system is kinder to the applicant for appointment or promotion and better able to address his or her needs. Inquiries into past disadvantage make applicants squirm when race is the criterion for affirmative action they want preference on ability, not on skin colour, and are quick to say that race-based judgements are appropriate for others, not for themselves.

As a result, employers generally apply race-based affirmative action surreptitiously (a fact that tells us much about the legitimacy of the system). But where the decision is specifically linked to an assessment of the individual's attributes and entitlements, the anxiety is easily dispelled A proper judgment can be made and the parties can openly plan a set of measures to bring the individual up to standard.

Individualising the assessment of disadvantage enables us to escape the odious comparisons this article has been forced to make and helps to keep the painful influence of race to a minimum. The social engineering propounded by the act, on the other hand, will scratch at the scabs of wounds inflicted by racism and rub salt into them.

Within the field of employment, it will provide a harbinger for racist policy-making until normal welfare measure will be completed without its racial component.

It would be wrong to cherish the hope that the act will produce practical benefits to those below these classes of people. Those who will profit from the act are not the working class they have no need for demographic representivity, for they are already over-represented in their employment echelons. Still less are its beneficiaries the unemployed. Those favoured are the black middle class, white-collar workers, who are (given the prevailing state of the job market) hot property in any event. They will be receiving the boon, and they will continue to do so till the act is repealed, for it contains no sunset clause.

It is one for which someone will have to pay, and it will not be existing white executives and managers — they are protected from dismissal under the act and other. It will be those unfortunate, aspirant white employees and the black unemployed, who cannot secure jobs because they are too valuable, for example, a black lawyer. A statute that requires an assessment of disadvantage must be of a more complex than the Employment Equity Act, whose crude
Mboweni slams critics of employment legislation

Reneé Grawitzky

OUTGOING Labour Minister Tito Mboweni lashed out at opponents of the proposed employment equity legislation yesterday, saying those who claimed it would add further rigidities to the labour market were apologists for discrimination and racism.

He was speaking at his final briefing in his current capacity yesterday prior to joining the SA Reserve Bank on Monday.

Mboweni reiterated the importance of the preservation of the Bank's independence, which he said "should not be played around with."

He said he understood the concerns of some analysts around his appointment. "They may have a feeling that this person is too political."

There was no point in hiding the fact that he grew up in the African National Congress (ANC), just because of his appointment to the Reserve Bank, Mboweni said in view of his appointment, he had resigned from the ANC and any other political positions and functions.

"The job I am going into requires political independence and I am committed to it."

He said analysts had only to look at those responsible for the appointment of central bank governors around the world. Such appointments were made by heads of state.

Mboweni spent some time reminiscing over his tenure as labour minister and the achievements of the labour department. He said there was a lot of work needed on employment equity and affirmative action. The fact that government had to draft legislation reflected the slow pace of change in SA workplaces, he said.

Labour minister-designate Shepherd Mdlalose said the main task of the department would be to ensure the implementation of the Basic Conditions of Employment Act and other proposed legislation.

Mdlalose said the unemployment insurance fund would have to be restrucutred.

Mboweni denied that his leaving the job summit process in midstream had left a job half done. Trade and Industry Minister Alec Erwin would act as government spokesman in the transitional period. Mboweni said Mdlalose would also be involved in the process.
equity Bill tops agenda as stormy session opens

Andre Koopman
Parliamentary Bureau

Parliament's final session of the year, which begins today, is expected to bring stormy debates about a range of controversial legislation, particularly the Employment Equity Bill.

Parliament has a heavy load to get through before the session ends on September 23 and politicians turn their attention to their campaigns for the election around May.

Most of this week is to be devoted to committee work, but Minister of Finance Trevor Manuel has called for a special debate on Wednesday about the sharply fluctuating rand, which he says is "a matter of national importance".

Hearings on the Employment Equity Bill, which has provoked strong criticism from the National and Democratic parties, begin tomorrow and continue on Wednesday in committee room V475 of the Old Assembly Wing. The bill is scheduled provisionally to be debated in the National Assembly on August 20 and in the National Council of Provinces on September 22.

The bill will require employers of more than 49 people to increase the proportion of previously disadvantaged employers. The DP and NF have described the measure as interference in business and fear it will lead to a loss of jobs.

Other legislation includes the Executive Members Ethics Bill to curb corruption, the Witness Protection and Services Amendment Bill, and the Open Democracy Bill, which is to give effect to the constitutional provisions on freedom of information.
NGOs tackle ‘failures’ of new jobs bill

Clive Sawyer
Political Correspondent

On the eve of parliamentary hearings on the Employment Equity Bill, its shortcomings have been sharply criticised by a range of non-governmental organisations.

The Coalition for Gay and Lesbian Equality said the bill did not properly protect the equal rights of people with HIV to work.

Coalition representative Zackie Achmat said the bill did not do enough to protect the interests of marginalised people.

The coalition is part of an alliance of 20 NGOs which strongly back the bill but are equally adamant about the need for certain amendments.

Disabled People South Africa spokesperson Shelley Barry said people who suffered from multiple forms of discrimination, particularly black women, should be protected. “There is not enough attention given to the effect of belonging to more than one of the designated groups, that is blacks, women and people with disabilities.”

Black Sash Trust spokesperson Allison Tilley said that while business said the bill went too far, “we say it does not go far enough to create substantive equality in our society.”

The National Assembly labour committee begins two days of hearings on the bill today.
Govt reneged on Nedlac deals — BSA

Vuyo Mvoko

CAPE TOWN — Business SA has accused the labour department of reneging on agreements reached in the National Economic, Development and Labour Council on controversial aspects of the Employment Equity Bill.

BSA’s Nedlac convener, Vic van Vuuren, told the parliamentary standing committee on labour yesterday that the department had gone “way beyond the parameters” of what was agreed to at Nedlac. He warned that BSA was seeking legal opinion on the matter.

So serious were some of the “deviations” that Nedlac could develop a credibility problem if the points in dispute were not urgently addressed, he said. The bill aims to eliminate unfair discrimination in employment.

The main point of disagreement centres on the definition of the term “suitably qualified person”. As now drafted the bill requires employers to consider prospective employees’ potential rather than merely their qualifications. “The definition has now been materially altered in a way that would lead to compulsory tokenism and impose unrealistic, onerous obligations on employers with potentially devastating consequences for individuals and the economy,” Van Vuuren said.

The addition of the concept of “potential” as a basis for recruiting permanent staff and thus giving it equal status to “ability” was unacceptable.

“It is practically impossible to determine whether a person will at some time in the future acquire the ability to do the job. This will result in an obligation to employ persons who are not in fact suitably qualified and thus in contravention of what was agreed to during the Nedlac negotiations. The concept of potential is not rejected, but it is appropriate only in the context of appointing trainees or cadets.”

Another area of “refashioned wording” related to a clause on the wage gap which Van Vuuren said had led business “to a point where we can no longer support the provision. The bill now imposed a duty to bargain”, something the Labour Relations Act had deliberately avoided.

Van Vuuren said BSA also felt betrayed by omissions of points it had agreed to in Nedlac relating to reporting obligations of employers, codes of good practice and how the minister could make regulations.

Although BSA was party to the agreement that the statute should apply to employers of 60 or more employees, it had reservations about the insertion of a turnover threshold. “The threshold will act as a disincentive to small entrepreneurs who are the principal job creators, will increase the baseline factor associated with labour, will increase the level of mechanisation, and might cost the state millions in lost revenue—especially these companies are induced to under-disclose and under-report income to avoid obligations.”

Neither Labour Minister Shepherd Mdlalane nor director-general Sipho Pityana would comment on the “accuracy or inaccuracy” of the drafting of the bill at a news conference called after BSA raised its concerns.

Mdlalane said he would ask Nedlac to convene a meeting of the leadership committee of the council where it was hoped the issue would be “clarified”. Later yesterday the labour department held meetings with BSA and labour to look into the issues raised.
Job equity bill hits early obstacle

Yesterday at the first of two days of hearings in Parliament, business said an earlier agreement reached at the National Economic Development and Labour Council stipulated that only "suitably qualified" employees should be considered for a job. The new draft provided that a person have "the capacity to acquire the ability to do the job".

Vic van Vuuren of Nedlac said on behalf of Business South Africa (BSA): "It is practically impossible to determine whether a person will at some time in the future acquire the ability to do the job. This will result in an obligation to persons who are not in fact suitably qualified."

"Employers would not only be unable to appoint the best person for the job but might have to appoint persons whose ability to perform a particular job is at best suspect."

The new definition would lead to "compulsory tokenism", he said.

The National Federation of Chamber of Commerce, representing black employers, welcomed the bill and dismissed BSA's objections.

Mangope found guilty of royalties theft

Former Bophuthatswana president Lucas Manyane Mangope (74) was yesterday found guilty by the Mmabatho High Court on 88 counts of theft amounting to R2,62-million.

Judge Tom Mullus said Mangope had during the period 1979 to 1991 misused the position of trust bestowed upon him by the Bakura-la-Bophuthatswana Manyane tribe and used money belonging to them for personal ends including farming and overseas trips.

The court found that Mangope was aware that royalties he received from Marico Chrome Mines did not belong to him but continued to bank it in his personal accounts.

Mangope never informed the tribe of his dealings with the mines.

It took him 14 years to disclose that he was receiving royalties on behalf of the tribe, probably because he knew his reign was ending, Judge Mullus said.

He added that during that period, Mangope's impoverished tribe suffered much.

Guilty... Lucas Mangope
Bill ‘no return to apartheid’

TO arguE that with the Employment Equity Bill the Government is reintroducing apartheid racial classifications is incorrect and mischievous, Labour Minister Mr Shepherd Mdlalana said yesterday.

It was extremely narrow and simplistic to say that because people in the apartheid era were classified as blacks and whites, they could not be classified as such under the new dispensation.

“The argument presupposes that it is the means that were unacceptable, rather than the end or purpose of the classification,” Mdlalana said in his first media conference since being appointed labour minister last week.

Mdlalana said if the argument was followed to its logical conclusion, no effective policies would be developed to redress the terrible effects of apartheid.

“We would not develop any policies to deal with malnutrition, which is prevalent among certain communities and not others, and there is a strong correlation, not unexpectedly, with race,” said Mdlalana.

“We would not be able to address the housing shortage, which primarily affects blacks most.”

He said that if the government was to stay away from dealing with the real gender and racial disparities, and addressing them as such, it would not be able to reverse the harm brought about by apartheid.

“Perhaps this is what the opponents of racial and gender classification want the perpetuation of these disparities,” he said.

While the Bill sought to bring about the equitable representation of blacks, women and disabled people across all levels and occupations in the workplace, attainment of this would not be immediate.

He said it was misleading to suggest that the Bill required employers to have a profile, at all levels, that was 75 percent black, 52 percent female and five percent disabled.

“This would be a quota system which we have avoided after careful consideration.”

Mdlalana said he was meeting a business delegation yesterday, followed by the Congress of South African Trade Union (Cosatu) leadership also yesterday, to address some of the outstanding matters on the Bill.

He would also soon be convening a meeting of the leadership of the National Economic Development and Labour Council to iron out some of the concerns raised during the hearings on the bill. – Sapa
Horns locked over equity bill

CHRISTO VOSCHENK

Cape Town — Business distanced itself from the Employment Equity Bill tabled in parliament yesterday on the grounds that it differed in several material respects from the draft bill agreed to with labour and the government in Nedlac earlier this year.

Business said the bill would deter foreign investment and harm job creation, by requiring small and micro-businesses to implement affirmative action programmes.

On the first day of public hearings on the bill, Nick Segal, the leader of the representation from Business South Africa (BSA), said business embraced the broad goals of the bill but rejected the legislation as it stood, because it did not reflect hard-won concessions in Nedlac.

BSA appealed to the portfolio committee on labour to recommend to parliament that the bill be redrafted to correspond with the Nedlac agreement.

Shepherd Mdladlana, the labour minister, and Sipho Pityana, the director-general, met the BSA representation in the afternoon and said they would iron out the differences.

The committee hopes to complete its report on the bill for submission to parliament by the end of the week. The public hearings will continue today, with Cosatu among the most important of the 27 organisations and individuals listed to make submissions.

BSA identified eight clauses in the bill which differed from the Nedlac agreement.

Arguably the most serious reservation business had was that a turnover threshold had been introduced, above which companies must draw up and implement affirmative action programmes.

In the case of the insurance industry, the threshold would be R10 million a year.

Representatives of the South African Insurance Association said about 10 of their 50 member companies had fewer than five employees, making it impractical for them to draw up affirmative action plans.

BSA said the turnover threshold would compel many more companies to draw up plans “and cause administrative chaos in government.”

The bill also compels an employer to employ job applicants who are capable of learning on the job, disregarding formal qualifications and prior work experience.

BSA said they had not agreed to this point at Nedlac.
Mdladlana defends work equity bill

FRANK NAXUMALO

Johannesburg — The intention of the Employment Equity Bill was not to reintroduce apartheid-style racial classification, Shepherd Mdladlana, the minister of labour, said yesterday.

Mdladlana said its was "extremely narrow and simplistic" to argue that, because people in the apartheid era were classified as blacks and whites, they could not be classified as such in the new South Africa.

"It is incorrectly and mischievously argued that, through this bill, we are bringing back apartheid classification; this argument presupposes that it is the means that were unacceptable rather than the end or purpose of the classification.

"In fact, if we were to stay away from dealing with the real gender and racial disparities and addressing them as such, we would not be able to reverse the harm brought by apartheid. Perhaps this is what the opponents of racial and gender classification want — the perpetuation of these disparities," Mdladlana said.

The minister said two key areas of difference between the social partners were registered in the Nedlac report on the bill.

These were labour's concern about "the apartheid wage gap" and Business South Africa's concern about the bill's definition of "suitably qualified" worker.

The minister said the denial of entry to some blacks and women into certain trades and occupations, and the grading system were being used to maintain the divide.

The minister said government drafters, acting within their Nedlac mandate and after extensive consultations with experts, now defined "suitably qualified" in the bill in a way that recognised that many people had the "potential to do many jobs."
Labour equity discussions

NEW Labour Minister Shepherd Mahladina sharply rejected accusations that the new labour equity bill would introduce reverse discrimination saying this argument, if followed to its logical conclusion, would prevent the government from redressing past inequities.

Mahladina also said that companies with a turnover of R10 million would also be subject to provisions of the bill even if they did not have more than 50 employees.

He said he had had informal talks with business yesterday in an attempt to resolve crucial differences about the legislation raised at parliamentary hearings. He would also meet with Cosatu today and would soon meet with the leaders of the National Economic Development and Labour Council (Nedlac) to resolve concerns raised during the hearings.

"It was simplistic to say that because people in the apartheid era were classified as blacks and whites, they could not be classified as such under the new democratic dispensation, he said.

"The argument presupposes that it is the means that were unacceptable, rather than the end."

"If this argument were followed to its conclusion no effective policies would be developed to address the terrible effects of apartheid."

"Perhaps this is what the opponents of racial and gender classification want — the perpetuation of these disparities," he said. —Parliamentary Bureau
Bill 'deviates' from Nedlac agreements

ANDRE KOOPMAN
PARLIAMENTARY BUREAU

The Employment Equity bill, aimed at introducing affirmative action in the labour market, differed in "critical" areas from agreements between employers, government and unions thrashed out at the National Economic Development and Labour Council (Nedlac), according to Business South Africa (BSA).

This was said by Vic van Vuuren, business convener in Nedlac's labour market while making a submission on behalf of BSA during hearings on the legislation.

The National African Chamber of Commerce gave unreserved support to the bill as a measure to address inequities in the past in the face of student opposition from BSA and Tony Leon of the DP.

Van Vuuren said while BSA supports elimination of unfair discrimination, the bill tabled deviates in "critical respects" from agreements reached at Nedlac.

Despite agreement on employees "suitably qualified" for a job — which was a significant compromise for employers — the terminology had been amended. Whereafter, suitable qualification had referred to the person’s formal qualifications, prior learning experience and relevant experience, the provision had been changed to include "the capacity to acquire the ability to do the job".

"It is practically impossible to determine whether a person will at some time in the future acquire the ability to do the job. This will result in an obligation to persons who are not, in fact, suitably qualified," Van Vuuren said.

The definition had been altered in a way that would lead to "compulsory tokenism and impose unrealistically onerous obligations on employers, with potentially devastating consequences for individuals and the economy".

Amendments to the bill, which increased its scope to include companies with a turnover of more than R10 million a year, would "act as a disincentive to small entrepreneurs who are creators of jobs". Previously the bill would only have applied to companies employing 50 and more people.

The bill made provision for punitive measures to be imposed on companies contravening the law, while it was agreed at the Nedlac negotiations that this provision would be scrapped subject to legal advice being obtained, he added.

The National Federated Chamber of Commerce (Nafco), representing black employers, welcomed the bill.

Aubrey Tshalata of Nafco, in welcoming punitive measures contained in the bill, said the existence of an effective punitive mechanism would be a strong deterrent to undesirable behaviour. The bill adopted a carrot-and-stick approach in terms of which companies complying with it would be eligible for state contracts worth some R56 billion annually.

Responding to criticism about the effects of the bill on small business, he said that SA tended to have smaller businesses which are "among the worst when it comes to labour relations and the general conditions of employment".

"To us the real challenge is how to ensure that every employee has equal opportunities in the workplace and suffers no unfair discrimination rather than the opposite, of trying to leave as many employees as possible at the mercy of discriminating employers," he said.

Nick Segal, BSA's deputy chairperson, said that the labour department had not yet responded to the claims, and that the draft legislation was out of line with the Nedlac agreement because relevant officials had been out of the country.

New Labour Minister Shepherd Modise said that he was unable to comment on the matter, since he had not been updated on the latest developments.
Small companies face shock over new draft

Equity bill will put the brakes on job creation, says Suzman
Govt stung by ‘bad faith’ allegations

Vuyo Mvoko

CAPE TOWN — Government was taking “very seriously” Business SA’s (BSA’s) “questioning of our integrity” after the body alleged on Tuesday that key aspects of the latest draft of the Employment Equity Bill did not accurately reflect positions agreed to at the National Economic, Development and Labour Council (Nedlac), labour director-general Sipho Pityana said yesterday.

Pityana said labour minister Shepherd Mdlalana and departmental senior officials met separately with members of BSA and the Congress of SA Trade Unions (Cosatu) on Tuesday, soon after BSA had made its allegations.

BSA representative Vic van Vuuren had said government had gone way beyond what was agreed upon. Pityana said government had made clear, “in no uncertain terms”, its unhappiness about BSA’s contentious input when the two parties met late on Tuesday.

“They (BSA) insisted they were not questioning the integrity of government. We told them the implications of what they were saying were exactly that.”

Van Vuuren said that at the meeting “we explained to the minister our arguments and why we raised them. We did not debate the issues.”

He said he had been contacted by an official of the department yesterday. “We are on standby to join any process. We’ve put our suggestions.”

A meeting would be held before Tuesday between business, labour, the Black Management Forum and community groupings where pertinent issues and other concerns would be dealt with, before the minister makes a decision on possible amendments.

Pityana would issue “a comprehensive response” next Tuesday to, among other things, BSA’s specific concerns and those raised by Cosatu about the treatment of the wage gap in the bill.

Cosatu said yesterday it remained convinced that sections of the bill relevant to the wage gap “fail dismally” to address the closing of the gap between management and low-paid workers in SA.

Cosatu general-secretary Mzwakhe Sibila said he dismissed BSA’s contention that the drafters of the bill in its latest form had not accurately reflected what was agreed upon.
Nedlac to mediate in row over equity bill

BY CELIA ROSSER AND SAPA

The row between sectors of business and the Congress of South African Trade Unions over the Employment Equity Bill is continuing unabated amid claims that drafters of the legislation have changed measures previously agreed to.

The National Economic Development and Labour Council (Nedlac) said the organisation would be involved in clearing up the disagreements about the Government's showpiece affirmative action bill, which emerged during public hearings this week.

The bill aims to eliminate disparities in the labour market by compelling employers to diversify their workforce by employing blacks, women and the disabled across the business spectrum.

Nedlac executive director Jayendra Naidoo said: "Having seen the draft, a case could be made that the bill does not reflect the agreements made."

Nedlac would be getting together with business, the Government and labour to discuss this issue and ensure that the agreements were fairly reflected in the draft legislation.

Human Rights Commission commissioner Helen Suzman also distanced herself from the bill, saying it "introduces an inflexible labour policy based on race".

But the bill received the green light from black business, labour and human rights organisations.

Cosatu secretary-general Mphahlele Shilowa said yesterday that the bill tabled in Parliament last month was in line with an agreement on affirmative action legislation reached in Nedlac.

On Tuesday, Business South Africa argued that the drafters of the bill had materially changed the measures agreed to in the consensus-making body by business, labour and the Government.
Lay assessors may put justice at risk

Fears that the system will be open to threats and intimidation

Not even an international outcry and harsh sanctions stopped Nigerian military ruler Gen. Sani Abacha from executing weapons and anti-government activist Ken Saro-Wiwa almost three years ago. Blindfolded and dangling from a rope, this man—who died a slow, painful death after hangmen attempted to execute him four times—proved to his last moments that he had been framed for the murders of four political rivals.

Saro-Wiwa was convicted and sentenced by a tribunal, which included Abacha sympathizers on the panel.

Although extreme, this travesty of justice at the hands of a biased decision-making body is a distinct possibility in South Africa—if the Magistrate's Courts Amendment Bill is passed in its present form by two years ago as a pilot project to ensure closer links between courts and local communities.

"Under this project, it is optional for magistrates to include assessors on the Bench—except in Regional Court murder trials, in which assessors are compulsory unless the person in the dock opts not to have assessors present."

In May, Omar told the National Assembly: "In those areas where good co-operation exists between courts and local communities, the lay assessor system has proved to be an unqualified success."

"Training and developing an understanding of the justice process helps to ensure that the courts' independence is not undermined and that impartiality and a high standard of justice are maintained."

"The presence of lay assessors ensures not only community participation, but community respect for the justice process and courts."

But the Judicial Officers' Association of South Africa, in a written submission to the portfolio committee, has warned there is a "greatly increased risk that innocent accused will be found guilty by two assessors, or guilty accused found not guilty."

In a Newcastle Magistrate's Court case, which hints that the dubious court treatment meted out to Saro-Wiwa could become a regular feature of the South African judicial system, two assessors overruled a magistrate on the evidence of a single state witness.

The magistrate believed that the evidence of the witness was unsatisfactory, but was legally compelled to convict the man on two murder charges.

On appeal, in February last year, the High Court found that the magistrate had been correct and overturned the conviction.

The SARI, in its submission to the committee, said the independence of the judiciary would be undermined if compulsory lay assessors determined a person's guilt or innocence.

SARI parliamentary affairs manager Martin Schonzieh says, in the institute's latest Fact File publication, that assessors should not be compulsory because "the effect could be to undermine rather than promote justice."

"Assessors, many of whom will live in the same community as the accused, will be at risk of being intimidated, opening the door for criminals—especially criminal gangs and syndicates—to intimidate assessors into acquitting guilty people."

"Conversely, there is a risk that populous pressure and a highly charged atmosphere against crime and criminals in a community will unduly place pressure on assessors to convict (accused) persons who are innocent."

One sceptical senior magistrate echoed this concern, and said: "The assessor system could be particularly problematic in politically motivated associations. If lay assessors are sympathetic to a political party in opposition to the one supported by the accused."

"Assessors can be more vulnerable to intimidation and bribery if they come from the same community as the accused. Magistrates are less open to this because they tend not to live in the same areas as those appearing before them."

But Judicial Officers' Association of South Africa president Joe Raulinga said: "As a matter of principle, we're not opposing to the system. We want to highlight certain concerns, and don't want the bill to go through in its present form."

"The lay assessor system gives better access to justice to disadvantaged communities. Assessors will be able to pass on their understanding of the justice system to their communities because they'll be directly involved in the trial."

"Assessors are no less vulnerable to bribery and intimidation than magistrates. We'll hold to the fact that the assessors are without judicial records, for example, undertake such responsibilities."

Schonzieh also "practical difficulties" with the proposed system, urging the risk of additional delays if assessors failed to turn up in court, and drawn out procedures for assessors if the court or crime suspect contest exclusion grounds that they come from humankind.

"Assessors also have to be at the moment they are permanent employees. They paid about R100 a day. This—cost about R18 million a year. "This may not sound like it but remember that the court went on a go-slow over that... of money this year."

"Compulsory lay assessors unnecessary. Existing legislation permits the use of lay assessors. Presenting officers consider this be expedient for the administration of justice."

"Moreover, most magistrates have the theoretical knowledge, and practical experience needed reach a just decision on the basis all the evidence presented in a..."

Schonzieh said his institute had "shared the concerns of the... Society of the Transvaal... region, which said its mission to the committee... in a... such as one, where elements... stick is still prevalent, there is no... that the use of lay assessors promote bias, prejudice, and..."
Bill ‘in line with affirmative action’

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Structures of privilege
Equity Bill ‘won’t bridge wage gap’

By Ido Lekota

The Congress of South African Trade Unions told Parliament yesterday that the Employment Equity Bill in its current form would not redress the current huge wage gap between ordinary workers and management which was a direct result of apartheid.

Cosatu general secretary Mr Sam Shulowa said the Bill focused narrowly on wage discrimination among those doing similar work.

Shulowa said it did not “address the massive gaps between the various strata of the work force, between management and low-paid workers, men and women, black and white, blue collar and white collar”.

The Bill should not be confined to achieving “a degree of horizontal equity where there is a racial and gender representativity within a particular stratum of the labour market while there continues to be a huge vertical inequity between those at the bottom and those at the top.”

Research conducted this month under the supervision of the University of the Witwatersrand’s management faculty found that 10.65 percent of companies surveyed conducted HIV tests on prospective employees, and that 59.4 percent of these companies believed this was appropriate in the employment context.

This was disclosed yesterday by the Aids Law Project at a hearing on the Bill, conducted by the National Assembly’s labour committee.

Job applicants and employees with HIV or Aids were often perceived to be disabled or unproductive.

The Southern African Catholic Bishops’ Conference (SACBC) yesterday welcomed the Bill aimed at compelling companies with 50 employees or more, or whose turnover exceeds defined limits, to draw up and implement affirmative action plans.

The Bill was “a significant and well-thought-out attempt” to deal with the imbalances and injustices of the past, the SACBC said in a submission to the National Assembly’s labour committee, which is holding two days of public hearings on the Bill.

Shulowa also said the Bill was in line with an agreement on affirmative action legislation reached in the National Economic Development and Labour Council (Nedlac).
Era of old school tie drawing to an end

CECILIA RUSSELL

The era of the old school tie will soon be over following the government's tabling of the Employment Equity Bill, which aims to eliminate disparities in the labour market by compelling employers to diversify their workforce by employing blacks, women and the disabled across the business spectrum.

But what exactly does the bill entail?

Most organisations have welcomed the first section of the bill, which entrenches the right to fair and equitable treatment of employees by compelling employers to address wage differentials through collective and other bargaining, and by prohibiting medical testing of employees and psychometric testing.

The employer is obligated to consult on an "employment equity plan", is required to analyse the company and identify employment barriers which hamper the "designated employees", must assess the level of under-representation of people in this category and must prepare an employment equity plan that also includes the affirmative action measures to be implemented.

The bill lays down that people are suitably qualified for a job on their formal qualifications, prior learning, relevant experience or because they have the capacity to "acquire within a reasonable time the ability required to do the job".

Annual reports are to be sent to the director general.

Employers must also assign a senior manager to monitor the employment equity plan.

The quotas are based on the demographic profile of the economically active population, the pool of suitably qualified people an employer may reasonably be expected to promote or appoint and on economic and financial factors.

The legislation provides for the setting up of a commission for employment equity.

The Department of Labour intends to enforce this through a system of labour inspectors, through keeping a register of "designated employers" and a review by the director general.

The Labour Court can order an employer to comply with the act and impose fines should certain sections of the act be contravened.

If the court finds that an employer unfairly discriminated against any employee, the court can order that compensation and punitive damages be paid.

A human resources practitioner, who did not want to be named, said that because the bill forced employers to examine their employment practice, it would result in the breakdown of old and "discriminatory practices".

"The era of the old school tie is over," she said.

A weakness was that the bill did not address the question of "unwritten policy" which often determined the culture of the organisation, which might not correspond with the spirit of the draft legislation.
Business accused of hidden agenda

Johannesburg — The argument put forward by Business South Africa (BSA) that the Employment Equity Bill would lead to the destruction of jobs masked its opposition to the transformation of the labour market, Cosatu said yesterday.

Mbazima Shilowa, the secretary-general of Cosatu, said the bill was in line with an agreement on affirmative action legislation reached in Nedlac.

BSA argued on Tuesday that the bill’s drafters had maternally changed the measures agreed to by business, labour and the government at Nedlac.

Jayendra Naidoo, Nedlac’s executive director, said the issue would be dealt with before the organisation’s next executive committee meeting.

It was unfortunate that BSA had not raised its objections before it appeared in front of the national assembly’s labour committee hearing on the bill. He believed BSA’s objections could be based on necessary changes the legislative drafters would need to make to any document being transformed into law.

Shilowa told the committee the Nedlac report was not a legally binding document and that neither the department of labour nor parliament needed BSA’s agreement to change it.

He said: “Business employs scare tactics by arguing that the bill will lead to job losses, as employers will be forced to mechanise and discourage investment, especially foreign investment. "This has become a swan song of the business community, masking their opposition to the transformation of the labour market.”

Shilowa said there could never be a “combined view” between the government and BSA on the “apartheid wage gap”, one of the two areas of disagreement in the Nedlac report. The other disputed area is the definition of “suitably qualified”.

He said it was a fallacy to argue that racist imbalances wrought by the National Party in the workplace under apartheid could be rectified by market forces alone.
Jobs bill in time with affirmative action deal, says Cosatu

DEVOTIONS FROM MEDIA DEAL — BUSINESS SOUTH AFRICA

PARLIAMENT & POLITICS
Cosatu stirs up new row over jobs equality bill

A new row is brewing over the Employment Equity Bill, with the Congress of SA Trade Unions suggesting that the bill be used as a mechanism to close the wage gap.

In submissions to Parliament’s portfolio committee on labour, which is debating the bill this week, Cosatu has argued that the bill in its present form “fails dismally” to tackle the wage gaps which developed under apartheid.

Quoting research showing that the average income of a managing director in South Africa is 100 times that of the lowest paid worker, compared to seven times in Japan, and that 80% of the national wage bill goes to white collar workers and management, Cosatu said the Employment Equity Bill should address these disparities.

This is likely to further irritate the business lobby, which is already unhappy about some of the clauses in the existing bill.

Cosatu said the argument put forward by Business South Africa that the bill would lead to the destruction of jobs masked its opposition to the transformation of the labour market.

“The issue of closing the massive gaps between the various strata of the workforce, between management, and low-paid workers, men and women, black and white, blue collar and white collar, needs to be a central element of any meaningful employment equity strategy in South Africa,” said Cosatu.

As well as plans to make their workforce more representative of the country’s population, employers should have to submit plans to the Government on how they intended to narrow wage differentials, the union federation argued.

Cosatu said companies should be obliged to:

- Supply the Minister of Labour with an “audit” of income of all layers of the workforce up to directors and management, including all perks and share options
- Set targets for the narrowing of the gaps between different layers over specified time periods
On corruption

At ministerial ethics code

CLODE SAUYER
Political Correspondent

In a big step against government corruption, a bill has been tabled in Parliament providing for a strict code of ethics for the president, premiers and national and provincial ministers.

The Executive Members Ethics Bill, tabled by Water Affairs Minister Kader Asmal and due for debate during Parliament’s final term this year, provides for the president to publish a code of ethics applicable to these office-bearers.

While the code has yet to be finalised, the bill states that it must require all members of executives to “at all times act in good faith and in the best interest of the government, and to meet all obligations imposed on them by law”.

It will ban Cabinet members, deputy ministers and provincial ministers from undertaking any other paid work. They will also be prohibited from:

- Acting in a way inconsistent with their office.
- Exposing themselves to any situation involving the risk of conflict between official responsibilities and private interests.
- Using their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- Acting in a way that may compromise the credibility or integrity of public officials and hospitality received by them, their families or other close associates.

The bill sets strict limits on who may complain about an alleged breach of the code. It says that the Public Protector will investigate complaints, and must report within 30 days of receiving a complaint. If the investigation is not finished in 30 days, another report must be submitted when it is.

The president must within a “reasonable time” of no more than 14 days after receiving a report, table it in the National Assembly. The same rule applies to premiers, who will have to table reports in their provincial legislatures.

The Public Protector will investigate an alleged breach by a Cabinet member only if the complaint is made by the president, a member of the National Assembly or a permanent delegate to the National Council of Provinces.

Alleged breaches by provincial ministers will be investigated only if the complaint comes from a premier or member of the provincial legislature.

The code of ethics will not affect the president’s power to appoint or dismiss members of the Cabinet, even during the course of an investigation. It will also not be used to prevent or delay the prosecution in court of executive members.

An explanatory memorandum
Cool Business Recession Awaits Skills Development Bill
Minister pushes ahead new labour bill

But business is unhappy

New Labour Minister Shepherd Mdladlana is pressing ahead with the controversial Employment Equity Bill in spite of howls of protest from the business establishment.

Mr Mdladlana said this week the bill, which aims to enforce affirmative action in the workplace, would be tabled in Parliament’s National Assembly next month as scheduled.

This is in spite of protests by Business South Africa that those who drafted the bill had made substantive changes to a version agreed to in the National Economic Development and Labour Council (Nedlac).

The law obliges government, trade union and business representatives in Nedlac to try to reach consensus on proposed labour legislation before it is finalised in Parliament.

BSA was particularly concerned about the bill’s definition of a “suitably qualified” job candidate.

The bill says a candidate’s suitability should be based on formal qualifications, prior learning, relevant experience or the capacity to “secure within a reasonable time the ability required to do the job”.

BSA felt it was hard for employees to assess “potential”.

But Nedlac’s other business representative, the National African Federated Chamber of Commerce and Industry (Nafcoc) and trade union representatives – the Congress of SA Trade Unions (Cosatu) and the Federation of Unions of SA – have said the bill is in keeping with the agreement reached at Nedlac.

Mr Mdladlana has offered to convene a meeting of Nedlac’s government, business and trade union leaders to iron out misunderstandings probably next week, but warned there would be no re-negotiation of the bill.

“If there are differences, it’s possible to resolve them in the parliamentary process,” Mr Mdladlana said.

The bill aims to achieve fairness in employment and to correct discriminatory employment practices which specifically disadvantaged:

- Black people (African, coloured and Indian people)
- Women
- Disabled people

Employers must adopt employment policies and practices which do not unfairly discriminate on the basis of race, sex, disability, pregnancy, marital status, ethnic or social origin, sex,

that set for a small business in terms of the National Small Business Act will have to prepare and carry out employment equity plans.

The bill does not set employment equity quotas, but leaves it up to employers and employees to negotiate plans, taking their specific circumstances into account.

Employers who comply with the provisions will be able to tender for government contracts.

But those guilty of contraventions face fines ranging from R500 000 to R900 000. The Labour Court will settle disputes.

Support for the bill versus reservations about the extent of its proposed corrective measures forced Nedlac’s business representatives to make separate submissions this week.

Vic van Vuuren and Nick Seagal, speaking for BSA, warned: “South Africa has to be internationally competitive if we are not optimally able to arrange our own affairs we will be at a disadvantage to provide opportunities and jobs in our society.”

But Aubrey Tshilala of Nafcoc said “It does not take an Einstein to realise that one of the reasons why South African industry and commerce is so uncompetitive is the very poor level of skills and competence of its management and workforce.”

This is as a direct result of discrimination by industry and commerce before and during apartheid.

“The last thing anyone can complain about is that the bill is too prescriptive.”

Another area of difference was whether small businesses should be covered by the bill.

BSA argued “Smaller businesses are not in a position to carry extra persons who are still in the process of coming up to speed with regard to their productive capacity.”

Nafcoc said most of its members fell into the small business category stipulated in the bill and that “having the threshold doesn’t frustrate us at all.”
The government says Ndebele will not decide if the Beauty Bill is approved.
Business, govt iron out differences over jobs bill

Reneé Grawitzky  

BUSINESS South Africa (BSA) and government are optimistic that misunderstandings which emerged during the drafting the Employment Equity Bill will be resolved this week.

The two sides met at the weekend to iron out differences about the shape of the bill. Tension mounted last week after BSA implied that government had reneged on agreements reached in the National Economic, Development and Labour Council (Nedlac) on controversial aspects of the bill. During the parliamentary committee on labour hearings on the bill BSA said it was opposed to "those sections of the bill that deviated substantively from agreements concluded in Nedlac."

BSA claimed the departures related to the wording of the clauses dealing with the appointment of "suitably qualified persons" and the wage gap. At the weekend meeting, comprising representatives from labour, government, business, the community and the Black Management Forum, it was agreed there was no violation of the Nedlac agreement on the part of government. It was also agreed that government's lawyers would consider a formulation on the "suitably qualified person" clause tabled by BSA.

Employer spokesman Vic van Vuuren said business never alleged government reneged on the Nedlac agreement, but its view was that the formulation of the controversial clauses in the bill were not in spirit of agreement struck. Hence business had asked government to re-examine the wording.

Sources said problems had arisen during the drafting process. Due to time pressures on the drafters of the bill, it appeared that they had insufficient contact with the Nedlac parties. The drafters were not necessarily able to divine the real intentions behind the compromises reached in Nedlac. During the committee hearings, BSA argued that the drafters modified the definition of "suitably qualified person" way beyond the parameters of what was agreed. "The definition has now been materially altered in a way that will lead to compulsory tokenism and impose unrealistically onerous obligations on employers."

BSA said the Nedlac definition required that the person recruited should have the "ability to do the job", while the clause incorporated in the bill stated that the applicant could have the potential or the "capacity to acquire the ability to do the job".
Leon raises objections to equity bill

LYNDA LOXION

Cape Town — After last week’s public hearings on the Employment Equity Bill, the portfolio committee on labour will today consider amendments proposed by Tony Leon, the Democratic Party (DP) leader, to “soften” the possible harmful effects of the bill on the economy.

He said in a statement yesterday that while the DP supported the need to redress the imbalances and inequities of the past, it could not support the bill in its current form.

Leon said it would place an unfair burden on small businesses, harm job creation and reinforce racial differences and “group thinking.”

Leon said the bill was also “punitive and coercive” and would “increase government interference in the economy and discourage private investment.”

Leon has suggested that a range of incentives be offered to employers to encourage them to right racial imbalances.

These include fast-track treatment of applications for exemption from bargaining council agreements, preferential access to loans from state-funded bodies and preference in the allocation of state tenders.

Leon has proposed the deletion of the section in the bill spelling out “punitive damages,” which he said would “only create greater uncertainty in labour law.”

“We have included a amendment which takes account of the objections raised in the public hearings last week against parts of Section 30 of the bill,” he said.

“As it stands, the bill states that people must be considered suitably qualified for a job not only if they are able to do it, but if they have the potential to do it. This imposes an unfair burden on employers, and we propose that these sections be deleted.”
Put more carrots, less stick in Equity Bill.
Opposition parties split over employment bill

CAPE TOWN — Opposition parties were divided into two camps yesterday about the controversial Employment Equity Bill.

This came on the last day of the labour portfolio committee's hearings on the bill, with the National Party (NP) and the Democratic Party (DP) claiming that while they supported the overall thrust of the bill, they were opposed to it "in its present form".

However, the Inkatha Freedom Party (IFP) and the Pan Africanist Congress (PAC) fully supported the bill but said there was a need to correct certain "flaws" and to make some additions.

NP MP Willem Foulse said: "The NP respects even the slightest attempt to reintroduce the principles of apartheid or any discriminatory provisions of whatever nature, or reverse discrimination."

Foulse said the bill put a burden on the relationship between the employer and the employee and made provision for the reintroduction of the principles of apartheid and discrimination.

He said it would have a negative effect on the creation of jobs, would restrict the workforce, strain economic growth, put at risk the opportunities of those who were employed; and would not protect the interests of the unemployed.

Foulse predicted that the bill would lead to the destruction of the economy.

DP leader Tony Leon said the main thrust of the key provisions of the bill were "punitive and coercive".

It would place "onerous obligations" on the employer, increase government interference in the economy and was likely to provide a disincentive for private sector investment, he said.

Apartheid was a group-based discrimination system, Leon acknowledged, but said "the DP believes that the bill tilts the balance against the individual and leans too heavily in favour of the group."

However, IFP MP Velaphi Ndlouv said the bill did not "recognise ethnicity as it mixes ethnic and linguistic groupings within the common denominator of "black people". This would lead to the possibility of meeting affirmative action requirements with people of a linguistic group who were only a minority in a specific region.

Ndlouv said the programme advocated by the bill "should only be temporary and be revisited by Parliament once it has addressed the imbalances of the past and moved into a new colour-blind society."

The IFP proposed that an amendment be made to force Parliament to "apply its mind anew" to the issue after 10 years.

PAC MP Ngula Muendane supported the bill but said it needed "some panelbeating here or there."

He said that the bill was "long overdue."

Government intervention was needed, Muendane said, or else workers and blacks would be "eternally disadvantaged" in the country of their birth.

He said that those who thought the bill advocated reverse racism were wrong, as apartheid's paradigm was to upgrade some while suppressing the majority. The PAC felt that while there was discrimination against women in general, there was even more against black women.

This was because, in addition to discriminatory attitudes, their lot was compounded by statutory discrimination Muendane called for black women to be classified as an additional designated group.

Labour director-general Supho Pityana is expected to announce on Friday what amendments, if any, the labour ministry could make to the bill after the submissions have been made by business, labour, community organisations and political parties during the hearings.
Employment Bill

By Frank W. House
**ANALYSIS & COMMENT**

DP’s proposals for employment bill are market-orientated

The Democratic Party has just tabled its proposed amendments to the Employment Equity Bill.

Our amendments are not aimed at amply repricing or blindly scrutinising the present draft of the bill. They are a principled, market-orientated answer to the many concerns that have been raised against the bill.

While the DP does support government policies and programs to develop and empower all people who have been disadvantaged in the past, it takes cognisance of the economic realities facing the South African labour market.

**Unemployment**

Unemployment - a 25% of the population. It is unemployment, not historic disadvantage, which is the most important cause of poverty and inequality. The bill should strive to create a dignified and productive route to job creation and foreign investment.

Yet the legislation will place onerous obligations on the employer, unreasonably retarding the introduction of labour market.

Democratic Party leader Tony Leon outlines the party's suggested amendments to the Employment Equity Bill, which will be debated in Parliament next week.

1. **Definition of “Designated Group”**

The bill refers to black, women and disabled persons as the members of this designated group. The DP's proposed amendment would change the wording of the constitution's section 92A, which refers to persons or categories of persons who have been disadvantaged by unfair discrimination.

2. **Unemployment and the Bill**

The DP's proposed amendment would increase the number of people employed by such an employer from 50 to 100. This will ensure that the small and micro-business person will not be deemed to be a designated employer.

The current definition in the latest draft provides that even if an employer employs fewer than 50 people, but has a total annual turnover that is equal or above the applicable minimum annual turnover of a small business in terms of the Small Business Act, it may be deemed to be a designated employer. The DP's proposed amendment would ensure that this threshold is increased to 100 employees.

3. **Performance Rating System**

The DP's proposed amendment would include a performance rating system, which can be used to evaluate employers for compliance with the act, allowing for a number of possible monetisation, such as performance in the allocation of state tenders, absence of corruption, and professional acumen.

4. **Equalisation of the Labour Market**

The DP's proposed amendment would address the issue of equalisation of the labour market. The amendments must help to foster the job creation process and to reduce the burden of compliance.

In conclusion, the bill, as drafted, could still be a success. It wants to move away from apartheid, yet uses racism as its lens; it wants to narrow inequalities and reduce human development, yet it ensures that the employment norms and standards. SA needs to change and transformation, but let us not destroy better than we know.
Labour court judges differ on how much companies must pay

Uncertainty over compensation for procedurally unfair dismissals will prevail until the Labour Appeal Court rules on the issue, says Robert Lagrange.

UNDER the previous Labour Relations Act (LRA) there was always some uncertainty about the award the industrial court would make for a dismissal which was only procedurally unfair.

The new Act attempted to eliminate that uncertainty by adopting the rule used by many private arbitrators, namely to award procedurally wronged employees their salary for the period between the dismissal and the end of the arbitration proceeding.

This meant that the employee suffered no loss as a result of the unreasonably unfair procedure of the employer.

Regrettably, the Labour Court is not yet unanimous in its approach to this question under the new LRA.

If a dismissal of an employee is only procedurally unfair, subsection 194(1) of the LRA requires the Labour Court or the Commission for Conciliation, Mediation and Arbitration to make an award of "compensation" which must be equal to the remuneration that the employee would have been paid between the date of dismissal and the end of proceedings.

Under subsection 194(2), the compensation payable if a dismissal is substantively unfair, "must be just and equitable in all the circumstances, but not less than the amount specified in subsection (1)". The only exception to the rule in subsection (1), is when the former employee pursuing the claim is tardy in doing so.

However, what this rule means, is a matter on which Labour Court judges are divided.

In Chothus v Hall Longmore (J39/97), Judge Basson took the view that "compensation" is equivalent to damages suffered or the actual loss to an employee, which implies an employee must prove the loss of income since the date of dismissal and take steps to reduce that loss. Consequently, the minimum award is restricted to the actual loss suffered by the employee between the date of dismissal and the end of proceedings.

By contrast, in National Union of Metalworkers of SA & Others v Precious Metal Chains (Pty) Ltd (J109/97), Acting Judge Masekurumule held that an adjudicator must award an employee the value of remuneration the employee would have earned while waiting for a fair hearing by the adjudicator, irrespective of the employee's actual loss during that time.

In reaching this conclusion the judge relied on, among other things: the clear, imperative, language of subsection 194(1); the intention of the legislature to eliminate the confusion around compensation awards which prevailed under the old Act by introducing certainty and uniformity, and the salutary effect of such awards in compelling employers to be more careful in following the guidelines on procedural fairness in the Act.

Judge Zondo's decision, as an acting judge, in CWU v Johnson and Johnson (23/97) distinguished compensation for purely procedural and substantive unfairness.

Although agreeing with Basson on the meaning of compensation, the judge held that the calculation of compensation under subsection (1) applies irrespective of the actual loss suffered.

In the latest contribution to the debate, Wagley, AJ in Manning v Metro Nissan & Ano (Case no. 1034/97) decided that an adjudicator has a discretion on the amount to be awarded above the minimum specified by subsection (1), up to the maximum of 12 months' remuneration, but not in respect of the minimum itself.

Further, the acting judge held that the purpose of subsection (1) is not to profit the employee but to avoid prejudice to the employee while awaiting a fair hearing by the adjudicator.

Consequently, any income earned in the interim from other sources must be offset against the amount due under that section.

Effectively, Acting Judge Wagley reached a similar result as Basson, but without implying a duty on former employees to mitigate their losses.

However, on the correct method of determining the amount payable, uncertainty will prevail until the Labour Appeal Court pronounces on the matter.

Until then, dismissed employees would be advised to look for other work.

Lagrange is a member of the South African Association of Labour Lawyers.
Bosses to pay for pension discrimination

A Labour Court judgment may have opened way for victims to claim millions of rands in compensation

OWN CORRESPONDENT
Cape Town

A ground-breaking judgment in the Labour Court may have opened the way for employees who were victims of discrimination in retirement fund rules to claim millions of rands in compensation from employers.

In a judgment last month, the Labour Court ordered Gauteng tobacco company Leonard Dingler to pay R180 000 to black employees to compensate them for previous discrimination against them.

The weekly-paid blacks had been excluded from membership of the staff benefit fund, which was open only to monthly salaried staff. The employer paid a monthly contribution of 10% of salary to the staff benefit fund but only 5% to the weekly paid workers' retirement fund.

In the first judgment in the case, in October last year, the Labour Court found that the fund's rules had discriminated against the black employees and that this amounted to an unfair labour practice.

The court gave the company and the aggrieved workers a chance to find a solution.

The two parties came to an agreement about the restructuring of the funds but deadlocked on the question of compensation.

In a second judgment, in March, the Labour Court ordered the employer to pay the difference between contributions to the two funds, back-dating the payments for one year.

Peter Strasheim, of Old Mutual Employee Benefits Legal Consultancy, who helped the employees and the company reach agreement on the issue, said the two Leonard Dingler cases had huge implications for fund members, trustees and the retirement industry.

"In this case, the parties agreed that only employer contributions not previously paid would make up the compensation. The employees did not claim interest or investment returns on the unpaid amount.

"A key issue is the implications for employers and retirement funds if employees claim the full actuarial value of the unpaid contributions as compensation," he said.

This would include interest which would have been earned and investment returns foregone and could run into huge sums, Strasheim said.

"There are also serious implications where some companies are unable to pay." Companies could come under pressure to pay out from profits or from part of the surplus, if any, in the retirement fund to cover compensation claims, he said.

Another key issue would be whether the need for equality should be satisfied by increasing the fund benefits paid to the victims of discrimination to the same level as other workers, or reducing benefits paid to the privileged to those paid to the victims, or by compromising between the two."
Labour relations talks

Mboweni shifts focus

Labour Minister Tito Mboweni said yesterday he would not engage in a national conciliation on an urgent basis.
Changes to labour laws biased – Sacob

MANY of the recent changes to labour laws were blatantly biased in favour of labour, the South African Chamber of Business (Sacob) said yesterday.

The cumulative effect of the legislation would inhibit job creation, destroy jobs, and encourage evasion of labour market law, Sacob said in a submission to the National Assembly’s labour portfolio committee, which is holding hearings on the labour Budget vote.

“Sacob is strongly of the opinion that the programme for labour law reform does not properly prioritise the needs of the South African labour market and that it does not, in the absence of a macro economic strategy, dovetail with other measures of economic restructuring,”

Sacob expressed concern that the Budget made no mention of funding for institutions envisaged in terms of the Basic Conditions of Employment Act, the Skills Development Bill, and the Employment Equity Bill.

In a separate submission to the committee, the Free Market Foundation urged that the Ministry of Finance tailor its occupational health and safety regulations to specific industries and enterprises.

The foundation cited as an example miners involved in small-scale mining operations, who were exposed to dangers different from those of their counterparts employed in deep-level mines operated by large enterprises.

In its submission, the Southern African Catholic Bishops Conference welcomed the 18.35 percent increase in the labour Budget vote, and the additional allocations for human resource development.

“However, to justify such increases the ministry is going to have to demonstrate that it is making progress in reducing unemployment.”

The conference expressed concern that the Unemployment Insurance Fund was severely under-funded, yet its allocation had remained unchanged at R7 million.

It also criticised the decrease in allocations to work centres for the disabled and workshops for the blind.

The Congress of South African Trade Unions, the country’s largest labour federation, has refused to participate in the hearings, claiming that the Budget process does not accommodate meaningful input from the public – Sapa.
Abandon notion of transformation or profit

The proposed transformation of order and management says, "Abandon notion of transformation or profit,"

There is a contradiction in the concept of transformation or profit. The concept of transformation is typically associated with positive change, improvement, or progression. It suggests a process of change that leads to a better outcome. On the other hand, the concept of profit is often associated with financial gain or the success of a business. It is a measure of how well a company is performing financially.

The contradiction lies in the idea of abandoning the notion of transformation while simultaneously seeking profit. Transformation implies change, which can be associated with uncertainty and risk. If the goal is to abandon the notion of transformation, it suggests a preference for maintaining the status quo, which might not necessarily lead to profit.

In essence, if the aim is to abandon the notion of transformation, there is an implicit acceptance that the current state of affairs is acceptable and does not require change. This can be seen as a rejection of progress and improvement, which are often associated with transformation. Therefore, the two concepts are inherently contradictory.

In conclusion, the idea of abandoning the notion of transformation while seeking profit is contradictory. It implies a desire for stability and avoiding change, which is antithetical to the very essence of transformation that aims to create positive change and improve outcomes.
SA's unemployed face far too many obstacles

The Economist
Labour law 'will undermine merit'

Louise Cook

LABOUR Minister Tito Mboweni's proposed Employment Equity Bill was a "technicolour nightmar" that would bring into question the competence of any black person who was appointed to a senior or middle management position on a farm, Graham McIntosh, president of KwaZulu-Natal's agricultural union, said yesterday.

The bill required any enterprise with 50 workers or more to submit a business plan to government indicating how it planned to implement integration in the workplace.

The bill was aimed at promoting the employment of blacks, women and handicapped people. However, stakeholders felt it was likely to compromise appointments on merit and affect large farms and agricultural co-operatives known for their high ratio of white employment.

McIntosh said that, contrary to popular belief, farms had been the one sector of the economy where blacks had had substantial opportunities for advancement to positions of responsibility such as foremen and dairymen.

Government planned to set up an inspection service to monitor progress. Estimated costs of the service were R15m a year and another R6m a year to set up a commission for employment equity and policy development.

BD 301498
Countryside Day

Workers' Day

Cosatu seeks 1999 election pact

One step forward, two steps back

Casatu's demonstration against the NEHAWU strike

The Workers' Library and Museum

Sends greetings to all workers on Workers' Day

Paper, Printing, Wood and Allied Workers' Union, a COSATU affiliate, has a million members of the Workers' World in South Africa in the year 2000.
Cabinet challenged to reveal price of state jobs equity

NP quizzes ministers on bill

CLOVE SNYDER
Political Correspondent

Cabinet ministers have been challenged to tell Parliament how much it will cost to implement the Employment Equity Bill in each of their departments. The challenge was made in a series of 25 questions tabled in the National Assembly by various members of the National Party to each member of the Cabinet.

Each minister has been asked to say whether the cost of implementing the bill has been budgeted for.

The questions coincide with this week's release of the Government's white paper on affirmative action in the public service and para-statals.

The Employment Equity Bill, which the Government hopes to have approved by Parliament this year, prohibits discrimination in employment, and the second part introduces affirmative action programmes to deal with apartheid-linked discrimination.

All employers, including the Government, will be required to promote equal opportunity and to eliminate unfair discrimination in any employment policy or practice.

Employers will not be allowed to discriminate against employees on grounds of race, gender, sex, pregnancy, marital status, family responsibility, disability, physical or mental health condition, cultural or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language or birth.

The bill also puts a ban on racial and sexual harassment, characterising them as unfair discrimination, and prohibits medical testing except under certain circumstances.

The bill does not set racial quotas, but requires workplaces to set their own targets after consulting workers and trade unions.

The Government is one of the country's largest employers, with those on its payroll including the armed forces and the millions in the state bureaucracy.

Implementing the policy in the white paper on affirmative action in the public service will require considerable effort, and the white paper attempts to give this impetus by widening responsibility for affirmative action to all management levels.

The white paper sets affirmative action goals of 30% black people, 30% women and 2% disabled at management level in the civil service by 2005.

Currently women make up only 13% and the disabled only 0,02% at management level.

The white paper requires that affirmative action be absorbed in the budgeting process of departments.

Affirmative action policies will be incorporated in managers' performance objectives and the performance contracts of directors-general.

Public Service and Administration Minister Zola Skweyiya said the public service was shedding employees at a rate of 8% through natural attrition. Combining this with proper human resource planning should help the Government achieve its goal.

The NP has indicated it will oppose the affirmative action employment legislation.

Rejecting the Employment Equity Bill, the NP said "imbalances of the past created by discriminatory principles cannot be rectified by reverse discriminatory principles".

Meanwhile, staff of opposition parties in Cape Town were struggling yesterday to get copies of the white paper on affirmative action in the public service so they could comment on it.

Government gazettes are published in Pretoria on Fridays and released in Cape Town on Tuesdays.

However, Monday morning had been a public holiday, so late yesterday copies of the gazette had not yet arrived at government printer offices in the parliamentary capital.

Inquiry raps Gauteng leader over the knuckles

MOTSEKGA HOPWELL RODEBE
Political Bureau

Gauteng Premier Mathole Motsepe's attitude to money, time and management has been attacked in the report of the Negota commission of inquiry.

While the report cleared him of allegations of stealing donor funds, spying for the previous government and nepotism, it paints an unflattering picture of a public figure with little regard for accepted management practices.

It found that he headed a chaotic administration at the National Institute for Public Interest Law (Nuplar) in the 1990s.

Premier: Mathole Motsepe

The report heaps some of the blame for the chaos that was Mr Motsepe's operating style on the political climate at the time. But it portrays him as an administrator who disregarded advice, arrived late or not at all for meetings and that he performed his duties as director-general in an unprofessional and haphazard manner.

The commission found that he had conceived of and founded the institute but might not have foreseen the magnitude and the pace of its growth.

It argued that he was too involved with other institutions.

The commission found that the way the institute (as headed by Mr Motsepe) accounted for the spending of Tresco (foreign) donor funds was flawed and insufficient. But it cleared Mr Motsepe on charges of nepotism.
Nedlac considers equity bill report

Reneé Grawitzky

THE National Economic, Development and Labour Council (Nedlac) will consider a report today on negotiations on the Employment Equity Bill ahead of the bill and the report being referred to the cabinet for approval.

The tabling of the report for consideration by the management committee marks the end of Nedlac's negotiation process, and reflects substantial agreement reached on many of the controversial aspects of the bill.

It also records reservations on certain clauses, with a limited number of issues remaining outstanding, which some parties believe can be resolved through trade-offs.

Parties consistently obtaining mandates from their respective constituencies during the negotiation process has reduced potential problems for the management committee.

The labour department said that, once ratified, the report would accompany the bill to cabinet for consideration. The bill could then be tabled in parliament by the end of next month.

The report confirms earlier agreements on some controversial clauses and tentative agreement on a Congress of SA Trade Union demand for a clause to give legislative effect to attempts to reduce the wage gap.

Parties agreed to expand the range of employers covered by the bill from a company employing 50 or more people to include those with annual turnover in line with provisions in the National Small Business Act.

Small business has reserved its position on the turnover clause as it would increase the number of companies covered by the legislation.

In view of this attempts have been made to ease some of the administrative burdens. Companies employing less than 150 people will only be required to submit a report to the director-general of labour on progress made in implementing the employment equity every two years instead of annually.

Special regulations for small business will be published including a format to assist in implementing and maintaining employment equity.

Parties agreed on changes to a critical clause which stated that employers would not have to appoint or promote members of the 'designated group' who were not suitably qualified.

The clause also said employers would not have to introduce quotas, create new jobs or be forced not to employ from outside the designated group.

Parties were unable to agree on the wording of the phrase "suitably qualified person", which has now been referred to government's legal advisers.

Employment equity plans will no longer have to reflect the national and regional demographics but rather the national and regional economically active population.
Employment bill a ‘done deal’

Reneé Grawitzky

NATIONAL Economic Development and Labour Council (Nedlac) executive director Jayendra Naidoo said yesterday the Employment Equity Bill appeared to be a ‘done deal’.

Naidoo said after a Nedlac management committee meeting yesterday that consensus was reached on the fundamental issues in the bill.

The management committee, mandated by an executive council meeting in March to sign off the report, was supposed to ratify a Nedlac report on the outcome of negotiations on the bill.

The committee was unable to do so “because of a mere formality”, Naidoo said “further levels of communication were needed before the parties could sign off the report”. He said negotiations had been so quick that at times the mandating process did not move as fast as the talks.

It is understood that one of the parties was unable to confirm its final mandate on the Nedlac report ahead of yesterday’s meeting.

The management committee has requested the labour market chamber convenors to ratify the report at a meeting later this week.

Once the convenors ratify the report, it and the bill will be submitted to Labour Minister Tito Mboweni and thereafter be presented to cabinet.

The Nedlac report on the outcome of talks on the bill will only be made public once all parties have formally given their stamp of approval.

Meanwhile, a management committee meeting on the presidential job summit has been postponed yet again.

Naidoo said the parties wanted to hold a high-level meeting ahead of the Nedlac summit on May 18. He warned, however, that the level of preparation for the summit was in a “critical zone”.

Nedlac agrees on code to eliminate sexual harassment

Reneé Grawitzky

THE National Economic, Development and Labour Council (Nedlac) agreed this week on a code of good practice aimed at eliminating sexual harassment in the workplace.

The code, yet to be ratified by the Nedlac executive council, will help the commission for conciliation, mediation and arbitration fulfil its obligation to prevent harassment in the workplace in terms of the Labour Relations Act.

The adoption of the code follows numerous sexual harassment cases being referred to the commission.

In recent arbitration revolting around claims of alleged sexual harassment over an 18-month period and which led to the employee's eventual resignation, the arbitrator awarded an employee the equivalent of nine months' salary as compensation.

The employee, a former personal secretary for Southern Life's Rustenburg branch manager, argued she had been subjected to acts which constituted sexual harassment. This included the manager giving her a pink G-string. The arbitrator found that unsolicited gifts such as underwear could have sexual connotations and hence constitute an act of sexual harassment.

The manager argued that wearing black underwear in an obvious manner was inappropriate and he instead gave the employee pink underwear, which would improve the company's image. The arbitrator's ruling is in line with a code of good practice.

The code is intended to guide employers and employees in dealing with claims of sexual harassment, but perpetrators and victims could include job applicants, suppliers, contractors and others dealing with a business.

Sexual harassment is defined as unwanted conduct of a sexual nature. Sexual attention becomes harassment if the recipient has made it clear that the behaviour is offensive and the perpetrator knows it is unacceptable.

The definition of sexual harassment includes unwelcome physical, verbal or nonverbal conduct.

Unwelcome physical conduct can include a strip search, while verbal forms include name-calling and sexual jokes.

The display of sexually explicit pictures or objects can be nonverbal conduct while harassment can encompass sexual favouritism. This can occur where a person in a position of authority rewards those who respond to his or her sexual advances while other employees are denied promotions.
Cosatu has 
reservations 
about the 
gap clause 
on new wage 
structure.
Employment Equity Bill introduced this year will attempt to increase the number of blacks and women in the workforce. It will impose a system of control and punishment to achieve this end, but would do better to introduce a system of incentive and reward.

As it stands, the bill will do nothing for 4.5 million unemployed people or for the 7.7 million domestic and farm labourers. It will negatively affect 9.9 million South Africans well into the future.

An opposite positive approach, that encourages employers to act in the interest of society when they act in their own self-interest, would create many more jobs in the private sector, assist the Government to provide social services and redress the imbalances of apartheid.

Apart from reducing crime, Government has two major obligations in the immediate future: one is to promote job creation, the other is to ensure social and economic advancement of South Africans. Public sector funds are absorbed on workers' salaries, leaving no money for development.

Government policy must create a climate for investment. Since apartheid was deliberately aimed at disempowering blacks, its effects can only be countered with regard for race, but in a way that fosters goodwill and respect among all races.

Employment equity legislation must allow individuals to benefit when they act in their own self-interest. It must link personal gain to the training of disadvantaged blacks. Implementation of affirmative action programmes, employment opportunities and better social services for the poor.

Our country is struggling with underfunded education, health, police and welfare services. Business is taxed to raise funds that enable Government to provide these services. But filtered through bureaucracy, useful tax rands are sorely diminished.

To benefit fully from the same expenditure, business should be given tax breaks for investing a percentage of profits in education, health and social benefits. Employers should provide occupational and primary health care for workers and invest money in retirement plans on their behalf.

All these measures would reduce the burden on Government. Increase training, stimulate local initiatives and permit freedom of choice.

Business confidence would grow, investment increase and more blacks be gainfully employed.

By contrast, the proposed bill uses racial classification as a basis for control by labour commissioners and courts to force implementation of affirmative action programmes. On the basis of these subjective criteria charges can be laid against employers. This authoritarian approach will not only harm reconciliation and require costly bureaucracies to enforce, but it will open countless avenues for corruption and abuse of power.

Provisions aimed at unfair discrimination apply to all employers. Complaints may be brought by existing, dismissed or aspirant employees, a trade union, workplace forum, labour inspector, commissioner or the director general. They are lodged on the grounds of discrimination, or not taking reasonable steps to guard against it.

Discrimination is assumed unfair unless proven fair by employers. In contrast to alleged criminals who are innocent until proven guilty, inevitably business running costs will increase, accountability of workers decrease, and labour lawyers rub their hands in glee.

All these are relative criteria subject to interpretation. If there is alleged failure to comply with an employment equity plan, the complaint goes to the Commission for Conciliation, Mediation and Arbitration (CCMA) for mediation or arbitration. Flourishing businesses must tremble at the uncertainty and bureaucracy engendered by this bill.

The onerous requirements and hassle factor imposed will discourage many companies from investing. By contrast, accountability of employers to employees, without compromising trust, flexibility or free choice in the workplace, would be better served with an incentive-driven approach.

Business could apply for concessions on the basis of programmes implemented. Instead of putting employers on the defensive and exposing the country to a negative spiral, Government would reward responsible employers, save money and create the environment for growth, investment and increased participation of blacks in the economy.

Dr Ruth Rabinowitz is an IFP MP.
Simple Rewording Could be Solution

ANALYSIS & COMMENT

NEGLIGENCE, more than actuality, often governs the law in matters of employment. The failure of an employer to provide a safe working environment is a classic example of this. Employers are required to take reasonable care to ensure the safety of their employees. This duty of care applies to the provision of equipment, training, and supervision. However, in some cases, the employer may be found negligent even when no injury occurs.

The principle of negligence is based on the concept of duty of care. An employer owes a duty of care to its employees to ensure their safety. If this duty is breached, the employer may be liable for negligence. However, the burden of proof is on the employee to show that the employer failed to exercise reasonable care.

The court in the recent case of Smith v. Brown (2005) considered whether the employer had breached its duty of care. In this case, the employee was injured when a piece of equipment malfunctioned. The employer argued that the equipment was in good working order and that the employee had received adequate training. The court found that the employer had breached its duty of care in several respects, including failing to conduct regular maintenance checks and failing to provide adequate training.

The decision in Smith v. Brown highlights the importance of employers taking reasonable care to ensure the safety of their employees. The employer in this case was found liable for negligence, even though no injury occurred. This serves as a reminder that employers must take all reasonable precautions to prevent accidents and injuries at work.

In conclusion, negligence is a common cause of action in employment law. Employers must take reasonable care to ensure the safety of their employees. Failure to do so may result in a finding of negligence, even in cases where no injury occurs.
Cabinet backs two labour bills

Cape Town — Cabinet gave the go-ahead yesterday for the employment equity and skills development bills to be submitted to parliament.

The bills are likely to be passed by June or July this year, despite continued disagreements on some aspects by business and labour.

Tito Mboweni, the labour minister, said the greatest progress during negotiations in Nedlac had been made on the employment equity bill.

An important change is that firms employing 50 or more staff members would no longer have to automatically submit employment equity plans. Only employers who have turnovers higher than those used to classify small and medium-sized enterprises would have to submit plans. This was irrespective of how many employees they had.

Mboweni said that after representations from the public, it had become clear that the 18-month period in which reports had to be submitted by employers was "unreasonably long". As a result, employers would have to submit reports within 12 months if they employed fewer than 150 people and within six months if they employed more than 150 people.

Employers with 150 staff or fewer would have to submit subsequent reports only once every two years. Larger employers would have to report back every year.

To prevent confusion over who would handle disputes, it had been decided that these would be handled by labour inspectors and the director-general of labour.

The Commission for Conciliation, Mediation and Arbitration would still handle disputes over unfair discrimination, with the labour court acting as the final point of appeal.

Factors to be considered when preparing and assessing employment equity plans had been broadened. The plans would no longer have to take into account national and regional demographics alone, but the national and regional demographics of the economically active population.

Employers would now also have to consider the equitable representation of various groups, "so that they should not focus on one particular group disproportionately", Mboweni said.

"Other business constraints have now been incorporated in the assessing of plans, such as the labour turnover (or lack thereof) for employers, as well as current and planned vacancies."

On the skills development bill, Mboweni said there had been "a remarkable degree of agreement" in Nedlac. He was pleased that employers had agreed to contribute an amount equal to 1 percent of their payroll towards skills development.
Employers with heads in the sand will be kicked in the rear.

Workplace A no of employers bulk covers reporting of misbehavior and training for companies for the hearing the message.
Equity bill 'follows good global practices'

Lynda Loxton
Parliamentary Correspondent

Cape Town — The Employment Equity Bill was in line with international good practices in human resources management and was aimed at achieving real progress in affirmative action in the workplace, a parliamentary committee heard yesterday.

Loyiso Mabhane, the director of equal opportunities in the department of labour, told the select committee on labour and public enterprises that contrary to the alarmist responses from some sectors, the bill had been passed quickly at Nedlac precisely because it was so reasonable.

But it did recognize that firms had to be forced by means of specific legislation to make the elimination of discrimination at work a reality, "otherwise this will remain merely wishful thinking", Mabhane said.

He quoted from an article written earlier this year by Justice Richard Goldstone in which he warned that South Africa was "living in the shadow of a time bomb" of inherited inequalities and that it was in the interests of all concerned to do something concrete about this.

Mabhane said the bill, which would be tabled in parliament next week, clearly spell out how firms should implement equity but did not stipulate quotas or in any way imply, as some had suggested, that white males no longer had a place in the workplace.

Firms would be required to draw up plans to implement equity in close consultation with employees so they addressed the realities on the ground in every company. These would be monitored to ensure they were implemented in real ways, and not through the creation of artificial posts to accommodate previously under-represented employees.

These plans only had to be submitted to the government if companies were designated as being larger than small and medium enterprises in terms of annual turnover.
State role essential to end discrimination, says Omar

Taryn Lambert (166)

JUSTICE Minister Dullah Omar launched a project yesterday aimed at drafting legislative measures to prohibit unfair discrimination and said state intervention was essential to bring about equality.

"We have to ask whether it is enough to ban discrimination," he said.

"Perhaps this legislation, or other legislation has to address strong affirmative measures to rectify the imbalances of the past."

Omar used the opportunity of the project's launch at the Union Buildings in Pretoria to take a jab at the media.

"They deliberately ignore what government has actually done and is doing," he said.

"These things either do not suit their agenda or are not sensational enough and therefore do not sell newspapers," he said.

The project will be conducted by the justice department in conjunction with the SA Human Rights Commission. Omar said there were certain areas of discrimination that needed immediate action and interim legislative intervention was an option to be looked at.

These issues included the right to inheritance for black children born out of wedlock and children other than the first male child, the removal of minority status for women married under customary law; recognition of religious marriages, including Muslim and Hindu marital unions, and the recognition of religious personal law.

"Action is needed in all these areas - not in the distant future - but immediately so as to ensure that the equality principle is respected in word and deed," Omar said.
'Laws needed to avoid chaos'

THE Employment Equity Bill which would be tabled in Parliament soon
was aimed at redressing historical workplace inequalities and avoiding
chaos in future race and industrial relations, Labour Minister Tito Mboweni
said yesterday.

Speaking at a Southern African
German Chamber of Commerce and
Industry luncheon in Johannesburg,
where he engaged in robust debate
with German businessmen, Mboweni
said there was widespread misinterpre-
tation of the Bill.

While acknowledging that the Bill
was contentious, he said the Government
was forced to come up with this legisla-
tion and the Skills Development Bill to
address historical inequalities such as
racial and gender prejudice.

"There are all these inequalities in
our society, most of them historical,
that we have to address now if we are
to avoid chaos in future," he said.

Reacting to concerns that the Bills
were a step back towards apartheid
laws where issues such as race were
paramount, Mboweni said this was a
misunderstanding of the laws as their
basis principle was non-discrimination
of any kind.

Similarly, skills development and
employment equity could not be left to
the vagaries of market forces as these
had failed to resolve inequalities in the
country for three centuries.

Mboweni said there was no need to
be apprehensive about the Bills.

The Star 27/6/98
White kids won't get raw job deal, says Mboweni

Demographics key factor

Employment equity legislation will not leave young whites worse off, Labour Minister Tito Mbeweni has told Parliament.

Replying to questions by Pieter Groenewald of the Freedom Front, Mr Mbeweni said the proposed law would require all employers to take into account the demographics of the economically active population when implementing it.

Whites have a higher proportion of economically active people than that of the population as a whole, he said.

The legislation would prohibit discrimination on the grounds of race and age. In bringing about equity, representation of previously disadvantaged groups would be required.

"White youth will therefore not be worse off when compared to those of the other groups, as representation in accordance with the country's statistics will have to be observed," Mr Mboweni said.

The legislation differed from apartheid legislation, which also required racial classifications, because it was intended to ensure all were represented in the workplace.

At the same time, Mr Mbeweni outlined details of plans to encourage training in the workplace.

The Skills Development Bill, to be tabled in Parliament soon, would introduce a new system of learnerships.

Instead of focusing only on blue-collar skills, learnerships would also involve the service, agriculture, manufacturing and mining sectors.

Mr Mbeweni said a new levy and grant system would create financial incentives for employers to participate in the learnership system.

Employers would have to pay 1% of their payroll to finance skills development in their companies.

Employers would get grants, against their levy contributions, when they provided work experience opportunities. "This scheme is the foundation of a new partnership between the public and private sectors in our country, which must revolutionise the quality and relevance of the knowledge and skills of our workforce," Mr Mboweni said.
Mbowneni to plug labour loophole

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town—The loophole in the Labour Relations Act that had led to the growing trend of employers taking on workers as contractors would be plugged, Tito Mbowneni, the labour minister, warned yesterday.

In a mini-debate in the national assembly, he said the trend undermined bargaining councils and deprived workers of access to pension, provident and medical aid funds.

It had been spearheaded by the Confederation of Employers of Southern Africa (Cosesa), which claimed to represent about 120,000 employers with a workforce of 2.4 million. Mbowneni said it had consistently argued against wage regulations, "often using one-sided information in an endeavour to discredit the bargaining council system."

Mbowneni said he met Cosesa last year to discuss the issue and it had used the meetings as a pretext to send a circular to its members, claiming there would be an amnesty on prosecutions.

"This circular is false, wrong, misleading and a big lie. I should like to make it very clear that I condemn in the strongest possible terms the way in which Cosesa used this meeting to misrepresent what transpired and to further its approach of avoiding compliance with legislation."

Labour department officials have been asked to consider ways to plug the loophole in the Labour Relations Act that allowed for contractors, and Mbowneni planned "a massive information campaign aimed at workers and employers highlighting to them the dangers of becoming independent contractors when in fact they are workers."

Godfrey Oliphant, an ANC MP, called the tactic "the unacceptable face of capitalism."

However National Party members said current labour legislation was a significant factor behind growing unemployment and workers could not be blamed for accepting contract work.
Labour Court should help to break disputes logjam

By CLAUDIA MPETO

While the virtues of the Employment Equity Act are still being disputed at the National Economic Development and Labour Council, a helping hand has been extended to workers with the official opening of the Labour Appeal Court.

It is hoped that the court, with its emphasis on conciliation, efficiency and accessibility, will play a major role in ensuring that lengthy labour disputes do not clog the system. The court has been operating on an ad hoc basis since November 1996 and has already heard 83 cases and 26 appeals.

"During our term of office, a week has not gone by when this court has not been in session," said Mr Justice John Myburgh.

One of the strengths of the new system is the provision that has been made for the hearing of urgent appeals. The swiftness of this system was demonstrated recently in the application by Business South Africa against Cosatu to declare the union movement's intended protest action over the Basic Conditions of Employment Act unlawful.

Judgment was handed down within a week, whereas some cases in the old Industrial Court dragged on for years.

The rules of the court, which are based on the Labour Relations Act, have also been streamlined to make them more accessible.

One of the important functions of the Labour Court is to determine whether a strike or a lockout enjoys protection by the Labour Relations Act.

The court also adjudicates if the Commission for Conciliation, Mediation and Arbitration is unable to resolve disputes about picketing or when an employee claims to have been unfairly dismissed.

The court's location in Braamfontein puts it within walking distance of the train station, taxi ranks and bus routes.
Several non-governmental organisations in Cape Town have formed an equity alliance to support the application of the Employment Equity Bill. This alliance includes representatives from disability organisations, lesbian and gay rights organisations, HIV and labour organisations, as well as the statutory Commission on Gender Equality. The alliance is composed of community organisations and individuals who work towards addressing the need for gender and other forms of equality in the workplace.

The alliance plans to submit a memorandum to the Employment Equity Act, which effectively deals with the principle of equality, to inform and influence the implementation of the Employment Equity Act. The work of the alliance will include joint meetings and seminars to discuss the bill and its effective implementation with various stakeholders, including parliament, political parties, business and labour.
Govt told police to commit illegal acts...
Little mercy will be shown to those found guilty of crossing the line.
Discriminatory employers will be on the block

Johannesburg — Businesses which failed to take steps to remove all discriminatory practices from their pay policies could face legal action when the Employment Equity Bill becomes law later this year, FSA-Contact, the human resources consultancy, said yesterday.

However, complying with requirements of the bill could place companies under enormous financial pressure, the consultancy said.

Hennie Steenkamp, a senior consultant at FSA-Contact, said while many local companies had implemented affirmative action plans and ensured that their recruitment and disciplinary practices were fair and justifiable, many "still discriminate along racial lines when it comes to pay and benefits.

"Some discriminatory practices include providing lower or no pension benefits to women or black employees compared with other groups, different salary scales for people doing the same job because of their gender or race, and discriminating against one group within the organisation in terms of medical aid or housing benefits."

Steenkamp said companies should immediately review job classification and grading policies and systems to ensure they meet the requirements of the bill.

Employers should also review salary scales, pension, housing and medical aid benefits to ensure that these do not exclude or prejudice any employee on gender or racial grounds.

"Employers cannot delay dealing with the issue (because) the bill requires employers to collect information and conduct analysis of its employment policies, practices and procedures to identify employment barriers which adversely affect women, the disabled and previously disadvantaged," Steenkamp said.
Workplace participation is not confined to forums

Cape Town — Although only 48 workplace forums had been established since November in terms of the Labour Relations Act, other forms of workplace participation were being initiated, Thabo Mbeki, the Labour minister, said recently.

Answering questions in the national assembly, he said the Commission for Conciliation, Mediation and Arbitration had received 49 applications for the establishment of workplace forums since November. Thirteen had already been established and 13 were being processed. The rest had not met statutory requirements.

“However, this does not reflect a lack of activity in relation to other forms of workplace participation,” Mbeki said.

“We have had reports that various forms of workplace participation have been initiated and are operating.

“Workers and employers are not required to follow the route prescribed in the act in respect of workplace participation.”
Ramaphosa calls for balanced labour law

Johannesburg — "Failure to find an appropriate balance could well act to the detriment of both job preservation and job creation, right across the business spectrum," Cyril Ramaphosa, South African Breweries' (SAB) acting chairman, warned the government in the chairman's review in SAB's financial 1998 annual report.

He was referring to the "recent procession of labour enactments promulgated and to be promulgated", such as the Labour Relations Act, the Basic Conditions of Employment Act, the Skills Development Bill and the Employment Equity Bill which, despite positive aspects, could be prescriptive and "cost burdensome".

He said development and recruitment would be better served by a more flexible labour market. He urged that individual employers' achievements be given recognition and exemption from blanket levies.

SAB also faces possible government intervention in the form of official competition and liquor polcics. Ramaphosa said it was inevitable that the size and success of SAB attracted unfavourable comment, and urged that the group's true role in the business sector be assessed "more knowledgeably".

"Competition and liquor policies must ensure that the very players these policies seek to protect or advance are not prejudiced, and that legislation is not introduced, which could achieve results neither intended nor foreseen," Ramaphosa said.

During the 13 months to March 31 1998 SAB undertook total capital expenditure and investment activity of over R4 billion. A programme to invest the same amount is planned for the current financial year.
PERIOD OF GRACE ‘UNACCEPTABLE’

Equity Bill ‘too soft’
on private employers

JOHANNESBURG: The Black Management Forum says the government should not waste time by allowing private companies an 18-month period of grace for submitting equity plans.

Six weeks before the expiry date for public comment on the government’s Employment Equity Bill, the proposed legislation has come under fire from the Black Management Forum (BMF) for being “too soft” on employers in the private sector.

BMF president Mr Lot Ndlouv said his organisation welcomed legislation as a tool for transforming the workplace but believed the bill allowed companies too much time to get their houses in order.

The bill, released last November, gives companies 18 months in which to submit equity plans, and those not complying could be hit with fines between R500,000 and R900,000.

“The 18-month period is unacceptable. We have a very serious problem with that because if allows companies to start from a zero base and pretend they never knew about affirmative action legislation,” he said.

Ndlouv said studies had shown that when asked what the main challenges facing business were, many companies canvassed said affirmative action was one of the main issues that required attention.

Although the government had “dragged its feet” on drafting legislation, it had to its credit consulted widely, and this included canvassing the views of business.

The government should “not waste time” by allowing companies 18 months to get their houses in order.

Ndlouv said that for private employers the bill set no targets, which were necessary for gauging its effect on the workplace.

“I do not think employers will oppose the imposing of targets because at the end of the day, it is in their interests,” he said.

The forum was also concerned about the location of the bill in the Ministry of Labour.

“Since this bill is pivotal to the transformation of our society as a whole, and not just ensuring blacks take up positions, we feel that to help change the culture and mindset of our people, the bill should be driven from the deputy-president’s office,” Ndlouv said.

The forum was willing to work with government to iron out differences before the bill became law.

During the unveiling of the bill, Labour Minister Mr Tito Mboweni said several studies had shown that management in South Africa was still dominated by white men, who make up a “small fraction of our society.”

“The grim reality is that black people continue to perform almost all lower-paid and lower skilled jobs,” he said.

He said legislation would not change the workplace in the country “overnight” but would encourage change or “old patterns will continue.”

Mboweni said the fact that four years into the democratic order the labour market remains so skewed bears testimony to the need to take steps to change.

The bill is available for public comment until February 16. — Own Correspondent
Employment equity bill slated as too soft

BY EDWIN NAIDU

Six weeks before the expiry date for public comment on the Government's Employment Equity Bill the proposed legislation has come under fire from the Black Management Forum for being "too soft" on employers in the private sector.

Forum President Lot Ndlouv said his organisation welcomed legislation as a tool for transforming the workplace but believed the proposed bill allowed companies in the private sector too much time to get their house in order.

The proposed bill, released last November, gives companies 18 months in which to submit equity plans and those not complying could be hit with fines of between R500 000 and R900 000.

"The 18-month period is unacceptable. We have a very serious problem with that because it allows companies to start from a zero base and pretend that they never knew about affirmative action legislation," he said.

Ndlouv said separate studies, including one by FSA Contact, had shown that when asked about the main challenges facing business many of the companies canvassed said affirmative action was one of the main issues requiring attention.

"It seems as if Government is giving companies a long time frame because affirmative action is a brand new concept to business. This is unacceptable," he said.

Ndlouv said the bill set no targets for employers in the private sector. These were necessary to judge its effect on the workplace.

"I do not think employers will oppose the imposing of targets because at the end of the day it is in their interests," he said.

Ndlouv added that the forum was also concerned about the placement of the bill within the Ministry of Labour.

"Since this bill is pivotal to transformation of our society as a whole, and not just ensuring blacks take up positions, we feel that to help change the culture and mindset of our people, the bill should be driven from the deputy president's office," he said.

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"The grim reality is that black people continue to perform almost all lower-paid and lower-skilled jobs," he said.

He said legislation would not change the workplace in the country overnight but would encourage change or else old patterns would continue.

Mboweni said the bill should not encourage companies to make token appointments of blacks, women or the disabled.

"We do not ask employers to employ people who are disastrous for the job and incapable. We are demanding that they train their staff, that they eliminate racial discrimination in the workplace and that they recruit from the widest possible pool of suitable candidates," he said.

Mboweni said the fact that, four years into the democratic order, the labour market remained so skewed bore testimony to the need to take steps to change.

The bill is available for public comment until February 16 after which it will be debated in Parliament. It is expected to be passed into law by June.
Union directory now available


The directory has summaries of labour Acts, information on all trade unions and federations, employer organisations, bargain-
ing councils and chambers of commerce, including names and addresses. The new edition also carries summaries of the Basic Conditions of Employment Bill and the Employment Equity Bill, both due to come into force this year.

It costs R285 plus VAT and can be ordered from SA Trade Union Directory, Box 4787 Randburg Tel: (011) 791 2505 or fax (011) 791 2594/
Race relations institute surprised by business sector's acceptance

Employers 'in the dark' on equity bill

FRANK NXUMALO
LABOUR CORRESPONDENT

Johannesburg — The general acceptance by business, albeit with some reservations, of the Employment Equity Bill, makes it questionable whether business fully understood how the bill would work in practice, the South African Institute of Race Relations said in its latest report.

The aim of the bill is to eliminate unfair discrimination and ensure a more equitable representation of blacks and women at the workplace.

The institute's researchers, Anthea Jeffery and Martin Scantech, said that in practice black employees or their union representatives could bring charges of discrimination against any employer on 19 listed grounds, at all levels of employment. Claims could also be brought by job seekers or former employees.

According to the bill, it is not unfair discrimination “to take positive measures” to promote employment equity by giving preferential treatment to black people, women and people with disabilities, the institute said.

The bill places the burden of proof on the employer. Failure to satisfy that burden could result in compensatory and punitive damages, the institute said.

To enforce equitable representation, the bill compels employers with 50 or more employees to come up with “employment equity plans” that reflect national and/or regional demographics.

The bill does not impose employment quotas. But in practice, these plans must either have “numerical goals to be achieved within a specified time” or aim at a workforce which is 76 percent black, 52 percent female, and about 5 percent disabled.

“Designated employers must show ‘reasonable progress’ in meeting these goals, but unless employers experience high rates of staff turnover, it might be difficult to make sufficient progress without dismissing incumbents.”

“Failure to make ‘sufficient progress’ is punishable by fines of up to R5 000 000 for a first offence and R50 000 for a fourth.

These maxima may be increased at any time by the minister of labour by notice in the Government Gazette,” the report said.

It said if the well-established precedent in the US was followed, “under-representation” of any of the three groups would be evidence of “indirect unfair discrimination.” If employers were unable to justify the composition of the workforce, they would also be liable on that basis.
Experts warn on new job equity bill

Employers may be fined over composition of workforce

If United States law is followed in South Africa, all employers, even the smallest, may be forced to employ more black people and women or face heavy fines, two Institute of Race Relations researchers have said.

Analysing the Employment Equity Bill due to come before Parliament this year, researchers Anthea Jeffery and Martin Schontech say it could have wide-ranging effects on small as well as bigger businesses.

If it becomes law, the measure will force employers of 50 or more people to produce an employment equity plan and to show “reasonable” progress in achieving employment equity within one to five years.

Employment equity will be defined with reference to national and regional population breakdowns and to the number of “suitably qualified” black people, women and disabled people available.

But, say the researchers in their analysis, not only employers of 50 people are affected by the bill’s provisions on unfair discrimination.

“The bill imposes on all employers irrespective of their size – a prohibition on unfair discrimination, whether direct or indirect. Direct discrimination requires proof of some kind. Indirect discrimination is more broad.”

If the law is interpreted in the same way as in the US, the researchers say, any under-representation of black people, women or the disabled in any company could be indirect discrimination. This means that unless an employer can explain why the numbers of black people, women, and disabled people at all levels of the company do not reflect the demographic situation in the country – taking into account regional differences – he or she could be in contravention of the law.

The researchers say the bill is silent about whether US law will be followed in interpreting the meaning of indirect discrimination. But, they note, the influence of US law is visible in other parts of the bill.

The bill also puts the burden of proof on employers to justify the composition of their workforce where black people, women and the disabled are under-represented.

Though employers are entitled to take into account the number of “suitably qualified” people when determining the composition of the workforce, the bill does not say how “suitably qualified” is to be defined.
Job descriptions may not accord with labour laws.

FRANK NXUMALO

Johannesburg — Business was opening itself to potential litigation in terms of the new Occupational Health & Safety Act because current job descriptions do not prescribe to the safety requirements of the act, Deon Brineman of DB Consulting, a public relations and strategic training company, said last week.

"This is especially relevant in the case of a death or serious injury in the workplace, if the job description does not reflect the hazards and conditions in which the employee needs to work.

"The act states, inter alia, in section 8 that it is the duty of an employer to provide working systems that are safe.

"He should determine what is necessary to provide for safety and health before resorting to personal protective equipment.
Racial discrimination soon to be outlawed in the workplace

DONWALD PRESSLY
PARLIAMENTARY BUREAU

LABOUR Minister Mr Tito Mboweni will forge ahead with his plan to promote “equity” in the workplace with two important bills before Parliament to promote affirmative action in the private sector.

This week the labour department announced that the Employment Equity Bill, which targets racial discrimination in the private sector, would go before Parliament this year.

While Mboweni’s spokesperson Ms Estelle Randall could not be reached for comment, the bill will require designated employers to draw up an employment equity plan, including targets and time-frames for achieving the targets.

Designated employers will be those who employ a workforce larger than 50 people.

The equity plan must aim at achieving “equitable representation” of blacks, women and the disabled by eliminating “under-representation” of previously disadvantaged people.

Mboweni announced last year that the Skills Development Bill would require business to pay a levy for training. The cost must still be determined, but it is expected that it will amount to about 2% of turnover.

Pan Africanist Congress MP Ms Patricia de Lille said proper consultation and input “from a broad spectrum” was needed on the Equity Bill.

“Government, workers and the private sector must try and reach as much consensus as possible before it is implemented,”

Inkatha Freedom Party spokesperson Mr Velaphi Ndlouvu said the party was “totally against” tokenism, such as when someone undeserving was appointed to a position. The emphasis, he said, should be on training and on merit, adding: “We must not be irrational about these things.”

Inkatha is expected to oppose the bill together with the Democratic and National parties. These parties believe that merit should play a key role in appointments to jobs while representation of all groups should be the ideal.

DP leader Mr Tony Leon said the implications of the legislation were “explosive”.

“For a start, the success of any employment equity plan would necessitate require employers to engage in racial classification.

Leon said: “Unashamedly, the bill provides for this by requiring the minister to draw up a code of good practice which will outline how such classification must be undertaken.”

To enforce the bill, labour inspectors would have the power to enter, question and inspect any workplace and issue compliance orders.

Leon said much of the monitoring of the act’s implementation would depend on trade unions, which would only add strain to labour relations.

NP spokesperson Mr Adriaan Blaas said they could not support the affirmative action policy because it was against its policy of a free market. It would mean that people would have to be retrenched, leading to counter-productive severance packages.

“In America successful black people (argue that affirmative action) give negative credibility to their track record. We are not against affirmative action, on condition that merit is not sacrificed,” said Blaas.
Focus on ethics in the workplace

Employment Bill launched

Cape Town — The government’s Employment Equity Bill, details of which were first published last December, was launched yesterday to a mixed reception by a range of groups, including business, trade unions, employers’ organisations and non-governmental organisations.

Loyiso Mbabane, the equal opportunities director at the department of labour, said the bill — which at best was expected to be passed in parliament by July — had so far met with fierce resistance from business and labour than its predecessor last year, the Basic Conditions of Employment Bill.

“If things go well, and there have been no huge objections from business and labour to the bill, it should be in Nedinca by April or May and in parliament by July,” said Mbabane. Should there be hiccups, the bill would go to parliament by September, he said.

But in a lengthy question session after the official launch, concern was raised from different quarters over issues including the effects of the bill on smaller businesses, the lack of clear targets for different sectors and problems with the finer detail, such as the issue of training.

Mbabane said the key vision of the bill was “equitable representation of groups across all occupations and across all levels in the workplace.”

In contrast to the employment bill, which addresses “real” issues such as working hours, the equity bill focuses on ethics. It aims to achieve equality in the workplace, promote equal opportunity and fair treatment and eliminate discrimination.

“We want people to really change existing jobs and their line functions to give opportunities to, for example, black people and disabled people,” he said.

“It’s not an ideal legislation that will deal with all the country’s problems. Don’t think that in five or even 10 years people will have attained the goals.

“But in the long term, if companies start moving people along different levels, this will develop its own momentum. Once you have the critical mass of, for example, women, they will monitor the situation”

Mbabane dismissed criticism that the bill ignored small businesses, pointing out that small businesses — defined as businesses with 50 or less employees — had specifically been excluded from the ambit of the legislation.

One of the key pillars of the bill was “strategic change management,” whereby employers were encouraged to set their own targets with employees.

“The bill requires companies to take the law seriously and to do something about it,” said Mbabane.

The labour department is calling for comment on the bill, which so far has been presented to eight provinces, until February 15.
Equity bill inches to completion

LYNDA LEXTON

Cape Town — The debate about the constitutional aspect of certain parts of the Employment Equity Bill continued in parliament yesterday, but Godfrey Oliphant, the chairman of the labour committee, said he was confident the final bill would pass any constitutional test.

The committee considered several amendments suggested by the labour department after its recent meetings with Business South Africa and trade unions, and asked for clarity on some issues.

The department spent yesterday afternoon tightening up the bill. The committee is due to vote on it today before it goes to the national assembly on August 20.

The debate mainly centred on the issue of so-called “designated groups” and the concerns that the singling out of black women could affect other groups that had also suffered job discrimination.

Sipho Pityana, the labour director-general, said it had been decided that the employment equity commission would issue guidelines on the prioritisation of designated groups.
Labour plan will cost jobs, warns business

BIZTELEPHONES

Amendments to the Bill, tabled by the Department of Labour. These concerns include the wage gap (though BSA reiterates its support for the measure designed to eliminate unfair wage discrimination), HIV testing, and the definition of family responsibility. BSA remained concerned that no amendments had been tabled to address the negative impact of the legislation on small businesses.

BSA expressed its concern yesterday at some of the new proposed
More storms over Equity Bill

FRANK NXUMALO
AND LINDA LOXION

Johannesburg — Voting at the parliamentary portfolio committee on labour on the stormy Employment Equity Bill was postponed yesterday, “until maybe next week.”

This followed sharp reaction from Business South Africa (BSA) to proposals by the labour department to include two new clauses on the “apartheid wage gap” and the definition of “suitably qualified.”

On Tuesday Sipho Pityana, the director-general of the department, proposed that companies include an “analysis of the wage gap” in their employment equity plans.

He also wanted the definition of “suitably qualified” to be changed to include formal qualifications, prior learning, relevant experience and the capacity to do the job within a reasonable time.

BSA said it recognised wage inequalities “because of apartheid” and that “the bill itself was one of the ways of addressing the issue by facilitating the movement of designated groups to higher occupations.”

But it said the clauses were the wrong way of going about it.

“We realise there are large disparities in wages and that they should be addressed, but we feel that those clauses are the wrong instruments to address the wage gap,” said Frans Barker, BSA’s representative.

Barker said that by compelling companies to submit the kind of information contained in employment equity plans, the government was undercutting the international competitiveness of South African firms. These plans were an integral part of a firm’s sensitive operational cost structure. They might cost hundreds of thousands of rands to put together; yet might end up being “freely” accessible to competitors.

Zwelinzima Vavi, Cosatu’s deputy general secretary, said “in some sectors the ratio between highest and lowest paid workers is 100:1 We want this gap to be reduced to at least 8:1.”

“The overwhelming number of workers’ wages fall well below the minimum living level. This trend has not decreased but increased in recent years.”

“Our position is largely guided by the need to confront the apartheid wage gap which was inherited from the Wage Act that sought to condemn black workers and blue-collar workers to poverty wages,” Vavi said.

He said many workers could be described as “working poor”, which meant that despite being employed they “continued to be poor and little better than the permanently unemployed.”

Lusia Mshulume, the director for equal opportunities, said the department had been examining how similar monitoring programmes (of equity plans) worked in the US.
Cosatu outlines its position on Equity Bill

NEWS
Throwing a confusing spanner into the works

Amendments to the Employment Equity Bill will turn a good idea into a bad compromise. CAROL PATON reviews the proposed affirmative action legislation

In its original form the Employment Equity Bill had two aims to promote equal opportunities in employment by outlawing all possible forms of discrimination, and to bring about redress for disadvantaged groups by legally binding employers to implement affirmative action programmes.

This week, with its proposed amendments to the Bill, the government added a third aim that it should somehow be used to reduce the huge differentials in SA between the highest and the lowest paid, a phenomenon called the apartheid wage gap.

This would be done by requiring employers to disclose the salaries of all their employees, which, in turn, would provide unions with ammunition to bargain down the differentials.

The addition has confused the Bill’s original intentions. It has further confused public debate about the Bill, which was already suffering from a good deal of misunderstanding.

The Bill’s non-discrimination clauses are quite clear and not, in the light of the Constitution, anything new. Discrimination on any grounds is prohibited.

The clauses on affirmative action are more complicated.

Employers of more than 50 people (or owners of smaller firms with a turnover higher than the threshold of a small business) must give the Labour Department an annual analysis of the workforce and a plan, which shows how they aim to improve representation at all occupational levels.

The plan must set numerical targets for the employment of the three groups mentioned in the Bill: blacks, women and the disabled. Candidates from these should still be considered for employment even where they lack the formal qualifications or experience but have the potential to acquire the ability to do the job.

However, the Director-General of Labour, Sipho Pityana, says companies whose workforces are not representative will have a chance to explain why and identify the obstacles to improvement. These could include skills in short supply, low staff turnover, which means there are few vacancies for new black, female or disabled entrants, or no physical access for the disabled.

If a company can show it has made “reasonable efforts” to overcome these problems and meet targets to employ blacks, women and disabled people, its attempt will be considered adequate, even if it fails, says Pityana.

In addition, Pityana, who will be able to impose fines of between R500 000 and R990 000 on firms which do not comply with the Bill, will have to consider the demographics of an area, the existing pool of labour, staff turnover and financial factors before doing so.

While the affirmative action provisions have raised alarm in some quarters, the Bill has been accepted without much fuss by big business because many of its provisions are a lot less controversial in practice than they appear on paper. On paper, the provisions look like a drastic attempt at social engineering, but in practice, most big companies are by necessity moving in the affirmative action direction and believe that drawing on a wider pool of talent makes good economic sense.

Apart from the economic sense argument in favour of affirmative action, the Bill also has other positive features.

By forcing employers to consider disadvantaged people with potential for employment the Bill will contribute to social justice in the workplace.

By calling on employers to employ people with potential it will also make employers provide targeted training.

While black men have, in the absence of legislation, already experienced accelerated occupational mobility, the Bill will have a positive effect on women and disabled people, who will be drawn into mainstream employment in far greater numbers than ever before.

The Bill also strengthens non-discrimination against gay people. One of the amendments, for instance, stresses that there should be no difference between a spouse and a same-sex partner.

The clause that requires that people with potential be included in the workforce caused controversy in business. But after a meeting with the government last week it was agreed that candidates would have to acquire the capacity to do the job “within a reasonable time”.

However, in throwing this compromise to business, the government also tossed one in the direction of labour.

Cosatu’s biggest objection to the Bill was that it would not narrow the apartheid wage gap. But the proposal on disclosure of salaries is a mess.

Cosatu is not satisfied because while the amendment proposes disclosure it does not include a mechanism for narrowing the wage gap. On the other hand, for business, which does not yet disclose even the individual pay of directors of listed companies, full disclosure is unthinkable.

Putting these objections aside, the Bill also makes the mistake of assuming it is possible to bargain the wage gap away. But low wages and high salaries are not the simple result of racial discrimination.

In South Africa, as in Europe and the US, the demand for management skills has pushed top managers’ pay through the ceiling. Changing that pattern can only come about through a changed and better-skilled labour market.

Disclosure is unlikely to shame companies into paying bosses less and workers more
Consensus cannot be achieved on demand.

Government's section on key areas of regulation indicates that it has not made a

The baking development, which aims to improve the use of young minds - in the context of educational development,

Consensus cannot be achieved on demand.
Mdladlanza slams union violence

Frank Nxumalo

Johannesburg — Shepherd Mdladlanza, the new labour minister, last week condemned unprocedural actions and violence in the rash of industrial disputes sweeping the country, particularly in the chemical industry.

Mdladlanza said the “wave of high-profile strikes” in the past few weeks had caused “a great deal of anxiety and concern to the public.”

“We must condemn all unprocedural actions, particularly acts of violence taken by the parties in the course of their disputes,” he said.

“The law provides adequate avenues to deal with disputes and strikes in a procedural way. I acknowledge that this is a time when tensions run high, but I call on all parties to exercise restraint.”

Mdladlanza instructed the Commission for Conciliation, Mediation and Arbitration (CCMA) to consider either advising the parties involved in the spate of strikes to approach the essential services committee for a determination or invoke Section 169 of the new Labour Relations Act (LRA).

Mdladlanza said a determination in terms of Section 73 of the LRA would facilitate an agreement on the supply and distribution of petrol “whether these are essential or not.”

He said his department was considering a series of “urgent amendments” to the LRA which would deal with a number of current labour issues.

These included the case and management problems of the CCMA caused by the “unexpected high volumes of disputes,” the phasing out of the industrial court and the preservation of pension and provident funds and medical aid schemes functioning in terms of collective agreements when bargaining council are dissolved.

The leadership of the Chemical Workers’ Industrial Union (CWIU) is expected to meet industry employers’ associations this morning as its national strike enters the second week.

The CWIU is demanding a paid sick leave, a 40-hour working week and a 10.5 percent wage increase. The amount involved is equal to the settlement level of last year, and this appears to be the main obstacle to a settlement as it is higher than the employers’ offer of 8.5 percent.

The strike is expected to continue deep into this week even if there is a settlement today because the union first has to report back to its members.
Labour act changes steer well clear of controversy

René Grawitzky

CABINET approved a number of technical and non-controversial amendments to the Labour Relations Act this week.

Some of these are intended to facilitate smoother operation of the Commission for Conciliation, Mediation and Arbitration.

In line with earlier discussions, the amendments do not reflect any major policy changes on the part of government and they do not include the controversial amendments proposed by the labour market commission report on the extension of bargaining councils.

The report proposed that the minister should have greater discretion in deciding whether or not to extend council agreements to non-parties.

This is supposed to form part of the discussions at the presidential job summit.

The former labour minister, Tito Mboweni, stated publicly that he did not want to table controversial amendments to the act ahead of the elections.

There are, however, some minor amendments relating to applications for exemptions from bargaining council agreements.

A number of important amendments, which have been approved, relate to the time periods for the referral of disputes to the Labour Court or their resolution through arbitration.

The amendments to the act were considered by a subcommittee of the labour market chamber within the National Economic, Development and Labour Council (Nedlac) between June and July.

A draft Nedlac report on the amendment bill was endorsed by the labour market chamber convenors on July 28 and ratified by the management committee on July 31.

The Nedlac report was ratified by the Nedlac management committee at its meeting on July 31, 1998.

Vuyo Mvoko

PARLIAMENT's labour portfolio committee ratified the labour department's controversial amendments to the Employment Equity Bill yesterday, clearing the way for the bill to go through the formal parliamentary processes.

The particular amendments, opposed by Business SA (BSA), which thought they were "oner-
HANDCUFFED BY LABOUR LAW

Does Skweyiya have the will?

In a parliamentary briefing last week, Public Service & Administration Minister Zola Skweyiya waxed lyrical on his new management and administrative framework. He also talked at length about the Batho Pele (people first) programme aimed at making civil servants more responsive to user of government services.

Not a word was uttered about the albatross that hangs around his neck and may be his undoing in the 1999 election.

Skweyiya said three years ago that SA’s bloated civil service would be cut by 100 000 jobs a year. But research by the Centre for Policy Studies (CPS) shows that only 80 000 jobs have been shed so far, and tough battles lie ahead if any more are to be cut.

The CPS says government employed 1,15m people as at March 31 this year. Total employment since March 1998 has declined by 9,6%, though the provincial share of the total has risen 3,5% to 70,6%.

“The reduction in total employment was primarily achieved by a freeze on all new appointments, as well as the voluntary severance package scheme introduced in 1996,” says CPS’ J P Landman.

Though the numbers are coming down, the cost of the civil service has increased because of the three-year wage agreement between government and unions in 1996. Nominal growth in personnel expenditure rose by 19,2% in 1996/1997, 9,1% in 1997/1998 and 8,8% in 1998/1999.

“Personnel expenditure and interest payments on government debt can be regarded as the ‘terrible twosome’ of the national Budget. They constitute 56% of total government spending,” says Landman.

There are about 54 000 supernumeraries — people who draw a salary but have no work — in the civil service. At the average R66 113 salary, they cost the taxpayer R3,57bn/year.

“The soft options have been exhausted through the voluntary severance packages. From now on, reducing the size of the civil service will require a much stronger political commitment,” says Landman.

The biggest stumbling block to large-scale retrenchments, he says, is the Labour Relations Act, which makes retrenchments extremely cumbersome.

Justice Mahla
Committee clears way for equity bill
Cosatu applauds passage of equity bill

Frank Nejumalo and Lynda Loxton

Johannesburg — Cosatu yesterday welcomed the passage of the Employment Equity Bill by the labour portfolio committee.

The labour federation in particular praised the clause that compels companies to disclose salaries at all occupational levels in an effort to close the apartheid wage gap.

Voting on the apartheid wage gap clause had been postponed last week following sharp reactions from business. But the bill was passed yesterday without any amendments.

Business South Africa (BSA) said it would call an urgent meeting of its governing body to discuss the issue and what its next steps would be.

Frans Barker, its chief labour negotiator for BSA, said the fact that there had been no amendments to the clause was “relatively small in the bigger scheme of things”, which was that “you can’t lift the wage earner by pulling down the wage payer”.

The bill is expected to sail through the National Assembly on August 20.

The labour federation said “Cosatu applauds the intention of the legislation to place an obligation on employers to progressively reduce the disproportionate income differentials inherited from the past structures of the apartheid labour market.”

However, Cosatu said while it fully supported the intention of the clause, it maintained its view that this could “have been expressed more clearly in the legislation”. It warned that if this was not the case, the dispute was not yet over.

Zwelinxuma Vavi, Cosatu’s deputy secretary general, said “if the bill does not give effect to the intention to place a clear obligation on employers to reduce disproportionate wage differentials in terms of nationally stipulated benchmarks, then Cosatu will seek further amendments to see that this intention is captured in a clear and unequivocal way.”

Vavi said Cosatu applauded the fact that aspects of the legislation were aimed at ensuring the transformation of the labour market would benefit “millions of ordinary workers through eradication of the inherited apartheid-era wage gap.”

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Controversial labour equity bill set to be in force by October

ESTELLE RANDALL

The controversial Employment Equity Bill makes its final journey to becoming law this week when it is considered by the National Assembly.

The debate on Thursday will conclude almost three years of discussions amongst government, business, the unions and other interested groups on how to rectify four decades of apartheid imbalances in the workplace. The bill seeks to implement the constitutional right to equality and the removal of discrimination.

But it is agreed that apartheid bequeathed a legacy of racial imbalance in current occupational and income patterns – the issue is how to correct these imbalances.

One view argues that the market will correct these imbalances naturally. Opposition parties such as the Democratic Party and the National Party have also warned that the bill could “re-racialise” South Africa’s labour market. However, the constitution makes provision for “legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination”.

Business South Africa (BSA) would also like to see less, rather than more state regulation, particularly on the issue of the wage gap engendered by apartheid.

Others, such as the Pan Africanist Congress, would like to see the state lay down specific quotas for correcting racial inequity in employment and to move towards setting a national minimum wage.

The Congress of SA Trade Unions (Cosatu) would like the state to set specific targets for employers to bridge the apartheid wage gap.

The bill, in keeping with government policy objectives, tries to balance efficiency with regulation.

From the outset, government has said that rectifying past discriminatory employment practices, including the apartheid wage gap, would require a degree of state regulation together with self-regulation from employers.

At the launch of the bill in November last year, former labour minister Thabo Mbeki pointed out: “We can

not undo inequalities simply by outlawing discrimination. Our constitution has already done that: 'To give practical effect to our constitution we need specific programmes to redress imbalances.'

The Government favours neither a national minimum wage nor a strict compulsion for employers to bargain around having the apartheid wage gap. But the issue of the wage gap and the need for employers to supply details about salary structure for all employees has been present in discussion documents on employment equity legislation since the 1996 Green Paper. Government’s current proposal does not completely satisfy either Cosatu or BSA.

According to the proposal, companies’ employment equity plans to the department of labour must include a statement of the pay and benefits received in each occupational category and level of the workforce.

Where naturally large gaps in income are reflected, employers may reduce these through collective bargaining, compliance with sectoral determinations and the Basic Conditions of Employment Act and relevant measures in the skills-development legislation.

The commission, due to be appointed in terms of the Basic Conditions of Employment Act, will research and investigate appropriate wage gaps and advise the minister of labour on steps to achieve this.

Business fears that disclosing detailed salary information could diminish companies’ competitive edge and appear to have been addressed by an agreement that the information is disclosed only to the Employment Conditions Commission.

Minister of Labour Shepherd Mdlalana points out that business and labour would continue to be involved: “They will get another bite at the cherry when the Employment Conditions Commission makes recommendations,” he says.

Brian Allen of the labour consultancy Andrew Levy and Associates points out that the Labour Relations Act provides for employers to make information available that would aid collective bargaining.

A recent study found that South African executives took home 19 times as much as workers. In South Korea the differences are slight, in Japan it is 10 and in Germany it is 11.

But South Africa’s income disparities are not simply a reflection of apartheid discrimination. They also reflect the skills shortage – a problem which the Skills Development Bill seeks to tackle.

Public hearings on this bill start next week, as the Employment Equity Bill makes its final lap of the legislative process. Once approved by the National Assembly, the Employment Equity Bill will go to the National Council of Provinces. It is expected to be signed into law in October.
Cosatu’s last-ditch attempt to modify Employment Equity Bill fails

By ESTELLE RANDALL

Despite a last-minute attempt by the Congress of SA Trade Unions to force through changes to the Employment Equity Bill, the Government this week stuck to its guns and refused to budge.

At issue was the wording of a new clause the Department of Labour added to the bill to clarify how employers should correct the apartheid wage gap.

According to the proposal, companies’ employment equity plans to the Department of Labour must include a statement of the pay and benefits received in each occupational category and level of the workforce.

Where unnaturally large income differentials are reflected, employers must take measures to reduce these.

The measures may include collective bargaining, compliance with sectoral determinations made in terms of the Basic Conditions of Employment Act, relevant measures in the skills development legislation, similar measures which are appropriate, or compliance with norms and benchmarks set by the Employment Conditions Commission.

Cosatu believed the minister of labour should be obliged to ensure that employers take the necessary steps to reduce any inconsistent wage gaps. However, the department’s wording remained the same, and Parliament’s labour committee approved the bill on Thursday.
Employment equity bill redresses injustices

GODFREY OLIPHANT

THE Employment Equity Bill to be debated in Parliament tomorrow will provide our country with the most comprehensive anti-discrimina-
tory legislation in the world.

It is a practical framework to redress past discrimination in the workplace.

The bill helps to ensure that our country’s acclaimed constitution is a living document with real consequences in the working lives of real people. No wonder it is broadly welcomed and described by Disabled People SA as “one of the most positive pieces of legislation”.

True, the bill’s opponents have been vocal. And their chief spokesperson Tony Leon has received disproportionate publicity. At no stage did the government or the ANC claim to have a monopoly on wis-
dom. The bill is the result of a democratic ethos that included many civil society submissions. It includes proposals by business, trade unions, non-governmental organisations and amendments by its opponents, the NP and the DP.

It does not satisfy everyone, but an inclusive democratic process can almost never achieve that. But it does have the solid support of our broad society and the key role players.

We have to capture in legislation anti-dis-
crimination values, and the rectifying of past injustices in the work place. Apartheid was, after all, introduced through legislation. To think that its injustices would disappear naturally is naive and dishonest.

That is why all business groups support legis-
lation to achieve these goals, and why Busi-
ness SA is on record as saying “We have faith in the guidance of legislation”.

The bill prohibits discrimination against an employee in any policy or practice on grounds of race, gender, pregnancy, marital status, family responsibility, social origin, sexual orienta-
tion, age, disability, religion, “V” status, belief, political opinion, culture and guage.

This means that everyone will be protected against discrimination by this bill, including Freedom Front MP Pieter Groenewald, who says a previous employer blocked his career progression because he was not a Broederbender.

It is one of the first bills in the world that specifies that no discrimination against HIV sufferers would be allowed. Testing to determine an employee’s HIV status is also not permitted unless the Labour Court finds it necessary.

The bill defines family responsibility to include gay and lesbian and unmarried heterosexual relationships.

To redress discrimination, the bill recognises groups, be it in terms of race, gender or disability. The reason for this is that in this country people were discriminated against because of the groups that they belonged to, not because of the individuals who they were.

The bill requires employers to reduce disproportionate wage gaps SA, with a 100:1 ratio from top to bottom, as the second largest income gap in the world (Japan 7.1), an apartheid legacy. Equity legislation must aim to eliminate this.

G Godfrey Oliphant is an ANC MP and chairperson of Parliament’s Labour Portfolio Committee.
Job equity bills, wages clause risks business

ANY 8/1/98

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Equity bill hits DP, NP roadblocks

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Voting on the Employment Equity Bill in the National Assembly, originally scheduled for today, was pushed yesterday to tomorrow following the eleventh-hour tabling of amendment motions by the DP and the NP.

Godfrey Oliphant, the chairman of the parliamentary portfolio committee, said the DP wanted the equity law reviewed every five years so that “it was not necessary permanent legislation.” He said the NP was raising the issue of the definition of “black people.”

The ANC slammed both parties for “playing childish games with parliament and irresponsible behaviour.”

Oliphant said “It is hard to believe they are very serious about them (the amendment proposals), as they have never raised issues in the portfolio committee on which they sit.”

“They will, however, not be able to deny the country the best anti-discriminatory legislation in the world and a practical framework to redress past discrimination in the workplace for more than 24 hours.”

He said it was typical of the parties to slow down the democratic process with “childish games.”

Nowethu Mpali, the Cosatu spokesman, said the union group would need time to study the DP amendment proposals before it could respond.

She said Cosatu found the NP proposal “very interesting.”

“Throughout their years of ruling, they (the NP) have always had a definition of black people,” Mpali said.

“It’s surprising that all of a sudden they do not know who black people are.”

Meanwhile, power generation in Mpumalanga and parts of Gauteng could be disrupted today as hundreds of Boteck Industries workers allied to the National Union of Metalworkers of South Africa (Numsa) and the National Union of Mineworkers down tools to press wage increase demands.

Dumisa Ntuli, the Numsa spokesman, said workers were demanding a 9.5 percent wage increase on a sliding scale and five-worker grade system, while employers had offered 7.5 percent.
Bill to reveal  
execs’ salaries

A MAJOR political storm has erupt-  
ed in parliament after the National  
and Democratic parties launched  
11th hour action to delay the pas-  
sage of the controversial Employ-  
ment Equity Bill.

The bill, which has been amended to require employers to reveal the salaries of executives and  
to reduce the wage gap, will be referred back to the Portfolio Committee on Labour after today’s  
debate. Voting on the bill is expected to take place tomorrow.

Under the amendments, employers will be required to disclose to  
government the remuneration packages of all employees  
within one year after the bill is passed.

Corab, however, said the proposed law, saying they will  
transform the labour market to benefit the overwhelming majority  
that is a tiny minority.”

But Business South Africa has  
deplored the amendment regarding  
the disclosure of pay as “onerous”  
and a deterrent to a foreign  
investor. The Cape Chamber of  
Commerce and Industry also  
“vigorously opposes” the amendment.

The wage gap between bosses and workers which the amendment seeks to close, is large,  
Labour minister Ben Ngubane said, explaining that South African managing  
directors earn 100 times more than the  
lowest-paid workers.

And the bill’s main objective is to put an end to an era  
during which while unions were  
protected and women, blacks and  
people with disabilities were  
denied prospects of advancement.

In terms of the legislation, the government would be required to  
establish a commission for  
employment equity to enforce the bill.

This would be done through the  
formation of a labour inspectorate  
and the office of the director-  
general in the Department of Labour.

The bill requires companies  
with 50 or more employees, or  
whose turnover exceeds a defined  
limit, to implement plans for  
removing past discrimination and  
for closing the wage gap between  
bosses and workers.

The Employment Equity Bill also  
tells employers to conduct  
discrimination in the employment  
policies and practices and unfair  
discrimination on the grounds of  
sex, gender, race, nationality,  
color, social origin, age, disability,  
sexual orientation, religion,  
political opinion, culture, language  
birth against employees or job  
applicants.

It would also outlaw medical  
testing unless justified.

If it becomes law, the bill  
would require employers to  
prepare and implement employment equity plans after  
conducting a workplace analysis  
and having consulted with unions  
and employees.

The bill also  
protects employees from  
victimisation for exercising rights  
conferring on them by the legislation.

Gordon  
Olliff of the National Party, which  
the bill has had one day of debate  
and 11th hour action to delay its  
passage, said the bill was “onerous”  
and a deterrent to foreign  
investors. The Cape Chamber of  
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The bill also  
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Incentives offered to companies  
which comply with the legislation  
would include access to state contracts worth R5 billion.

On the other hand, companies  
which fail to eliminate discrimination in the workplace and  
introduce equal opportunities will face  
hard times and be denied access to  
locally owned state contracts.

The Democratic Party has  
charged that the bill may be  
unconstitutional.

DP leader Tony Leon said yester- 
day that the bill was “out of line” with  
the wording of constitutional provisions on redressing past  
discrimination.

He said the constitution, in its  
affirmative action provisions, stated  
that beneficiaries should be people  
or categories of people disadvantaged  
by unfair discrimination.

In contrast, the bill listed black  
people, women and disabled people  
as beneficiaries while excluding  
all others, which the DP regarded  
as unconstitutional.

Cons and the Pan Africanist Congress have welcomed the bill,  
while the National Party has  
described it as “serious racism.”

Once approved by the National Assembly, the bill will be debated  
by the National Council of Provinces (NCOP).

Further amendments can be  
made by the NCOP before the bill  
is passed to President Nelson  
Mandela to be signed into law.
Opposition challenge to jobs bill

ANC expected to push through Employment Equity Bill despite fierce opposition

BY JOYCE HAYWOOD
Cape Town

Proponents of last-minute opposition amendments to the Employment Equity Bill will delay the bill's passage by a day, but it is almost certain to be passed by the National Assembly tomorrow.

The National Party and the Democratic Party, which both oppose the bill, yesterday took advantage of Parliament's rules to table amendments that will have to be considered by Parliament's labour committee today. Their effect is to stall the bill, but only by a day.

Although the amendments have no chance of being accepted by the ANC-dominated committee, Parliament's rules lay down that they have to be considered before the bill may be voted on, and passed, by the Assembly, probably tomorrow.

The bill, which is aimed at radically changing the lives of millions of workers, is the Government's showpiece affirmative action measure.

It has already undergone thorough interrogation at the National Economic Development and Labour Council.

The main objective of the legislation is to put an end to an era where white males were preferred and women, blacks, and people with disabilities were denied prospects of advancement and development.

In terms of the legislation, the Government will establish a Commission for Employment Equity, which would enforce the bill.

This would be done through the formation of a labour inspectorate and the office of the director-general in the Department of Labour.

The bill requires companies with 50 or more employees, or whose turnover exceeds a defined limit, to implement plans for redressing past discrimination and/or closing the wage gap between bosses and workers.

It also intends to prohibit unfair discrimination in employment policies and practices on the grounds of race, gender, sex, origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language or birth.

It would also outlaw medical testing, unless this is deemed justifiable.

Incentives offered to companies which comply would include access to state contracts worth R5-billion a year. On the other hand, companies which fail to eliminate discrimination in the workplace face heavy fines and would be denied access to state contracts.

DP leader Tony Leon yesterday said the bill was out of line with the wording of constitutional provisions on redressing past unfair discrimination.

The constitution, in its affirmative action provisions, said beneficiaries should be people or categories of people disadvantaged by unfair discrimination.

By contrast, the bill listed blacks, women and disabled people as beneficiaries, while excluding all others, which was unconstitutional, Leon submitted.

Cosatu and the PAC have welcomed the bill while the NP has described it as "reverse racism".

Once approved by the National Assembly, the bill will be debated by the National Council of Provinces, which could make amendments before passing it to President Nelson Mandela to be signed into law.
Affirmative action Bill in its final stages

AFFIRMATIVE action laws that will radically reshape the South African workplace are set to be passed by Parliament this week, despite opposition by big business and political parties.

The African National Congress, which has steered the Employment Equity Bill through its stormy parliamentary stages, is expected to use its parliamentary majority to steamroll the law when it comes before the House of Assembly for vote today.

The Bill seeks to correct the uneven distribution of jobs and incomes created by apartheid policies of the previous government, and address the employment needs of black people, women and the disabled.

The Bill requires companies with 50 or more employees, or whose turnover exceeds a defined limit, to implement plans for redressing past discrimination and for closing the wage gap between bosses and workers.

During the apartheid era, being white and male was qualification enough for climbing the corporate ladder, being female, black, disabled or gay meant having to scramble for even the lowest rung.

Business, during the lengthy gestation period of the legislation, has made continual inputs and succeeded in moderating some of the harsher demands of labour, including that specific workforce racial quotas be pre-determined by government.

But while agreeing on the need for some form of affirmative action, business has taken particular exception to amendments introduced last week that place an obligation on employers to "progressively reduce" the wage gap between workers and bosses.

Under the amendments, employers are required to disclose to the Government the remuneration packages of all employees, a requirement which Business South Africa has described as "onerous" and a deterrent to foreign investors.

The Congress of South African Trade Unions has applauded the planned laws, saying they will "transform the labour market to benefit the overwhelming majority instead of a tiny minority" - Sapa-AFP.
Discrimination out as equity bill gets the nod

75% majority says yes

CLOVE SAWYER
Political Correspondent

Employment equity laws which ban discrimination against a range of groups, notably on race and gender grounds, and which will force companies to draft equity plans for Government approval, were approved in the National Assembly today by an overwhelming majority.

After a final round of acrimonious debate as parties formally explained their reasons for supporting or opposing the Employment Equity Bill, it was approved by 214 votes to 72.

Parties in favour were the African National Congress, Inkatha Freedom Party and Pan Africanist Congress.

Those against were the National Party, Democratic Party, Freedom Front and African Christian Democratic Party.

Eleventh-hour amendments by the DP were voted down at a meeting last night of the Assembly’s portfolio committee on labour.

In yesterday’s debate in the Assembly plenary, references to race flew thick and fast. The bill’s proponents argued that it would eradicate the inheritance of decades of colonialism and apartheid, where skin colour and gender determined status and pay in the workplace.

Its critics slammed it as doing nothing other than continuing this principle, with merely the roles reversed.

Emotions reached a pitch when the Freedom Front’s Pieter Groenewald was ordered to leave the House after refusing to withdraw his labelling of

Labour Minister Shepherd Mdlalana a racist, to be followed in solidarity by his party leader and caucus.

With his predecessor Tito Mboweni watching from the public gallery, Mr. Mdlalana introduced the bill as giving effect to the constitution by setting out specific steps to eliminate unfair discrimination.

The results of a national survey on patterns of employment of people according to race, gender and disability, proved the need for the legislation, said Mr. Mdlalana.

“Without national legislation that spells out specific action to transform policies and practices and to engage in planning and implementation of affirmative action measures, employers will do as little or nothing at all.”

He urged that employees have maximum participation in drafting equity policies and plans.

NP leader Martinus van Schalkwyk said the bill undermined the constitutional commitment to non-racialism.

The Freedom Front’s Mr. Groenewald said the bill meant penalising those too pale and too male, and said the ANC had become the new champions of apartheid.

DP leader Tony Lohn said the bill did nothing for the poor, marginalised or the rural masses in whose name the ANC claimed to govern.

Nhlabathi Zulu of the IFP said it was doubtful it would cause business to emigrate, because there had been wide input on the bill.

Nqila Mnemane of the PAC said the crucial difference between the bill and apartheid job reservation laws was that the bill did not seek to displace anyone.
Use Equity Bill to transform ‘apartheid labour regime’

The passage of the Employment Equity Bill by the National Assembly is an important victory in the struggle to overcome the legacy of racism, gender discrimination and discrimination against disabled people.

The South African Communist Party welcomes this bill as a framework within which equity can be fought for and won. All South Africans should welcome the measures that are being introduced in the bill, as these will add to the considerable progress being made in transforming our country into a united, non-racial, non-sexist democracy.

Critics of the bill, in the form of white business and its pretentious representatives, the National Party and the Democratic Party, have given no reasons other than their own narrow racist interests for the claim that the bill reintroduces race as a factor in employment, in essence, a defence of class and racial interests.

The charge that it introduces new measures to deal with the legacy of apartheid cannot be sustained.

South Africa seems to be leading the world in the way internationally in requiring employers to disclose details of employees’ salaries as a means of closing the wage gap.

The measure unique is its basis as a means of redressing the apartheid past.

The measure is contained in the Employment Equity Bill, due to be voted on by the National Assembly today.

The Labour Relations Commission’s report on the matter was the result of the Commission’s own initiative in response to the growing number of cases of unequal pay in the workplace.

The Commission found that the law was inadequate and that the issue was urgent.

The Commission’s report said that the Employment Equity Bill should be passed as soon as possible.

The bill is a significant victory for the working class and the previously oppressed.

The bill seeks to introduce measures that will ensure that employees are paid a wage that reflects their work.

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Equity Bill debate evokes storm

KERRY CULLINAN

INTENSE argument over whether the Employment Equity Bill means new opportunities for South Africans or re-introduces apartheid dominated yesterday’s emotional debate in the National Assembly. Introducing the bill, Labour Minister Shepherd Mdlalana said it took the Constitution’s stand against discrimination “a step further by stipulating the specific steps to be taken to eliminate unfair discrimination in employment.”

Apartheid’s negative intervention in the labour market—apparent in the migrant labour system, draconian pass laws and other legislative measures that denied blacks job advancement—made the bill necessary, said Mdlalana.

“For employment equity to be optimally implemented, it is essential that visible leadership is evident at all levels of companies,” said Mdlalana, who appealed to employers to establish “a viable business imperative to supplement the moral and legal reasons” for the bill.

However, the National Party, Democratic Party and Freedom Front raised a chorus of protest, claiming that the bill re-introduced racial discrimination. The NP and the DP had tabled last-minute amendments on Wednesday to prevent voting on the bill yesterday. However, it will be voted on today.

The entire FF delegation walked out of Parliament in protest after FF MP Peter Cruyswinder was ordered out of the House for refusing to retract his claim that Mdlalana was a “pious in intent but destructive in effect”

Before walking out, FF leader Constand Viljoen said the bill would result in “permanent joblessness and poverty for my people.”

NP leader Martynus van Schalkwyk said “skin colour now determines a person’s success in life.”

“Despite all the semantics and demeans, racial quotas will now be forced on companies.”

However, the NP withdrew the amendment it had tabled the previous day. The DP did not withdraw its amendments, however.

DP leader Tony Leon described the bill as “a perversion of social engineering — pious in intent but destructive in effect.”

ANC MP Phillip Dexter said that the NP, DP and FF were using “tactics similar to the Nazis” to spread fear and loathing among whites.

These tactics, said Dexter, amounted to “swart gevaar.” “You are afraid of black people. You are afraid that a black person, a woman or a disabled person can do your job,” said Dexter.

The Inkatha Freedom Party’s Prince Nialahla Zulu said the bill was necessary as it prohibited all forms of discrimination, but that his party wanted employers to take note of “regional demographics” when employing black people.

Zulu asked that the bill not be implemented in a rigid fashion.

PAC leader Ngila Muendane said the bill did not go far enough, especially in addressing the needs of black women.

The ACDP said that it favoured employment equity, but wanted the bill to be enforced for a short time only.

Parliamentary Bureau

Fairness in workforce needed

KERRY CULLINAN

MOST South African companies have no idea how to implement employment equity, according to a survey conducted by the Department of Labour.

“No vision is evident,” said researcher Angus Bowmaker-Falconer, adding that only 20% of the companies surveyed had an equity plan that had set goals and timetables for addressing racial imbalances in their workforce. Less than a third had a written equity policy.

The survey was based on responses by 553 organisations, despite the fact that 6,000 questionnaires were sent out.

Only 2.3% of these were major companies.

Bowmaker-Falconer said the poor response could in part be attributed to Business South Africa (BSA). “BSA is concerned about the timing and intentions of the survey, so in this sense they put a spanner in the works.”

The sample clearly demonstrated the need for intervention to ensure equity. It revealed that black women constituted a mere one percent and black men five percent of senior management in surveyed companies. In contrast, the lowest categories of workers were 87% black.

“Most employers completely disregarded people with disabilities, and they are certainly not considered in any plans,” said Labour Minister Shepherd Mdlalana.

Department consultant Professor Harsh Jam of McMaster University in Canada said that unless top management supported equity, it would not work properly.

“If equity is left to the human resources departments, it doesn’t work. If line managers are not held responsible in terms of numerical goals and timetables, they have no stake in it. Employment equity is not about denying jobs to those who already have them, but expanding the pool of applicants for new jobs. It is about ensuring that training and recruitment is for all, not just a select group,” he said.

Parliamentary Bureau.
Real consequences for real people

BY GODFREY OLIIPHANT

The Employment Equity Bill will provide our country with the most comprehensive anti-discriminatory legislation in the world and a practical framework to redress past discrimination in the workplace.

The bill helps to ensure that our country’s acclaimed constitution is a living document with real consequences in the working lives of real people.

No wonder it is broadly welcomed and described by Disabled People South Africa, for instance, as “one of the most positive pieces of legislation to be tabled”.

True, the bill’s opponents have been vocal and their chief spokesperson Tony Leon has received publicity totally out of proportion to support for his ideas or their moral and intellectual substance.

But this bill represents the collective effort of representatives of the entire nation. At no stage did the Government or the ANC claim to have a monopoly on wisdom. The bill is the result of a democratic ethos that saw many submissions by civil society taken on board.

It includes proposals by business, trade unions, non-governmental organisations and amendments by its opponents, the NP and the DP.

It does not satisfy everyone or perhaps even anyone 100%, for an inclusive democratic process can almost never achieve that. But it does have the solid support of our broad society and key role players.

We have to capture anti-discrimination values and the rectifying of past injustices in the workplace in legislation.

Apartheid was, after all, introduced through legislation. To think that its mysticcs would disappear naturally is naive and dishonest.

That is why all business groups support legislation to achieve these goals and why Business SA is on record as saying “We have faith in the guidance of legislation.”

The bill prohibits discrimination against an employee in any policy or practice on grounds of race, gender, pregnancy, marital status, family responsibility, sexual orientation, religion, HIV status, belief, political opinion, culture and language. This means that everyone, including Freedom Front MP Pieter Groenewald who says that a previous employer blocked his career progress because he was not a Broederbond supporter, will be protected against discrimination.

You can’t redress past injustices if you deny history. The bill therefore recognises groups in order to provide an effective framework to, among other things, decolonise our society.

The bill also requires employers to reduce disproportionate wage gaps. This is done because it recognises the dual nature of South Africa’s racist history whereby blacks received starvation pay and whites were guaranteed “civilised” wages.

No wonder South Africa, with a 10 to 1 ratio from top to bottom, has the second largest income differential in the world. Compare this with Japan’s 7 to 1 ratio. The wage gap is the result of this country’s racist history. Any legislation that is serious about achieving equity must aim to eliminate this.

GODFREY OLIIPHANT is an ANCY MP and chairperson of Parliament’s Portfolio Committee on Labour.
Entrenching reverse discrimination

By Willie Fourie

The National Party supports the basic principles of the Employment Equity bill, but rejects any form of discrimination contained in the legislation.

The NP is aware of the imbalances of the past and does support the elimination of unfair discrimination in the labour market and the creation of equal opportunities in order to address these imbalances.

We cannot, however, support the slightest attempt to entrench reverse discrimination as contained in this bill. In its current form it will, apart from the obvious economic cost of implementing it, carry social costs for South Africa that are impossible to quantify.

The bill requires racial classification, racial preferences and accompanying racial discrimination. In a country already deeply divided along racial lines, the bill will foster racial consciousness and increase racial tensions.

It seems that the bill is based on the point of departure that no empowerment is taking place, whether generally or in respect of vertical mobility within businesses. This seems to be the reason for the statutory intervention to achieve these objectives.

The reality, however, is that most companies in South Africa have already implemented measures, due to simple business logic, to achieve the same objectives as the bill.

The greatest inequality in South Africa is also no longer between black and white, but between the employed and the jobless, running at a ratio of 29:1.

Government intervention in the market through this bill will slow the process of greater racial equality, rather than accelerate it, and in the process hamper economic growth, discourage investment, and reduce economic growth.

It is for these reasons that the National Party strongly objects to the re-racialising of the workforce through this bill.

At present, according to the latest statistics of the Central Statistical Services approximately 300 jobs are lost in the formal sector of the economy everyday.

We believe that the bill will have a further negative impact on the creation of jobs in SA as it renders the labour market even more rigid.

Apart from the obvious levels of higher unemployment this will engender, it will impact on the concomitant worsening of the crime situation.

The National Party believes that any labour legislation being contemplated should be premised on the idea of bringing about an increase in the demand for labour and not causing a reduction in demand.

This bill is very likely, through the increased costs it will generate, especially for small businesses, to provide a considerable disincentive to offering employment.

Furthermore, the legal costs of defending claims and disputes (even if successfully defended) or the award of compensatory damages could place especially small businesses under crippling financial strain.

This is an ironic reality in a country where entrepreneurship is touted as one of our biggest solutions to curb the growing numbers of jobless.

In seeking to depict this bill as bland in its provisions and beneficial in its consequences, the Government does the many millions who are poor and unemployed a grave disservice.

Willie Fourie in a National Party MP
N EW DAWN FOR WORKERS

Today the ANC is expected to use its parliamentary majority to push through the National Assembly the Employment

policies of the previous government. Politically Correspondent Joyal Rambur reports

Every bill which seeks to correct the uneven distribution of jobs and income created by the apartheid
FF walks out of Parliament during fiery debate on equity bill

BY JOVIAL RANTAO
AND KENNY CULLINAN
Parliamentary Bureau

Cape Town – An emotional debate on the Employment Equity Bill in the National Assembly ended in a dramatic walkout from the assembly by the Freedom Front yesterday.

FF leader General Constand Viljoen led a walkout after FF MP Pieter Groenewald was ordered out of the House for refusing to withdraw a remark that Labour Minister Shepherd Mdlalana was racist.

Earlier, members of the whites-only Mineworkers' Union staged a sit-in at Mdlalana's office in protest against "racist legislation".

Opposition parties have used all tricks in the book to delay the passing of the bill, which has been delayed until today.

The ANC chief whip has called on all ANC MPs to attend to ensure a full majority.

In the National Assembly debate, racial references flew thick and fast during the intense argument over whether the bill meant a new opportunities for South Africans or reintroduced apartheid.

Mdlalana said the bill took the constitution's stand against discrimination a step further by stipulating the specific steps to be taken to eliminate unfair discrimination in employment.

Apartheid's negative intervention in the labour market - apparent in the migrant labour system, draconian pass laws and other legislation that denied blacks job advancement - made the bill necessary.

More reports

Page 5 and 13
Employment equity progressing slowly

SOUTH African companies are displaying a disturbing lack of progress in implementing employment equity practices, Labour Minister M. Shepard Mdlalana said yesterday.

Mdlalana made the comments during a media briefing in Cape Town to mark the release of a Labour Ministry employment survey.

The nationwide survey revealed that only 29 percent of the 455 businesses examined had established a written employment equity policy.

It also found that only 20 percent of respondents had established employment equity goals and timetables.

"There can be no room for further delay in addressing this abhorrent state of affairs," Mdlalana said.

The most important reasons for implementing employment equity policies were to improve employee morale and enhance productivity, he said.

Labour researcher Mr Angus Bowmaker-Falconer said smaller companies appeared to be progressing faster than larger companies in implementing the new affirmative action laws.

He said 430 of the 455 respondents had returned a detailed employee breakdown by designated group and occupational category.

Very few of the companies surveyed employed persons with disabilities, he said.

Black employees comprised 11 percent of senior management and 25 percent of junior management posts, according to the survey.

White men and women still accounted for 73 percent of all professional workers, Bowmaker-Falconer said.

Black women accounted for 5.7 percent of junior to middle management positions.

Mdlalana said that when South African employers were judged against the backdrop of international best practices — as documented in the 1997 report by the United States Equal Employment Opportunity Commission — "our situation can only be described as abysmal."

The report claims that one million whites could lose their jobs due to affirmative action — Sapa.
Unhappy NF calls it discriminatory and says its measures constitute neo-apartheid.
State knuckles down to enforce labour equity

Study shows lack of progress in implementing equitable labour practice, goals and timetables, writes THABO KOBOKOANE

GOVERNMENT is to spend about R150-million over the next five years enforcing the new employment equity law.

A study, commissioned by the Department of Labour, showed that only 29% of 455 businesses surveyed had established employment equity policies while only 20% had established equity goals and timetables.

The study also found that most organisations had implemented only formal policies and plans during the past two years. Even where there had been progress, this had been inadequate.

"There can be no room for further delays in addressing this abhorrent state of affairs," said Labour Minister Shephard Mdladlana as he prepared to table the Employment Equity Bill in Parliament on Thursday.

The law, passed by Parliament on Friday despite Democratic Party and National Party objections, will compel businesses employing 50 or more people and with annual turnover of more than R10-million to submit within 18 months employment equity plans outlining methods to remove discrimination and ensure the creation of a more diverse and representative labour force.

Controversial last-minute amendments oblige employers to "progressively reduce" the wage gap between workers and bosses and disclose to government the remuneration packages of all employees.

The Labour Department is creating capacity to ensure key aspects of the law are implemented.

Labour director-general Sipho Pityana says the department is looking at ways of revamping the employment equity directorate, improving staffing at national and provincial levels, and enhancing capacity at its head office.

About R25-million has already been allocated in next year's departmental budget to provide for the initial enforcement infrastructure and employment labour inspectors.

If the study is to be believed, the department has a tough job ahead of it in monitoring and enforcing compliance.

The study of 455 organisations with 173,828 employees reveals the extent of employment equity problems.

While 6,000 organisations were targeted, only 455 responded. Of those responding, only 430 provided detailed employee profile analyses by designated group and occupational categories.

The results of this survey are in line with studies in the past few years, suggesting that affirmative action is stuttering.

Only 11% of senior management are black, while a further 25% are in junior and middle management positions.

The position of black women is worse, accounting for only 1% of senior management and 5.7% of junior to middle management positions.

White men and women still constitute 73% of all professional workers, and African men and women 37% of all workers.

"When SA employers are judged against the backdrop of international best practice, our situation can only be described as abysmal," says Mdladlana.

A major surprise in the survey is the finding that a majority of smaller companies appear to be progressing faster than larger companies in implementing affirmative action laws.

"Large corporate employers, many of whom have been involved in affirmative action and employment equity initiatives for some time, appear to have made little progress," says the report.
New employment act covers all of SA's workers

The Basic Conditions of Employment Act will, unlike the previous law, cover all workers. Most significantly, farm, contract, domestic and part-time workers will have basic conditions of employment. Public service workers will be covered from May 1, 2000.

SA workers work long hours, and often put in overtime to make ends meet. Many live far from their homes and spend too much time away from their families.

The new legislation addresses this by reducing working hours and increasing the overtime premium from time-and-a-half to time-and-a-half.

The law now says that the maximum number of hours that a worker can be compelled to work in 45 hours a week. Weekly working hours for shift, mine and farm workers have been reduced from 45 to 45 hours. This will be implemented on farms and mines from today. Working hours for security guards and the like have been reduced from 60 to 55 hours a week and will be further reduced to 50 hours a year.

This does not mean that workers who work a 40-hour week will have to work a 45-hour week. The law only sets the minimum floor — it says workers cannot be forced to work more than 45 hours a week without overtime.

Because the new act improves the overtime premium to "time-and-a-half" and reduces the maximum number of hours that a worker can be compelled to work, it is hoped that this will lead to workers doing less overtime.

The new overtime rate could also be an incentive to employ more workers rather than pay them for overtime.

The new act allows for compulsory rest periods. This protection did not exist in the past, and workers could work for months without a day off.

Workers must now have every Sunday as a rest day, unless they agree otherwise. Those who work regularly on a Sunday must be paid a premium of time-and-a-half if they work occasionally on a Sunday.

Unlike the previous law, which provided for a single sick leave quota, this new law provides for 12 weeks to four months. Extended maternity leave is also provided for.

The act introduces a new form of leave called family responsibility leave. These leaves include maternity leave for women and leave for the birth or care of a child. The leaves are provided for in the new law.

The act is intended to reduce the negative social consequences of overtime. The act is not a panacea for all the problems facing the labour market. It is a conscious decision that it includes ways in which its provisions can be varied to suit the circumstances of individual workers as well as enterprises and sectors.

Workers and employers are urged to ensure that their conditions of employment comply with the act. The labour department is available to advise employers and workers of their rights and obligations. It is also intended to ensure the law if there is no compliance.

Seftel is chief director labour relations at the labour department.
New rights today for workers in SA

FROM NOON TODAY, all workers in South Africa enter a new era for basic rights on the job. Both employees and employers need to be aware of the impact of the Basic Conditions of Employment Act. KARIN SCHIMKE reports.

If you work for someone, study your letter of employment. If you employ someone, study their letter of employment. That is the message from labour law experts as the Basic Conditions of Employment Act (BCEA) — to which all employers must adhere — takes effect from noon today.

There is not a single worker who is not protected by the new law, regardless of how often they work. Part-time workers and contract workers are also protected.

The new law means:

- You cannot work more than 45 hours a week. If you do, you must be paid time-and-a-half for every extra hour (instead of time-and-a-third), or your employer must negotiate a time-off with you.

- Women are entitled to four months’ maternity leave instead of three. Women who give birth to still-born children are, unlike before, also allowed this time to recover.

- Women are no longer required to begin maternity leave one month before the baby is due.

- Everyone is entitled to three weeks leave a year, instead of just two.

- You are entitled to your full sick leave — three weeks in a threc-year cycle — after only six months in a new job.

- Every worker is entitled to three days paid leave a year to attend to the birth or illness of their children or death in the family.

The act was attacked by opposition parties, debated by business and welcomed by workers. However, many people are still unprepared for its effect on their lives.

Janet Dickman, manager of labour affairs and social policy at the South African Chamber of Business (Sacob), said, “I hate to say it, but businesspeople don’t seem to be prepared for the changes. I haven’t done a survey to confirm this, but it’s my perception based on the fact that we have had so few calls from our members asking advice.”

Sacob, said Dickman, was concerned about the law’s effect on small businesses. With overtime pay and maternity leave being increased and with fewer working hours, she said there was a good chance that many would struggle to keep afloat.

“Big businesses will be least affected by the act. But there are going to be major changes in the way small and medium businesses go about their work,” she said.

Lisa Safadi, chief director of labour relations in the Department of Labour, said the department questioned the basis of employer claims that labour costs would be raised, preventing job creation.

“Jobs are not created or lost by a single law. Not all employers will face an increase in costs. For example, improved conditions can help increase productivity and reduce the negative social consequences — and therefore the social costs — of poor working conditions,” said Labour lawyer Michael Bagrann.

Bagrann said it was not a realistic expectation that the new laws were going to cost businesses that much more. “There will be added overheads, but I’ve noticed that people are more concerned about how it is becoming increasingly difficult and expensive to get rid of under-performing staff than they are about paying more for overtime.”

“Remember all those threats about how business was going to be affected by the new Labour Relations Act a few years ago? Well, none of those threats came to pass.”

The current hysteria is simply because the law is new upon us, and frankly some people just aren’t prepared for it, even though they’ve had a year to make plans. The hoo-ha is political, not practical.”

Certain provisions of the act will not affect people earning more than R89 455 a year (R7 454 a month).

The law is most protective of people like domestic and farm workers and part-time workers who spend at least 24 hours a month at their place of employment.

Whatever an employment contract states, the act takes precedence where it is more beneficial to the worker.

In other words, if your contract says you must work 48 hours a week, then you have to be paid overtime for the extra three hours, because the law says you only have to work 45 hours a week. If your contract says you are entitled to six months’ maternity leave, you are still entitled to that, even if the law states four months’ statutory maternity leave.

“Your contract must be read together with the BCEA,” said Bagrann. “Whichever one you the better deal is the one that has precedence.”

Labour lawyer Michael Bagrann, said it was not a realistic expectation that the new laws were going to cost businesses that much more. “There will be added overheads, but I’ve noticed that people are more concerned about how it is becoming increasingly difficult and expensive to get rid of under-performing staff than they are about paying more for overtime.”

The law did not mean, he added, that every single employment contract had to be renegotiated, but it was advisable for everyone to look at their letters of employment.

The act has many consequences, such as:

- A student who works at a restaurant for seven hours every Saturday is entitled to pro-rata paid leave, sick leave and UIF benefits.

- Domestic workers are entitled to the same benefits, even if they only work once a week. It is highly advisable that contracts be signed between “Madams and Eves”, but if they are not, the domestic worker has recourse to the act.

- If a casual worker insists on a contract from an employer and is refused or asked to stop working because of their insistence that the relationship be formalised, the worker can call an inspector of the Department of Labour to investigate.

- Wronged workers also have recourse, when their legal rights are being ignored, to mediation and arbitration.
conditions of Employment Act covers all in country from today, making the most vulnerable – domestic, farm, and contract sectors

By Lisa Sefel

Today December 1, 1998, the new Basic Conditions of Employment Act will be promulgated. What improvements does the act offer?

The previous law does not cover all workers. The new BCES covers all.

Most significantly, farm, domestic, and contract workers will have basic conditions of employment. Public servants will be covered from May 1, 2000.

South African workers work long hours and often work overtime to make ends meet. Many workers live far from their homes and spend far too much time away from their families.

The law now says that the maximum number of hours that a worker can be compelled to work is 45 hours a week. Weekly working hours for shift, nurse, and farm workers have been reduced from 46 to 45 hours. This will be implemented on farms and mines as from December 1998.

Working hours for security guards have been reduced from 60 to 55 hours a week. This will be further reduced to 50 hours in a year's time.

This does not mean that workers who work a 46-hour week will have to work a 45-hour week. The law only sets the minimum floor – it says workers cannot be forced to work more than 46 hours a week without overtime pay.

The new act improves the overtime premium from "time and a half" to "time and a third" to "time and a half." Overtime will be paid now as for working overtime. It is hoped that this will lead to workers doing less overtime.

The new overtime rate could also be an incentive to employ more workers rather than pay overtime.

The new act applies for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off. Workers must now have every Sunday as a rest day, unless they agree otherwise.

Workers who work regularly on a Sunday must be paid a premium of time and a half. If they work occasionally on a Sunday they must be paid double time. This is good news for shop workers.

Until now, unless they won this through collective bargaining, shop workers have not been paid more for giving up their Sundays.

It has been well established that workers who work at night for long periods run greater health risks. They often face danger if no transport is provided for them. During the day, the law gave workers no special protection. The new act says night workers must be paid a premium or get additional time off.

The act also includes provisions to protect their health and safety.

It improves workers' leave provisions. Annual leave has been increased from two weeks to three weeks. Sick leave is now at three weeks in a three-year cycle.

The act prohibits children under 15 from working. Children between 15 and 18 years of age will be protected and prohibited from working in certain jobs, especially in the mining and manufacturing sectors.

In addition to setting a floor of rights for all workers, the act includes provisions for establishing minimum wages and conditions for groups of vulnerable workers such as farm and domestic workers.

For the first time, the Government will be able to set a minimum wage for domestic and farm workers. Some workers in these sectors are earning as little as R100 and R200 a month. This measure is urgently needed.

Some employers have argued that the BCES will raise labour costs and prevent job creation.

The Department of Labour questions the basis of these arguments. Jobs are not created or lost by a single law. As the Jobs Summit has shown, sustainable job creation requires a multifaceted strategy. In addition, not all employers will face an increase in costs.

For example, improved conditions can help increase productivity and reduce the negative social consequences, and therefore the social costs, of poor working conditions. This is the new act's prime objective.

New act allows for compulsory rest periods

For further information contact your nearest Department of Labour office. Lisa Sefel is the chief director for Labour Relations in the Department of Labour.

135 and other samples were used for this article. Four pages were available for use from the Department of Labour. These are not mandatory by law but are recommended by the Department to protect both employees and employers.
SAMPLE CONTRACT OF EMPLOYMENT

Recommended by the Department of Labour for domestic employees

Entered into between ... (herein referred to as "the employer")

and ... (herein referred to as "the employee")

1. Commencement
This contract will begin on ... and continue until terminated as set out in clause 4

2. Place of work

3. Job description
Job Title ... (e.g. domestic worker, child minder, gardener etc)

4. Duties

5. Termination of employment
Either party can terminate this agreement with four weeks' written notice. In the case where an employee is ill, notice may be given by the employer verbally.

6. Wage
5.1 The employee's wage shall be paid in cash on the last working day of every week/month and shall be ... R
5.2 The employee shall be entitled to the following allowances/payment in kind ...
5.2.1 A weekly/monthly transport allowance of ... R
5.2.2 Meals per week/month to the value of ... R
5.2.3 Accommodation per week/month to the value of ... R
5.3 The total value of the above remuneration shall be ... (The total of clauses 5.1 to 5.2.3) (Modify or delete clauses 5.2.1 to 5.2.3 as needed)
5.4 The employer shall review the employee's salary/wage once a year

6. Hours of work
6.1 Normal working hours will be ... am to ... pm on Mondays to Fridays and from ... am to ... pm on Saturdays.
6.2 Overtime will only be worked if agreed upon between the parties from time to time.
6.3 The employee will be paid for overtime at the rate of one and a half times higher total wage as set out in clause 5.3

7. Meal intervals
The employee agrees to a lunch break of one hour/30 minutes (delete the one that is not applicable). Lunchtime will be taken from to daily.

8. Sunday Work
Any work on Sundays will be by agreement between the parties from time to time, if the employee works on a Sunday he/she shall be paid double the wages for each hour worked.

9. Public Holidays
The employee will be entitled to all official public holidays on full pay. If an employee does not work on a public holiday, he/she shall receive normal payment for that day if the employee works on a public holiday he/she shall be paid double.

10. Annual Leave
10.1 The employee is entitled to ... days' paid leave every 12 months of continuous service. Leave to be taken at times convenient to the employer who may require that the employee take his/her leave at such times as calculated with that of the employer.

11. Sick Leave
11.1 During any sick leave of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

12. Maternity Leave
12.1 The employee is entitled to ... days' maternity leave without pay OR ... days' maternity leave on pay (Pick applicable clause)

13. Family responsibility
13.1 The employee will be entitled to three days' family responsibility leave during each leave cycle.

14. Deductions from remuneration
14.1 The employer may not deduct any monies from the employee's wage unless the employee has agreed to this in writing on each occasion.

15. Accommodation
15.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package.
15.2 The accommodation may only be occupied by the worker unless prior arrangement with the employer.

15.3 Prior permission should be obtained for workers who wish to stay the night. However, members of the employee's direct family are visiting, such permission will not be necessary.

16. Clothing
16.1 All uniforms will be supplied to the employee by the employer and will remain the property of the employer.

17. Other conditions of employment or benefits

18. General
Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

THIS DONE AND SIGNED AT ... ON THIS ... DAY OF ... 1998

EMPLOYER

EMPLOYEE

Witness:

...
New Labour Law Will Take Time to Kick in

Experts say six months' confusion: millions will still operate outside the legislation.

The new Labour Law is expected to take time to kick in, with experts predicting that millions of workers will still operate outside the legislation.

"It will take at least six months for the new law to fully take effect," said economist Dr. Jane Smith. "Many workers will continue to operate under old laws and regulations."
New deal for workers

The new Basic Conditions of Employment Act is set to change the conditions under which the lowly paid work. Lisa Seftel provides the details.

The new Basic Conditions of Employment Act will improve the lives of farmworkers.

The new Basic Conditions of Employment Act

The law now says that the maximum that a worker can be required to work is 45 hours a week. Weekly working hours for shift workers and farmworkers have been reduced from 48 to 45 hours.

This will be implemented on farms and mines from December 1, 1999. Working hours for security guards have been reduced from 60 to 55 hours a week. This will be further reduced to 50 hours in a year's time.

The new Act also states that workers who work a 40-hour week will have to work a 45-hour week. The law only sets the maximum floor: it says workers cannot be forced to work more than 45 hours a week without overtime pay.

The new overtime rate could also become an incentive to employ more workers rather than pay overtime.

The new Act also allows for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off.

Workers must now have every Sunday as a rest day, unless they agree otherwise. And workers who work regularly on a Sunday must be paid a premium of time and a half.

If they work occasionally on a Sunday, they must be paid double time. This is good news for shop workers. Until now, unless they won this through collective bargaining, shop workers have not been paid for giving up their Sundays.

It has been well established that workers who work at night for long periods run greater health and safety risks. They also often face danger if no transport is provided for them.

Previously, the law gave workers no special protection. The new BCA says night workers must be paid a premium or get additional time off. The Act also includes provisions to protect their health and safety.

In addition, the new Act improves workers' leave provision. Annual leave has been increased from two weeks to three weeks.

Sick leave remains at three weeks in a three-year cycle, but workers will now be entitled to their full sick leave quota after just six months in employment, instead of after one year.

Maternity leave has been improved from 12 weeks to four months, and extended to include women who have stillborn babies.

Women also have a greater chance as to when they take leave around the birth of their child — they are no longer obliged to take three months maternity leave before the birth.

The Act introduces a new form of leave called 'family responsibility leave.' Workers are now entitled to three days paid leave a year to attend to the birth or illness of their children or the death of an immediate family member.

The Act also prohibits children under 15 from working. Children between 15 and 18 will be better protected and prohibited from working in certain jobs, especially in the mining and manufacturing sectors.

In addition to setting a floor of rights for all workers, the Act includes provisions for establishing minimum wages and conditions for groups of vulnerable workers such as domestic and farm workers.

For the first time, the Government will be able to set a minimum wage for domestic and farmworkers. With workers in these sectors earning as little as R100 and R200 a month, this measure is urgent and needed.

Some employers have argued that the BCA will raise labour costs and prevent job creation. The Department of Labour questions the basis of these arguments.

Jobs are not created or lost by a single law. As the President's Jobs Summit has shown, sustainable job creation requires a multifaceted strategy. In addition, not all employers will face an increase in costs.

For example, improved conditions can help increase productivity and reduce the negative social consequences, and therefore, the social costs, of poor working conditions.

The new Act is nevertheless sensitive to the problems facing the labour market. It is for this reason that it includes ways in which the Act's provisions can be varied or changed to suit the circumstances of individual workers as well as enterprises and sectors.

Workers and employers are urged to ensure that their conditions of employment comply with the Act. The Department of Labour is available to advise employers and workers of their rights and obligations. It is also tasked to enforce the law in non-compliance cases.

(The writer is the Director of Labour's chief director of labour relations.)
‘Act will not harm small businesses’

Reneé Grawitz

LABOUR Minister Shepherd Mdladlana countered speculation yesterday that the new Basic Conditions of Employment Act — which came into effect yesterday — would harm small businesses.

At the launch of the act, he said a probe into the effect of the act on small businesses had vindicated our view that the act would not have a significant effect.

Mdladlana said a ministerial task team proposed a special dispensation to grant small business some flexibility in implementing certain aspects.

A source said the task team did not concur with the investigation and in fact criticised it. The task team said that the act “may prove generous for small business” if certain sections were not varied.

The Employment Conditions Commission would focus on drafting sectoral determinations for the retail, civil engineering, security and cleaning sectors.

The agricultural sector came under the spotlight in the wake of weekend reports of the plight of farmworkers on an asparagus farm in the Free State.

Mdladlana said “a new law on its own will not help these workers.” Proper enforcement had to be ensured and “gross disregard for worker rights” dealt with, he said. Under the new act, such a farmer could be fined more than R300,000.

Labour Minister Shepherd Mdladlana at the Midrand launch of the new Basic Conditions of Employment Act yesterday.

Picture: ROBERT BOTHA
Workers get legal

Sick leave, holidays, hours laid

LISA SEFTEL

Now that the new Basic Conditions of Employment Act has been promulgated, what improvements does it offer for workers?

The previous law did not cover all workers. The new one covers all. Most significantly, farm, domestic, part-time and contract workers will have basic conditions of employment, and public service workers will be covered from May 1, 2000.

South African workers work long hours and often do overtime to make ends meet. Many workers live far from home and spend far too much time away from their families.

The law now says that the maximum amount of time that someone can be compelled to work is 45 hours a week. Weekly hours for shift, mine and farm workers have been reduced from 48 hours to 45 hours. This will be implemented on farms and mines from December 1 next year.

Working hours for security guards have been reduced from 60 to 55 hours a week. This will be further reduced to 50 hours in a year's time.

This does not mean that workers who work a 40-hour week will have to work a 45-hour week.

The law only sets the minimum floor – it says workers cannot be forced to work more than 45 hours a week without overtime pay.

The new Act improves the overtime premium from “time and a third” to “time and a half.” Workers will be paid more for working overtime. It is hoped that this will lead to their doing less overtime.

The new overtime rate could also be an incentive to employ more workers rather than pay overtime.

The Act allows for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off.

Workers must now have every Sunday as a rest day, unless they agree otherwise. Those who work regularly on a Sunday must be paid a premium of time and a half.

Should they work occasionally on a Sunday, they must be paid double time. This is good news for shop workers.

Until now, except where shop workers had won this right through collective bargaining, they were not paid extra for giving up their Sundays.

It has been well established that workers who work at night for long periods run greater health and safety risks.

They also often face danger if no transport is provided to take them home. Previously, the law gave workers no special protection.

The new Act says night workers must be paid a premium or get additional time off. The Act also contains provisions on health and safety.

It improves leave provisions. Annual leave has been increased from two weeks to three weeks. Sick leave remains at three weeks in a three-year cycle, but workers will now be entitled to their full sick leave quota after six months in employment, instead of after one year.

Maternity leave has been lengthened from 12 weeks to four months and extended to women who give birth to stillborn children.

All women employees, no matter how long they have been employed in a company, are eligible for maternity leave.

Women also have greater choice as to when they take leave around the birth of their child – they are no longer obliged to take one week maternity leave before the birth.

However, the employer is not obliged to pay the employee the period for which she is off due to her pregnancy.

The Act introduces a new concept of leave called family responsibility leave. Workers are now entitled to three days paid leave per year to attend to a newly-born baby, children or for the death of an immediate family member.

The Act prohibits child labor. Children under 18 years of age from being employed. Children between 15 and 18 years will be better protected and prohibited from working in dangerous areas, especially in the mining and manufacturing sectors.

In addition to setting a floor for rights for all workers, the Act includes provisions for...
SAMPLE CONTRACT OF EMPLOYMENT
Recommended by the Department of Labour for domestic employees

Entered into between

Address of employer:

... (herein referred to as "the employer")

and

... (herein after referred to as "the employee")

1. Commencement
This contract will begin ... and continue until terminated as set out in clause 4.

2. Place of work

3. Job description
Job Title:

... (e.g. domestic worker, child minder, gardener, etc)

Duties:

... ...

4. Termination of employment
Either party can terminate this agreement with four weeks' written notice. In the case where an employee is ill, notice may be given by that employee verbally.

5. Wage
5.1 The employee's wage shall be paid in cash on the last working day of each week/month and shall be ...

5.2 The employee shall be entitled to the following allowances:
5.2.1 A weekly or month transport allowance of ...
5.2.2 Meals per week/month to the value of ...
5.2.3 Accommodation per week/month to the value of ...

5.3 The total value of the above remuneration shall be ...

(This is the total of clauses 5.1 to 5.3.2 and 5.3.3)

6. Hours of work
6.1 Normal working hours will be from ... to ... on Mondays to Fridays and from ...

6.2 Overtime will be worked only if agreed upon between the parties from time to time.

6.3 The employee will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 5.3.

7. Meal breaks
The employee agrees to a lunch break of one hour/30 minutes. The one that is not applicable. The meal break will take place from ... to ...

8. Sunday and Public Holidays
Any work on Sundays will be by agreement between the parties from time to time. If the employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. Annual leave
The employee shall be entitled to ... days' paid leave after every 12 months of continuous service. Leave shall be taken at the employee's request. The employee may request that the employee is to take his/her leave at such times as are agreed to with him/her.G.9.4.1 Sick leave
11.1 During the first six months of employment, the employee shall be entitled to one day's paid sick leave for every six days worked.
11.2 If the employee is to notify the employer so in advance as possible in case of his/her absence from work through illness.
11.3 Maternity leave
12.1 The employee will be entitled to ... days' maternity leave without pay. OR
12.2 The employee will be entitled to ... days' maternity leave with pay.

13. Family responsibility
The employee will be entitled to three days' family responsibility leave during each leave cycle.

14. Deductions from remuneration
The employer may deduct any monies from the employee's wage/earnings where the employee has incurred a debt or is in arrears or is otherwise indebted.

15. Accommodation
15.1 The employer shall provide accommodation for as long as the employee is in the service of the employer. The accommodation shall be in accordance with the employer's policy.
15.2 The employer may provide accommodation to employees who have been employed for a period of more than six months.
15.3 Prior permission shall be obtained from the employer's employer before moving to the property of the employer.

16. Clothing
The employer will be entitled to all clothing and uniforms and shall be entitled to such uniform and uniforms upon termination of employment.

17. Other conditions of employment or benefits

18. General
Any changes to this agreement will be valid if they are in writing and have been agreed by both parties.

THUS DONE AND SIGNED AT ... ON THIS DAY OF 1998

EMPLOYER

EMPLOYEE

Witnesses
Good news... your inspector Dina Engaged: walks out a pamphlet on the new basic conditions of employment Act. The

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Registration: don't know enough about workers.

Concern that public on employment act

Instructed drive to educate.

By Ryan Cresswell

(16) (300) 2/18/98

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(c) Andres Vachacos
New job law not well received by Vaal farmers

By Charity Bhengu

The new Basic Conditions of Employment Act “will destroy business and leave many farmworkers jobless”, several Vaal Triangle farmers interviewed by Sowetan warned.

Some farmers expressed anger and frustration at the promulgation of the new law and vowed not to comply with it. They said the Act foisted “unreasonable” conditions on them.

Sowetan conducted a snap survey among farmers and workers in Carletonville and Eikenhof yesterday.

While some farmers warned that many workers would lose their jobs if they insisted on their “so-called rights”, others said they were not happy that they had not been consulted or involved in discussions leading to the passing of the law.

The new Act, which became effective yesterday, is geared at improving working conditions of farm, domestic and contract workers.

Among other things, the law stipulates that workers cannot be forced to work more than 45 hours a week without overtime pay.

Approached for comment, Hartenbosfontein farmer Mr Guy MacNab said “I don’t care about this law. It does not apply to me. It will not work here.” He warned that many people would end up jobless.

“This law forces me to give a permanent job to a worker who has been working for me for more than 90 days. How can I give a seasonal worker a full-time employment if I need him only for a short time?”

Another local farmer, Mrs Bee Purvis, was also up in arms against the new law.

“I am not happy that such decisions could be made without including us in the discussions,” she said.

Many of the farmworkers Sowetan interviewed seemed oblivious of the new Act and believed their employers would resist it anyway.

They complained of working long hours and weekends for low wages.

Domestic worker Ms Thandi Mauku said she earned R100 a week and is not paid overtime.

See page 6
PROTESTS continued on Page 34

FINANCIAL MAIL, September 12, 1997

Feeding the para conflict between Pagad and gangsters is escalating
New Law, a Break with Past

By Mzwakhe Manyamela

1

Labour Reporter

65

Law

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Workers

1998

December 2, 1998

SOWETAN
After bid blow, city can aim for new ‘gold’

2004 experience can be channelled now into development priorities

Now that Cape Town has lost the bid to host the 2004 Olympics, what will become the focus of the city's developmental efforts? City editor Andrea Weiss takes a look at the harsh realities that will face Cape Town in coming years - with no Olympic dream to hold on to.

Cape Town is a city which seems to be in a state of flux. As the Olympic dream has faded, so has the aura of a city that was poised to be the gateway to the world. What remains is a city that is struggling to find its identity in the face of accelerating change.

The Olympic bid has left Cape Town with a legacy of new infrastructure, but also with a legacy of debt and a sense of uncertainty about the future. The city is now faced with the task of finding new ways to generate income and develop its economy.

A focus on transport

Among the most noticeable developments is the new transport system that has been developed for the Olympics. The city has invested heavily in new roads and highways, as well as in public transport systems, in order to accommodate the influx of visitors.

Public transport is essential for the growth of tourism which will be boosted by the event. The city has invested heavily in new roads and highways, as well as in public transport systems, in order to accommodate the influx of visitors.

The Olympic bid has also had a positive impact on the city's economic development. The new infrastructure has created new jobs and opportunities for businesses, and has helped to attract new investment.

Cape Town has been transformed by the Olympic Games, but it is clear that the city will have to continue to develop in order to sustain its growth in the future.
Unions must police deals.
WILL THE EMPLOYMENT ACT FREE WORKERS?

DOMESTIC WORKER

Did you know that the employment act makes it illegal for employers to discriminate against domestic workers?

UNREGISTERED

Registering your workers is a must, but it is not a guarantee of their rights.

REGISTRATION NO:

Who can register your workers?

The employment act also requires that workers be registered by an authorized body.

EMPLOYER'S NAME:

The employment act provides for a minimum wage for domestic workers.

MINIMUM WAGE:

What is the minimum wage for domestic workers?

The employment act also requires that employers provide adequate insurance for their workers.

INSURANCE:

What insurance must employers provide for their workers?
Employment contracts hide host of legal landmines

Drawing up contracts has turned into a nightmare for unwary employers, writes Rael Solomom

On a daily basis, employers are inundated with articles and news items relating to the current labour legislation. This is the case because the employment contract, which is a contract of personal service, is of fundamental importance in the employment relationship. The contract sets out the terms, conditions and obligations of the employer and the employee.

Despite the warnings, employers continue to shoot themselves in the foot

A contract is an agreement between two or more parties and is enforceable by law. It is a legally binding agreement that sets out the terms and conditions of the employment relationship. The contract is a vital document that can help protect both employers and employees.

At the time of drafting, the contract should include the following:

- The name of the employer
- The name and address of the employee
- The position or job title of the employee
- The employment period
- The hours of work
- The rate of pay
- Any benefits or perks
- The notice period

Employment contracts are legally binding and should be prepared with the help of a lawyer to ensure that they meet the legal requirements. The contract should be fair and reasonable and should protect the interests of both the employer and the employee.
Small business to tackle labour Act

By Joshua Raboroko

The introduction of the Basic Conditions of Employment Act (BCEA) could spell serious problems for the tenuous relationship between township employees and their bosses, sources said yesterday.

Trade unions said historically township employers were among "the worst payers and exploiters" in the labour industry — especially when it came to proper working conditions for their employees.

Township workers of all job categories — from fish and chips dealers to domestics — were not unionised and were forced to work 12 hours a day.

However, small and medium-sized entrepreneurs have argued that they were not given enough time to make an input when the Act was introduced, adding that it was only recently that the state invited them to comment on the legislation.

About 21 organisations comprised retailers, undertakers, caterers, taverners and professional business people are to meet at the Standard Bank Jabulani Hall on Thursday to discuss the matter.

**Range of issues**

Greater Soweto Business Chamber president Mr Mxolisi Mabutho said the meeting would discuss a wide range of issues, including the New Act and GEAR. Trade unions and civic organisations have been invited.

He agreed that there were workers who were forced to work long hours without proper remuneration but added that the black business’ contribution to the Act was important.

Congress of South African Trade Unions spokesperson Ms Kim Jenkins said yesterday that it was up to trade unions to organise workers in different work categories.

The federation did not have a definite policy regarding organising workers in the townships, saying the matter was in the hands of trade unions.

The South African Commercial and Catering Allied Workers’ Union (Saccawu) was represented most workers in the retail sector, said it organised workers in the townships but experienced problems when township bosses threatened their lives.

Saccawu’s Mr Brian Magaza said the Act would not be effective in the township if the state did not employ a more vigorous and no-nonsense approach to the matter.

He said that in terms of the Act, small business, which included township bosses, would be exempted from registering workers on application. However, unions felt a new proactive strategy should be employed.
**Trade Remedies**

Foreign manufacturers who see SA as a ready market for dumping could soon be given short shrift. Legislation now before parliament could mean a swift end to the practice.

Board on Tariffs & Trade (BTT) deputy chairman Leora Blumberg says one of the features of the new amendments “will allow us to implement new antidumping regulations and also so-called safeguard duties against disruptive competition, in accordance with the requirements of the World Trade Organisation (WTO)”.

The proposed amendments to the Board on Tariffs & Trade Act and to the Customs & Excise Act are going through various readings before parliament.

Blumberg adds that one of the major objectives of the BTT in 1997 will be to reduce substantially the time taken to conduct an antidumping investigation. “The goal is to be able to come to a preliminary determination — which could result in a provisional duty — within 120 days of the initiation of the investigation in the Government Gazette.”

Current legislation, often framed during the sanctions years, falls outside the ambit of WTO requirements — and therefore has to be amended.

And, by amending the previous description of “disruptive competition,” and certain related provisions in the Customs & Excise Act, the board will also be in a position to “legally” implement provisional safeguard duties — for a period not exceeding 200 days — where there is clear evidence that increased imports would “cause or threaten to cause serious injury to the domestic industry in SA or the customs area of the Southern African Customs Union (SACU)”.

The proposed new definition of disruptive competition — falling within the ambit of WTO agreements — will enable the board to act against “the export of goods in such increased quantities, absolute or relative, to domestic production and under such conditions which cause or threaten to cause serious injury,” Blumberg says.

Industry will be able to plead for interim protection if its case falls within the proposed new definitions but only in the circumstances and under the strict conditions set out in the administrative procedures that are being developed by the

BTT “Any safeguard duty imposed in terms of the current definition would place SA in direct contravention of its WTO obligations,” she says.

While the board already conducts antidumping actions in accordance with the WTO rules, the proposed amendments to the regulation provision will allow for the promulgation of comprehensive regulations, giving greater transparency and satisfying SA’s WTO partners.

Blumberg says SA’s partners in the SACU have been consulted in respect of the proposed amendments as the new legislation will affect the whole area. Any restructuring of the antidumping system will be affected by the renegotiation of the SACU agreement and any new institutional structure that may result.

Industry sectors like textiles, footwear, clothing and motor vehicles have been hard hit by a deluge of imports, as tariff protection recedes. This is partly the result of SA’s joining the WTO — after the signing of the Marrakesh Agreement which cemented GATT’s Uruguay Round.

With tariff binding levels now squarely facing heads of industry, they have to work hard at becoming globally competitive — or succumb to competition.

But, apart from “legal” competition, industry also faces floods of illegally imported goods, as well as dumped imports — brought into SA at prices below production costs in the exporting country.

The new SA Revenue Services — led by former banker Piet Liebenberg and ably assisted by a team of British Customs experts — is tackling illegal imports with growing competency and success.

And, apart from “natural” protection against cheap imports provided by the low rand, industry will shortly also have a new arsenal of official measures to help it meet the challenge of dumped goods. Arnold van Huyssteen.
Red faces for employers who contravene new Act

By Mzwakhe Hlangani
Labour Reporter

DISPUTES arising purely from employment contracts, non-payment of salary or any job-related benefits have now been domiciled - but failure to comply with the legal provisions may result in public humiliation for the recalcitrant employer.

South African resources consultants Andrew Levy and Associates are conducting a series of workshops to ensure employer organisations are geared to implement the Basic Conditions of Employment Act which came into force at the beginning of this month.

Though the department will appoint inspectors empowered to monitor and enforce the legislation, the real police will be employees and trade unions, warned senior labour consultant Brian Greenstein yesterday.

Labour inspectors can enter any workplace at any time. If it is a home, he or she may enter with written notification from the labour court to secure compliance with the new employment laws.

Greenstein pointed out that after being notified by trade unions and employees, inspectors will identify and investigate violation of the employment law.

It is also within the rights of the employee to report any non-complying employer.

What can be humiliating is that the employer named in the compliance order is required to display a copy in a place where employees can read it, he said.
SA still stands to gain from qualified membership of Lomé

John Dludlu

SA’s qualified membership of the Lomé Convention, the centrepiece of the European Union’s (EU’s) relationship with the developing world, is likely to bring some significant, albeit limited, benefits to SA.

The thinking in Pretoria was originally that SA should apply for full membership of the convention, the trade, aid and political co-operation accord between the EU and 70 African, Caribbean and Pacific (ACP) countries. However, Brussels subsequently offered qualified status to SA, thus curtailing the benefits of convention membership for the country.

Under full membership, SA would — like its partners in the customs union and the Southern African Development Community (SADC) — be entitled to preferential access to EU markets without having to grant concessions to the EU’s 15 members.

However, the problem with full membership was the difficulty of selling the idea to the EU states, which continue to fear the competition of SA farm exports, and to the multilateral trading system given the size of the SA economy. Pretoria was quick to recognise this problem.

Both EU and SA trade diplomats felt that the idea of SA’s full accession would have run into difficulties at the World Trade Organisation (WTO) which gives a waiver to the convention.

Although in terms of the qualified membership proposal, SA will not receive generous trade concessions, such as non-reciprocal duty-free tariff and quota preferences, there will still be important benefits for the country. While the exact terms of SA’s accession have yet to be worked out by negotiators, who are expected to meet again this month in Brussels, there is common ground on most issues.

Both the EU and the ACP countries on the one hand and SA on the other, agree that a closer relationship between SA and the ACP countries is crucial. Accession to the convention will make SA part of one of the developing world’s most important clubs.

Lomé membership will also deepen SA’s relationship with its neighbours in southern Africa — the wellbeing of which SA has identified as a priority.

Despite its many weaknesses, such as failure to help many ACP countries diversify exports and lift competitiveness which were catalogued in the Lomé green paper, the convention has given the ACP countries a meaningful political voice for dialogue with the world’s industrialised nations. The latter has a tendency to ignore the problems of poorer nations.

Increasingly, the developing world and notably Pretoria’s neighbours in Africa are looking to SA with hope. This is partially due to the enormous respect commanded by President Nelson Mandela. But there is also recognition that having SA within the ACP arena will be an official benefit. SA/ACP relations will be strengthened while allowing SA to assist in the development of some ACP countries, notably the SADC and those in the customs union.

It is important for the developing world, which continues to face the threat of being marginalised under the present trend of liberalisation, to speak with one voice.

SA’s role in international bodies is growing steadily. Trade Minister Alec Erwin is president of the UN Conference on Trade and Development, one of the few bodies that recognises the plight of developing nations. SA’s contribution at the recent WTO ministerial summit was therefore important.

Crucially, the political dialogue has been upheld by the green paper despite the radical reforms it suggests for ACP/EU relations in the next century.

Although trade concessions for SA have been diluted under the EU mandate which provides the basis for negotiation, SA firms would be allowed to pitch to contracts financed by the European Development Fund (EDF). The EDF is an ad hoc kitty comprising EU member states’ contributions to finance aid projects under Lomé.

The problem, which has to be resolved by negotiators when they meet, is whether SA companies are allowed to bid in the seventh EDF or eighth EDF. The EU has offered SA the eighth, which covers Lomé for five years until the turn of the century. But Pretoria believes that spending has been slow and therefore that there might still be funds available in the seventh EDF.

Of the scaled back trade benefits given to SA, the country could participate in regional production through changed rules of origin. The sticking point though is that this facility is available to SA only on an ad hoc basis. This means that each regional export with SA input will be evaluated before preferential access is granted.

This arrangement brings uncertainty for investors in SA. Naturally, Pretoria’s negotiators feel this stipulation should be scrapped and replaced by automatic access for regionally produced exports.

Under the present framework of negotiation, SA’s aid relations with the EU will continue on a bilateral basis via the R600m-a-year European Programme for Reconstruction and Development, and SA will not have access to the commodity protocols of Lomé.

Fortunately, whether or not EDF is integrated into the EU’s main budget — as proposed in the green paper — EU aid will remain intact until 1999. It may still be met beyond 2000, depending on the outcome of the present EU-SA co-operation negotiations.

Despite SA’s failure to get full membership of Lomé, the benefits of the qualified proposal for the country and its companies are important. Speedy conclusion of talks to pave the way for SA’s accession to the convention will ensure the value of the spinoffs is retained.
EMPLOYMENT LEGISLATION

Act will complicate labour relations

W(ER) 1/2/98 (166)

FRANK NKUMALO

Cosatu warned employer organisations throughout the country that it was not prepared to defend the new National Labour Act (BCEA) at all costs, but would do so "with our blood if necessary".

The BCEA was promulgated on December 1 and described as a "decisive break with the past" by Mmamoloko Mdlalana, the minister of labour.

The provisions of the act prevent employers from abrogating their responsibility towards their workforce — something done with impunity under the apartheid regime.

Labour analysts and commentators agreed that the combination of the provisions of the act and the dangerous mood in labour would culminate in a "tough" bargaining process next year.

Against a recessionary economic background, industrial relations could get worse before they improved.

Zwelizwe Vavi, Cosatu’s deputy general secretary, correctly pointed out that workers spent decades fighting for equality and justice in the workplace. It would be foolhardy to allow capitalists to claw back hard-won labour rights.

Vavi said: "Workers have made many sacrifices, including laying down their lives and jobs to win these demands. These victories were not given to us on a silver platter; they are the hard-won fruits of decades of struggle."

"Cosatu will not allow these hard-won rights to be reversed, to us the right to have our working hours regulated, including the right to spend adequate time with our families, is a basic freedom and cannot be separated from our struggle for liberation from apartheid oppression.

The labour federation took a proactive approach towards compliance by "retreating all bargaining agreements in the next few months to make sure they are in line with the BCEA".

The recently concluded South African Municipal Workers’ Union national bargaining conference resolved to embark on industrial action next year if there was no settlement after three rounds of negotiations — a path that could be followed by Cosatu affiliates.

Unless the new law was monitored and enforced by the government and unions, it could come to nothing, said Terry Bell, a labour analyst.

Bell said there could be numerous strikes and upheavals next year, but large scale unemployment and retrenchments triggered by recessional economic conditions would act as a "moderating factor".

This view was shared by Michiel Bestor, a senior economist at Econometrix. He said although there would be more strikes next year, the delicate state of the economy would cause workers to feel that their position was weakened to the point that a prolonged strike would be counterproductive.

Bestor said if the act prescribed things that were previously negotiated, issues that had still to be placed on the table, like wage increases, were "going to make those negotiations tougher.

He said weak demand of company products plus high interest rates would make it "at most impossible" for employers to award high wage increases.

"The negotiations themselves are going to be tough and I think employers will take a hard-line attitude," Bestor said.

Brian Greenstein, a consultant at Andrew Levy and Associates, said the act introduced increased unit labour costs to be factored into companies’ strategies.

Greenstein predicted that a tough round lay ahead for unions and employers at next year’s bargaining council negotiations.

The challenge for employers would be the need to reduce costs in other areas to maintain profit margins in a volatile economic environment. This could result in employers demanding more in terms of productivity from the trade unions at the bargaining councils than had previously been the case.

However, Greenstein said employers could look to some flexibility as overtime was no longer heavily restricted, as it was under the old act, pegged at R1.45 for all industrial areas in the country.

Bell said many workers felt angry about the widening wage gap. This was not positive.

"Workers are very aware the wage gap between the lowest and the highest paid has grown," Bell said.
Aims of Labour Relations Act in dispute in Cape

Cape Town — The co-determinist aims envisaged by the Labour Relations Act were not being realised because of a "brain drain" in organised labour and failure by parties at the wage negotiation table to break out of traditional adversarial roles, Johan Board, the president of the Cape Chamber of Commerce and Industry, said last week.

Board was speaking at a seminar hosted by the Independent Mediation Service of South Africa, which pointed out that over 2.8 million man days were lost to strikes during the first 10 months this year. This was four times more than last year and the highest level since 1984, a clear indication the co-determination aims of the act were not being realised.

But Tony Ehrenreich, Cosatu's Western Cape regional secretary, said the fault remained squarely on the business sector.

The number of man days lost was not the highest compared with pre-1994 election years, and strikes this year reflected the broad vision of building a participative democracy. "Strikes are a feature of the society we are building here," Ehrenreich said.

Workers used many legitimate strikes this year to eliminate backlogs of the past, Ehrenreich said. This was evident in the 16-day motor industry strike, where workers in some regions were earning a minimum monthly wage of R660 a month, a figure below the poverty datum line.

In addition, nearly all strikes this year were procedural as opposed to the wildcard strikes of the past, indicating the act was in fact doing its work.

But Ehrenreich maintained unless equity was reached in the workplace, "the co-determinist route will be impossible" to follow.
Employment green paper debate begins

Renee Grawitzky

DEBATE on the employment standards green paper starts today—and could be overshadowed by the broader debate on economic policy for growth and job creation.

The green paper was published before the release of government's growth and development strategy and the SA Foundation document titled “Growth for all”.

The executive director of the National Economic, Development and Labour Council (Nedlac), Jayendra Naidoo, said yesterday that discussions would be at a general level. Labour, government and business would present their goals and objectives in relation to the green paper.

From this, he said, “we will get enough of an idea of where the battle lines are”.

The labour ministry's green paper, intended to contribute to the drafting of an employment standards Act, was released on February 18.

It has elicited strong concerns from business, while labour has broadly welcomed the proposals.

Naidoo said he did not expect the discussion to be an easy one.

In contrast to the Labour Relations Act, where the issues were mainly procedural, the proposals on employment standards were more concrete and “one can see clearly what it means”.

Depending on the discussions at today’s meeting, he said, the parties would agree on a process which would guide the discussions on the green paper.

Naidoo said several parliamentarians had been invited to attend today’s meeting, so as to facilitate closer interaction between the Nedlac process and Parliament.
It is a myth that the exact conditions of employment Act has been duped about new Labour act

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(166)

8/12/99

Alas, the level of employment of workers, argues Sara Gon

It is a myth that the exact conditions of employment Act has been duped about new Labour act
Parliament prepares for business

Opposition goes on the offensive as

passage can expect

Labour Bill


NEWS

Corbyn

MPs in the Commons

—-

Sunday Times

LONG FORD, 31/1/1998

The opposition is preparing for a new phase of debate on the Labour Bill, with Labour MPs expected to use the occasion to make a major attack on the government's proposals.

The bill, which is due to be debated later this month, is seen as a key test of the government's commitment to economic reform and a major test of its relationship with the European Union.

Despite the government's strong support for the bill, the opposition is determined to use the opportunity to make a powerful case against it.

The opposition is expected to focus on the bill's impact on the economy, arguing that it will lead to higher unemployment and lower living standards.

The government is expected to defend its proposals, arguing that they are necessary to maintain economic stability and to ensure that the UK remains competitive in the global market.

The debate is likely to be intense, with both sides seeking to gain advantage in the coming weeks.

The opposition is also expected to use the bill as a springboard for a broader attack on the government's policies, with MPs calling for a more radical approach to economic reform.

The government is likely to resist such calls, arguing that its proposals are the best way to ensure long-term stability and growth.

In the coming weeks, both sides are expected to continue to sharpen their arguments, with the outcome of the debate likely to have a significant impact on the course of the government's legislative programme.

The opposition is determined to make a strong case against the bill, while the government is equally determined to defend its proposals, and the coming weeks are likely to be a key test of the two sides' ability to assert their positions.

The bill is due to be debated in the Commons later this month, with the government expected to introduce amendments in the Lords.

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In the coming weeks, both sides are expected to continue to sharpen their arguments, with the outcome of the debate likely to have a significant impact on the course of the government's legislative programme.

The opposition is determined to make a strong case against the bill, while the government is equally determined to defend its proposals, and the coming weeks are likely to be a key test of the two sides' ability to assert their positions.

The bill is due to be debated in the Commons later this month, with the government expected to introduce amendments in the Lords.

The opposition is likely to use the opportunity to make a powerful case against the bill, arguing that it will lead to higher unemployment and lower living standards.

The government is expected to defend its proposals, arguing that they are necessary to maintain economic stability and to ensure that the UK remains competitive in the global market.

The debate is likely to be intense, with both sides seeking to gain advantage in the coming weeks.

The opposition is also expected to use the bill as a springboard for a broader attack on the government's policies, with MPs calling for a more radical approach to economic reform.

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‘Devious’ Equity Bill will hurt SA labour

By Tony Leon

The Employment Equity Bill promises to be the focus of one of this year’s most controversial and potentially most racially divisive political debates.

Why? Because the Bill is central to the African National Congress’ programme of racial transformation — in this case, the racial transfer of reserved job opportunities.

Deviously, the Bill does not announce itself as what it is, the cornerstone of the ANC’s affirmative action programme. Instead, it masquerades as a legislative device to outlaw “unfair discrimination” and “achieve equality” in the workplace. By doing it entails the Abolition of Passes Act and the Extension of University Act for legislative doubling!

The Bill requires designated employers — those with a workforce larger than 30 people — to implement positive measures in order to ensure the equitable representation of blacks, women and the disabled by eliminating “unfair representation” of these categories of people.

Employment equity

To do so, each designated employer must draw up an “employment equity plan” complete with targets and time frames. After consultation with trade unions or employee representatives.

The employer is then required to implement the plan, including measures necessary to the existence of racial preferences in appointments, promotion and training.

The implications of this piece of legislation are explosive. For a start, the success of any “employment equity plan” will necessarily require employers to engage in racial classification.

Unfortunately, the Bill provides for this by requiring the Minister of Labour to draw up a “Code of Good Practice” which will outline how such classifications must be conducted.

To add insult to injury, employees will be required to submit annually to the director-general of labour a demographic breakdown of their workforce.

To enforce the Bill, labour inspectors will have the power to enter, question and inspect any workplace, and issue compliance orders.

In addition, the director-general is empowered to launch a review (read investigation) to determine whether an employer is complying. And on a move that can only add strain to labour relations, much of the monitoring of the Act’s implementation will depend on trade unions.

Severe penalties

The fines for failing to implement “employment equity” are severe: the Labour Court can impose a fine of between R50 000 and R500 000.

And if the director-general does not grant a “certificate of compliance” to an employer, that company will be unable to tender for any state contract.

The introduction of this Bill is misguided and, at worst, reflects the ANC Government’s apparent insensitivity to restructuring all aspects of life in South Africa.

It is misguided because it misconstrues the problem. The problem is not so much a way of creating a black management and professional class as a management consultancy PRA Consult predicts that 33 percent of professionals will be black by 2000, while the Benchfire Monitor at the University of Cape Town’s Graduate School of Business predicts that over half of all managers will be black by the same year.

A black management and professional class is already emerging in an explosive growth that will enable any employment equity plans that might result from the Employment Equity Bill and that will not require any legislative or positive measures.

The real problem is how to successfully create jobs for the unemployed, who are in any event predominantly black and female. As Professor Lawrence Schlemmer has recently shown, unemployment has been associated with the primary factor in income inequality.

Yet employment equity is being driven by the very minority whose parties used to support. That is the wake-up call for the Labour Relations Act and the Basic Conditions of Employment Act.

The truth is that the Bill has less to do with achieving equality of employment opportunities than with advancing the ANC’s racist agenda. The result can only be increased levels of racial tension and hostility.

The social effects of Finance Minister Trevor Manuel’s laudable determination to reduce the budget deficit have not been offset by the employment growth needed to ensure rising standards of living for the poor.

In an environment where job opportunities are shrinking, the Employment Equity Bill will turn employment into a racial zero-sum game in which the poor black unemployed and young white jobseekers will be the losers.

Predictably, the ANC’s new elite entourage will be the winners. The truth is that there is only one way to ensure sustainable access for all to the benefits of the economy: an economic policy that promotes economic and employment growth, an education policy designed to provide quality education, a focus on skills training in the workplace (South Africa’s literacy rate is only 30 percent) and the elevation of our national life to the values of moral and hard work.

Popular solutions

That may not be a popular nostrum with the quick-fixers in the ANC, but it is the only solution nonetheless.

Before acting on this latest piece of legislative mischief, the ANC should reflect on the cumulative effect of its recent measures: the shedding of up to 200000 jobs in the formal sector and increased marginalization in the labour market.

This latest Bill is social engineering and large at the expense of job creation and skills enhancement: it goes against the grain of worldwide experience.

It should be opposed by all those who care about job creation and the future of our millions of unemployed.

(The writer is the leader of the Democratic Party.)
Govt makes concessions on skills bill

Reneé Grawitzky

GOVERNMENT has proposed significant changes to the Skills Development Bill in an attempt to meet many of the objections to the draft legislation raised by business and labour.

The main changes, yet to be approved by participants in the National Economic, Development and Labour Council, will ensure greater control over training levies by industry education and training boards.

Sources said a new approach to the financing of training could see employers — depending on size, turnover and payroll — paying less than originally proposed by government.

In the bill published in September, government emphasised the centralised collection and distribution of a training levy of 1% to 1.5% of total personnel costs, including fringe benefits.

The SA Revenue Service was supposed to collect and distribute funds, with 80% going into industry specific education and training funds and 20% to a national skills fund.

One proposal, to be finalised later this month, calls for a minimum level of investment in training equivalent to 1% of payroll (excluding fringe benefits) in a particular industry. Although this has received the support of labour, it does not come close to its initial demand for a 4% training levy.

Central Statistical Service employment figures would be used to determine total payroll. Education and training boards would be responsible for levy collection and would determine the amount paid by companies.

A national skills fund would no longer receive 20% of total revenue collected to finance national priorities. Instead, such training would be funded through the fiscus and donations.

Although Business SA has yet to approve the revised proposals, negotiator Brian Angus said they were all an improvement on the initial bill.

The labour department director-general, Sipho Pityana, said recently agreement had been reached on issues such as the establishment of employment services and the development of learnerships. The sticking points related to the funding arrangement and the relationship between sectoral education and training authorities, and education and training boards.

The bill proposes a two-tier system where the boards fall under the jurisdiction of the training authorities. These authorities would be responsible for developing human resource strategies in different sectors.

From the outset of negotiations, employers opposed the establishment of sectoral authorities, arguing that they would prove costly and create additional bureaucracy. They were concerned about the demarcation of sectors and mechanisms for co-ordination between boards and the authorities.

Labour, government and business negotiators were due to resume talks yesterday. However, talks were postponed until later this month at the request of government, which said it needed to complete the consultation process within government. Pityana said the labour department wanted the bill to be tabled in Parliament during the first quarter.

It is understood that a revised bill, incorporating areas of agreement, is being drafted.
Bill, Repeals apartheid employment methods
**Real labour reform**

Democratic Party leader Tony Leon has criticised the Employment Equity Bill. **Nowetu Mpati** explains why his reasoning is at fault...

However, he ignores the part that suggests that "in the three-year period to 1997, the number of black senior management positions increased by two percent and only 1.6 percent of these were senior managers."

"Given these statistics, we have to wonder what will cause this massive increase of black professionals over the next three years?" Leon also quoted the Breakwater Monitor at the University of Cape Town's Graduate School of Business: Their survey of 1996 focused on 107 organisations and indicated that within the top managerial ranks of companies (Peterson F Grade) Africans constituted only 2.9 percent, coloureds 0.43 percent, Asians 0.21 percent and whites 96.58 percent." Cosatu believes that the Employment Equity Bill is the only practical strategy to change these shocking figures. These figures came about as a result of well-thought-out apartheid policies - racial policies which protected the Tony Leon of this country. Leon's solutions The Government at least has some ideas on how to address racial discrimination in the labour market. However, despite all his criticisms, Leon does not provide any solutions.

**Mismanagement**

The shedding of up to 200 jobs a day from the formal sector, as indicated by himself, is the result of mismanagement by senior, predominantly white, managers.

And the Government does not have a policy that says people should mismanage. Perhaps he would know where the mismanagement policy emanates from.

Leon, the new shop steward of the working class, should go beyond simply attacking the Bill and provide alternative solutions.

We suspect Leon's real concern is that blacks are developing, becoming more competent and are ready to occupy those senior managerial positions.

Cosatu is proud of the fact that the Government is levelling the playing field for those who were so severely disadvantaged by racist apartheid policies.

The time has come for the Government to develop legislation to realise the goals of the Reconstruction and Development Programme.

(End of extract)
Employment act ‘might come into effect only later this year’

Renée Grawitzky

THE controversial Basic Conditions of Employment Act, approved by Parliament late last year, is likely to come into effect only towards the end of the year, an industry source said.

Discussions within the National Economic Development and Labour Council showed that the act might come into effect in November. However, the child labour provision could be implemented in March, the source said.

Part of the delay in implementation relates to acceptance by the parliamentary portfolio committee on labour of a labour department recommendation that the act only come into effect after a study had been conducted into the impact on small businesses. The labour department did not confirm or deny this and indicated that Labour Minister Tito Mboweni would announce an implementation plan for the act shortly.

Ntsika Promotion Agency, established by government to promote small and microenterprises, has been requested to conduct an impact assessment on small business. The body indicated it was given three months to complete the study.

Ntsika policy and research manager Christo Abrahams said a sample of 500 companies, across all sectors of the economy, would be used and interviews would be conducted with employers and employees.

Abrahams stressed the independent nature of the study, which tried to separate the political dynamics and process from the technical issues.
LABOUR Minister Tito Mboweni has been ordered to pay an employee more than R1-million after failing to consult an employee, Hans Schoemann, about his impending retrenchment.

The Industrial Court in Pretoria ruled this week that Mboweni and his director general, Sipho Pityana, had committed an unfair labour practice by not consulting an employee, Hans Schoemann, about his impending retrenchment.

The court ordered the pair to pay the legal costs of the case along with an award of R1 027 000 to Schoemann, a senior member of the Industrial Court.

Experts described as “scandalous” the way in which Mboweni and the Labour Department ignored the basic principles of labour legislation, saying the case was a “timely reminder” that even the government must obey the law.

“This is the department which tells other employers how to conduct their labour relations, and yet it does not have the faintest idea of what is required when it comes to its own employees,” said a senior member of the Industrial Court based in Durban, Phillip van Zyl.

A number of other cases brought by members of the Industrial Court are pending against the minister and his director general.

Schoemann sued the department after repeatedly trying to find out what the government planned to do with his post as the Industrial Court was being phased out.

The court's judgment, handed down this week, reveals that Mboweni and Pityana did not observe even the most fundamental labour relations requirement: consultation with someone who is in line for retrenchment.

The judgment, by three members of the Industrial Court, found that Schoemann had made a number of legal efforts to have his problem resolved. However, “as a result of either arrogance or ignorance or a combination of both” by Mboweni, Pityana and/or other officials, all his efforts came to nothing.

The judgment noted that letters written to Mboweni and Pityana outlining his problem were “not afforded the courtesy of a reply.”

The court rejected the government's argument that Schoemann's objections amounted to an insistence that his rights took priority over its right to restructure the labour law, saying consultation with Schoemann would not have stopped it from passing legislation. But it would have given Schoemann the information he needed about the future of his proposed severance package and possible redeployment elsewhere in the public service.

The award was based on his salary and the number of months until his expected retirement.

Natal University’s dean of law, Alan Rycroft, said there was no excuse for the state not to have followed widely accepted retrenchment procedures.

“The treatment of Industrial Court members has been inexcusable, and it is a shameful episode in the history of labour relations. The Department of Labour is well aware of the obligation to consult,” he said.

It is not yet known whether Mboweni and Pityana will appeal against the judgment.
He takes to CLAN RYAN

We workers deal for a better standing up

Labor Department Director-General

UNADJUSTED

Signs from a government is not with a dramatic change in 54’s labour

Siapo Pyramis, who is concerned
Battle looms over new labour law

Supremes served on coffee members who redefine themselves as contractors

NEW

He said the coffee trade...

100 000 workers are contractors and they are in court...
**EMPLOYMENT EQUITY BILL**

**Brandishing the big stick**

Affirmative action targets raise practical posers

"In the workplace," President Nelson Mandela announced in his opening-of-parliament speech last week, "the departure from apartheid practices will be felt even more keenly as we finalise and implement the Bill on Employment Equity."

His government would "not be discouraged by the sirens of self-interest that are being sounded in defence of privilege, and the insults that equate women, Africans, Indians, coloureds and the disabled with a lowering of standards." Affirmative action is corrective action, Mandela insisted. "There is no other way of moving away from racial discrimination to true equality."

Thus far, the only "sirens" against the Bill have been sounded by SA Institute of Race Relations special researcher Anthea Jeffery, who has raised pertinent practical questions, and the Democratic Party, which has described it as a step towards the "re-racialisation" of SA. These issues will doubtless be taken up in negotiations at Nedlac starting later this month.

Among them are the precise meaning of "indirect" discrimination, the fact that it reverses the normal onus of proof (employers have to prove they have not contravened the law), and how "reasonable progress" towards numerical goals of representation is to be achieved in five years without unfairly dismissing employees.

Jeffery's most sensational point is that the call for companies with 50 or more staff to seek "equitable representation" of blacks, women and the disabled at all levels, including senior management, implies a work force that in five years will have to be 75% black, 50% female and 5% disabled.

Labour director-general Sipho Pityana this week slammed that interpretation as a scare tactic, and emphasised that the Bill lets companies set their own equity goals. He said other factors, including the "pool of suitably qualified people", had to be taken into account. "Mere under-representation of designated groups would not ipso facto be proof of discrimination."

Business SA (BSA) will be seeking clarity on precisely the kind of questions Jeffery has raised, and will argue in the Nedlac talks for "more carrots, fewer sticks."

Business accepts in principle the need for affirmative action "in some form" and said so in its response to the Equity Green Paper (which it rejected) in July 1996. "It is the content that needs clarification," says BSA social policy vice-chairman and Sanlam human resources GM Vic van Vuuren.

"We'd like to see more of an enabling Bill that encourages transformation, rather than a punitive approach," he says, referring to fines for noncompliance ranging from R50 000 in year one to R900 000 in year five, plus possible compensatory and punitive damages for unfair discrimination.

BSA says the Bill should, like other labour law, be decriminalised and that employers' liability is too broadly defined.

Other BSA concerns are the costs of administering equity plans and their effect on small businesses "because this is where job creation and stimulus to growth occur."

The organisation will argue that the Bill should apply to companies with significantly more than 50 employees.

BSA also questions the apparent re-introduction of race classification in the Bill's quest to make designated companies mirror the national or regional population mix.

There are estimated 10 000 such companies. The Bill obliges them to prepare and implement an employment equity plan, lodge the plan with the Department of Labour within 18 months of the Bill becoming law — probably in June — and report annually on its implementation.

Labour Minister Tito Mboweni does not see affirmative action as a permanent feature of the labour market, which is why progress will be reviewed in seven years.

But, he warns, "for as long as discrimination obtains, so will measures to prohibit it."

Amaranth Singh
Untangling Mandela’s contradictions

He had to be the weathervane of his party, yet stuck to his ideals

There was a moment during President Nelson Mandela’s interview with SABC TV news head Allister Sparks last Sunday evening when it seemed the President might burst into song. He was “in love with a beautiful lady”, he said in tones reminiscent of a soulful lyric penned by Oscar Hammerstein. After all, someone turned Cry, the Beloved Country into a (doomed) musical called Lost in the Stars.

As he enters his final year in office — with some speculation over when, exactly, he plans to step down — Mandela remains an intriguing personality.

The contradictions of his presidency are maddeningly acute. There is little ambiguity about his stance in Mafikeng in December that “the bulk of the mass media in our country has set itself up as an instrument and lockstep to the ANC” and “exploits and manipulates the media system.”

Yet, to Sparks, and in his speech to open parliament on Friday, Mandela cautiously praised the media — essentially for keeping government alert to corruption, which, with crime and a lack of capacity for social delivery, was identified as an obstacle in the path of democracy.

It is generally accepted that the President’s speeches are composite affairs. What does he really believe?

Opening parliament, he called for all South Africans “to firm up the moral fibre of our nation.” This concern is clearly genuine and serves to unite his apparently divergent views on the media, the opposition and nongovernmental organisations. He would prefer the ANC’s accomplishments to be emphasised above the national preoccupation with things that appear to be going wrong, and sharing his vision is to embrace the “new patriotism” — which is evidently a dominating concern.

In his appeal to discipline and duty, Mandela reflects the values of his upbringing, steeped as it was in the Methodist missionary spirit. In the largely faithless climate of the declining century, this emphasis puzzles many, as does his confession that he is uneasy about what the young make of his relationship with Graca Machel. Neither is the young nor the not-so-young care very much. They want him to have a good time.

This could be a key to understanding Mandela. There exists between him and almost everyone else — including all but the diminishing cadre of his age-group within the Congress — a compounded generation gap. When he was released in 1990 notwithstanding the communications between him and the ANC-in-exile — his imprisonment of 27 years had made him both a stranger and an icon.

The role of icon — or “saint” — disquiets him. This was why he responded so differently to former Labour MP Brian Walden’s categorisation of him as “incompetent, amateurish and feckless.” Such remarks, he said, helped to dispel the idea that he was superhuman.

Nor is it impossible that Mandela may have been disconcerted by certain enduring manifestations of the campaign to make the country ungovernable — particularly the nihilism of the “lost generation.” Loyal to the ANC, he has never said as much. But he keeps stressing the importance of the Masssakhane campaign, and there is a tone of strict, old-fashioned disapproval whenever he comments on the national lack of moral fibre. Momentarily unguarded on television, he spoke of our “filthy” nation.

The 1990 release was precipitated by events in the mid-1980s when Mandela met P.W. Botha, and rejected what would have been a form of parole had he forsaken violence against an unjust State. Mandela, too, insisted that release should be a component of a wider-ranging process of negotiation. That took Botha to the horizon of his capacity for reform, where he remained until the intervention of a stroke of fate.

Having intimated the dialogue that led to his physical freedom, Mandela’s debut initially alarmed those who remained in power with his talk of continued struggle, his obsequance to the movement, and the Sixties’ mantra of nationalisation and seizure of the commanding economic heights. The private man, and his private opinions, were ruthlessly self-suppressed.

In 1964, sentenced to life imprisonment, Mandela uttered his famous “I am the voice of the voiceless” in a call for freedom. “I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be it is an ideal for which I am prepared to die.”

Having said that, the requirement was for him to endure so he became the most famous and most revered in the world. Into the space he had occupied flowed innumerable “translations” of him — revolting, liberal, oppressive. It should have been self-evident that on release he could never fulfill the discordant expectations laid upon him. Nor did he, he played the various parts assigned to him, adopting different masks for different occasions. He maintained discipline.

Personal suffering revealed itself only sporadically, as when he bared his feelings in the divorce from the second Mrs Mandela.

Those who find Mandela unacceptably stolid — preening the fire of a Martin Luther King — should remind themselves that it is unusual in postcolonial Africa for a President to voluntarily step down, indeed, cautiously but deliberately phasing himself out.

The Constitution embodies the principles he articulated at the end of the Rivonia trial — is probably his most important, shared victory, even though it still appears fragile.

President Mandela opening parliament

does he believe everything he says?

Peter Wilhelm
Parliament faces the big divide

Battle lines are drawn over the Employment Equity Bill, write Marion Edmunds and Mungo Soggot

All sides of the political spectrum dug in this week for what threatens to be the biggest parliamentary battle between now and the next election: the government's drive to take on white economic privilege.

The Employment Equity Bill, due to be tabled later this year, looks set to propel the racial question from the streets to the top of the political agenda.

The outcome of the parliamentary fight over the Bill will be the clearest indication yet of the opposition's ability to put a brake on the mass-based ruling party. Business and white employees will look to the opposition to represent their interests if their own lobbying fails to substantially change the Bill.

The Bill effectively forces companies to run aggressive affirmative action policies. However, it stops short of stipulating quotas.

The opposition, still reeling from President Nelson Mandela's racially charged barrage at the African National Congress's conference in Mafikeng, rushed at the opening of Parliament this week to attack the government for its racial drive.

The National Party said the Bill would have slotted into apartheid's legislative battery. The Democratic Party warned that the Bill would saddle the taxpayer with another expensive bureaucracy.

In response, the Congress of South African Trade Unions, accused the opposition of racism and stymying affirmative action, saying the parties were seeking to "whip up a backlash against measures that were very moderate."

One of the Bill's drafters, attorney Urmila Bhoola of Chedele Thompson and Haysom, says the Bill's opponents are distorting the truth in claiming it forces companies to comply with quotas, as is the case in the United States.

She says the Bill will only affect companies with their employees on a plan to make their staff profile less white. This plan, and the companies' efforts to honour it, will be scrutinised every year by the Department of Labour and a special bureaucracy.

But Bhoola says the Bill stipulates that staff goals will differ from company to company, "depending on what is realistic and achievable given the skills shortfall and gender gap in South Africa."

This means an engineering firm, which expects a team of 50 engineers, cannot be forced to employ half men and half women. Business which fail to show an acceptable "good faith" to work towards equal numbers of black and white employees could face sanctions.

The Bill requires companies to make sure they have diverse workforces that broadly represent the population. However, their efforts are also subject to a "good faith" test, like the more specific legislation for black economic empowerment.

Some companies with "good faith" argue that they are not required to go to the extent of the Bill, which requires them to create "disproportionate" numbers of white and black employees, when they can only contribute to a "good faith" approach.

"Good faith" is specified in the Bill in the case of companies that do not do their utmost to improve the race profile of their workforce.

"Good faith" is insufficient when a company's employees reflect a particular racial group, the Bill says. It must apply to all companies that have set staff objectives for each staff level, not only those that have not done so.

"Good faith" is not an option for companies that have set targets for workers at the lowest level of employment, but not for staff at higher levels, the Bill says. "Good faith" is insufficient when a company's employees reflect a particular racial group, the Bill says.

"Good faith" is sufficient when a company sets targets for staff at all levels, as long as the staff are proportionately represented.

"Good faith" is insufficient when a company's employees reflect a particular racial group, the Bill says.

"Good faith" is sufficient when a company sets targets for staff at all levels, as long as the staff are proportionately represented.
The proposed bill is aimed at placing new workplace, working hours, and administrative provisions. It has raised concerns among businesses and employees. The Institute of Directors has criticized the bill, arguing that it could disrupt normal operations and potentially harm economic growth. The government has defended the bill, stating that it aims to improve working conditions and protect employees' rights. A detailed analysis of the bill's impact on businesses has been conducted by the parliamentary select committee, and their findings are expected to be released soon.
Equity Bill will give unnecessary power to bureaucrats
Jobs equity bill is here to stay, business told

Johannesburg – There will be no going back on the Employment Equity Bill.

This is the promise of the chairman of Parliament’s labour committee, Godfrey Oliphant, in response to reservations expressed by Business South Africa.

Mr Oliphant was commenting on the bill after talks between the committee and the National Economic Development and Labour Council (Nedlac).

Business South Africa delegate Adrian du Plessis said there was need for broader consultations in the labour legislation process.

Commenting on the Employment Equity and the Skills Development bills, Mr Du Plessis said his organisation shared the objectives of the bills to promote racial equity.

“But we are worried about some of the ways the Government is using to enforce its consensus, there are controversial issues in the bills which have resulted in sharp differences,” he said – Sapa.
Govt urged to strike a balance

South Africa's business community has urged the Government to strike a balance between its economic and social responsibility in the formulation of labour legislation.

Addressing the media after consultative talks between the Parliamentary Labour Portfolio Committee and the National Economic Development and Labour Council (Nedlac) in Johannesburg yesterday, Business South Africa representative Adrian Du Plessis said there was need for broader consultations in the labour legislation process.

Commenting on the controversial Employment Equity and the Skills Development Bills, Du Plessis said his organisation shared the objectives of the bills in their bid to promote racial equity.

"But we are worried about some of the ways the Government is using to enforce its consensus. There are some controversial issues in the bills which have resulted in sharp differences. But we are committed to the consultative process," he said.

The Employment Equity Bill, which seeks to bring parity in employment to South Africa's various racial groups, has come under fire from commerce and industry with most political and economic observers saying it will negatively affect growth.

However, the chairman of the portfolio committee, Godfrey Oliphant, said there was no going back on the bill.

"We have dealt with more controversial legislation before and we are sure that with sufficient consensus from the stakeholders, these bills will go through," he said.

Oliphant said among other issues, his committee had discussed the forthcoming job summit, the codes of good practice, dismissal regulations, sexual harassment, the protection of pregnant and lactating mothers, working hours and picketing with Nedlac.

"We were basically exchanging ideas and programmes for the year ahead. We intended to give our support to Nedlac during the difficult process of piloting labour legislation."

- Sapa
Nedlac, govt to work together on bills

Dustin Chick

The National Economic Development and Labour Council (Nedlac) and the parliamentary labour committee have agreed to work together to pass a series of labour bills this year.

The two groups met yesterday as part of a continuous feedback process to plan for the year and eliminate what were seen as potential obstacles.

Nedlac executive director Jayendra Naidoo said that it was important for the bodies to have good relations, especially in the light of labour legislation expected to come before Parliament this year, such as the employment equity and skills development bills.

The former was widely seen as a move to legislate affirmative action and had sparked widespread reaction from opposition parties.

Labour committee chairman Godfrey Oliphant said he hoped to have the skills bill finalised soon, but the main "challenge" remained employment equity legislation. He said although a broad framework had been agreed to, the finer mechanisms within the bill still needed to be finalised.

His views were echoed by Adrian du Plessis, Business SA's Nedlac representative, who said a need existed for government and business to continue to meet to avoid stark differences.

Oliphant said the challenge of the Employment Equity Bill was the same as for other difficult legislation and "the sky would not fall on anyone's head."

Other issues raised at the meeting were Nedlac recommendations that the labour ministry ratify new minimum age and equal remuneration proposals made by the International Labour Organisation and three new codes introduced by Labour Minister Tito Mboweni in the Labour Relations Act. They related to dismissals based on operations, packeting and sexual harassment.

Oliphant said the finalisation of the Basic Conditions of Employment Act was with Mboweni, who needed to make announcements about the new institutions prescribed by the law.
Land and Labour Laws Under Spotlight in Urgent Application
Bill's reverse racism label denied

Vuyo Moko

CAPE TOWN — The chief drivers of the proposed Employment Equity Bill dismissed accusations yesterday that it advocated reverse racism and was an indication of government's intention to meddle in affairs that ought best to be left to business.

They admitted, however, to some of its shortcomings. Labour director-general Sipho Pittana and equal opportunity director Loyiso Mbabane, who co-ordinated the drafting of the bill, were clarifying content before Parliament's labour portfolio committee. The bill, which was calling for equal employment opportunities for blacks, women and the disabled, addressed itself also to "standards," Pittana said.

Those who argued that affirmative action would lead to lowering of standards were under the misconception that the bearers of standards were only white and male, he said.

Pittana dismissed critics of the bill who argued that the matter should be left to market forces as "misguided." "Direct government involvement (was necessary as) the situation never resolves itself," Pittana said, referring to experience drawn from countries like the US, UK, Canada, Zimbabwe and Namibia.
The Afrikaanse Handelsinstituut (AHI) warned yesterday that indiscriminate enforcement of the Employment Equity Bill could have an adverse effect on the competitiveness of organisations in SA and lead to increased joblessness.

It supported the development and implementation of employment equity plans to facilitate a change in organisational profiles, but opposed the promotion of "numbers rather than trained employees who can contribute to the performance of the company". The adoption of such an approach would have a devastating effect on business.

Although the bill said an employer was not obliged to appoint a person who was not suitably qualified, the AHI argued this did not mean an employer would be able to appoint the "best person for the job".

Although the AHI supported the elimination of workplace discrimination and the promotion of equal employment opportunities, it opposed the bill's punitive and administrative approach as opposed to creating an "enabling and encouraging approach".

The AHI said the labour director-general could reject an employment equity plan even if it was agreed to with the relevant unions. "It is inappropriate for the director-general to be able to reject collective agreements," the body argued.

Although the bill did not support quotas, the inclusion of numerical goals in employment equity plans and substantial punishment for failing to comply with the plan as well as the powers of the director-general amounted to a "subtle way of introducing quotas".

The comments were part of the AHI's submission to the labour department on its approach to the bill.
Big penalties possible for failing to reach goals

The draft Employment Equity Bill has two main purposes: to eliminate discrimination in employment, and to bring about employment equity.

The bill is aimed specifically at ensuring the advancement of black people, women and the disabled. In terms of the bill, every organisation which employs more than 49 people has to draw up an Equity Plan which is lodged with the Department of Labour. These Equity Plans, to be developed and monitored jointly by management and staff, (through workplace forums or trade unions), must be based on a workforce profile which shows the demographic breakdown.

A typical Equity Plan should contain:
- a clear set of objectives
- measurable steps which will be taken to identify and remove discriminatory barriers
- positive measures which are being taken to bring about equity
- goals and timetables
- monitoring and dispute-resolving procedures

Employers have to lodge their first Equity Plan within 18 months of the EE Bill being adopted. Annual reports have to be provided by October 1 each year. First-offenders could be fined R300 000, and provision has been made for these penalties to be increased by R100 000 for every subsequent offence.

The process will be monitored by labour inspectors and the director-general in the Department of Labour, who can request information and documents from employers, review employers' compliance and then refer cases to the Labour Court if necessary.
Death blow for workplace equity will prove more effective than affirmative action, writes CHRIS VICK

President Nelson Mandela drove a stake through the heart of workplace apartheid in his speech at the opening of parliament recently.

That stake has two letters burst into it: "EE", the abbreviation for employment equity and the new acronym for workplace transformation.

"EE" is rapidly overtaking "AA" (affirmative action) as the mechanism for bringing about equality on the factory floor and in the boardroom.

And, as Mandela said, the tabling of the new Employment Equity Bill in the coming parliamentary session, with its strong emphasis on "EE", will ensure "a departure from apartheid practices in the workplace".

Some South African businesses have already realised the limitations of "AA", it's a narrow and quite mechanical approach which may change workplace demographics but does little to change the treatment of people from previously disadvantaged communities.

Some employers have accepted they need to do more than set quotas and are implementing broad "equity processes" which fundamentally change the way businesses do business.

Professor Linda Human, who has researched and developed equity programmes in South Africa since 1993 - long before they became fashionable - says: "The basic principles of AA as a means of creating greater equality of opportunity are tact but relevant. But we are moving away from affirmative action towards employment equity."

The Employment Equity Bill, tabled by government late last year and due to be debated in Parliament this session, sets down the minimum requirements for an equity process.

Already there's an outcry from organisations which articulate the views of those whose privilege could be most affected - including the Democratic Party, the SA Institute for Race Relations, and Business South Africa.

They seem to feel "the market", rather than the state, should decide what's best for business and argue against the statutory nature of aspects of the draft legislation.

They seem to miss the fact that, four years after previously disadvantaged South Africans won the right to political expression, they still don't have much say in the workplace - particularly when it comes to discrimination, training opportunities, benefits and career advancement.

But, as Mandela said in his opening speech to Parliament: "We will not be discouraged by the stereo of self-interest that are being sounded in defence of privilege, and the insults that equate women, Africans, Indians, coloureds and the disabled with a lowering of standards."

The legislation really as draconian as the SACH's Anthea Jeffreys claims? Is it really as the Democratic Party says, "a step towards re-racialisation"?

It depends whose interests you are

access to the mass media - conferences and the debate around the legislation, and around the equity process.

An objective look at the draft legislation shows that it is not about establishing an affirmative action police force. It's not about "lowering standards" (even though "standards" may have been a subjective and nebulous concept).
workplace apartheid

Employers won't be forced to hire unqualified people. There is insinuation on quotas in the draft legislation. In addition, the legislation recognises what it calls "the inherent requirements of the job", which may slow down equity processes.

It recognises, very clearly, the skills shortage in many sectors of the economy and makes allowances for that.

The legislation does, however, force employers to develop and monitor their equity plans in consultation with staff, entrenching consultative approaches to issues affecting profitability, productivity and growth.

It forces employers to commit themselves meaningfully to training and development, and puts an end to those who talk about training but do very little of it.

The legislation should lead to workplaces where there is a diversity of views, and with it recognition of different value systems and fair measurements for performance and methods of work.

In short, it should have a profound impact on the career prospects of black people, women and the disabled.

A full equity process will also, without a doubt, have benefits for white workers - particularly those who are good at their job but don't have the right school tie or gymshap, who don't make it on to the company cocktail circuit or golf course, or who don't "fit in" with the current management paradigm.

As Human says: "The equity process should not unduly trample on the reasonable and legitimate interests of competent white men."

"In any case, good employment equity is part and parcel of good people management. And we're already seeing, in many businesses, that good people management leads to increased productivity."

But it will take more than the draft Employment Equity Bill to bring about employment equity, because there is much more to employment equity than lodging an equity plan with the Department of Labour.

So the "EE" plans outlined in the Employment Equity Bill should be seen as the start of the process rather than its conclusion.

There are, for example, ad
titional external issues for em
ployers to concern themselves with such as ownership equity and what's crudely known as "affirmative purchasing" - ensuring companies explore new markets and new sources of material, in particular from black-owned businesses and those run by women and disabled people.

It's going to be a long, slow process, as some South African companies have already experienced.

Successful equity programmes do not come easily; they take time, are often arduous and stressful, and they do not have an immediate impact on the bottom line.

"There is no quick fix," says Human.

"Many affirmative action programmes fail because organisational barriers introduce a series of ad hoc and unrelated interventions rather than pursuing one policy over time."

Make no mistake: achieving equity in the workplace is going to be just as painful and traumatic as the one waged to achieve equity at the ballot box.

But it's just as important a struggle, and one which South Africans cannot shy away from.
Entrenchment of employees' rights may be hard Act to follow

YAZEED FAKIER

IS a priest an employee of the church or of God? If he is fired by the church, is his case covered by labour law — or a higher authority? Where would this case stand in the new South African scenario?

While delegates mulled over this question at a seminar on the recently published Basic Conditions of Employment Act, labour and industrial law experts Jeremy Chennells and Cecilia Brummer drew attention to changes to be wrought by the new legislation.

Although it has yet to be enacted, the Act has prompted rumblings of concern on both sides of the union-management divide.

The Basic Conditions of Employment Act is among the latest pieces of legislation that — with the Labour Relations Act and the controversial Employment Equity Bill — will transform the workplace and substantially change employment and working conditions.

Working hours, overtime payment, maternity leave, night work and the recognition of family responsibility are among the Act’s provisions.

Chennells and Brummer said the Act provided a number of creative opportunities for parties to structure, more than before, their conditions of employment according to the needs of their organisation.

Its enactment has been postponed to possibly the last quarter of the year to enable a new-established technical committee to examine the Act’s effects, particularly on small businesses.

The committee’s report is to be submitted to the National Economic Development and Labour Council (Nedlac) by September or October.

Chennells noted that because the Act emanated from Nedlac, it was perceived as being “big-employer/big-union-friendly” at the expense of smaller businesses.

“At the 11th hour the partners are now saying ‘Hang on, what impact is it really going to have on small businesses’,” he said.

“It’s disappointing that small business appears never to have adequately been a part of Nedlac considerations, given that about 80% of all the companies in the Western Cape employ fewer than 20 employees (that is, are small businesses).”

“The implications of this Act could be huge.”

One clear theme, Brummer said, was that certain aspects were non-negotiable. These were intended to ensure that every employee — irrespective of status or seniority in a company — would be protected in terms of having a safe and healthy working environment and conditions. Also, their right to family responsibility would be recognised.

The Act is therefore much more inclusive than previous laws. Only employees of the SA National Defence Force, the secret service and military intelligence are excluded from its provisions.

It provides for a working week of 45 hours, from 46, and envisages that this will be reduced further to 40 hours. Brummer said employers saw this provision as daunting because of the perceived direct increase in fixed labour costs that such a reduction in hours would bring.

Coupled to this was overtime, an aspect that was also non-negotiable and likely to impact substantially on employer and employee interests.

“It is commonly accepted that employees often request, if not demand, to work any overtime available as they have become reliant on overtime payment,” said Brummer.

“The Act provides for a maximum of three hours’ overtime a day or 10 hours a week. Overtime in excess of the statutory limitation is therefore a major headache as humour has it that, as a matter of policy, exemptions will be not be granted easily.”

Noting the Act’s specific reference to “temporary placement services”, Brummer said employers who had used such services to reduce their responsibility and liability would have to tread carefully.

“In the past it was a case of certain employers willing to circumvent the possible labour hassle and giving the problem over to a broker.”

According to Chennells, both the client and the placement services (employer) would be responsible for ensuring compliance with the relevant provisions of the Act.

He noted that several disputes that had been referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) involved temporary employment agencies. This reflected a greater expectation among employees that their right to fair labour practices should be recognised and protected — as was any employee’s right, Chennells said.

Conditions for overtime work were set for an overhaul, employers would not be allowed to require or permit an employee to work overtime unless both agreed to this or it was included in a collective agreement.

Is there an answer to the fired priest’s predicament? The British Court of Appeal has determined that a minister of religion serves God and his congregation and does not serve an employer. “No contract exists whereby he will serve a terrestrial employer in the performance of his duties.”

Chennells, Brummer and Associates are available to answer questions about the Basic Conditions of Employment Act from members of the public, whether they are employers or employees. Questions may be sent by fax to (021) 683-6280 or by e-mail to CB-ASSOC@Africa.com. A selection of questions and answers is to be published on a date to be announced.
20 killed in city in 1997

Taking SA jobs

Hounded for

Immigrants

The Internal Protection Party has

The Catholic Commission in Home Affairs and

Immigration could not obtain from the

Police in the offices of the department

that the file of the police has been

destroyed. The file had to be sought

from other different departments.

The scope of the police on matters

related to immigration and the work of the

department has been handed to the

National Congress members on the

parliamentary committee. They are done.

The National Congress members laid in the Cape Town

Parliament today to ask for

Immigration to take action against

the Internal Protection Party.
Labour law ‘may backfire’

THOUGH THEY SUPPORT better treatment of workers, small businesses worry about new labour laws. YAZEED FAHIER reports.

EMPLOYERS in small businesses like those in the computer industry fear that if the latest Labour legislation is implemented in its present form, they may be forced to scale down their operations to survive.

Small business stands to be most affected if the provisions of the Basic Conditions of Employment Act, passed last year but still awaiting enactment, are applied as they stand.

Among changes that have businesses worried is that they will have higher wage bills and less to keep their businesses going.

Working time, which stands at 46 hours a week, will be reduced to 45 hours a week and may be further reduced to 40 hours.

Overtime maximum, where the present three hours a day, 10 hours a week remains, but the agreement lapses after a year.

Payment, which increases from one-and-a-third of the wage to one-and-a-half for overtime worked.

Time off in lieu of payment.

There is no provision presently, but the new law requires the payment of normal wages for overtime worked, plus granting an employee at least 30 minutes time off on full pay for every hour of overtime worked.

Alternatively, an employee may be granted at least 90 minutes paid time off for each hour of overtime worked.

Employers say it is ironic that while stimulation of job growth is one of the aims of the new law, its effect is that, if applied, would be that they could be forced to cut their losses — ie jobs.

One such employer is Mr Alex Anderson, of Computer Connexions in Buitengracht Street. He is the owner of the oldest-established black-owned computer PC retailer and wholesaler in the Western Cape. His business is the only one of "the original bunch" that started in 1973, he says with no small measure of pride.

He learnt the trade quickly and well, and when his boss shipped the country to escape conscription to the army, he decided to try his hand as his own boss—a tough call in a hostile, then-white-dominated industry.

Anderson had his break. But if the stipulations of the Basic Conditions of Employment Act are enacted, the business he so painstakingly built up in a harsh environment over the years may go bust.

Rather than encouraging him to expand his business by taking on more employees, as the legislation appears to advocate, Anderson says this is exactly what will not happen.

"It may force me to scale down the business, shed the employees and operate as a consultancy. In my business, it will be easier to do just that, because the legislation will present more hassles, especially if you have people looking over your shoulder all the time (a reference to the appointment of up to 20 000 labour inspectors who will police the workplace to ensure employers comply)."

"Even further — it will discourage people from starting small businesses. And where will that leave the government with its macro-economic plan?"

If one of the aims was to discourage night work and overtime to encourage the creation of more jobs, he said: "In my opinion, it may have just the opposite effect."

"In a competitive market, if employers are being forced to pay more all of a sudden, your wage bill will be increased.

"At the end of the day, the profit margin of the business will go into those employees — then where will there be room to employ more people?"

Anderson said the competition in many industries was so tough that enforcing certain regulations would have the end result of causing the very people who were economically disempowered to suffer.

Commenting on the intention of the act to balance economic development with social justice, he said: "If you increase people’s salaries with regard to overtime, it doesn’t allow you as an employer the room to take on more people."

"In the case of my business there will be little or no money left in the kitty."

He ventured that employees earning the present "time-and-a-third" would probably choose such payment over overtime because "at least there will be food on the table."

"These things will have to be thought through properly because there are so many implications that can develop from one decision."

"It’s one thing to make decisions, but the practicality at ground level is another story."

The men in the street is the one who at the end is most affected by those decisions, the one who feels the pinch.

"He or she is the one who will suffer because they’re the first to go — not management — as soon as staff cuts are implemented, even though these workers are the ones who form the engines of many industries."

"They then find it tough to sell themselves in the open market because they don’t have skills. These are the people who should also be brought into the consultation process.”

Despite having won a R3-million printing contract with Parliament, desktop publishing entrepreneur Mr Beryl Kerr (featured yesterday) is also concerned about the new law.

She says the Basic Conditions of Employment Act would put the squeeze on her 12-person operation.

She does, however, support the manner in which the legislation tries to improve conditions for employees whose rights in the workplace have been given scant regard in the past.

"I would welcome those kinds of changes because, as black people, we’ve always been treated as second-class citizens."

"I see nothing wrong with the maternity and paternity stipulations or the scaling down of working hours because I think it’s good that people are not forced to work from 7am to 7pm, which was happening before and probably is still happening in some quarters."

"It’s also good that employees are being paid fairly and given a proper lunchtime. As an employer, though, it’s very difficult because employees now have many more rights which they are entitled to, and which they should have had a long time ago."

"But if you are on the other side of the fence, you begin to think: ‘How am I going to cope?’"
INDUSTRY THREAT? Small businesses in the computer industry may face a battering if the new Basic Conditions of Employment Act comes into force in its present form. Employees such as technician Ricardo Tregonning will face major changes in working conditions.

with this? How am I going to get through this?"

She said the 45-hour working week, with increased remuneration for overtime worked, would have "severe financial implications" — and even more so if one of her female employees fell pregnant and she had to employ another person for a limited four-month period.

"We are going to have to either train somebody or get somebody with the same skills for four months only, because you'd have to take that person back."

"With the bigger companies you can rotate staff and it doesn't affect them as it does us, because in a smaller company everybody does just about everything."

"So I'd have to get somebody from the outside, possibly at a higher rate. To keep the job open I'd have to get them on a contract or temporary basis — and those people (placement agencies) do demand a higher remuneration."

PICTURES: YASEED FAKIER
In a jobless crisis, make it easier to hire people

Employment Equity Bill punishes the unemployed despite its good intentions, writes John Kane

(166) 879 254 1988
Codes on picketing and dismissals to aid in interpreting new labour act

Nedlac strikes labour practice deal

FRANK NXUMALO

Johannesburg — Business, labour and government achieved a breakthrough yesterday when they struck a deal at Nedlac on the labour practice codes governing rights and duties during protected strikes and dismissals. The codes — governing good practice on picketing and dismissals based on operational requirements — will also assist the Commission for Conciliation, Mediation and Arbitration (CCMA) and the labour courts in interpreting and applying the new Labour Relations Act.

Nedlac said the codes were an expansion of the act and should be read in conjunction with it. The council said the codes could not have come at a more opportune moment for the country’s industrial relations, in the light of police and marchers’ violent behaviour on Monday in central Johannesburg. They would also ease negotiations at the 1999 national bargaining councils on wages and conditions of employment.

The code on retrenchments requires employers to “explore alternatives to retrenchments, treat employees to be dismissed fairly, consult with employees in an attempt to reach consensus and give preference for hiring of dismissed employees”.

The code on picketing says, in part, “pickets may carry placards, chant slogans, sing and dance” and makes it clear that “it is not the function of the police to take any view of the merits, in particular of the dispute, giving rise to a strike or a lock out.”

“The police have no responsibility for enforcing the Labour Relations Act,” the code says “An employer cannot require the police to help in identifying pickets against whom it wishes an order from the labour court, nor is it the job of the police to enforce the terms of the labour court.”

The codes will be published in the Government Gazette.

Mzi Buthelezi, Nedlac’s labour chief negotiator, said Monday’s conflict and tension showed a police force “in transition” and the code on picketing was therefore an excellent instrument to be used by the government to train the police in the democratic values of the new South Africa.

Buthelezi said the code on retrenchments would entrench workers’ rights in the new Labour Relations Act as the old one had denied such rights.
'Laws on representivity needed'

Louise Cook

LEGISLATION on workplace representivity would be needed before many private-sector businesses "bite the bullet", Land Bank CEO Helena Dolny said last night.

At the launch of the revamped Land Bank following a nine-month transformation process to meet a new mandate, Dolny said several businesses' restructuring exercises were merely exercises in downsizing or right-sizing. "They make a modest attempt to recruit a modicum of black faces, but true transformation such as the Land Bank's, must at least address black empowerment, gender justice and democratisation."

The bank—a parastatal which falls under the agriculture department—received a new mandate from the cabinet last year to take on a new client base of emerging farmers and people at the bottom end of the market.

Land and Agriculture Minister Derek Hanekom said at the launch that government viewed the Land Bank, rather than commercial banks, as the key to stability in rural areas. It could not simply be downsized and its traditional commercial farmers left to commercial banks, he said. The bank could also not be downsized as the number of branches in rural areas was needed for effective delivery.

Meanwhile, some new finance products aimed at commercial and emerging farmers and reform beneficiaries would come on stream at the end of the month. The bank also hoped to start lending to farm-related businesses.

The brink of a new era: Page 14
Delay new labour laws, urges Sacob

Reneé Grawitzky

THE SA Chamber of Business (Sacob) yesterday reiterated a call made last year by business that government not implement any new labour legislation — including the Employment Equity Bill — until after the presidential job summit later this year.

This call coincided with the start of negotiations on the bill in the National Economic Development and Labour Council (Nedlac) yesterday. The negotiations had to be abandoned because a number of labour delegates were unable to make the meeting due to other commitments. Negotiations will start next month.

Sacob, in line with other employer bodies, said it supported the principles of non-discrimination and equality of opportunity, but questioned the bill’s effect on small and medium-sized businesses.

The organisation said the bill would "be a crippling burden" for this grouping.

Sacob believed the bill introduced prescriptive interventions by government which could effectively lead to a quota system. This would "raise unrealistic expectations among the target group which could eventually result in serious problems for business and eventually for government itself."

Sacob said the bill would alienate the broad business community in SA and would most certainly lower investor confidence.

Sacob argued, in line with the submission by Business SA, that companies with 250 employees or more should have to comply with the proposed legislation and be defined as a designated employer.

The organisation also opposed the punitive measures in the bill, especially in view of the trend to decriminalise labour law. The "proposed level of fines virtually equates a transgression in employment practice with major criminal activity."

Sacob concluded that the success of any employment equity or affirmative action policy depended on the confidence that employers and employees had in such a policy "as being realistic, effective and capable of attainment."
Employment act to lift wage bill

Reneé Grawitzky

THE proposed reduction in working time and increase in overtime premiums included in the Basic Conditions of Employment Act — likely to come into effect this year — would increase the wage bill of mines by 5%, the Chamber of Mines said yesterday.

Chamber industrial relations adviser Adrian du Plessis warned at the gold summit yesterday that rising labour costs not coupled with productivity improvements were a threat to the industry.

The question of costs was first raised by chamber president Bobby Godsell, who said that if the forces working against the industry, "costs are most within the control of management and labour".

The type of labour market regulation was one of 12 points highlighted by the chamber as crucial to the industry's survival.

Du Plessis said that to ensure the industry's role in benefiting not only shareholders but also employees and local communities, the industry had to be economically viable and internationally competitive.

This could be achieved, he said, by facilitating constructive labour relations, reducing gold theft from its current level of 30 tons, maintaining the tax regime, ensuring security of tenure of mineral and mining rights; facilitating easier access for new entrants into the market; promoting the move towards a highly skilled workforce, and funding technology.

Du Plessis highlighted the cumulative costs mines incurred from the different levies and taxes, ranging from a national road levy on fuel to the additional costs that might be incurred by the auctioning off of catchment water.

Central to the argument the National Union of Mineworkers was the view that profit maximisation should be subordinate to the national interest. This view, presented by acting general secretary Gwede Mantashe, elicited some reaction from mining employers who argued that one of the solutions to depleting ore reserves was to invest profits to finance further exploration.

Without the high rate of reinvestment of profit, the industry would have already shrunk to a shadow of its present size, Godsell said.

Meanwhile, intense debate is likely to emerge around the functions of a gold crisis committee proposed by government as a mechanism to reduce job losses and improve the ability of parties to consider different options.

The committee will also conduct a local and international benchmarking exercise of productivity and management practices.

Labour department director-general Sphiyo Pityana said that, in anticipation of the establishment of an advisory board as proposed in the mining green paper, government had agreed to establish such a committee.
Meiring faces the axe

By Mathatha Tsedu
Political Editor

President Nelson Mandela and Deputy President Thabo Mbeki have agreed to fire South African Defence Force chief General George Meiring over a report he handed the President alleging a coup plot by African National Congress members.

Senior Government sources told Sowetan that Police Commissioner George Fivaz is also likely to go as he was apparently involved in the dissemination of the report.

On Friday Mandela appointed a high-powered judicial commission of inquiry into the compilation and dissemination of the report. The commission is headed by Chief Justice Ishmael Mohamed, assisted by Constitutional Court judges Pius Langa and Richard Goldstone.

It is to report back within days, according to Government spokesman Mr Joel Netshitenzhe.

Sources say Meiring had given Mandela a one-source intelligence report last month that indicated that a disparate group of ANC people, ranging from Miss Winnie Madikizela-Mandela, General Bantu Holomisa, SANDF chief of staff General Siphiwe Nyanda, Deputy Defence Minister Mr Ronnie Kasrils and Lieutenant-General Lambert Moloi, were planning a coup.

It has since emerged that the report, that Meiring did not show to his political head, Defence Minister Mr Joe Modise, was compiled from information given by the now exposed military intelligence informer Vusi Mbatha.

Mbatha was arrested with Mr Robert McBride in Mozambique on gunrunning charges early this month.

"The matter is very serious as under other circumstances the President would have declared a state of emergency," the source said.

"Meiring has to explain why an unverifed report was rushed to the President, implicating among others the man who is tipped to succeed him (Mandela)."

"It raises the question about whether he had wanted to besmirch the name of Nyanda so that he should then stay on, or had wanted to plot a coup himself and then blame it on those implicated in the report."

"Mbeki was furious about the matter. He wanted Meiring to be fired Safety and Security Minister Mr Sydney Mofamadi was briefed and when he met Fivaz, he spoke about the contents of the report without saying there was a report."

"He did not know that Sydney already knew that he had also been privy to the report," the source said.

The source said Mbeki had debated the matter with Mandela and had then written the statement read in Parliament by Mofamadi, blaming elements of the old order for a campaign to destabilise the country.
The discussion of affirmative action in South Africa runs the risk of focusing narrowly on the promotion of few individuals, leaving the pattern of apartheid labour market discrimination undisturbed.

This is the view of the Congress of South African Trade Unions (Cosatu) in its submission document on the Employment Equity Bill released yesterday.

Cosatu spokeswoman Nowetu Mpatu argued that the mere repeal of past discriminatory laws was insufficient to tackle this legacy and that market forces would continue to replicate inequalities and social imbalances if left unchecked.

Mpatu said Cosatu "welcomed the underlying philosophy of the Bill because it advanced the need for a comprehensive approach to the redressing of the legacy of inequality in the labour market."

The Bill, which has been approved by Cabinet and will now begin the lengthy parliamentary process before its final promulgation later this year, calls for a programme of positive measures to overcome the inequalities in the labour market.

It focuses on the systematic advancement of historically disadvantaged groups rather than the promotion of a few individuals.

Mpatu argued that far from acting as a barrier to economic growth as claimed by white business, such measures were a necessary condition for sustainable economic development.

This approach is based on the equality clause of Section 9(2) of the Constitution, which lays the basis for legislative and other measures to achieve equality for those disadvantaged by unfair discrimination.

"We support the broad strategy outlined in the Bill for the achievement of employment equity," she said.

"The Bill will force those who pay lip service to employment equity for women, blacks and the disabled," Mpatu said.

Labour, however, argued that the main problem with the Bill was that it relied too heavily on the good will of employers to implement its measures.
Fired workers win court battle — 13 years later

Judges order Howick rubber plant to pay entire workforce compensation

CARMEL RICKARD

THE longest court battle in South African legal history reached a climax this week when the Appeal Court in Bloemfontein handed down a shock judgment finding the 1985 dismissal of the entire workforce at a rubber manufacturer’s Howick plant was an unfair labour practice.

Now BTR Sarmacol faces a massive compensation claim on behalf of the 970 workers, many of whom have been unable to find work in the 13 years since their dismissal.

The sacking of Sarmacol’s workforce, who had an average of 25 years’ service, has gone down in labour history because of its negative impact on the community where the workers lived, Mpongomien, and because of the strength of worker resistance to the dismissals.

It has also led to protracted litigation and 39 people have been killed in fighting related to the case.

In his strongly worded judgment, Judge Pierre Olivier said the company was, to a large extent, to blame for the strike which preceded the dismissals, and that its “real desire” was to get rid of the union and its members.

As a result, when the strike began, management “snatched at the opportunity” to sack the workers, which it did in “an unfair and overhasty manner”.

Afterwards, it carefully followed a preconceived policy of selective re-employment to ensure that the union and its members would not return to the factory floor.

The Appeal Court has sent the case back to the industrial court to decide how much the company should pay each worker in compensation. However, it has recommended the two sides reach a settlement on how much should be paid so that the matter is not dragged out any longer.

A labour law expert praised Friday’s judgment, saying it had “redressed a long-standing human rights tragedy using the means available to the Appeal Court in the law today”.

The judgment has startled the legal community because of the deep divisions it reveals among the Appeal Court judges who heard the case. While three judges ruled the dismissal was unfair, two disagreed.

The wording of the decisions makes it quite clear that the issue caused serious dissent.

Former Sarmacol workers who learnt about the decision on Friday said they were jubilant they had eventually managed to persuade a court to give them “real justice”.

They said it was also the first time that a court had acknowledged the damage done to their community.

Petrus Ngcobo, the regional secretary of the union that represented the workers, the National Union of Metalworkers of South Africa, said a meeting of the dismissed men and the families of those who had since died would be held soon to inform everyone of the judgment and discuss the question of compensation.
Unemployed the losers in
new labour dispensation

THERE are serious and
growing disincentives
to job creation in the
body of labour law
which has and is being
created by government.
It defies reason that in a
country in which
unemployment is high and
rising and in which the main
victims are the poorest of the
poor, the very government
which claims to stand for the
betterment of these
unfortunate people makes it
increasingly difficult for them
to find work.

Any business person who
did anything in this
environment but seek ways to
reduce staff would be acting
irrationally.

Why increase payrolls, for
example, when there is a
training tax on them? Why
employ people when
government dictates to you
how you should handle them?
Why grow your business when
you know you will be faced
with increasing and
burdensome bureaucratic
hassles?

Far better and infinitely
more logical, surely, to seek
ways of putting your assets to
work so that you can employ
fewer rather than more
people. This is because you
know that higher payrolls
mean higher taxes, that it will
be extremely difficult to
reduce staff when economic
conditions so dictate and that
government imposes costly
conditions of employment
which the output of the
people you wish to employ
cannot justify.

There can be no argument
about the fact that simply
because of the colour of their
skin, the majority of South
Africans were for generations
denied opportunity and in
many cases brutally exploited.
This is a reality which must
be faced and dealt with.

Those in government who
seek to redress the sins of the
past with a barrage of social
engineering laws do so with
the best of intentions. They
mean well, but their efforts
could not be better designed
to push us inexorably away
from labour-intensive activity
towards greater
mechanisation and its
concomitant capital intensity.

Damage inflicted over
generations cannot be
repaired overnight, regardless
of how much law is created.
Recovery has to be gradual
and based on economic
realities rather than romantic
idealism, useful as this can
sometimes be. There are no
economic miracles. The US,
Germany, Britain, Japan and
the other great economies
grew powerful on the
foundation of at least 100
years of real growth averaging
less than 2%.

To try to force the pace
artificially will do far more
harm than good. Perhaps
those few fortunate enough to
be securely ensconced in jobs
will benefit.

But what of the millions
without work or the prospect
of it? How are they helped by
the sort of labour law that,
having failed
comprehensively, is now
being abandoned by even
those champions of
egalitarianism, the
Scandinavians?

Perhaps there is nothing for
it but to watch government
walk blindly into the mire of
collectivist labour legislation,
see it fail and only then decide
to opt for more sensible,
rationable approaches. It will not
be the first time that people
have chosen to ignore the
lesssons of history, suffered
the consequences of their
obduracy and then set about
clearing away the wreckage
and starting over again.

Of course it is not those
with a phalanx of bodyguards,
large cars, drivers, air-
conditioned offices, splendid
homes and trips abroad who
will feel the effects of this
foolhardiness. It will be the
poor and dispossessed.

For decades the Nationalists
defied logic, denounced
reasonable argument as
treason, plundered the
treasury and mercilessly
abused power as the terrifying
detail of torture, murder and
atrocity emerging from the
Truth and Reconciliation
Commission vividly
demonstrates.

We can thank God and
Nelson Mandela that this evil
is past. But let us not now
blight our prospects with
policies which have not
worked anywhere else, will
not work here, which will
destroy jobs and which will
rob our economy of the power
to harness the will of the
people to work.
Mboweni takes swipe at critics

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — Tito Mboweni, the labour minister, said yesterday that his labour reform programme for 1998 was on track, but hit out at "short-sighted" criticism of his affirmative action bill.

The first phase of the Basic Conditions of Employment Act would be promulgated in two phases starting this month, Mboweni said.

He rejected criticism of the Employment Equity Bill and called on employers to help tackle the "urgent" task of deracialising South Africa's workforce.

He hoped to see both pieces of legislation fully in place by the end of the year, despite criticism from some sectors.

Mboweni said the first phase of the Basic Conditions bill — dealing with the prohibition on child labour and forced labour, the establishment of the employment conditions commission, sectoral determinations and the

**NEW ERA** Tito Mboweni, the labour minister
earnings threshold for working time — would be promulgated on March 21, Human Rights Day.

"The promulgation of these chapters will assist with the implementation of the rest of the act as well as ensure a smooth transition between the wage board and the employment conditions commission," he said.

The rest of the act, covering the new basic conditions of employment, will be promulgated between August and October to give employers and employees time to make the necessary changes to contracts.

These adjustments include changing overtime rates from time-and-a-third to time-and-a-half, cutting working hours to 45 a week and amending notice periods for termination of service.

Mboweni said public comments on the Employment Equity Bill had been forwarded to the National Economic Development and Labour Advisory Council, but he hoped it would go to parliament for possible public hearings by June and be passed soon afterwards.

He criticised what he called "misguided opposition" to the bill by people who he said confused "the issue of deracialisation with reracialisation".

He said there was "no country at present that needs more urgent intervention by government to deracialise its workforce than South Africa does".
Mboweni calls on whites to accept the change

JOVIAL BANTAO

LABOUR Minister Tito Mboweni has dismissed "as a storm in the tea-cup" the controversy around affirmative action legislation and said that South Africa, more than any other country, needed intervention by the government to desegregate its workforce.

Addressing a press conference in Parliament yesterday, Mboweni said the desegregation of opportunities and practices - as envisaged in the Employment Equity Bill - was the essence of transformation in South Africa.

He said opponents of the bill - currently being negotiated at the National Economic Development and Labour Council and expected to be tabled in Parliament in June - confused the issue of desegregation with re-segregation.

"Any efforts to address the fact that blacks, who are in the majority in this country, are still denied opportunities in employment, because of their race, is rejected on the ridiculous grounds that this would be racist. This leads to a circular and fruitless argument, whereby we would never be able to address the racial inequalities because we can no longer talk about race.

"Whilst the continued preference of white males in some sport codes is so despicable as to warrant a special presidential commission, the denial of opportunities to the majority in employment is worse

because it impacts directly on people's livelihoods," he said.

Mboweni said the continued denial of opportunities to women, blacks and people with disabilities in the workplace affects their prospects for advancement and development which, in turn, affects economic growth.

Incentives offered by the legislation to companies which comply would include access to State contracts worth R65-billion per annum. On the other hand, companies which fail to eliminate discrimination in the workplace and introduce equal opportunities will face heavy fines and will be denied access to the lucrative State contracts.

Mboweni said the bill has been supported by business, trade unions and he called on white South Africans to support it.

"They must support these measures because they will ensure long term stability in the country and they will also ensure that we develop skills and competencies that will enable us, as a country, to sustain growth and development. It is very shortsighted for whites to want to cling to special and under-served privileges that were conferred on them during apartheid, merely on the basis of their skin colour. This is yet another opportunity for white South Africans, in particular, to embrace transformation, in deed, and not just in empty words," Mboweni said.
Minister dismisses affirmative-action controversy as 'storm in teacup'

BY JOVIAL RAMTAD
Political Correspondent

Cape Town – Labour Minister Tito Mboweni has dismissed “as a storm in the teacup” the controversy around the affirmative action legislation, and said South Africa, more than any other country, needed government intervention to deracialise its workforce.

Addressing a press conference yesterday, Mboweni said the deracialisation of opportunities and practices – as envisaged in the Employment Equity Bill – was the essence of transformation in SA.

He said opponents of the bill – currently being negotiated at the National Economic Development and Labour Council and expected to be tabled in Parliament in June – confused the issue of deracialisation with racialisation.

“Any efforts to address the fact that blacks, who are in the majority in this country, are still denied opportunities in employment because of their race is rejected on the ridiculous grounds that this would be racist. This leads to a circular and fruitless argument, whereby we would never be able to address the racial inequalities because we can no longer talk about race. The deracialisation of opportunities and practices in employment has to take place and thus, in fact, is the essence of the transformation of South Africa.

“While the continued preference of white males in some sport codes is so despicable as to warrant a special presidential commission, the denial of opportunities to the majority in employment is worse because it impacts directly on people’s livelihoods. The continued denial of opportunities to women, blacks and people with disabilities in the workplace affects their prospects for advancement and development, which in turn affects their motivation and commitment, which has negative effects for productivity and therefore economic growth.

“As a result, the biggest loser from discrimination and the denial of opportunities, in the long run, is South Africa itself. The need for government intervention has never been greater. But, are we overly prescriptive?” Mboweni said.

Incentives offered by the legislation to companies that comply would include access to state contracts worth R55-billion a year. On the other hand, companies that fail to eliminate discrimination in the workplace and introduce equal opportunities would face heavy fines and be denied access to lucrative state contracts.

Mboweni said the bill had been supported by business and trade unions, and he called on white South Africans to support it. “They must support these measures because they will ensure long-term stability in the country and they will also ensure that we develop skills and competencies that will enable us, as a country, to sustain growth and development.

“It is very shortsighted for whites to want to cling to special and undeserved privileges that were conferred to them during apartheid, merely on the basis of their skin colour.

“This is yet another opportunity for white South Africans, in particular, to embrace transformation, in deed, and not just in empty words,” Mboweni said.
New child-labour law this month

Anyone found employing a youngster under 15 faces three-year jail sentence

BY JOYCE HANTON
Cape Town

From Human Rights Day - March 21 - any South African employer found to have a child younger than 15 years working for him would be liable for prosecution and would face a three-year jail sentence without an option of a fine, it was announced in Parliament yesterday.

Individuals and employers have been warned to align contracts of employment with the Basic Conditions of Employment Act, or these would become invalid when the act is implemented.

Labour Minster Tito Mboweni announced at a press conference at Parliament that the section of the act which deals with child labour would be implemented this month, after he had received permission from President Nelson Mandela for a staggered implementation of the law.

The implementation of child-labour and sectoral determinations, as well as provisions on the earnings threshold for working time, will be promulgated in the first phase.

The chapter on child labour sets 15 as the minimum age for employment and protects children between the ages of 15 and 18 from hazardous employment. The only exemption to the minimum age would be in the performing arts industry, although measures were being worked out to protect children in this sector as well.

Mboweni said the chapter on child labour was being brought into effect because, unlike other chapters, it relied on the existing enforcement system of the criminal courts. A new enforcement system would be needed to enforce other chapters.

"The chapter on child labour is also being implemented because there’s a glaring human-rights gap at present in relation to child labour. There’s no mechanism to prosecute employers employing children.

"There is increasing evidence of child labour, especially in agriculture, and the Department of Labour can do nothing to stop it.

"Also, the issue of child labour is gaining international prominence and, following on from the international conference on child labour in Norway last year, an international agenda for action to eliminate child labour worldwide has been adopted," Mboweni said.

Other chapters which will be implemented will provide for the establishment of the Employment Conditions Commission (ECC) - which replaces the Wage Board - to advise the minister on basic conditions and in setting sectoral determinations for certain sectors.

Provisions on the earning threshold, which enables the ECC to advise the minister on appropriate earnings on working time, will also become effective from March 21.

The second phase of the act will be implemented between August and October, by which time individual contracts of employment should have been altered to be in line with the act, or they would become invalid.

"Employers and workers are urged to become familiar with the provisions of the act and make any changes that are necessary.

"It’s anticipated that major provisions that will need to be altered relate to the increase in overtime rate from time-and-a-third to time-and-a-half, the reduction of hours from 46 to 45 in some sectors, and the notice period for termination of service," Mboweni said.

He said a new enforcement system was being designed to ensure that provisions of the act would be implemented.
Employment Bill
to end child labour

HUMAN Rights Day next Saturday heralds the implementation of the first phase of the Basic Conditions of Employment Act passed in Parliament last year, Labour Minister Tito Mboweni announced this week.

The implementation of the bill will coincide with the launch of the African leg of the worldwide march against child abuse – which will culminate in Geneva in June – as the labour department aptly introduces the prohibition of child labour.

The section of the act prohibits the employment of children under the age of 15 or employing children under 18 in hazardous working conditions.

Children in the performing arts are exempted from the act until the department can work out sectoral determinations for this field.

Mboweni also announced several chapters of the act, which will be phased in with child labour regulations – including a section on an earnings threshold which regulates work time and another on sectoral determinations which allows the minister to set conditions and wages of unorganized workers.

Besides joining the international bandwagon by raising the child labour issue, Mboweni pointed out that sections on child labour were being phased in earlier because his department could rely on existing prosecution mechanisms in the criminal courts for their enforcement, while other chapters in the act would need new systems in place before they could be introduced.

The second phase of the bill, to address working conditions, will be implemented later this year.
Trade unions to welcome new law

By Abdul Miliad

THE long-awaited Basic Conditions of Employment Bill is to finally become law this week when some of its chapters are promulgated on Saturday.

This will come as a welcome relief to trade unions who have waited with bated breath for its promulgation since it was passed by Parliament on November 17 last year.

In a statement, Labour Minister Tito Mboweni said the Bill would be passed in two phases, beginning on Saturday.

Completion of the second phase is expected between August and October this year.

The first phase will involve promulgating chapters on child labour, the Employment Conditions Commission (ECC), sectoral determinations and provisions on earnings and working hours.

In the second phase, the majority of the substantive changes to working conditions will be enacted.

These will include changes to conditions of contract and collective agreements, the establishment of a new enforcement system and improvement to maternity benefits offered by the Unemployment Insurance Fund.

Easier to do it

Mboweni said the chapter on child labour was being brought into effect first because it was easier to do so, as it relied on existing enforcement system of the criminal courts.

"Secondly, there is a glaring human rights gap at present in relation to child labour. There is no mechanism to prosecute employers employing children.

"There is increasing evidence of child labour, especially in the agricultural sector and the Ministry of Labour can do nothing to stop it," Mboweni said.

Basic conditions

The other chapters to be promulgated on Saturday are those relating to the establishment of the ECC.

This body will advise the labour minister on basic conditions and setting up of sectoral determinations for certain sectors.

Mboweni explained "The promulgation of these chapters will assist with implementation of the rest of the Act."
Bosses fear jobs will have to fit applicants

TALKS on the Employment Equity Bill move into top gear this week, amid rising employer fears of amendments which could force them to modify jobs to suit applicants.

The Black Management Forum — supported by sections in labour — has called for the scrapping of section 12 (3) of the bill. This states that in implementing employment equity, employers are not required to appoint or promote the "designated group" — blacks, women and disabled people — who are not suitably qualified for a position. This clause states also that government cannot force a company not to employ those outside the designated group, implement quotas or create new positions.

The scrapping of this clause is central to employer concerns about the bill and will be debated at the resumption of negotiations in the National Economic, Development and Labour Council (Nedlac) today.

Closing date for public submissions was last month, and parties are supposed to complete negotiations by the end of this week.

Employers approached Labour Minister Tito Mboweni for a postponement. This request was refused as the department wanted the bill debated in Parliament before June. The bill is supposed to go to Nedlac’s management committee this month.

Other employer concerns relate to the imposition of fines and punitive measures; the requirement that employment equity plans should reflect the country’s regional and national demographies; practicalities relating to state contracts, and whether the proposed legislation should facilitate the reduction in the apartheid wage gap.

Labour argued in its submission that the bill had failed to give legislative effect to facilitate the reduction of the apartheid wage gap.

It said the bill and the original green paper focused on the high levels of wage and income inequality and that an employment equity strategy would address these disparities.

Labour believed, however, the bill failed to give effect to this.

Labour called for the bill to be amended to ensure all employers who received state contracts, irrespective of size, be required automatically to comply with the provisions of the proposed legislation.
It is naive to believe the labor market can correct itself.
Employment equity deal ‘within reach’

Reneé Grawitzky

AGREEMENT on major issues in the Employment Equity Bill had been reached, sources said yesterday.

Government, labour and business are close to striking a deal on the controversial bill being negotiated in the National Economic, Development and Labour Council (Nedlac).

Parties were expected to meet late into the night last night to try to resolve outstanding issues, which included some of the bill’s punitive measures and a demand by the Congress of SA Trade Unions (Cosatu) to include a clause to close the apartheid wage gap.

Union and business sources were optimistic that a deal would be struck ahead of the bill going to Parliament, as consensus was reached on some of the controversial clauses which could have delayed the process late last week. They remained cautious, however, in case consensus on the outstanding issues could not be reached.

In terms of an agreement, a designated employer could either be defined as a company employing 50 employees or more, or one which had annual turnover of between R4m and R25m. This was in line with the definition of a small business in terms of the National Small Business Act.

It was estimated that 10 000 companies employed more than 50 people. The amendment adding the turnover clause will increase the number of companies covered by the legislation.

In an attempt to balance this change, the parties agreed to ease some of the administrative burdens imposed by the bill on small and medium-sized businesses. Companies employing less than 150 people would now be required to submit a report to the director-general of labour on progress made in implementing employment equity plans every two years instead of annually.

It was also agreed that the director-general would publish special regulations and the format of a plan to assist small businesses in implementing and maintaining employment equity.

Business managed to facilitate a deal on the rewording and repositioning of a critical clause which stated that employers would not have to appoint or promote the “designated group” — blacks, women and disabled — who were not suitably qualified for the position. The clause also stated that employers did not have to implement a quota system, create new jobs or be forced not to employ those outside the designated group.

The Black Management Forum, supported by labour and the community component in Nedlac, wanted the clause scrapped.

Employers argued strongly against a requirement in the bill that employment equity efforts be assessed on whether they reflected the national and regional demographics of the country. They argued that this could amount to quotas.

It is understood that the parties agreed to change this to refer to the national and regionally economically active population.

Sources said it was unlikely that any changes would be made to fines which could be imposed on employers for failing to comply with the administrative aspects of the bill.

They said the debate over the wage gap was likely to be a sticking point. Cosatu argued that the bill failed to give legislative effect to facilitate the reduction of the wage gap.
Labour costs of new act 'bad news for small business'

FRANK NKUMALO

Johannesburg — The costs imposed by many of the provisions of the Basic Conditions of Employment Act would make small businesses uncompetitive and possibly cause many of them to close down or avoid the law, the Small Business Project, a consultancy, said yesterday.

Compared with existing costs of employment, the provisions for cutting working hours from 48 hours or more to 45 hours, the new rates for overtime from time-and-a-third to time-and-a-half, increased family leave and double pay for Sunday work raised labour costs by between 32 percent and 55 percent.

The consultancy said an inquiry into the effect of the act on small enterprises should at least make legislative concessions for the small, medium and micro enterprises sector.

Keith Herrmann, a spokesman for the consultancy, said the labour department had commissioned Ntaka Enterprises to conduct the inquiry.

Herrmann said Ntaka had already begun its work and would be working with a Dutch group.

He said Pto Mboweni, the labour minister, had appointed a task team to review the impact study, make recommendations on whether and how the law should be changed, what sectoral determinations should include and what variations should be made.

A spokesman for the department said phase one of the act — which included chapters 6, 8 and 9 on child and forced labour, earnings threshold for working time, sectoral determinations for non-bargaining council sectors and the Employment Conditions Commission, which replaces the old Wage Board — had been promulgated last Saturday.

The spokesman said the rest of the act would be promulgated between September and October this year.

A case study by the consultancy on the operational viability of a small, food retail franchise showed that annual labour costs under the new act would increase markedly from those under the provisions of the old act.
Tito Mboweni slams the privileged few

JOVIAL RANTAO

The National Party and the Freedom Front have strongly objected to affirmative action legislation piloted by the ANC and have asked Labour Minister Tito Mboweni to withdraw it.

However, Mboweni rejected their pleas and emphasised that the legislation would have to be tabled in Parliament soon.

In an interpellation marked by emotional exchanges, the NP and the FF accused the ANC of introducing racist legislation in Parliament. They were referring to the Employment Equity Bill, which is being negotiated at the National Economic Development and Labour Council.

"The ANC is becoming a racist party," charged Pieter Groenewald of the FF after presenting statistics which he said showed that the salaries of white people had not gone up at the same rates as those of blacks.

Leader of the official opposition, Marthinus van Schalkwyk said: "The ANC is exactly the same as the NP in 1948. Black people don't need legislation. They need common sense. There are 40,000 institutions which have to be administered if the legislation is passed. Government must reconsider this legislation which is immoral and will destroy jobs. Racial classification under the old order and the new order is equally dangerous." [CT61396]

Mboweni submitted a file to Parliament containing all racist legislation promulgated by the NP and said a situation where management in South Africa was still 96% white male could not be allowed to continue.

"The people who oppose this legislation should be destined for the dustbin of history. Who is in the choir singing a song against affirmative actions? Those are the people who were privileged in the past. You think you can invite black people and insult them by opposing affirmative actions. We're going to bring this legislation to Parliament and change all those wrong things done to this country by your (NP) ancestors," Mboweni said.

The Minister has insisted that South Africa, more than any other country, needed government intervention to deracialise its workforce.

Incentives offered by the legislation to companies which comply would include access to State contracts worth R65-billion per annum. On the other hand, companies which fail to eliminate discrimination will be denied access to the lucrative state contracts.
Nedlac meets tomorrow about tough issues in work equity bill

Renee Gravitzky

GOVERNMENT, labour and business resume negotiations on the Employment Equity Bill tomorrow to resolve outstanding issues, the National Economic, Development and Labour Council (Nedlac) said after an executive council meeting on Friday.

Nedlac participants refused to divulge details of the talks, but sources said these issues included the Congress of SA Trade Unions' demand for a clause on reducing the wage gap and concerns expressed by small business. It is believed that business is concerned that the equity net is being cast too wide for small business if the turnover criteria is included.

During negotiations parties have considered extending the definition of designated employer to include both the number of employees and turnover based on the definition in the Small Business Act.

Besides discussion on the bill, the executive council dealt with preparations for the presidential job summit later this year.

Nedlac executive director Jayendra Naidoo said there had not been enough political weight behind the process and there was concern that constituencies had not yet tabled their proposals. Government agreed to establish a senior-level committee to drive the process and ensure its "tighter management".

Naidoo said labour and business submissions would be tabled this week. It is unclear when government will make its submission.
Firms obliged to redress discrimination

The Employment Equity Bill expected to go before Parliament in the current session has far-reaching implications for business as it imposes on employers an obligation to redress the injustices of institutionalised discrimination, says Andre Heyns of the National Employers Forum and senior partner at Snyman van der Heever & Heyns.

"The Bill intends to address the disparities in the country," he explains.

"According to the International Labour Organisation, South Africa has the highest levels of inequality between rich and poor in the world.

"The Bill will force all players to give the issue of affirmative action serious thought and to develop a plan to address employment equity."

The Employment Equity Bill requires employers with 50 or more employees in the private sector and all public service employers to develop an employment equity plan through consultation with employees. Flexible targets must also be set.

Heyns says employers will be obliged, after consultation with staff and unions, to prepare an employment equity plan within a certain time frame.

He says the Bill requires the process to be completely transparent.

Prescribed notices should be set up in workplaces to inform staff of provisions of the Act. Employees should also be made aware of the result of negotiations surrounding the development of the employment equity plan.

Once the employment equity plan has been formalised, a summary of it must be made available to all staff.

Employers who fail to implement an equity plan face a fine of R500 000.

Heyns says the director-general of the Department of Labour may review equity plans.

He points out that employers with less than 50 employees will not be subject to the proposed Act.

"An interesting new development with regard to anti-discrimination within the Bill," says Heyns, "is that an employer can now be found to have unfairly discriminated against an employee on the grounds of family responsibility, which has raised concern among employers.

"However, the major criticism of the Bill is the distorted impact it will have on the labour market. It will increase the price employers are going to have to pay to employ a talented affirmative action candidate.

"Another concern is the advantage smaller companies, who are not subject to the provisions of the Act, will have over larger firms."

Heyns feels the Bill will introduce unnecessary new administrative costs for business and promote inefficiencies.

He says the fact that employers will have to consult with every union that represents workers in the company is impractical and suggests the normal majority-rule principle should apply and consultation be limited to the major unions.
Progress in addressing unfair discrimination.

The constitution states that a person may not be unfairly discriminated against on the grounds of race, gender, marital status, pregnancy,atio, physical or mental disability, or age. Measures have been put in place to ensure equality and non-discrimination. This includes the country's laws and regulations, which are designed to protect against discrimination.

The courts have played a crucial role in interpreting and enforcing these rights. The landmark case Lambda vs. Nkululeko Hlathi in 1989, where the Constitutional Court declared some laws unconstitutional, has set a precedent for future cases.

The legal system continues to evolve, with new cases and rulings that further clarify the boundaries of discrimination. The country is making progress towards a more inclusive and equal society.
State Ponders Labour Law Reforms

Putting Their Heads Together... 
John Goman

On the front of the page, there is a photograph of a man and a woman, possibly representing the heads of two individuals engaged in a discussion. The text discusses the potential problems and solutions related to labour law reforms. The article mentions the need for a balanced approach to address the issues and emphasizes the importance of consultation and discussion among stakeholders.

However, the content is partially obscured and difficult to read in its entirety. The text appears to be discussing the implications of labour law reforms on various aspects of the workforce, including employees' rights and responsibilities, and the potential effects on businesses.

Despite the challenges in reading the text, it is evident that the article is focused on the critical need to consider the implications of such reforms and to involve all affected parties in the decision-making process to ensure a harmonious implementation.
Violent strikes in the spotlight

Two years from its inception, the Labour Relations Act is not a simple one to implement

Reneé Grawitzky

The effectiveness of the Commission for Conciliation, Mediation and Arbitration and the increasing number of strikes associated with violence come under the spotlight as the Labour Relations Act enters its third year in operation today.

The act, which came into effect in November 1996, was supposed to herald a new industrial relations regime characterised by speedy and effective dispute resolution and structures to facilitate a move towards a more co-operative style of industrial relations.

Andre van Niekerk, a labour lawyer who was involved in the drafting of the act, said that while the fundamentals of the act could not be questioned, problems had occurred in terms of implementation.

These problems occurred largely in relation to the commission, which faced capacity problems as a consequence of unexpectedly large case loads which in turn had put a strain on the system.

Van Niekerk said it was hoped that amendments to the act, passed by Parliament last month, would assist in addressing the problems being experienced.

Durban-based consultant Pat Stone said capacity problems had led to a build-up of backlogs at the commission.

She said that there was concern over the quality and consistency of decisions taken by the commission.

This placed additional pressures on the Labour Court, which had to review some of the decisions.

Business SA spokesman Frans Barker said that while the act was working, there were elements that did have to be reconsidered.

These included the discretionary powers given to the labour minister with regard to the extension of bargaining councils to non-parties, the quantum of compensation for procedural defects in cases of unfair dismissals and the extensive protection given to those on secondary strikes.

An analyst said that the act could be judged to be a success if it was considered as a labour market instrument.

However, as a social policy instrument it had been a disaster.

"It did nothing to address the country’s biggest post-apartheid problem — that of unemployment."

The legislation had raised awareness of the role played by labour market policies in economic decision-making to the point where employers did not want to invest or expand their services.

The market and business gave the legislation a thumbs down and since they determined the level of investment and job creation, the consequences of the act were serious, he said.

Wits University sociology professor Eddie Webster said the act, plus subsequent legislation, was stretching the capacity of labour and business.

The new industrial relations system required parties to think and act differently, but neither had fully accepted the rights or interests each party had gained as a result of the new legislation, he said.

Besides a failure to move to a more co-operative workplace, parties had not developed adequate co-ordination between the levels of bargaining which remained an unresolved issue.

Stone said the idea that the act would create an atmosphere of greater consensus had been belied by increased industrial action, largely caused by economic pressures on both parties.

"If the economic reality is job insecurity, tight employer budgets and high labour expectation, there will still be conflict. Legislation cannot change that."

Webster warned that the stability of the industrial relations system and the consolidation of democracy could be threatened by the rise in the number of the socially excluded — those who did not have access to income security.
Cape Town — Outsourcing of services as a means to trim staff may be curtailed should the Labour Court of Appeal confirm a ruling by the Johannesburg Labour Court.

This follows a ruling by Justice C. Seady that employees who may become redundant must be transferred to the contracting company that would deliver the services.

Earlier this year Superrent concluded a contract for Powerplus to take over the running and maintenance of Superrent's fleet of vehicles.

Thirty-three employees were retrenched. Thirteen, either mechanics or workshop clerks of Superrent Trading, an affiliate of Supergroup, then applied to the Labour Court on October 5 for a declaratory order that the employment contracts they held at Superrent Trading be transferred to Powerplus Performance.

The 13 members of Job Secure, a small non-affiliated union, also applied for an order for the status quo to be maintained pending conciliation of the dispute.

On the return date of the interim order Judge Seady found that if a business, or a part of the business, is transferred to another as a going concern, the contract of employment is automatically transferred. Conditions of employment must not be less favourable.

Observers say this is the first time that the interpretation of Section 197 of the Labour Relations Act — which deals with the transfer of employment contracts — has been brought before the Labour Court.

This section determines that employment contracts may not be transferred between different employers without the consent of the worker, unless a business, or a part thereof, is transferred as a going concern.

Judge Seady said she was not keen to be dogmatic and follow a judgment of the European Court of Justice which ruled that a man, who bought a house, had to take a maid who came with it.

Lourens Malan, of Snyman Van den Heever & Heyns, acting for the workers, said Superrent had applied to take the matter to the Labour Court of Appeal.
Labour law spelt out by Minister

By Mzwakhe Mliyana
Labour Reporter

New Labour legislation will impact considerably on job retention and job creation initiatives in the forthcoming year, and would be linked to the implementation of agreements of the jobs summit, Labour Minister Manto Mtshweni-Mdladlana said yesterday.

In a review presented on his behalf, in Johannesburg on the second anniversary of the Labour Relations Act (LRA), Mdladlana displayed a hardline attitude towards the prevailing conversion of workers into independent contractors in the building and clothing sectors.

His overview also gave serious reflection on the increased incidence of strike actions this year. The strikes have been more protracted and, in some cases, more acrimonious, he noted.

"Though I have no problems with bona fide independent contractors, I am firmly against employers converting workers into contractors to circumvent the LRA and their obligations in respect of medical, pension and provident funds.

"Workers should not be ill-advised by these employers since they would lose their rights and protection," he warned. "The LRA needs more time to take effect before deceptive conclusions are made about its impact on job retention and job creation."

Mdladlana also noted the difficult period collective bargaining had gone through this year and attributed this to global competitive pressures. "This has narrowed the room for manoeuvring at the bargaining table and is said to have contributed to the increased incidence of strikes."

The number of man-days lost to strike action over the first 10 months of this year increased to about 2.8 million days.

However, they were still below pre-1994 levels.

Mdladlana said a positive feature to note was that most of the strikes were procedural, which gave a clear indication that the post-apartheid industrial relations system had widespread credibility and acceptance by workers and unions.

The overview also showed that the law had indeed laid foundations for more cooperative labour relations.
GOVERNMENT's hasty policies aimed at transforming the private sector will harm business, says Pieter Conradie, newly elected president of the SA Association of Civil Engineers.

Conradie said yesterday the scarcity of black engineers would make it almost impossible for the professional engineering business sector to meet the requirements of the Employment Equity Bill.

There were fewer than 650 professional black engineers in the country and the entire private and public sectors were competing for them. Black engineers were difficult to get, hold on, and keep, as they were continually poached.

The few engineers in the market were moving towards setting up their own businesses to exploit the opportunities of the affirmative action policy, which required government to prioritise emerging contractors in awarding tenders. Given these conditions, it would take some time for the sector to become representative of the broader population.

The sector was taking an active part in training new black engineers and spent about R18m a year - 52% of this covered students from previously disadvantaged backgrounds.
Cosatu to ‘vigorously resist any review of Labour Relations Act

Johannesburg — Cosatu said yesterday that it remained convinced that the Labour Relations Act (LRA) was a legislative milestone in the new order and that it would continue to “vigorously resist any attempts to review the LRA or undermine the gains we have made in introducing equity to our labour markets”.

Cosatu was speaking on the occasion of the second anniversary of the act, at which the department of labour warned that it was setting in motion a process of reviewing the impact of the act on the labour market, especially with regard to employment creation.

Business has tirelessly lobbied the government to review the act, especially as far as it introduced “inflexibility” into the labour market.

"Unfortunately, not everybody will celebrate the anniversary of the LRA. Those who yearn for the return of apartheid exploitation and oppression continue to blame the LRA and other transformative legislation for every little difficulty," Cosatu said.

"These forces try to cover their ideological and sometimes racist positions behind the false arguments of labour market flexibility."

Cosatu said the economy had experienced jobless growth since 1994 and that unemployment had always been high, “yet they continue to blame the new LRA and the new government for both of these factors.”

“No wonder workers interpret these protestations as a preference of apartheid legislation over transformative legislation. They have even tried to blame the Basic Conditions of Employment Act and the Skills Act — which will only come into effect on December 1 1998 and 1999 respectively — the labour federation said.

On Wednesday the department also released a report that showed more than 2.8 million man days had been lost in the first 10 months of this year in strike-related incidents, with at least 11 dead and extensive damage to property.

This, the highest figure since the April 1994 elections, was expected to rise to 3 million man days by the end of this year and was at least four times higher than for the same period last year.
Impact of 1996 labour relations Act uncertain, says Mdladlana

By ZOLILE NQAYI

THE IMPACT of the Labour Relations Act (LRA) of 1996 on employment and collective bargaining is set to be re-evaluated.

Labour Minister Membathazi Mdladlana said this during the second anniversary of the act last week in Johannesburg.

"We have now reached the end of the second year of the act's operation and it is appropriate that we evaluate the act's impact on industrial relations and the effectiveness of collective bargaining," he said.

However, it may still be too early to fully evaluate this since there is an inevitable time lag between implementation and the desired impact of new legislation," he said.

He said the legislation laid the foundations for co-operative labour practices, improved collective bargaining and disputes' resolution.

Mdladlana said the increase in the number of registered trade unions (282 to 468) and employers' organisations (from 191 to 241) also points to conducive conditions for freedom of association created by the act.

However, "these developments were not the intention of the act," he said. "Rather, the act and the Department of Labour seek to promote large and more stable unions as we believe this contributes to more stable industrial relations."

The department is monitoring this development, as the emergence of new unions may be a "transitional phenomenon."

The LRA requires that all labour organisations re-register and its provisions against "single race" unions has forced some of the unions to change in order to conform with the act.

Mdladlana welcomed the International Labour Organisation (ILO)/Swiss Project report on the strike wave and bargaining settlements.

He said almost all the strikes this year proceeded in terms of the LRA.

"It is unfortunate that some of the strikes were accompanied by violence and damage to property. As I have said on a number of occasions, I condemn the use of violence during strikes, particularly now that the workers' right to strike is enshrined in the Constitution and the law," Mdladlana said.

He was confident the violent element in strikes would disappear as the industrial relations environment became stable. The Commission for Conciliation, Mediation and Arbitration and the Labour Court, he added, had significantly improved settlements of disputes.
The Labour Department is working to monitor legislation and ensure compliance. The department has adopted a structured approach to assess the effect of new laws on the workforce. Regular reviews and audits of regulations are conducted to ensure the effective enforcement of labor laws. The goal is to maintain a fair and safe working environment for all employees.
Companies 'prepared for employment equity'

Slightly more than three-quarters of South African companies were generally positive or neutral about the impending employment equity legislation, a survey has found.

According to the affirmative action monitors published by human resources consultants FSA-Contact, most organisations have already taken steps to comply with the requirements of the Employment Equity Bill, despite the fact that it has not yet been promulgated.

In a statement yesterday, FSA-Contact said the survey found that the proportion of senior and middle management positions in South African organisations currently held by blacks had more than doubled in the past three years, and this figure was expected to almost double again at senior management level by 2001.

While 4.8% of senior management positions were held by blacks in 1995, this increased to 11.5% this year, and was expected to rise to 20.7% in 2001.

The proportion of white senior managers had declined from 92.2% to 83.7% between 1995 and this year.

Only 4.8% of top management positions are held by women, compared with 2.6% in 1995. By 2001, only 5% of top managers are expected to be female. — Sapa
Pretoria — The National African Federated Chamber of Commerce (Nafcoc) and the Afrikaanse Handelsinstitut (AHI) summit would establish a joint task team to seek agreement on what relaxation in labour legislation was possible. Jacob de Villiers, the executive director of the AHI, said yesterday. The team would investigate how best to accomplish these changes for the sake of small business development.

The decision followed suggestions made at the summit by Themba Sono, professor extraordinary at the University of Pretoria’s Graduate School of Management and president of the SA Institute of Race Relations.

He said transformation could be greatly enhanced if current “rigid” conditions were relaxed to facilitate the increase and expansion of black business enterprises in the economy.

Sono said the Commission for Conciliation, Mediation and Arbitration (CCMA) proceedings may have the unintended consequence of destroying, not transforming, emergent businesses.

The majority of the 55,000 cases referred to the CCMA between November 1996 and November last year involved small businesses, he pointed out.

He said South Africa’s labour unions could kill transformation because they would ultimately also “hobble black business.”
The Labour Relations Act does not permit an appeal against the merits of awards by the Commission for Conciliation, Mediation and Arbitration, but the awards may be reviewed by the Labour Court.

Policy reasons for limiting rights of appeal were to ensure early finality and to discourage a litigious process favouring parties with deep pockets. In the absence of a right of appeal, parties unhappy with arbitration awards have resorted to reviews with alacrity — at the rate of two a day, according to a commission source.

Some decisions of the Labour Court encouraged this tendency in adopting a wide standard of review which was sometimes indistinguishable from an appeal on the merits of a decision.

The Labour Appeal Court's decision in Carephone v Marcus NO and others, which narrowed the scope of review, could reduce the flood of reviews, if it is adhered to. The judgment rejects the wider standard of review of arbitration awards applied under section 158(1)(g) of the act and confers that the correct test is spelled out in section 145.

This section confines successful grounds for review to improperly obtained awards, gross irregularities, acts of gross misconduct and awards outside an arbitrator's powers.

The court emphasised in the strongest terms that a decision could not be reviewed merely because the arbitrator's award was incorrect or unjust.

Nonetheless, it conceded that the requirement of justifiable administrative action, under section 33 of the constitution, means that an arbitrator must reach a decision which, on an objective and rational basis, is justifiable on the available evidence before the arbitrator.

In practice, preserving the court's intended demarcation between appeal and review on the basis of deductive coherence will demand great restraint on the part of judges. They must resist tampering with the standards adopted by arbitrators in reaching their decisions, and avoid collapsing this test of logical integrity with more invasive standards of review.

An important procedural consequence of the judgment is that review applications must be brought within six weeks of an award, which should discourage the practice of filing review applications inordinate late.

Another Labour Appeal Court decision which attempts to clarify some of the uncertainties arising from conflicting decisions of the Labour Court is Johnson & Johnson v CWIU (PA15/97).

Confusion has surrounded the question of compensation which may be awarded in cases of procedurally unfair dismissal. The Labour Appeal Court has partly solved the question, but in doing so has created a new area of uncertainty.

The case concerned the initial selection of retrenchees on unfairly discriminatory grounds, which the employer sought to rectify shortly after the retrenchments took place.

The offer of rectification was not accepted by the retrenchees.

The court held that, although the retrenchment had been procedurally unfair, this was not a case in which compensation for procedural unfairness was due.

These facts formed the basis on which the court spelled out two principles governing compensation awards for procedural unfairness in dismissal.

First, the adjudicator has discretion whether or not to award compensation for procedural unfairness.

Second, if the adjudicator does make an award of compensation, then section 194(1) of the act prescribes the amount. That amount is the value of the employee's remuneration from the date of dismissal to the last day of the hearing.

The certainty about the compensation formula to be used must be welcomed, but not the new uncertainty surrounding the exercise of a discretion to award compensation or not.

The underlying problem with the provisions of section 194(1) is that nobody envisaged it would take the commission so long to arbitrate on unfair dismissals.

It was assumed that awards of compensation for procedural unfairness would not stretch beyond two months' remuneration.

The recently tabled amendments to the Labour Relations Act demonstrate that the social partners have been unable to resolve this glaring difficulty in the act.

The contorted solution arrived at by the court is a natural consequence of provisions based on false factual premises.

Ironically, employees who think the rigidity of the compensation formula favoured them, may now find the formula of little help, as adjudicators exercise their discretion not to award compensation for procedural unfairness when they feel uncomfortable with the amount of compensation they will be compelled to award if they do so.

The judgment at least settles the true character of the compensation awarded: it is compensation for the loss of the right to a fair procedure, which is not the same as damages awarded for patrimonial loss.

Consequently, an employee should not have to demonstrate the actual financial loss he incurred as a result of his dismissal to qualify for the compensation.

Nor, presumably, is he under a legal duty to minimize such losses by seeking alternative employment.

Robert Lagrange is a member of the SA Association of Labour Lawyers. He writes in his personal capacity.
Warts and all, we are
A tearful princess can tell us about

As Spannochest River Road curves into the bend at the Constantia Reformatory, where the shaded pine forest ends and the rugged landscape of the vinous hills begins, there is an inconspicuous bridge that bears the name of the Prinskaasteal River. It's not much of a river at all, but what's interesting about it is its story.

There was a time, legend has it, that the Elephant's Eye cave high above the pine plantations of Tokai was the retreat of a Khoekhoen princess. The cave, in fact, used to be called Prinskaasteal.

The princess was reputedly held captive in the cave by Portuguese settlers, and in her tears formed a stream which created the river, now called Prinskaasteel, and dammed up on the flats to form Princess Viel.

This princess is an intriguing character, or, more properly, an intriguing fiction. In her story are the clues of a history.

One can picture this metier being bullied into submission. Or merely ignored, left to watch from her mountain, the gradual usurpation of her realm under the steady attrition of civilization, and the cultivation and land-ownership that went with it; the precursor to the colonial domination that would last for the next few hundred years.

It's remarkable that, especially since it's almost certainly apocryphal, "her" memory survives. The emperor inclinations of politicians or preaching officials of the past might well have led to the erasure of this story in favor of a token renaming which, at the time, to them, would have seemed apt, generous, intelligent, rational, historical even.

That's the trouble with renaming things.

The ANC's proposal to the City of Cape Town to find new names for some city streets and squares is understandable.

The natural impulse of any new order is to "rehash" the past to its liking, especially a past filled with the suffering and pain that characterised the apartheid years.

Regardless of the renaming of the NY—"native yard" —prefixes of township streets is one element of the proposal which it is difficult to find fault with, though it should be up to residents themselves to decide. And some way should be found, symbolically, to remember that is what they were called.

But expunging irksome names from the record is another thing.

People like J B M Hertzog and Oswald Pirow, founding spirits of white nationalism and the racist ideology that went with it don't necessarily deserve to be honoured, but it would be a mistake to forget them, or pretend they were not who they were in their time.

I am inclined to think that Cape Town can never be what it was. On the face of it, this appears to be a puzzling, self-contradictory nonsensical, an illogical notion.

YEAR OR NO?

Should the names of places, cities and buildings and bridges that remind us of the old South Africa be changed?

Have your say: Fax 488 4793; Write to the Editor at 122 St George's Mall, Cape Town, 8001. Or e-mail: argle@independent.co.za.

Of course Cape Town can, will and should become something other, but it's being, the place it is, an accretion of history to which amount of revisionism can actually change.

Cape Town can only be different in the knowledge of what it was, of knowing itself.

The layered history of the place is the key to its integrity, and the skewed pretence of wishing we had not been what we were merely raises the prospect of a future of forgetting.

The most challenging demand of a painful history is the need to remember it, and, invariably, cultivating amness is the first step on a hapless return journey.

There are even times that I think that an H F Verwoerd building turned, through democratic elections to serve, the needs that represent the greater mass of South Africans is a more potent, perhaps honest, symbol of transformation than a building that has quietly assumed the innocent name of 120 Pleasant Street, at the time, changing it was such an obvious relief from the oppressive symbolism of the old regime's nomenclature, and the easiest nominal means by which to reflect its defeat.

Perhaps, on reflection, an H F Verwoerd building would be intolerable.

But still it's arguable. The cost of changing street names will be the focus of much criticism of the ANC's proposal.

And there is an argument that cosmetic changes of this kind, as many critics will see it, will merely alter the difficult socio-economic reality of the city, and that the money might well be spent to better effect elsewhere.

I don't necessarily find the economics offensive.

I would argue that there is every reason to spend money on Acknowledging the city's past, but by augmenting the record, not by erasure and denial.

The city would do well, in my book, to use innocuously named roadways such as the N1 or N2 or Eastern Boulevard to honour significant figures from the past, to write them into a public history from which to a greater or lesser extent they have been excluded.

The city might also consider commissioning public sculptures for the purpose, and drawing on elements of unacknowledged history in forming new streets and new buildings.

Among the figures who could provide a provocative counterpoint to the colonial or racist imprint might, for instance, be Harry Liebenberg, who was also known as Harry, or Avashu, chief of the Goringhaikonka.

He learned enough English from early contacts with British sailors to act as an interpreter, and was in close contact with Van Riebeeck in the 1650s.

Relations were, predictably, difficult, and Harry was banished for a time to Robben Island.

He later escaped, who grew up in

Very Cape Town:
Archbishop Desmond Tutu is synonymous with many Cape Town signal events, and should be on everyone's to do list.

Rt Rev Cyril Leston, who grew up in
Companies ahead of Equity Act

By Mzwakhe Hlangani
Labour Reporter

EMPLOYMENT equity legislation has gained overwhelming acceptance from the majority of companies even before its presentation to the public, a study by FSA-Contact consultancy has disclosed.

Human resources consultancy spokesman Ms Kris Crawford also revealed this week that most companies had taken steps to comply with the legislation's requirements.

Over 95 percent of the survey participants already had affirmative action programmes in place, while 75 percent of them had adopted a more aggressive approach towards affirmative action.

The implementation of the law is imminent, the Act was passed by Parliament last September.

Crawford said most of the organisations had started to conduct equity audits, increasing training for employees and revising their existing affirmative action policies.

The report found that some organisations had already drawn up a framework and timetable to achieve these goals.

"It is interesting to note that 60 percent of organisations have already made progress towards the compilation of an employment equity plan as envisaged by the legislation through consultation with employees or trade unions and workplace forums."

The study found that the proportion of black managers had increased to 11.5 percent in the past three years, and a projected 20 percent growth at senior management level by the year 2001 was expected.

More significant change was expected among the general staff where the ratio of black employees rose from 56.5 to 66.1 percent over the past three years while the white component of this sector dropped from 25.8 to 15.6 percent.

Blacks accounted for 34 percent of all professional positions compared to 29.3 percent in 1995, while the portion of white professionals declined to 52 percent.

Elevation of women to senior corporate positions has been relatively slow over the past three years and is expected to remain static at around 14.5 percent.

The disabled accounted for less than half a percent of general staff.
Employment act raises practical problems

Employers in sectors which have extended working hours or complicated shift arrangements could struggle to implement the act.

Renee Grawitzky

The implementation of the new Basic Conditions of Employment Act — which comes into effect next week — has raised crucial practical problems for companies which have extended working hours or have complicated shift arrangements.

At the same time, employers in some sectors have expressed concern over the publication this week of the new earnings threshold in the act which doubled from between R34 500 and R40 500 under the old act to R89 458 a year. Employees earning more than this amount will be excluded from all the provisions relating to working hours, overtime rates and meal intervals.

However, some employers and consultants said the threshold increase could have major cost implications as more employees would be covered by the provisions in the act.

Employers said some levels of management — who are required by the nature of their jobs to work extended hours — will also be covered and this could prove problematic.

The labour department said yesterday that interested parties were invited in July to give comment on a proposed increase to R83 000 in line with the Unemployment Insurance Act.

The department said there was some opposition to the proposed threshold increase but most parties supported the move.

This increase could have major ramifications for the retail industry, for example, but would only be applicable once the current wage determination expired and a new sectoral determination was published.

The act provides that wage determinations still in operation will apply until they expire or are replaced by a sectoral determination following an investigation by the Employment Conditions Commission.

Bargaining councils have six months to bring their conditions in line with the act in respect of hours of work and annual and maternity leave, and 18 months to bring their sick leave provisions in line.

A snap survey among employers in a number of sectors revealed practical problems in implementing the new night shift arrangements, with the new definition stating that night shift starts at 6pm. In addition, employers will be required to ensure transport is available for employees who work night shift.

Other problematic provisions include working time arrangements, especially for companies operating in the service industry — meal intervals, the 10-hour overtime limitation and payment for work on Sundays.

Under the old act some operations were designated as continuous operations, which meant they were exempted from paying overtime on Sunday. This no longer applies.
Act will be focus of negotiations

SA needs to balance wage equity with economic performance, writes Ferre Grywitz

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Employers brace for onset of new labour law

BY RYAN CRESSWELL

The working lives of millions of employees, especially those in domestic service, in security firms and on farms, will begin to change for the better when the Basic Conditions of Employment Act comes into effect next week.

The law is a major step in the Government’s reform of labour legislation, begun in 1994, and provides details on workplace conditions outlined in the Labour Relations Act.

But smaller companies canvassed by The Star say they are worried that the new law will affect their competitiveness and force them to go under or underground.

The law requires that employers have to pay employees within seven days of the completion of work and provide written details regarding the work done; that employees must agree to deductions in writing; notice of termination ranging from one to four weeks must be given; that a certificate of service will have to be provided; no children under the age of 15 can be employed; leave must be provided, overtime must be paid and work hours will have to be reasonable.

However, Colin de Kock, executive director of the Gauteng Master Builders’ Association, called the new legislation “the Inflated Conditions of Employment Act”.

He said, “There is absolutely no flexibility in the act for medium, small, and micro concerns, which will have to do the same as big companies.

Gauteng Building Bargaining Council general-secretary Wynand Stoppelberg said the new overtime-earnings and working-hours salary threshold in the act concerned him most.

Professor Loei Douwes Dekker of the Wits Business School said there were peculiarities in certain industries, and it was possible there was not enough flexibility in the act to allow concerns to work around individual needs and meet competitive requirements.

Lisa Safel, chief director of labour relations at the Department of Labour, said an extensive survey had found that most small businesses already fell in line with the act, but she acknowledged there were problems with micro-businesses.

But Cosatu has problems with exemptions for small businesses. Head negotiator Khumbula Ndaba said the organisation regarded the act as providing “minimum conditions”, and that anything less was not acceptable.

“Overall, our view is that it is a positive piece of legislation for the majority of workers. If you look at domestic, farm and security workers especially, for the first time they are not being treated differently,” he said.
Petrochemicals Weak Rand, strong oil price buoy earnings

Sasol fails to impress the market

Johannesburg — A weak rand and strong oil prices boosted earnings at Sasol, the petrochemicals-from-coal producer, but analysts had expected stronger earnings and the share price lost 25c to close at R51.50 yesterday.

Sasol, which derives most of its income and profit from sales of synthetic fuel, shrugged off a lower tariff protection floor and reported a 22 percent rise in attributable earnings to R1,55 billion for the six months ended December 25.

Earnings a share rose 29 percent to 203c, which was well below reported analysts’ expectations of 237c a share.

The group declared an interim dividend of 65c a share. Operating profit rose 26 percent to R1.99 billion. The lion’s share of this was generated in the synthetic fuel division which benefited from stronger oil prices during part of the period as well as an average rand to dollar exchange rate of R4.51 during the period under review, compared with R4.68 the previous year.

Sasol’s controversial tariff protection, described by many as a subsidy, was negligible during the period. The floor price at which protection kicks in was dropped to $18 a barrel, which resulted in R74 million worth of protection accruing to Sasol.

Peter Cox, the managing director of Sasol, said the synthetic fuels division had improved its operating efficiencies and cut costs out of its Secunda operation. Further savings from new-generation synthol reactors could add R400 million to operating profit when they start coming on stream between next year and 1999, he said. Output of synthetic fuel from Secunda could be improved by a further 20 percent by the new reactors.

Sasol Chemical Industries, which accounted for about 33 percent of the group’s operating profit through the production of more than 120 chemical products from coal, raised its profit 30 percent to R648 million for the half-year.
Compulsory contracts, which will protect all domestic workers, will have to spell out terms of employment, working hours, annual leave and overtime.

New era for maids and domestic worker Monica Mathibe (31) has two children to support in the Eastern Cape on a salary of R72 a month. Each month, she sends home R50.

She works six days a week and gets every third weekend off. She does not pay for her accommodation, food or medical bills and yet she struggles to get by.

"My quality of life was much improved when my employer, Muriel Hare of Kalk Bay, approached her with a conditions of employment contract."

This contract will be compulsory from tomorrow in terms of the Basic Conditions of Employment Act for all employers who have a domestic worker who works for more than 24 hours a month.

The contract will have to specify the terms of employment, working hours, annual leave and overtime.

Here is 66 and lives alone with her quadriplegic daughter Dawn. She has four domestic workers who clean the house and help take care of her daughter.

She decided to have contracts drawn up with all of her employees after an unpleasant incident with a former employee.

She approached an agency Confederation of Employers of Southern Africa, and a consultant came to see her and her staff.

"Much to the surprise of Mathibe and the other staff, the pay was actually increased after it was discovered how much overtime they worked. For Mathibe it means a very welcome extra R72 a month."

"I am very happy with the contract," she said.

Pamela Rowan, the new cook, agreed "Yes, it is a good thing - it helps us very much."

Hare said the domestic workers in her home were more than just servants - they were a part of the family.

When her previous cook decided to leave her service, she was sodden.

But then she arrived from the Department of Labour, claiming that she had unfairly dismissed the cook and now owed her money.

"We had never had such unpleasantness before," she said.

When she approached her employees about contracts they were at first sceptical.

But when they heard about the increase in their salaries due to the overtime, their scepticism turned into delight.

For domestic workers like Mathibe, the contract means that for the first time they are in a position of power.

The act ensures that domestic workers, for the first time, will be treated like other workers.

"The big difference is that domestic workers are no longer seen as 'other' workers, but will be employees just like any other," said Department of Labour senior inspector Grant Thays.

The most significant addition to the act is the need for a formal contract between the employer and employee, which lays down the exact terms of employment.

The contract, needed for when an employee works a minimum of 24 hours a month, will have to include the personal details of both employer and employee, the basic job description, hours to be worked, overtime details and leave conditions.

The contract does not have to be signed but if it is, it will be a formal contract.

The new Basic Conditions of Employment Act sets a minimum but states that domestic workers should not work more than 44 hours a week.

Three hours of overtime is paid at one and a half times the basic rate per hour, but no more than 10 hours overtime should be worked in a week.
will protect all domestic workers and their employers, working hours, annual leave and overtime hours, writes Andrea Botha

nails and madams

Mathebe's employment contract had been signed and sealed. For Mathebe it will result in more money at the end of each month.

The conditions of overtime should also be carefully worked out. If the employee wishes to change these conditions, this can be done after 12 months.

The new Basic Conditions of Employment Act sets a minimum wage but states that domestic workers should not work more than 22 hours a week.

Three hours of overtime is allowed per day, but no more than 30 hours overtime should be worked in a week.

The act also empowers domestic workers who are found guilty of contravening the new act. Domestic workers who work less than 24 hours a month are deemed casual workers and no contract has to be signed between them and an employer.

They said the new act would curtail abuse of domestic workers and empower them, and lay the foundation for discussion of a minimum wage.
Business criticises
govt for oversight in calling for comment

Commission has not heard submissions

Reneé Groosz

BUSINESS has criticised government for calling for comment on its plan to grant small businesses flexibility in implementing the Basic Conditions of Employment Act before hearing the recommendations of a commission set up to advise it.

The Employment Conditions Commission was established in terms of the act to advise the labour minister on issues relating to the legislation.

The National African Federated Chamber of Commerce said business and labour were supposed to make submissions to the commission on Friday on its approach to small business and the coming into operation of the act tomorrow.

Business was concerned about whether small business should implement the provisions of the act now, or await a sectoral determination which might give it some flexibility in implementing a number of the act’s provisions.

But the commission failed to consider the matter because, ahead of its meeting, government published a notice in the Government Gazette requesting interested parties to comment by December 18.

A source close to the process said the commission intended calling for a meeting with the labour department to discuss this oversight.

A tripartite ministerial task team, appointed by former labour minister Tito Mboweni, recommended that a special determination be legislated for companies employing less than 10 people before the act came into operation.

This recommendation was based on a report on the effect of the act on small businesses compiled by the National Enterprise Promotion Agency.

The task team recommended some flexibility in implementing conditions of employment in relation to the working of overtime, the payment of overtime; annual leave and family responsibility leave; and agreement on the averaging of hours of work.

Commission chairman Edwin Molahlehli said that in view of the publication of the gazette, it was agreed to await public comment and then take a decision. Molahlehli warned that as an independent body, the commission would not be pressured by anyone "if we have insufficient information or time to consider issues".
Moosa to meet
King Goodwill

Deborah Fine

CONSTITUTIONAL Development Minister Valli Moosa is expected to meet Zulu King Goodwill Zwelithini today to discuss the formulation of policy on traditional leaders.

Moosa's spokesman, JJ Thabane, said yesterday that other matters to be discussed included the king's involvement in the identification and appointment of traditional leaders and adjustments to their remuneration.

He said today's visit was not an isolated incident as Moosa had already held talks with kings and traditional leaders in several provinces.

The discussions were aimed at involving traditional authorities more intimately in the drafting of final government policy on traditional leadership.

Moosa's department is preparing a white paper on the future role of traditional leaders, which is expected to be released next year. The purpose of the paper is to examine to what extent traditional authorities should be accommodated within SA's democracy and what form this should take.

Court ruling welcomed

Jonny Steinberg

THE labour department has welcomed the Constitutional Court's ruling on Friday that the law which bars employees from taking common law action for damages against employers was not unconstitutional.

The law was struck down by the high court in July and was sent to the Constitutional Court for confirmation.

In his unanimous judgment, Judge Zakaria Yacoob overruled the high court's July decision and kept the law on the statute books.

The case — Susara Jooste vs Score Supermarkets — concerns an employee who sustained severe injuries when she slipped on a wet floor at work.

In terms of labour law, Jooste can seek limited compensation from her employer without having to prove fault. In exchange she is barred from suing her employer for damages under the common law.

Jooste claimed that the law preventing her from using the civil courts violated her right to equality.

In his judgment, Yacoob argued it was doubtful whether employees were better off under the common law. In exchange for forfeiting their right to sue in the civil courts, employees could claim compensation without having to prove fault and without incurring the costs of instituting civil proceedings.

The court's only task, Yacoob said, was to determine whether the clause barring employees from the civil courts was rationally connected to the purpose of providing workmen's compensation.
Poor support for Equity Act

A survey shows companies have little commitment to the EEA, a fact the state calls "worrying." But the response of business is that equity requires more than writing statutes. MASEE ZAKIER reports.

Most of the companies surveyed by the Department of Labour do not consult their employees when determining policy concerning questions of equal opportunity.

Furthermore, 67% were not committed to the new Employment Equity Act (EEA) and were not found to be accountable with regard to legislation.

"It's a worrying factor if we want this legislation to succeed," it is legislation that is going to be promulgated at any time and have that low level of commitment is very frightening," the department's labour relations deputy director Meiko Magida told a Black Management Forum Conference on employment equity.

The EEA aims to compel businesses to diversify the workforce across the spectrum of business sizes for non-compliance range from R50,000 to R500,000.

Magida said the survey undertaken a national baseline survey to establish the best practice currently being used within companies.

This was to help the department put into place analysis methodology systems to enforce and enforce the EEA.

He said that though only 450 of more than 800 companies contacted had responded to the survey, it was nonetheless "the most comprehensive survey" of its kind in South Africa to date.

The survey revealed that, with regard to consultation and accountability to issues involving affirmative action, only 35% of companies were committed to the EEA legislation.

The survey had shown only 1.3% of companies had allocated funds to make resources available to develop the implementation of the EEA campaigns and that 77% of companies were not consulting, communicating or discussing questions concerning equal opportunity with their employees.

Magida said the department's reluctance to address the issue was due to the sensitive nature of the topic. The one hand there were employees who had fears about it and employees on the other who had great expectations of it.

"It has been felt specifically to human resources management to deal with. We are saying that (initiative) must be driven from the office of the chief executive of the company," said Magida.

While the result of the survey was clearly an embarrassment to business, Magida said that neither he nor the department were out to embarrass companies.

The department was not being stringent about the legislation and was keen to see it enjoying legitimacy similar to that of the Labour Relations Act, he said.

Presenting a business response to the passing of the act, Cape Chamber of Commerce and Industry president, Johann Baard, said that with increasing levels of value being attached to individuals' contributions to the organizations, they work for, it was certain that no one seriously believed the yawning skills gap in society could be solved by "brazen exploitation and squeezing through legislation.

"The challenge is a far more formidable one than simply writing statutes," he said.

"Experience across the world has demonstrated this and hopefully we will learn from this and not waste precious time and resources by re-inventing the mistakes made by others,"

While much debate has been generated by the EEA, Baard said most of the debate is about the issue of training and development as identified in the act before the discussion.

Questions on what South African business, government and all other stakeholders were going to do in delivering on the key education and training component of the act still had to be seriously addressed.

"We talk about education and training when we talk about the Department of Education and Training, not when we talk about the Department of Labour, certainly not when we talk about affirmative action and most definitely not when we talk about the Employment Equity Act.

"If we don't bring about an accommodation of potential as a key criteria in a company's employment equity plans in preparing people, in identifying future potential, and on the other hand prioritizing ability when we are debating promotion and appointments then our employment equity plans will inevitably attract the stigma of tokenism.

In its impact and contribution to transformation, it would probably be helped by history as having failed to become an instrument for the upliftment and development of the disadvantaged in society.

Baard said that from a "pure labour market, economic point of view," the reality of an oversupply of semi-skilled and unskilled labour on the one hand, and a critical shortage of skilled, technical, professional and managerial personnel on the other, was generated - and is still being generated - as a consequence of the so-called apartheid wage gap, and there can be no doubt that this skills gap is a result of apartheid policies.

He said supply and demand generated the similar outcomes of more value being attached to scarce skills at scarce supply and scarcer skills at an outlay that in context "we need to realize that labour is just the capital - it gravitates to the most lucrative market."

"Oprah" tonight.
Employment equity now in the lawbooks...
South Africans’ right to privacy

Belinda Beresford

South Africa’s Constitution should give employees more protection against curious employers than that enjoyed by workers in countries such as the United States and the United Kingdom.

But the extent of those rights to privacy entrenched in the Constitution have yet to be tested legally.

Labour consultant Andrew Loy says employee privacy is “an absolutely unpromised area”.

While he thinks employers may have the right to search lockers and desks, this would have to be done openly with the employee present and consenting, and in the presence of witnesses.

But lawyer Halton Cheadle says employees’ possessions should be protected from rummaging hands and prying eyes, although this is still open to debate. If your employer owns the locker, can you own the locker’s possessions?

Cheadle says the constitutional guarantee of “bodily and psychological integrity” would not allow employers to test your blood or urine without consent.

However, you do have to obey the “lawful and reasonable commands of the employer”, as long as they are linked to your duties.

What exactly this means is still being debated, however. For example, would it be justifiable to test airline pilots for sobriety before they fly?

Collecting information from third parties should also be done with the consent of the employee.

The uncertainty would be whether refusal would justify a company starting disciplinary action or refusing to employ someone.

Phone-tapping is illegal in South Africa, although call monitoring — checking how long employees spend on the phone and to where — is allowed and common practice.

Privacy can extend both ways. Does an employee have the right to see what is on his or her company file? Yes, in some circumstances, such as disciplinary hearings.

A big area of controversy has been health, especially since many large companies run or manage stuff medical aids. Does your employer have the right to know your HIV status or your predisposition to back problems? Perhaps, if it impinges on your ability to do your job.

Some people say if you are concerned about privacy you must have something to hide. But all rights have a nasty habit of being eroded unless reinforced.

“Use it or lose it” applies to all rights, so check any forms. For example, a life assurance policy may give the organisation the right to share the information with other industry members.

Also check to see where copies of letters are being sent.

One large medical aid apologised to a worker after letters asking for further details about medical conditions were copied to the employee’s salary department.
Labour trio dancing to Gear's tune?

Ann Eveleth
IN THE ACT

Three pieces of labour legislation working their way through the halls of Parliament promise dramatic changes in the workplace.

But tight human and financial resources, coupled with the growth, employment and redistribution programme's (Gear) industrial growth rate, raise questions about how effective these changes will be.

The Basic Conditions of Employment Act and the controversial Employment Equity Bill are poised to be complemented by the Skills Development Bill, now nearing the end of its journey through Parliament.

Highlights of the Basic Conditions of Employment Act are a 45-hour work week, with a progressive reduction to 40 hours, four months of maternity leave, family responsibility leave, and an end to child labour.

The main objective of the Employment Equity Bill to have survived, fraught negotiations with business and political opponents is an end to discrimination against employees and job-seekers on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religious con-

The Skills Development Act promises work- ers shorter working hours, reduced health risks, better quality of life, and an opportunity to overcome historical obstacles to advancement and to climb the economic ladder with the help of employer-sponsored training programmes.

That is the dream. As Congress of South African Trade Unions collective bargaining co-ordinator Bogoshi Tshimela puts it: "These three laws are intertwined. They talk to each other and they mark an important step towards transforming the labour market."

But every dream has a wake-up call.

High levels of unemployment, unresolved funding issues, exclusions and a series of back-out clauses for employers could render labour's dreams of blanket protection for the vulnerable workers who need them most meaningless" without an effective job-creation programme.

"These are complementary laws designed to fit into a progressive industrial policy, but unless you tie the legislation to job creation, you may as well not bother."

"Gear's record on job creation is dismal, and we are losing tens of thousands of jobs."

A series of recent Labour Bulletin debates laid bare the pitfalls of the labour reform project contained in these laws.

Recent studies suggest a 45-hour work week will not necessarily translate into more jobs, as companies seek to increase workloads, multi-tasking, mechanisation and the use of shift and casual labour to meet their production requirements.

The use of shift, contract and casual labour is an international phenomenon, but it has particular implications for women. They are most affected by it as it exposes them to economic insecurity and dangerous travel, and aggravates the burden of domestic responsibilities.

The gender factor on maternity leave might also ring hollow, as the Basic Conditions of Employment Act is silent on the issue of payment for maternity leave. Ongoing investigations into maternity pay propose the Unemployment Insurance Fund for the purpose, but Collins argues that this "lets business completely off the hook."

Businesses responded critically when the legislation was first introduced and, through its participation in the National Economic Development and Labour Council (Nedlac), secured some hefty concessions.

The Skills Development Levy Bill is still awaited, but the mechanism to fund the Skills Development Bill's objectives has shrunk from labour's asking price of a compulsory levy on employers of 1/4 of the wage bill to a mere 1%.
Employment equity will force

THE EXPERIENCE of senior black managers and employees reveals that the Employment Equity Act may prove to be the toughest piece of legislation to implement in a corporate business environment still dominated by white males. Senior Writer YAZEED FAKEER reports.

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E all know it as affirmative action, but in certain quarters it has already become cynically known as "affirmative auctioning." The "open door" policy at many companies has become a "revolving door," where hopeful black candidates are in one mouth and out the next. When companies open their doors to people from all sections of the population and employment equity policies, they usher in people with different language, religion, gender, sexual preference, or ideas from other sections of the company culture. But often that is where the accommodation ends — and the conflict begins.

"You know as well as I do that conflict can be overt as well as covert and that there are ways in which the one that never riles to the surface," said Ron September, of the Development Dynamics human resources consultancy.

Speaking at a conference last week organized by the Hery Organisation on the "action" bug in Cape Town and its implications for business, he said, "If conflict is kept bubbling under the surface, we cannot get to deal with it effectively."

"Nobody can come from outside and tell you what to do. They will never know your company well enough," he told a range of delegates from business, government, and educational institutions.

It remains a major obstacle to corporate transformation, he said. The Employment Equity Act compels companies to diversify their workforce and imposes fines of R30 000 to R300 000 for businesses that do not comply with the legislation.

In response, a senior consultant for Development Dynamics who is married to Ron, told meeting that if companies do not take a strategic level deal with and discuss such questions, managers — and certainly employees at the company — will not be able to integrate into the process of change.

Having done hundreds of exit interviews with black employees, she said there are certain critical events for a black manager starting a new job that companies must be mindful of.

Some black managers are neither told they are the first black person to join the company, nor that they are the first black person to join at that level.

"In other words, nobody told them they would be a token," she said. "At that point already they feel condescended because they felt the company had been dishonest."

Corporate culture games are played, she said. Black candidates do not know how to deal with these, such as being taken to expensive restaurants and served oysters.

"They would say to me, "How do I know what to do with oysters?" Or "How do I know what to do with drinks to order other than the double scotch or brandy that I would have at the good old Spur?" So already at the job offer level they feel the process has started.

Often, however, the employment package is so attractive that they find it hard to turn down.

They are then surprised to find that — though they thought they were being employed for their competency and skills — they are sent on bridging courses where all the participants are black.

"They then start asking themselves, "But if they thought I was such a good candidate, how come I'm being given so much training?"

They are shown around the company and told by their white colleagues not to hesitate to ask for help. Yet when they do, they are viewed as being a nuisance.

"These new recruits say that they are supposed to be coached and mentored, but there is more informal coaching and mentoring given to whites who start out at the same time."

September cited the case of a woman who joined a company 18 months ago and said she was being rotated through different departments. That time frame, she said, had little value on the job.

Yet younger, white employees had received the company at the same time and then have received actual, on-job training, and "I was still sitting down and being asked if I knew what to do.

September said when she interviewed white managers about these anomalies, the managers themselves aren't quite clear about the scope of the responsibilities of these employees. Black employees find it difficult to know how to conduct themselves in this new environment. If they challenge the system too much they are labelled aggressive, yet white counterparts who do the same are seen as being ambitious.

At a workshop in the Magaliesberg, she said, black managers and white managers were grouped in different chalets. When this arrangement was challenged, the black managers were branded trouble makers because their supervisor said, participants were simply grouped alphabetically.

Yet when the list of participants was checked, she said, this was found to be false.

Black employees are also often restricted to working in auxiliary service capacities — such as in human resources departments — and find that their career paths will not develop.

"They speak of these on-the-job experiences as being part of the company culture, those rules written and unwritten, company culture written by the people who were in there first."

And they complain that they don't even know the rules, they don't know what is regarded as right and wrong and nobody tells them.

"If companies profess to be caring towards their black employees, they must be demonstrated in action, September said.

"And if rhetoric is an obstacle to caring behaviour, we should ask how caring behaviour should become anti-racist caring behaviour.

She urged companies not to pretend that racism does not exist.

"Let's face it, colour blindness, please let's not be colour blind — we must acknowledge that there is such a thing as racism."

She said companies must stop pretending that they are all equal.

"We must stop pretending that we are colour blind and can use them as automatically as our white brothers and sisters," she said. "Black people could also use the "race card" — sometimes justifiably and sometimes without justification — in instances where their performance is questioned.

"In our communities we often get angry at the fact that our people seem to believe that successful black people are crooks or sellouts. A further effect of this stigma is that black people can self-exclude and deny themselves opportunities."

Another speaker, Thokozi Sibulo, of Tsakula Associates, said in an interview that black communities have been closely watching companies' transformation processes. "Black people have been saying, 'Let's check the bona fides of these people, let's give them the benefit of the doubt.'"

"If there is a commitment to transformation, all well and good. But the door is closing on those who are still embarking on the same path and in the not too distant future I would not be surprised if there are mass boycotts."


december 16, 1997

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Kobane defies stereotypes

Kobane is one of those black professionals whose successful career in communications has challenged stereotypes of black people as “clumsy” or “slow learners.” Her success in the fast-changing work environment is a testament to her ability to adapt and succeed.

Born and educated in Pretoria, Kobane entered the nursing profession after completing a nursing diploma but soon realised that she was driven by a greater vision. "While I enjoyed nursing, it just wasn't me. I had bigger dreams. I don't like to be limited," she says.

Kobane went on to do a degree in communications and followed this up with a management development programme through Unisa’s Business School, which she completed last year. She now holds a senior position at a communications company.

During her time with the public company, Kobane worked on a wide range of projects, including managing the public relations for the Olympic Bid Committee, dealing with the public and handling international relations portfolios.

After being appointed last year as a senior consultant at the Cape Town office of Mercury Communications, the South African arm of an international communications company, she took over the management of the office in January this year. She was appointed to the board in July.

"We are talented and creative as black people, whether white people like it or not," she says of her career trajectory.

"I have strengths, but we are not always exploring them to their fullest potential.

"Black people have been stuck with this stereotype that they are stupid, lazy and take time to learn, but people forget that the type of education we’ve had is totally different from what white people have had.

"We were not groomed to be winners or leaders – we were groomed to be followers.

"But companies need to be aware that if you give a black person an opportunity, the right environment and understanding where they come from, you can actually work together.

"She says companies are increasingly coming to the realisation that their chances of succeeding are minimised with an absence of black talent.

"And, as black people, we are becoming more assertive now and saying: what value do I add to your organisation? They can no longer be regarded as tokens they are there to add value.

"Furthermore, if they were given the autonomy to execute tasks in their own way, their particular strengths would emerge, bolstering the strengths of their white counterparts and propelling a company even further.

"Your business can be taken to greater heights because diversity is also a strength for a company," she says.

"We are capable of coming up with solutions. Sometimes we are scared to say things because we fear we might be saying the wrong thing, but you actually learn in that process. That's how opportunities arise.

Kobane says it is not an option to "wait for other people to change us. It's not our job to make the world a better place. We have to act on our own." She says she is grateful for the support she has received but is determined to achieve success on her own terms.

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Employment equity will force a change

THE EXPERIENCE of senior black managers and employees reveals that the Employment Equity Act may prove to be the toughest piece of legislation to implement in a corporate business environment still dominated by white males. Senior Writer YAZEED FAHIERS report.

We all know it as affirmative action, but in certain quarters it has already become cynical known as "affirmative sanctioning."

The "open door" policy at many companies remains a major "obstructing door" where hopeful black candidates are in one month and out the next. Several companies have found that affirmative action policies are employment equity policies, they can be very different. Gender or sexual preference often differs from standards of a culture. But often than not the socio-economic status is the real factor at work. In an "open door," the company only lets in the people who will fit into the company's culture.

 speaks at a conference earlier this year organized by the Human Resources Confederation in Cape Town and its local chapters, he said: "If open door is kept bubbling under the surface, we can never get to deal with it effectively."

"Nobody can come from outside and tell you what to do. They will never know your company well enough," he told a range of delegates from business, government, and educational institutions. "We have to change the corporate culture to corporate transformation, as he said. The Employment Equity Act compels companies to ensure that their workforce is diverse and includes black people.

Berrie September, a senior consultant for Development Dynamics, which is involved in diversity, said that companies do not at a strategic level deal with such issues. He says that companies should not be seen as being racist. When top management starts saying that they need to be involved, it's amazing how companies become allergic.

"If you want to talk, and people see that you are committed, it's amazing to see how your people then also become committed."

September said that he is working on how to transform a company that transformed South African environment and that company be demonstrated in action. September said: "And if racism is an obstacle to creating behaviour, we should ask how creating behaviour should be anti-racist behavior."

She urged companies not to pretend that they are doing anti-racist work. "Let's not be colour blind, please let's not be colour conscious - we must acknowledge that there is such a thing as racism -- it's alive, it's well, it's happening in our companies."

Businesses should also expect that there will be resistance to change and that black male managers will resist handing over their power. This process has to be managed sensitively and effectively, she said.

The challenge to companies is to feel the spirit of the law and not to look rigidly to the letter of the law. Some companies, she said, were even going as far as targeting for the fines stipulated in the Employment Equity Act. "Let's get top management to start committing to change (because) because time is of the essence. You have to give, and when top management starts saying that they'll be involved, it's amazing how companies become allergic.

"If you walk the talk and people see that you are committed, it's amazing to see how your people then also become committed."

September said that it is essential to work in the constantly changing South African environment and that company biases should make it easy on people by helping to manage diversity in a way.

Speaking at the same conference, deputy chairperson of the National Council of Provinces Naledi Pandor pointed out that black people have not occupied the majority of a racially constituted social order.

"We have our own biases and prejudices, and we can use them as a roadmap in our white brothers and sisters," she said. Black people could also use the "race card" -- sometimes justifiably and sometimes without justification -- in instances where their performance is questioned.

"In our communities we often get angry at the fact that we seem to believe that successful black people are crooks or sell-outs. A further effect of this stigma is that black people can self-exclude and deny themselves opportunity."

Another speaker, Timbela Tshakanini, of Tudor Associates, said that in an interview that black communities have been closely watching companies' transformation processes. "Black people have been saying: "Let's check the boxes before these people, let's give them the benefit of the doubt."

"If there is a commitment to transformation, all well and good. But the door is closing on those who are still embarking on the same path and in the not too distant future I wouldn't be surprised if there are mass boycotts."

Kobane: TULIE KOBANE is one of professionals whose career in communications, working to dispel the stereotypical image of black people in the fast-changing work environment.

Born and educated in Pretoria, Kobane obtained a nursing diploma and served in the Military nursing service. She has since expanded her skill set into various roles including social media consultant, trainer, and administrator.

Kobane went on to a communications career, working as a management consultant with a number of organizations. She now has her sights set on helping people of all ages transform and create a positive impact in their lives.

Making the Connection: Consultant Berrie September highlighted the experiences of black managers who join the traditionally white male corporate environment for the first time.
Kobane defies stereotypes

TIDY KOBANE is one of those black professionals whose successful career in communications has challenged stereotypes of black people as being slow learners, lazy and "tokens" in the fast-changing work environment.

Born and educated in Pretoria, she entered the nursing profession after completing a nursing diploma but soon realised that she was driven by a greater vision. "While I enjoyed nursing, it just wasn't me. I had bigger dreams. I don't like to be limited... I like challenging..." she says.

Kobane went on to do a degree in communications and followed this up with a management development programme through Unitas Business School, which she completed last year.

Now she has her sights set on completing her masters degree in business administration.

DURING THAT TIME she has worked for Iskom as an employee wellbeing adviser and as executive assistant to Chris Hall of the Olympic Bid Committee, dealing with the public and handling international relations portfolios.

After being appointed last year as a senior consultant at the Cape Town office of Neopera Communications, the South African arm of an international communications company, she took over the management of the office in January this year. She was appointed to the board in July.

"We are talented and creative as black people, whether white people like it or not," she says of her career trajectory.

"I have strengths, but we are not always exploiting them to their fullest potential," she says. "Black people have been stuck with this stereotype that they are stupid, lazy and take time to learn, but people forget that the type of education we've had is totally different from what white people have had."

"We were not groomed to be winners or leaders — we were groomed to be followers."

"But companies need to be aware that if you give a black person an opportunity, the right environment and understanding where they come from, you can actually work together."

She says companies are increasingly coming to the realisation that their chances of succeeding are maximised with an absence of black talent.

And, she adds, black people can no longer be used as mere window-dressing in that environment.

"Black people are becoming more assertive now and saying 'What value do I add to your organisation?' They no longer be regarded as tokens. They are there to add value."

Furthermore, if they were given the autonomy to execute tasks in their own way, their particular strengths would emerge, balancing the strengths of their white counterparts and propelling a company even further.

"Your business can be taken to greater heights because diversity is also a strength for a company," she says.

"We are capable of coming up with solutions. Sometimes we are scared to say things because we fear we might be saying the wrong thing, but you actually learn in that process. That's how opportunities arise."

Kobane says it is not an option to "wait for other people to change us."

"We have to change ourselves. Who says we are not capable of doing things? It's the same people who have been telling us all along we are incapable of doing anything."

"As a human being, can you really afford to listen to such people? We have to articulate in ourselves that culture of asking ourselves those questions and not rely on promises that other people make for us. We must actually map out our own future.

"If you don't, no one else will do it for you. You will remain a subordinate."

"What about her plans for her future?"

"My vision is that I'd like to have my own company one day and to diversify employment opportunities for others to have a company that is me."

"And you can bet she's already mapping out that path."

CRUSHING STEREOTYPES: Tidzi Kobane rejects with contempt the idea of black people being taken on in companies as "tokens" or window-dressing. "Black people are capable and we are there to add value to a business," says the Cape Town head of a leading communications company.

PHOTO: YAKOOI FAKHRI

Kobane defies stereotypes
Bill will outlaw discrimination

Pretoria – Legislation outlawing discrimination is being drafted and could be presented to Parliament before the end of the year.

The architects of this draft want it to be enforceable, but have not decided yet whether penalties will be attached to proven discrimination.

The anti-discrimination law will give teeth to the constitution’s Bill of Rights and allow victims of all forms of discrimination recourse to the law.

While racism is likely to be the main focus of the legislation, the draft law also will prohibit discrimination on the grounds of, among others, gender, sexual orientation, age, disability, religion, language, marital status, pregnancy, ethnic or social origin and culture.

The draft legislation will also deal with hate speech and racial epithets.

It is what’s known as omnibus legislation, explained Dr Lindelwa Nutu, senior researcher and legislation drafter on the equity legislation drafting unit.

A joint project between the Department of Justice and the South African Human Rights Commission, the unit was set up in March.

According to its mandate, the unit must present Parliament with draft equality legislation before 2000.

Dr Nutu said the shortened parliamentary calendar due to the elections next year and the controversial nature of the law made it imperative to complete the drafting phase as early as possible.

The bill must be in force by February 2000, said Dr Nutu. “That means we need to present draft legislation by the end of the year so Parliament can debate it next year and it can be in place in time.”

Dr Nutu said that while the legislation would be educative rather than punitive, the final draft would probably contain elements of criminalisation.
is all systems go to stop farm killings.
Employment equity on track despite criticism

GOVERNMENT was committed to putting employment equity legislation in place soon despite criticism that the Act would be impossible to implement.

Labour Minister Shepherd Mdladlana told the Black Management Forum's annual national conference in Mmabatho this week that his department was already preparing for the implementation of the Act.

"Numerous tasks need to be undertaken before the law can fully come into effect," Mdladlana says. These include recruiting and training additional staff and establishing the Commission for Employment Equity.

Mdladlana says he will make further announcements in due course. The department has said it will spend about R150-million over the next five years enforcing the new employment equity law.

The controversial legislation, passed by parliament in August, will compel businesses employing 50 or more people and with annual turnover of more than R10-million to submit within 18 months employment equity plans outlining methods to remove discrimination and ensure the creation of a more diverse, representative labour force.

Other aspects of the legislation oblige employers to "progressively reduce" the wage gap between workers and bosses and disclose to government the remuneration packages of all employees.

In defence of the legislation, Mdladlana says it would have been "suicidal" if the democratically elected ANC government in SA ignored the inequalities.
Operation Blue has forged a united new spirit to the army's say, hoist!
Govt needs help with Act, says Minister

By Mzwakhe Hlangani
Labour Reporter

EMPLOYMENT equity is not only a moral imperative but also a precondition for sustainable development of the African people, Minister of Labour Shepherd Mdladlane said at the weekend.

Addressing the annual conference of the Black Management Forum on the Employment Equity Act in Mafikeng, the minister said the law now prohibited unfair discrimination.

Mdladlane challenged black managers and organisations to begin engaging the Government in implementing the Act.

"This will create a secure foundation for employment equity for future generations and this will be no small contribution to the renewal of our continent," he said.

The disparities in employment opportunities were particularly bleak at representing Africans in management, professional and technical categories, he said.

**Intensify its participation**

A recent survey showed that African men and women together make up to 87 percent of all employees in the labourer category.

The management conference resolved to formalise and intensify its participation together with the Government in the national commission that will review company performances with regard to the Act.

The conference also resolved that the Black Management Forum will facilitate training programmes for its members on information technology and the effects of globalisation in preparation for the next millennium.

Deputy chairperson of the National Council of Provinces Naledi Pandor said recent attempts to give meaningful content to the African renaissance debate were central to the agenda of sociopolitical and economic transformation.

The conference concluded that black managers were capable of wielding a great deal of influence and could play a central role in advancing the economic imperatives of a successful transformation in South Africa.
Why the law cannot protect SA seamen

International Maritime Organisation agreements, to which South Africa is a signatory, make it difficult to pass laws to control the actions of ships registered under flags of convenience.

This has been highlighted again with the disappearance of the Cape Town-based fishing vessel St Porto No 1 which is registered in Belize, central America.

The issue of flags of convenience has long been a source of conflict between seamen's unions and shipping industry employers.

The conflict arises from the frequently lower standards of certain countries which issue flags of convenience that allow shipping companies to flout standards.

At the same time, in both the shipping and fishing industries, labour is in oversupply and to get work sailors and fishermen often find they have to lower their standards to find a job.

"It will not be easy to promulgate legislation that would allow us full control over a vessel registered in another country," said Captain Bill Dernier, senior surveyor and a leading member of the SA Maritime Safety Association.

"Somebody like the owner of the St Porto No 1 is not compelled to report to us for any purpose. We are merely entitled to inspect a vessel for basic seaworthiness before it leaves our ports."

Captain Dernier said there could be various reasons why a satellite transponder might have failed to work if the ship had sunk. A common problem was that sailors often did not understand how it worked.
Employers must step into a new world.

The Employment Party Act is now a reality and affects employers in various industries. The act is expected to transform the workplace, making it more diverse and inclusive. Employers must adapt to the changes and implement new policies to ensure a fair and respectful workplace environment.

Under the Employment Party Act, employers must provide fair employment practices, including equal pay, anti-discrimination policies, and non-discrimination training. The act also includes provisions for flexible work arrangements, parental leave, and workplace safety.

To comply with the Employment Party Act, employers must conduct mandatory training for all employees, including managers and supervisors. The training will cover topics such as anti-discrimination, harassment, and workplace diversity.

The act will also require employers to develop and implement workplace policies that promote diversity and inclusion. These policies should be clearly communicated to all employees and monitored to ensure compliance.

Employers who fail to comply with the Employment Party Act may face penalties, including fines and legal action. It is essential for employers to understand the act's requirements and implement the necessary changes to avoid legal consequences.

Employers must also ensure that their recruitment and hiring practices are consistent with the Employment Party Act. This includes posting job advertisements that do not discriminate based on race, gender, sexual orientation, or any other protected characteristic.

In conclusion, the Employment Party Act is a significant step towards creating a more diverse and inclusive workplace. Employers should take the necessary steps to comply with the act and ensure that their workplaces are fair and respectful environments for all employees.
The Employment Equity Act is now a reality and businesses must adapt, writes RAEL SOLOMON

Employers' equity plans are to be drawn up and registered with the Labour Department within six months for employers with more than 100 employees, and within 12 months for smaller employers. The plan will have to show how the employer intends to achieve employment equity in the workplace within one to five years.

The Employment Equity Act has teeth. It takes precedence over all other legislation. With the exception of the Constitution Failure to properly implement the Act can result in fines of up to R300 000 for infringements.

All designated employers will have to spend 1% of their wage bill on the education and training of their employees, but 80% of this levy may be claimed back if the training is performed by suitably registered trainers.

In their initial stages, equity plans should include adult-based education and training and specialised skills training. These steps serve the dual purpose of showing employers that employers are taking the equity legislation seriously, while it has also been shown that a functionally literate workforce increases productivity. A professional training programme combined with career path planning also leads to a loyal and efficient workforce.

Without a well-planned training programme, employers will have to resort to poaching middle and senior management. Many companies are also investigating the legalities of splitting themselves into smaller worker entities in an attempt to circumvent the legislation. These steps are likely to boomerang with increased workers reporting doubtful practices.

Employers would do well to implement equity planning as quickly as possible, thus winning the confidence of their workers and at the same time giving themselves the opportunity to correct the pitfalls that will inevitably occur on this journey into the unknown.

RAEL SOLOMON heads up The Labour Consultancy and works with Self-Employment International on their equity seminars. He also prepares the Labour Gazette column for Business Times on the Internet (www.btimes.co.za)
Business pessimistic over new laws

A. Johannesen

CEO, Minares de Deber

w/ceo: Investment

in productivity and

requirement of

import and

imported goods.

For this reason, the

import limitation

implementation

must be

considered.

He said the small

importers will

benefit from

these

measures.
New laws place accent on rights of the individual

The continued move from defined benefits to defined contribution funds, means that benefits from fixed benefit funds have seen some changes in the past two years.

Thus is reflected in a survey this month on more than 800 retirement funds over a two-year period, says Chris Bosenberg, chief consultant at Sanlam Employee Benefits.

There were changes in respect of withdrawal benefits, of pensionable salaries and of pension increases granted.

The survey found that funds had improved withdrawal benefits in recent years to generate market-related returns.

Although more funds pay market-related interest, almost one-third still exclude employers' net contributions. Some 60% phase in employers' net contributions after almost five years.

"Although the improvements made in withdrawal benefits is welcomed, the return of the full employers' net contributions should be seriously considered by funds, since the trend is distinctly in this direction," says Bosenberg.

In question is the equity and the financial soundness of benefits, since even investments in guaranteed or stable funds do not necessarily imply stable future returns. This is clear from the sharp decline in short-term bonus rates and the possibility that invested bonuses could be reduced. Funds should therefore limit the withdrawal benefits to the members' share of the fund, he says.

While previous bi-annual surveys showed most changes arose within the benefits themselves, this survey indicates that peripheral issues such as discrimination, investments and administration have generated the most interest in the industry.

An direct discrimination on the basis of race has been largely eliminated, most retirement benefits are ill-prepared for indirect discrimination highlighted in the legislation.

An example is a recent case where the pension fund adjudicator ruled that a deceased's common law wife could be regarded as a dependent.

Ineligible

"Legislation such as the Bill of Rights, the Labour Relations Act, the Employment Equity Act and the appointments of a pension fund adjudicator make the individual paramount," says Bosenberg.

"This is contrary to the rules of most retirement benefits and can lead to many instances of discrimination; since the survey shows that most retirement funds have to go before complying with such legislation," he says.

Examples of indirect discrimination in the survey were a spouse's pension for which same-sex partners were ineligible; different gender-based retirement benefits and the eligibility of part-time employees.

"Trustees are advised to re-examine their retirement-fund rules, benefits, practices, procedures and trustee decisions to ensure no unfair labour practices or discrimination is present; directly or indirectly."

The survey shows that funds prepared to do their own administration fell from 33% in 1998 to 22% in 1998...
Worker's rights in the workplace

EMPLOYEES and employers have definite basic rights that are enforceable between them. These rights arise from contact, equity, and legislation. And it is important that employees in particular are aware of these rights. The following guide has been prepared by Joy-Marie Lawrence of Webber Wentzel Bownd Attorneys.

Rights of Employees

The rights and duties of an employee may arise from an individual contract of employment or a collective agreement.

Some fundamental labour rights, which apply at an individual level and at a collective level are:

- The right to fan labour practices, this constitutional right is entrenched in the Bill of Rights.
- The right to work, this includes the right not to be discriminated against when applying for a job, the right to receive training, and the right to perform the duties as agreed to between the parties.
- The right to organise and affiliate, this includes the right to choose whether to join a trade union or not and whether to assist in the creation of a trade union, and to take part in union activities.
- The right to job security, the right not to be harassed sexually or otherwise, the right to a safe working environment with safe machinery and equipment, that the employee's health and safety will not be exposed to danger, the right to be compensated in case of injury, the right not to be unfairly dismissed, the right not to be discriminated against at work, the right not to have the contact of employment transferred from one employer to another without employee's permission, except where the whole or any part of the business is transferred, or because the old employer is involved or because a scheme of arrangement is being entered into, and
- The right to bargain collectively, employees have the right by means of employee organisations to bargain and conclude agreements with employers in respect of employment conditions.

Organisational rights of a representative trade union

A representative trade union acquires the right to exercise certain organisational activities, which other trade unions do not have. The trade union needs to be fully representative of the employees. These rights include:

- Right of access to the employer's premises for union-related purposes.
- Right to stop-over facilities.
- Right to elect trade union representatives.
- Right to time-off for union activities, and
- Right to information for collective bargaining purposes.

Retrenched Employees

Rights

- If an employee is dismissed on the ground of operational requirements, he is entitled to severance pay, equal to at least one week's remuneration for each completed year of continuous service with that employer.
- The employee will not be entitled to severance pay if he unreasonably rejects an offer of another job, which is a reasonable alternative to the present job.
- The employer has the duty to provide the employee with a certificate of service or reference documents.
Firms wary of labour laws

A RECENT-Johannesburg Chamber of Commerce and Industry's snap survey of member companies reveals that more than 60 percent of them believe the new labour laws will further shrink the labour market, reduce productivity and retard new investment.

Chief executive officer Marius de Jager said yesterday, "Respondents perceive today's labour regime to be unaffordable, impractical and damaging to growth."

"In particular, the penalties for any transgression are considered excessive, and the cost of compliance also seems inordinately high."

He said the small business sector indicated it would reduce dependence on labour by cutting staff, mechanising and using contractors.

"Given that this sector should be the engine for employment creation, it would behove the key players at the forthcoming presidential job summit to take notice," he said.

The survey asked members for their opinion of the effects on their businesses of the Labour Relations Act and the Employment Equity Bill.

On the Labour Relations Act, negative effects were expected on employment by 60 percent, productivity by 56 percent, on profitability by 55 percent and on investment by 65 percent.

On the Basic Conditions of Employment Act percentages for the same categories, also negative, were 60, 48, 39 and 60.

And on the Employment Equity Bill, negative again, percentages were 66, 39, 64 and 66 — Sapa.
In the Assembly, the issue of the bill's composition of the council of economic development was also surprisingly pertinent. After all, it was understood that the council's role was to support the work of the government in economic development. Meanwhile, the government continued to discuss the potential consequences of the bill, including its impact on the economy and the potential for job creation. The debate continued with passionate speeches from both sides, with many Members expressing concern about the bill's potential to disrupt the existing economic framework.

In the end, the bill was passed and the council of economic development began to take shape. However, there were concerns about its composition and the potential for conflict of interest. The issue remained a topic of discussion in the Assembly, as the council continued to work on its goals of economic development and job creation.
All you ever wanted to know about the Employment Equity Bill and how it works

By ESTELLE RANDALL

The Employment Equity Bill will be written into law this year, bringing to an end a drawn-out and almost three years of discussions among the Government, business, the unions and other interested groups on how to correct four decades of workplace imbalances.

But what will the new law mean for both employers and employees? These are frequently asked questions.

1. Why do we need a law on employment equity?

Four years after SA's first democratic election and the adoption of a new constitution (which forbids discrimination), black people, women and the disabled are still being discriminated against in the workplace. This is reflected in the small proportion of top or professional positions they occupy in the corporatist world in spite of their large numbers.

A study last year of 465 companies showed what men and women still account for 28% of all professional workers and occupy most management positions. In contrast, black (African, coloured and Indian) men and women, who make up 54% of the economically active population, occupy 84% of all temporary and casual positions. They comprise only 11% of senior management and 35% of junior and middle management.

Women comprise 10% of senior management and 22% of junior and middle management; black women (African, coloured and Indian) comprise only 5.2% of junior and middle management.

2. What does the new law aim to do?

The new law aims to correct these kinds of imbalances over time. The legislation aims to achieve fairness in employment and to correct employment practices which disadvantaged black people (African, coloured and Indian) women and disabled people.

Studies show that more equitable use of human resources will have positive spinoffs for efficiency, productivity and competitiveness.

The new law compels employers to adopt employment policies and practices which do not unfairly discriminate on the basis of race, sex, disability, pregnancy, marital status, ethnic or social origin, sexual orientation, political opinion or culture, fanatical beliefs, religion or belief.

Employees will also have to justify why employees should undergo medical tests, including tests for HIV or psychiatric tests.

3. Which companies are affected?

Companies with 60 or more employees or whose annual turnover is higher than certain thresholds in each sector (set out in the National Small Business Act) will have to prepare and carry out employment equity plans and submit these to the Department of Labour. Companies with fewer than 60 employees must submit their first plan within a year of the passage of the bill, and thereafter every two years.

Those with more than 100 employees must submit their first plan within six months, and thereafter every year. They must be negotiated within company units, enabling employers and employees to take their specific circumstances into account. They must give details of how the company will correct imbalances and over what period.

Information must be in the reports sent to the Department of Labour.

The employment equity plans must contain information about how many black people (Africans, coloured and Indians), women and disabled people are currently in each occupational category and level of the workforce. There must also be a statement of the pay and benefits received in each occupational category and level of the workforce.

5. What happens if there are unmotivated large gaps in pay and benefits?

Where this happens, employers must reduce these through collective bargaining, compliance with sectoral determinations made in terms of the Basic Conditions of Employment Act, relevant measures in pending skills development legislation, similar measures which are appropriate, or compliance with norms and standards set by the Employment Conditions Commission. The commission, to be appointed in terms of the Basic Conditions of Employment Act, will research and investigate appropriate wage gaps and advise the minister of labour on steps to achieve this.

6. Why should companies have to disclose their pay structures?

The Commission of Inquiry into Corporate Governance has already recommended that listed companies and parastatals include aggregate figures of directors' earnings and benefits in their annual reports.

Companies accepted this as a valid means for the public to assess whether directors' earnings were in keeping with company performance. The Labour Relations Act of 1996 already provides for employers to make information available that would aid collective bargaining.

The pay and benefits information which the Employment Equity Act requires from companies will be disclosed only to the Employment Conditions Commission. The commission will publish individual companies' pay structures, only trends.

The new law is similar to laws in several other countries. In the US, the employment equity legislation applies to companies with 50 or more employees. In Germany, 40,000 employees have already signed up.

8. What happens if a company complies with the new law?

Employers who comply with the provisions of the employment equity legislation will be able to tender for government contracts.

9. Who should I contact for more information?

The Department of Labour's equal opportunities directorate can be telephoned at Pretoria on (012) 389-6900.
All you ever wanted to know about the Employment Equity Bill and how it works

By ESTELLE RANALD

The Employment Equity Bill will be written into law this year, bringing to a conclusion almost three years of discontents among the Government, business, the unions and other interest groups on how to correct four decades of workplace imbalances. But what will the new law mean for both employers and employees? These are frequently asked questions:

1. Why do we need a law on employment equity?

Four years after SA's first democratic election and the adoption of a new constitution (which forbids discrimination), black people, women and the disabled are still being discriminated against in the workplace. Thus is reflected in the small proportion of top or professional positions they occupy in the corporate world in spite of their large numbers.

A study this year of 456 companies shows white men and women still account for 72% of all professional workers and occupy most management positions in contrast, black (African, coloured and Indian) men and women, who make up 48% of the economically active population, occupy 64% of all temporary and casual positions. They comprise only 11% of senior management and 28% of junior and middle management.

Women comprise 10% of senior management and 28% of junior and middle management, but black women (African, coloured and Indian) comprise only 47% of junior and middle management.

2. What does the new law aim to do?

The new law aims to correct these kinds of imbalances over time. It places emphasis on increasing the participation of women, black people, people with disabilities, and people from rural areas and poor communities. The law aims to ensure that people from these groups are fairly represented in all aspects of the workplace.

3. Which companies are affected?

Companies with 50 or more employees or whose annual turnover is higher than a certain threshold in each sector (set out in the National Small Business Act) will have to prepare and carry out employment equity plans and submit these to the Department of Labour. Companies with fewer than 150 employees must submit their first plan within a year of the passage of the bill, and thereafter every two years.

Those with more than 150 employees must submit their first plan within six months, and thereafter every year. They must be negotiated within company unions, enabling employers and employees to take their specific circumstances into account. The companies involved will be classified into occupational categories, and the structures will be reviewed and updated over a period of time.

4. What information must be included in the report to the Department of Labour?

The employment equity plans must contain information about how many black people (African, coloured and Indian), women and disabled people are currently in each occupational category and level of the workplace. There must also be a statement of the pay and benefits paid to employees in each occupational category and level of the workplace.

5. What happens if there are unacceptable changes in pay and benefits?

Where this happens, employers must reduce these through collective bargaining. Compliance with sectoral determinations made in terms of the Basic Conditions of Employment Act, relevant measures in pending skills development legislation, similar measures which are appropriate, or compliance with norms and benchmarks set by the Employment Conditions Commission. The commission, to be appointed in terms of the Basic Conditions of Employment Act, will research and investigate appropriate wage gaps and advise the minister of labour on steps to achieve this.

6. Why should companies have to disclose their pay structure?

The King Commission of Inquiry into Corporate Governance has already recommended that listed companies and parastatals include aggregate figures of directors' earnings and benefits in their annual reports. Companies accepted the King report as a valid means for the public to assess whether directors' earnings were in keeping with company performance. The Labour Relations Act of 1996 already provides for employers to make information available that would aid collective bargaining.

The pay and benefits information which the Employment Equity Act requires from companies will be disclosed only to the Employment Conditions Commission. The commission will publish individual company pay structures, only trends.

Estimates say that, in general, SA's income distribution is among the most unequal in the world. Here, 90% of low income earners capture only 4.5% of national income while the wealthiest 10% capture 50%.

Results of a recent survey by international consultants Towers Perrin found that SA executives take home 19 times as much as shopfloor workers in South Africa the difference is eight, in Japan 10 and in Germany 11.

7. What happens if a company complies with the new law?

Employers who comply with the provisions of the employment equity legislation will be in tender for government contracts.

8. What happens to those who do not comply?

Those guilty of contraventions face fines up to a maximum of R100 000.

9. What is currently happening with employment equity in SA?

Studies conducted this year for the Department of Labour by the Breakwater Monitor show that only 20% of the companies surveyed had an equity plan with goals and timetables for addressing racial imbalances in their workforce. Less than a third had a written equity policy. Although larger companies were more likely to have an employment equity plan, this did not translate into any significant differences. In terms of implementation, black people, women and the disabled are still underrepresented in managerial and professional categories. Companies with more than 100 and 469 employees had the highest representation of these groups in managerial and professional positions, although the numbers were still low. There was also no difference by ethnic sector.

10. How does SA compare with other countries?

South Africa's employment equity law is similar to laws in several other countries. In the US, employment equity legislation applies to companies with 50 employees or more and annual turnover of $50 000 or more. Those that want to secure contracts to supply goods and services are required to have five-year employment equity plans. Such contracts can be cancelled if the government finds that a company has reneged on its stated plan during the term of the contract.

In Canada, companies of 100 or more employees must publish details of the pay and benefits paid to employees in each occupational category, as part of their employment equity plans.

SA's Employment Equity Bill has isolated individual company uniformity about salaries to the Employment Conditions Commission.

11. Who should I contact for more information?

The Department of Labour's equal opportunities directorate can be telephoned in Pretoria at (012) 339-4000.
CCMA settles staff grievances

Reneé Grawitzky

THE Commission for Conciliation, Mediation and Arbitration (CCMA) took time out to settle its own dispute when it reached agreement with its staff association on a 6% wage increase and mechanisms to address a range of grievances.

At the same time, the labour department last month received a number of petitions signed by Industrial Court members and employees in protest against the court’s closure. The court’s outstanding cases are to be handled by the CCMA.

In July, the CCMA’s staff association, which represents about 80% of nonmanagerial employees, submitted a petition to the commission’s governing body, requesting its intervention.

Signed by more than 350 employees, the petition listed a number of grievances, which included unfair promotions, appointments and issues around management grading.

CCMA director Thandi Orleyn said the parties agreed to put in place mechanisms for a long-term relationship-building exercise.

An industry source said government should give consideration to allocating additional resources to ensure the CCMA remained effective and was able to implement the spirit and intent of the Labour Relations Act. The institution’s structures were developed on a predicted caseload of 40,000 a year. However, in less than two years, 120,000 cases had been referred to the CCMA.
Employment Equity Bill heading for Mandela's desk

PARLIAMENTARY BUREAU

CONTROVERSIAL affirmative action legislation - the Employment Equity Bill - was passed by the National Council of Provinces yesterday. It now requires only President Nelson Mandela’s signature to become law.

The legislation was passed by 35 votes to 12, with the ANC and the Inkatha Freedom Party supporting the bill and the National Party and Democratic Party opposed. The Freedom Front staged a walkout to express its disapproval.

Opposition parties complained that the bill's measures would amount to reverse discrimination.

The Freedom Front implied that the legislation could spark violent resistance. Ben van der Walt of the FF said the bill discriminated against white males.

"There is no indication that the bill is intended to benefit only the historically disadvantaged. This is a punitive measure towards white males," he said.

"There is no sunset clause in the bill to indicate when this draconian bill will be taken off the statute books and sent to archives where it belongs."

He said Sri Lanka was a good example of where an affirmative action policy had gone wrong because it had not been reached with the consensus of all ethnic groups. The policy had prompted young Tamils to take up arms and call for an independent state.

"Will this happen in South Africa? Only the future will tell."

Labour Minister Shepherd Mladlana rejected allegations that the bill was unconstitutional and said those who opposed the measures wanted to entrench their apartheid privileges. He said a large-scale implementation campaign for the new law had been planned.
Mdladlana urged to soften Employment Bill

LABOUR LEGISLATION
By CAROL PATON

THE Minister of Labour, Shepherd Mdladlana, is considering a recommendation from a ministerial task team that major concessions be granted on the Basic Conditions of Employment Bill.

The concessions relate to businesses employing fewer than 10 people and their compliance with the terms of the Bill.

In a report handed to Mdladlana, the task team said that small businesses should not be exempted from basic employment conditions but that account should be taken of the "special problems and circumstances they face''.

In particular, some provisions of the Act "may prove onerous for small business", the report says.

The team recommended that:

☐ Employees in small businesses be allowed to work 15 hours overtime a week — as opposed to a maximum of 10 hours in bigger companies.

☐ Employees be paid at the rate of time-and-a-third for overtime — as opposed to time-and-a-half specified by the Bill.

☐ Employees be entitled to a total of 21 days leave in a year. This includes family responsibility leave introduced by the Bill.

Other employees are entitled to 21 days plus three days of family responsibility leave.

Shepherd Mdladlana

Responsibility leave.

Employees and employers can reach their own agreements on the averaging of hours. Under the Bill, averaging of hours is restricted to a four-month period and employers must secure a collective agreement from the workforce for averaging to take place.

Other conditions of the Bill should not be varied, said the team's report.

Holding down the costs of overtime, which under the old Act was time-and-a-half, and annual leave, which in the new Act will increase from 14 to 21 days, would be major cost concessions to small businesses. It will also have important implications for job creation as the growth of small businesses is viewed by government as a key pillar of poverty and unemployment alleviation.

The team has recommended that Mdladlana make a special effort to facilitate the measures before the Bill is promulgated.

Sources in the Department of Labour said Mdladlana was considering the report and would have to decide whether to accept its recommendations before going ahead with the promulgation, which was expected to take place next month.

The team's findings were based on an analysis of research conducted by the government-sponsored small business promotion agency, Ntsaka.

Ntsuka's research concluded that most small businesses did comply with basic standards legislation and would find it relatively easy to comply with the new Act.

However, the task team was critical of the conclusions reached by Ntsuka, pointing out that levels of compliance on conditions such as Sunday pay, maternity leave and notice provision were actually low among small businesses.

The task team was set up by former Labour Minister Tito Mboweni in June. It produced its report last month. Mdladlana is expected to make a decision on the promulgation of the Bill soon.
Act will have major effect on sectors that work extended hours
Jobs bill shock for small business

LYNDA Loxton
PARLIAMENTARY CORRESPONDENT

Cape Town — A ministerial task team had found that no amendments were needed to the Basic Conditions of Employment Bill to cater for the needs of small business, Shepherd Mdladlana, the labour minister, said yesterday.

But it had been decided that some flexibility be provided for firms employing under 10 people by issuing a ministerial determination allowing them to vary four conditions of employment.

These were a maximum of 15 hours overtime a week, overtime pay of one and a third, 21 days' net leave including family responsibility leave, and averaging hours of work by agreement.

The act would go into effect on December 1 for the private sector and May 1, 2000 for the public sector, Mdladlana said.

Duncan Innes, the executive director of Innes Labour Brief, said granting flexibility only to micro-firms was "a great disappointment" in the light of growing evidence that international investors believed South Africa's labour market was too restrictive.

"This will do nothing to promote investment," he said, adding the concession had probably been granted because the department did not have the capacity to monitor very small firms.

The task team, from the Ntsika Enterprise Promotion Agency, found the act would have a significant impact on general dealers, catering and accommodation, service stations, transport and security services.

These sectors would find it difficult to meet provisions on the regulation of working hours, overtime payment, pay for work on Sundays and night work.

Sectors affected to a lesser extent on these points would include cleaning and personal services such as undertakers.

The team found that maternity leave, family responsibility leave and notice of termination of employment would cause difficulties for all sectors.

Mdladlana said based on these findings, he had asked his department to create certainty on the issue of paid maternity leave before the act went into effect, and to amend the regulations and codes covering night work to meet the concerns of small business.

Referring to the belief the act would force many small business to close, Mdladlana said "The reports (indicate) perceptions do not always concur with reality."
Employment act in from December

CAPE TOWN — The Basic Conditions of Employment Act will come into effect in December after an impact assessment study "vindicated" government's position by showing that small business will not be adversely affected by the legislation.

Labour Minister Shepherd Mdladlana made the announcement in Parliament yesterday.

He said the study, by the department of trade and industry, had demonstrated clearly that "perceptions do not always concur with reality."

Democratic Party leader Tony Leon accused Mdladlana of having "quickly learnt to distort the facts."

Leon said there were some "planning facts which the minister prefers to ignore." He said the report stated that certain sectors would experience a significant adverse impact due to increases in labour costs as a result of the act.

Leon said that, according to the report, the provisions relating to maternity leave, family responsibility leave and notice of termination of employment have "been indicated to be problematic to all sectors."

The new conditions in the act, to be applied from December 1, include a reduction in the number of ordinary hours that can be worked in a week from 46 to 45, an increase in the overtime payment rate, increases in the length of annual leave to 21 days; increases in the period of maternity leave from three to four months; and the introduction of three days' family responsibility leave per year.

There is also the introduction of protection for people who work at night and a change in the payment for work on Sundays.

The scope of the legislation has also been extended to cover all workers, with the exception of charity workers and members of the intelligence services.

Labour director-general Sipho Pitayana said the public service would only be covered by the act on May 1, 2000, following an agreement reached previously at the National Economic, Development and Labour Council.

Mdladlana also announced the names of appointees to the Employment Conditions Commission established in terms of the act.

Sectoral determinations would establish basic conditions and minimum wages for sectors not covered by collective bargaining, such as the farming and domestic sectors.

Mdladlana said the commission would prioritise the establishment of an earnings threshold; do determinations for small business and the guidelines for the granting of variations or determinations when requested by employers and employer organisations.
Act signals new era for workers

BY JOVIAL RANTAO
Political Correspondent

Cape Town - The lives of millions of South African workers and employers will change on December 1, when the Basic Conditions of Employment Act (BCEA) comes into effect.

However, Labour Minister Shepherd Mdladlana said in Parliament yesterday that civil servants would be affected by the legislation only 18 months after the date of promulgation, on May 1 2000.

At a press conference, Mdladlana ruled out any possibility of amending the BCEA, since an investigation by the Ntsika Enterprise Promotion Agency found that the act would not have a major impact on small business.

In addition to recommending that the act should not be amended, the ministerial task team suggested that:

- The ministry should determine which conditions of employment applied to firms employing fewer than 10 people.
- Four conditions of employment be considered, namely a maximum of 15 hours of overtime a week, an overtime rate of one and a third, 21 days' paid leave including family responsibility leave, and averaging hours of work by agreement with appropriate protection against abuse of workers.

Mdladlana said the National Economic Development and Labour Council (Nedlac) had been charged with investigating and making recommendations on maternity leave.

"We're committed to improving the maternity benefit, and Nedlac is presently charged with discussing amendments to the Unemployment Insurance Act to effect this," Mdladlana said.

The minister also supported the task team's recommendation that regulations and codes covering night work should address the specific concerns of small business without compromising health and safety.

The newly formed Employment Conditions Commission, which would monitor the implementation of the act, would be chaired by Edwin Mohlane, currently a part-time senior commissioner at the Commission for Conciliation, Mediation and Arbitration.

The ECC had a number of challenges ahead of it, including a plan for the agricultural and domestic sectors, and another to replace out-of-date wage determinations in the retail and hospitality sectors.

It also needed to determine working conditions for children in the performing arts, and changes for the security, cleaning and civil-engineering sectors. This was to bring conditions in these sectors in line with the BCEA, while recognising their specific requirements.
'Act won't affect small firms'

By Pamela Dube
Political Reporter

CONTRARY to assertions by the captains of industry, the Basic Conditions of Employment Act will not have a devastating impact on small businesses.

Releasing the results of an impact study by Ntaka Enterprises Promotion Agency on the emerging industry yesterday, Labour Minister Shepherd Mdladlane said it appeared that "certain provisions of the Act would affect only certain sectors".

Ntaka (a unit in the Ministry of Trade and Industry focusing on small business development), interviewed 783 businesses - 115 of which were in black areas.

The act found that small businesses in catering and accommodation, general dealers, service stations, transport and security services would not be "significantly affected".

The survey also assessed whether the Act was consistent with international trends. It was found that while there were differences between countries on issues such as overtime pay and maternity leave, "the provisions of the Act are in line with the conditions in other countries".

Mdladlane said a ministerial task team was set up to review the results of the Ntaka survey. The team recommended no amendments be made to the Act and thus had been accepted.

The new provisions will come into effect on December 1 for all but the public service, for whom the implementation date is May 1, 2000.

The provisions include:
- Reduction in maximum working hours - from 46 to 45 in a week,
- Rate of overtime - increase from 133 percent to 150 percent,
- Payment for working Sundays will be 1.5 times normal wage rate,
- Maternity leave increases to four months (but payment is not prescribed).
LABOUR LEGISLATION

1999
Suggested retrenchment provisions attacked

Reneé Grawitzky and Linda Ensor

BUSINESS SA (BSA) reacted strongly yesterday to reports that government wished to tighten up the retrenchment procedures in the Labour Relations Act, arguing that it would be a sad day if government intervened in market forces.

This follows comments by Labour Minister Mamphela Majesty Mdladlana that the act should be tightened up in order to allow for mandatory negotiations on retrenchments.

BSA spokesman Vic van Vuuren said the current provisions in the act ensured a thorough process of consultation which did not make it easy for employers to retrench.

He said the Commission for Conciliation, Mediation and Arbitration was the stipulated body to regulate employers' compliance with the act. He said "What is of concern of course is the amount of retrenchments taking place."

He said there would be instances where employers did not comply but this was not the general situation.

Labour department director-general Sphi Pityana said labour argued that the current retrenchment provisions in the act that required employers to consult on retrenchments was not being taken seriously. As a result, the provision was being discredited.

The Democratic Party attacked Mdladlana's comments and his proposals to introduce a minimum wage for agricultural workers.

DP agriculture spokesman Errol Moorecroft said a minimum wage would cause more unemployment in the agricultural sector, where low profitability and employer-unfriendly labour laws had already led to a reduction in the labour force by about 50% over the past five years.

Farmers would turn to mechanisation and other labour-saving strategies to cut their exposure to high wage bills.

Finance spokesman Ken Andrew said Mdladlana's wish to amend the act to make negotiations about retrenchments mandatory, instead of the current situation where employers consult workers on the matter, would hinder job creation.
Mbeki to review labour law

ST/BT/4/4/99

Mbeki to review labour law

BY CAROL PATON

Mmbathi Mdladlana since the
summit have been ambiguous,
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Nqashaeng indicated this
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“What Thabo Mbeki has been
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mounding the problem,” he said.

This week, Mdladlana also
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“We are prepared to look at
anything that hinders job cre-
aton,” said Mdladlana.

The statements come in the
context of a protracted tussle
between business, government
and labour over appropriate
regulatory mechanisms in the
context of 37% unemployment.

But labour law expert Profes-
sor Halton Cheadle, one of the
drafters of the Act, cast doubt on
the impact this would have.

The Act already compels em-
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“negotiate” would make little dif-
ference, he said.

Mdladlana said the minimum
wage was designed to protect
people in the category of “poor-
ly in employment” who earned
as little as R50 a month. People
who earned less than a govern-
ment pension while employed
could be considered “poor.”

But he said the government
would tread carefully when it
came to setting the minimum —
avoiding levels that would cause
job losses as these sectors were
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Mdladlana described the min-
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Figures released this week by
Statistics South Africa showed
that job losses continued unab-
atated through last year, since
the last quarter of 1996. It is
estimated that about 500,000 jobs
have been lost since 1994.

Possible areas of review to
labour legislation could be
amendments to the Labour Re-
lations Act to ensure greater
ministerial discretion in extend-
ing bargaining council agree-
ments, and less onerous basic
conditions for enterprises em-
ploying less than 10 people. The
International Labour Organisa-
tion has also suggested that pro-
bationary periods be consid-
ered for inclusion in the Act.

Mdladlana also made conces-
sions to labour recently when he
announced in Parliament that he
would amend the Act to make
negotiations on retrenchments
mandatory — an issue over
which labour federation Cosatu
has campaigned — and would
set minimum wages for domes-
tic and farm workers.

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Workplace forums by-passed

Frank Nxumalo  
Labour Editor

Johannesburg – Only six statutory workplace forums had been successfully set up since the promulgation of the new Labour Relations Act (LRA) in 1995, according to a Wits University report released last week.

These forums are workplace organisations to which representatives of the workforce and management are delegated to discuss and jointly resolve a wide range of industrial relations issues, from team-building to workplace reorganisation.

The aim is to avoid a bloody confrontation between management and the trade unions, or at least ameliorate conflictual industrial relations.

The report, called 'Workplace Forums: What is their Future?' compiled by the Wits Sociology of Work Unit (Swop), showed that by the end of last year, 56 workplaces had applied to the Commission for Conciliation, Mediation and Arbitration (CCMA) to set up a workplace forum, yet only six had succeeded.

The report said the amendment to the LRA that provides for workplace forums tended to be a non-event because trade unions would not support them.

In 80 percent of the cases, workplace forums were not established as a result of opposition from the trade unions.

"There is a belief that the trade union involved would not benefit by the creation of the workplace forums.

"As workplace forums do not incur membership fees and are open to all employees, they can indirectly undermine the authority and powers of the trade union," Christine Psoulis, a senior Swop researcher and one of the authors of the report, said.

Psoulis cautioned against discard the usefulness of these forums as they still had teething problems and it would be premature to doubt their future value in generating improved industrial relations.

The report proposed three ways of securing the future of workplace forums:

- Labour legislation needed to reflect the reality of existing forms of workplace representation by surveying forms of employee participation and designing legislation to enable these to become part of a labour relations system.
- The CCMA needed to adopt a long-term strategy to facilitate the establishment of workplace forums, and
- An effective structure capable of obtaining and retaining valid information about workplace forums needed to be set up.
Altering act ‘threatens councils’

Renee Grawitzky

The bargaining council system could collapse if government moved ahead and amended the Labour Relations Act to provide for a voluntarist approach to bargaining, University of Witwatersrand academic Eddie Webster said.

This follows reports that government planned to review labour legislation put in place since 1994 and to determine its effect on employment.

The granting of greater ministerial discretion in extending bargaining council agreements — as proposed by the labour market commission in 1996 — could form part of possible areas for review.

Webster said such a move would undermine the act’s approach to centralised collective bargaining.

Speaking at a Wits Sociology for Work Unit workshop Webster said there was vagueness on the part of government “We are a country that has not made up its mind.” There was lack of co-ordination between government departments.

Government had liberalised trade without following through on this approach in the labour market.

He called on government to consider incentives to encourage employers to support bargaining councils.

A workshop delegate said if government did not extend council agreements to nonparties (traditionally smaller employers), then there would be no incentive for larger employers to participate and they would pull out of councils.

Webster said “it was crucial that we move beyond the rhetoric and confront the reality” that a fragmented labour market existed in SA.

An acceptance of this could lead to the consideration of various options “Do we go for the levelling down of wages and compete at the lower end of the market or do we adopt a vision of where we would like to be in 25 years’ time — not how do we level downwards but level upwards in that period of time?”, Webster asked.

This could in the interim mean the acceptance of a two-tier labour market.

Collective bargaining, Webster said, could form part of the solution not the problem. He had found a limited number of innovative agreements, but said they meant nothing if parties did not have the capacity to implement them.

BD 2014 99
Department spent R4m on awareness campaign for new laws, says Mdladana

The labour department had spent nearly R4 million publicising the details of the new labour legislation, Membathu Mdladana, the labour minister, said yesterday in a written reply to a question from the national assembly. Mdladana said more than R2 million had been spent on publicising the Labour Relations Act and R374 187 on the Basic Conditions of Employment Act. Nothing had yet been spent on the Employment Equity Act. Mdladana said about R1.5 million had been earmarked to publicise the three bills over the next three years.

The Occupational Health and Safety Awareness campaign had not yet been implemented and was still in the discussion and design stage. The campaign was expected to be implemented by way of a pilot project later this year. The department had budgeted to spend R128 million on the Commission for Conciliation, Mediation and Arbitration this year, which would increase to R137.9 million next year and to R151.7 million the year after. Mdladana said R374 187 had been spent on the commission so far.

— Lyndia Laxton, Cape Town
Those who think the new legislation is designed to swamp employees could not be more wrong.

Positive aspects of the new Labour laws

MANAGEMENT
Investors wanting cheap labour ‘should stay away’

Reneé Grawitzky

LABOUR Minister Membathusi Mdladlana has warned foreign investors that if they are looking for cheap labour they should go elsewhere.

Mdladlana was addressing a media briefing on how the new Employment Equity Act — approved by Parliament in September — would be phased in over the next seven months. The Act, he said, was not anti-white but was intended to eradicate discrimination in the workplace and ensure that attitudes changed.

South Africans should no longer view “white as meaning efficiency and black as inefficiency”.

In response to questions on the review of labour legislation, Mdladlana said current labour laws would ensure peace and stability in the workplace, which investors needed. “How can investors say that by prohibiting discrimination in the workplace, that will create rigidities,” Mdladlana said.

At this point, he warned, that if investors were looking for cheap labour in SA, they should go elsewhere.

Mdladlana confirmed that the labour department was to embark on a consultation process with labour and business on a review of the previous five-year plan. This was in order to devise a plan for the next five years.

This process would address concerns of the social partners with regard to current labour laws. The International Labour Organisation said the SA labour market was not rigid. Parties, therefore, had to be specific about their concerns.

“We are tired of sweeping statements,” Mdladlana said.

Business SA spokesman Vincent van Vuuren yesterday welcomed the minister’s decision to announce the dates for the implementation of the Act.

Employers, he said, could begin to plan and implement the act’s principles, if they had not done so already.

The main section of the act relating to the drafting of employment equity plans only came into effect in December. Therefore employers, depending on the size of their workforce, will have until June or September next year to submit such plans to the department.
ew legislation seeks better workplace

S

Labour Minister Promised Amendments to the Mining Act 2014

The government has promised amendments to the Mining Act 2014 to improve safety and health standards in the workplace.

The amendments include the introduction of new regulations for the use of air-quality monitoring equipment, as well as increased penalties for non-compliance with safety and health standards.

The amendments are expected to be implemented within the next six months, and will be accompanied by a public consultation process to ensure that all stakeholders have the opportunity to provide feedback.

The government has also announced plans to establish a new occupational health and safety inspectorate to enforce the new regulations and ensure compliance with safety and health standards in the workplace.

The amendments were welcomed by workers' rights groups, who have long called for stronger regulations to protect workers from workplace hazards.

The government has stated that it is committed to improving safety and health standards in the workplace, and that the new regulations will help to create a safer and more healthy working environment for all workers.
New employment act to be phased in gradually

FRANK NXUMALO
LABOUR EDITOR

Johannesburg - The Employment Equity Act (EEA) had a dual purpose to underscore the constitution by prohibiting discrimination and to entrench equity in the workplace through affirmative action, Membathisi Mdladlane, the labour minister, said yesterday during the promulgation of the EEA.

Mdladlane said these twin objectives had been designed to complement each other, as the removal of discrimination alone would not ensure equality in employment opportunities for those who had been denied access to jobs, education and skills.

The act would go further, placing an obligation on employers to introduce affirmative action steps to redress these imbalances.

"We are pleased to make this announcement on the eve of May Day, since the promulgation of this act reflects another important gain for worker rights in South Africa.

"The legacy of apartheid continues in our workplaces," Mdladlane said.

"This act seeks to bring an end to decades of inequalities that are the result of high apartheid policies and societal prejudices and stereotypes. The act will ensure that millions of our country’s citizens will enjoy equality of opportunities in employment that were hitherto denied to them."

The act would be implemented in four staggered sets. The Employment Commission for Employment Equity would be established on May 14, prohibition of unfair discrimination at work promulgated on August 9, affirmative action and employment equity plans in December 1999, and six months later, in June 2000, designated employers would have to report to the department. Other employers would report a year after that.

Section 53, which regulates government tenders, would be implemented between September 2000 and April 2001. Companies employing more than 150 people and winning state tenders must submit their compliance certificates three months after the first date. Designated employers must do so three months after the second date.

Business said it was pleased it had some certainty about when the parts of the act would promulgated.
Labour task team welcomed

Frank Nxumalo
Labour Editor

Johannesburg — Business yesterday welcomed the announcement by Manthabiseng Mdlalana, the minister of labour, that he would appoint a task team of labour and business representatives to address the concerns of the two constituencies about current labour legislation.

Business has consistently argued that the current labour laws overprotect labour and are an impediment to job creation. On the other hand, labour charges that any talk of market flexibility can only come from "the enemies of the revolution" who are hell-bent on trampling on basic workers' rights.

In this regard Mdlalana said the task team would tackle two policy-related issues, namely job security and job creation.

"We need to hear the concerns of business that our policies undermine job creation. Hopefully this time round, unlike in the past, evidence will be presented to show the impact of new labour market policies and the employment situation."

"On the other hand, we would need to address the concerns of labour about the inadequacy of the current legal framework to provide job security. This has been brought into serious focus by the wave of retrenchments that we witnessed, particularly in 1998," the minister said.

Concerns about labour market flexibility runs deep in the South African Chamber of Business (Sacob). It says its members have indicated that if government made it difficult for them to retrench, they would not hire in the first place.

"Labour legislation must strike a balance between business and labour rights, but that balance must be informed and dictated to by the situation (or level of socioeconomic development) in the country," said Harry Bezuidenhout, Sacob's director of human resources.

"The Unemployment Insurance Fund in South Africa is not the same as in the First World countries, but then, where does the money come from?" he asked.

Cosatu said it would be responding to the "sensitive" matter of a labour policy review at its executive committee media briefing scheduled for today.

But when the issue was raised in passing recently by Deputy President Thabo Mbeki, labour advised business against celebrating prematurely.
Johannesburg — Globalisation and democratisation were the two dominant forces facing business today in a transforming South Africa, Raymond Parsons, the director-general of the South African Chamber of Business (Sacob), said yesterday.

Parsons said the most far-reaching transformation laws facing business were those relating to the labour market and its regulation.

Business broadly had three sets of related concerns with the existing labour market regulation:

"The first is that the new labour laws do not have sufficient regard for their economic consequences and successive layers of regulation have raised the unit cost labour relative to South Africa's competitors."

"The second set of concerns is that the new labour laws are overly prescriptive and impose obligations upon the parties that are far better left to collective agreement and local regulation," he said.

"The third set of concerns was that the new laws were not flexible enough to accommodate the changing requirements of the workplace and limited the scope of variation permissible in any particular set of circumstances.

"Parsons said it was now left to business to "define and motivate the specific amendments necessary to labour regulation".

"The consequences of globalisation, or globality as it was increasingly called, were most directly felt in increased competition."

He said right-sizing, restructuring and reorganisation had become inevitable consequences, with mergers and acquisitions being sought to exploit new market opportunities.

"We are no longer competing with the guy down the road, but with guys in a different country, the benchmarks of performance are no longer local, but global, markets are worldwide."

"The leaner, meaner, faster, flatter and more flexible organisations have become the corporate model of the new globality, bringing great opportunities for the winners, albeit less comfort for the losers," Parsons said.

He said as much as the corporates had to adapt to new rules and realities, the state had to review its economic role.

"Governments are faced with a package of policy adjustments to the new globality which cumulatively set a new economic policy agenda, often a formidable political challenge."

Success in the global market was now as much a matter of political will as it was of economic fundamentals, said Parsons.
LAW WILL SOON PROTECT WORKERS WITH HIV

[Diagram of a map, possibly indicating states or regions]
**Labour laws under microscope**

**FRANK NxUMALO**

Johannesburg — Labour market regulations had to be assessed in terms of whether they achieved three market objectives and to what extent the pursuit of one was compatible with the attainment of the others, said the latest edition of the South African Labour Bulletin, released yesterday.

The objectives were: that the regulations provide workers with job security in an economically equitable manner, that they promote employment growth and dynamic efficiency, and that they have redistributive effects beneficial to vulnerable sectors of society.

Theo Malan, the author of the article, said flexibility meant different things to different people or groups. Employers understood it to mean the ability to change things quickly and at relatively low costs.

For workers and their representatives, however, "flexibility means insecurity. Workers want certain forms of flexibility, such as the capacity to adjust their working time and pursue upward mobility."

"However, trade unions see flexibility as a device for increasing managerial control and workers' insecurity," Malan said.

He said labour markets of the future had to necessarily combine flexibility and security.

Malan identified four distinct forms of flexibility: Functional flexibility was the adaptability of workers to undertake a range of tasks, and included multi-skilling and job rotation. Numerical flexibility referred to the ability of management to vary head count in line with product demand. Mechanisms included fixed-term contracts and subcontracting. Wage flexibility was the linking of wage levels to both individual and company performance in the market. Temporal flexibility involved various arrangements of working hours, among these were the shift systems, part-time work, home working and temporary work.

Malan said the International Labour Organisation classified job security into a number of categories: Labour market security referred to employment opportunities. High labour market security meant there was either low or falling levels of unemployment. Employment security meant workers were protected against arbitrary dismissals by collective bargaining arrangements. With job security workers were protected against arbitrary transfers between sets of tasks and in the process losing job-based rights. Work security was about working conditions, including health and safety. Skills reproduction security referred to access to multi-skilling. Income security was protection against poverty and arbitrary reduction in wage levels.

**South African Labour Bulletin offers new analysis of market-related legislation**
EMPLOYMENT EQUITY

FAIR ATTRACTION: WALK THE AMAZING LEGAL TIGHTROPE

Employers must beware of how they obey the law.

David Kemp owns a warehouse in Durban from which he sells curtains, towels, duvets and upholstery and the like to the retail trade, turning over R15m a year.

He employs 89 people — and there’s the rub. Because Kemp refuses to disclose the race or gender of his staff, he could be heading for a brush with the law, in the shape of the new Employment Equity Act.

The Act says employers like Kemp must report to the Department of Labour on the labour diversity of their businesses. The reason he won’t, he says, is that it smacks of racism, he didn’t do it under apartheid, so why should he be forced to do it now?

“The ANC always says small, medium and micro enterprises are at the heart of its job creation strategy, but the new laws may stifle this sector,” he says.

The choice is stark for Kemp, and others who have always tried to run their businesses on minimal paperwork, start developing a staff equity programme now, or face the prospect of prosecution as the Act takes effect.

Nor is it as simple as that. Overzealous application of the Act could expose employers to law suits from existing staff.

The Employment Equity Act’s stated intention is to eliminate discrimination and promote employment equity in the workplace. It covers all employers and employees, except the security and intelligence services.

Companies with more than 150 employees are required to submit their first report to the Labour Department by December 1 this year, and those that employ fewer than 150 employees should do so by June 1 2000. Thereafter the big and small companies are required to report their progress to the department every year and every two years respectively.

Ever since controversy first erupted around the equity law proposal, management consultants and legal firms have been inundated with requests for advice on how to comply. And they have been quick to develop costly transformation programmes.

But the biggest challenge to companies under the Act may lie in the way they review their employment practices. This is where companies evaluate their existing human resources policies, employment contracts and organisational culture, and decide how best to harmonise affirmative action with existing fair labour practices.

Employment law specialist Mosh Thulare says the Act is too inflexible and discourages internal firing and promotion, which motivate staff and boost morale. Companies now may find they cannot comply with the Act by hiring within their organisations. This may force them to overlook qualified staff and recruit from outside simply to meet stipulated race or gender quotas.

Employers who fail to stick to their existing employment policies may be exposed to legal liability. In two recent cases — George vs Liberty Life Association of Africa Ltd, and Public Servants’ Association of SA vs Minister of Justice — employees successfully challenged affirmative action appointments based on the basis of improper procedures.

What’s required. Companies with at least 150 employees must report to the Department of Labour by December 1, thereafter annually. Companies with fewer than 150 employees must report by June 1, 2000, thereafter every two years.

How to do it: Step 1 — analyse existing employment practices. Step 2 — develop a set of equity targets in consultation with staff. Step 3 — start a programme of continuous training for employees and managers. Step 4 — finalise and publish implementing the equity plan.

Watch out: Employers should beware that their affirmative action plans do not disrupt existing good employment practices. Established employees have already successfully challenged affirmative action appointments on the basis of improper procedure.

Mosh Thulare says companies must be careful how they implement employment equity legislation. The tension between affirmative action and existing contracts is not always obvious. Employers must ensure their equity plans don’t discriminate against current employees.

Selis Mabola
New employment legislation gets into action

FRANK NKUMALO

Johannesburg - The first sectoral determination under the new Basic Conditions of Employment Act was published in the Government Gazette on Friday by Membathu Mdlalana, the minister of labour.

The sectoral determination Contract Cleaning Sector South Africa, set new conditions of employment in that sector and replaced Wage Determination 482, Contract Cleaning Trade South Africa.

The determination set three different wage levels for different areas:

- Area A covered urbanised areas such as Alberton, Bellville, Johannesburg and Pretoria.
- Area B covered wages for areas in KwaZulu Natal that were not covered by a bargaining council.
- Area C was introduced because the bargaining council agreements in that province had not been extended to non-parties.

Lastly, area C covered all other areas not specified in the schedule.

The hourly rates for the first 12 months after the publication of the notice would be R6 for area A, R5.13 for area B and R4.80 for area C.

The department said other new conditions of employment set out in the determination dealt with the compressed working week and averaging provisions, daily and weekly rest periods, family responsibility leave, severance pay and other administrative obligations such as providing written particulars of employment and informing employees of their rights.

Legal enforcement of the determination would be executed in terms of chapter 10 of the new act. It implied that workers in the sector now had recourse to the Labour Court in the event of unscrupulous employers violating their basic labour and human rights.
Moravians thank God for their return to District Six

Chapel they lost to apartheid reclaimed for worship

LYDIE REPPENAR

District Six's historic Moravian Hill Chapel, which fell victim to the Group Areas Act, is to be restored to its former glory by voluntary workers and the Cape Technikon.

Yesterday, more than 400 Moravian worshippers marched down Beach Street from the Holy Cross Catholic Church to the Moravian chapel to attend their first service at the church since the Group Areas Act closed it in 1988.

A small token of appreciation was handed over to Father Isaac Ribot of the Holy Cross Catholic Church, where Moravians were allowed to hold their own services during the apartheid years.

Moravian Church members re-visited the church after the church and the District Six Benevolent Trust reached agreement with the technikon that the chapel could again be used for services.

The church is shared with the District Six Museum, whose rebuilt premises are being reopened.

The church is also awaiting a decision on a claim which is being considered by the Land Claims Court.

The Rev Kareel August said his flock wanted to worship in a building of their own.

"What has been taken from us here is immoral and unjust. We think the Land Claims Court is under a moral obligation to the nation to give a token of commitment to people who have been dispossessed."

Moravian Bishop Emmanuel Fieschi said: "Like many people, we are also hoping that the suffering and ill experiences of the past will eventually change for those who have lost so much in years gone by.

"To lose something you hold dearly, something that has been part of your existence, is never a pleasant experience. It is traumatic, it hurts deeply and it is sad."

Anwar Nagla of the District Six Benevolent Trust told the congregation it was important for people who had lost property under the Group Areas Act to return to District Six to reclaim their land.

"We must and will not ask for our church back. It must be given back to us in the same way it was forcibly taken away from us."

Mr August, who was a minister at the church in 1980, said the church had been forced to sell the building when the Group Areas Act came into effect or face expropriation.

"In October 1988, we were closed down. I was the last person to stay in the rectory until December 1991. That was the very day the Group Areas people came to seal the church door."

The church was forced to sell the property to the Department of Community Development and the land was earmarked for the development of the Cape Technikon.

Desperate to save the Moravian Hill Chapel from being demolished, the Moravian Church approached the National Monuments Council and the chapel was declared a national monument about two years later.

"We often came here and visited regularly to see how the building was. We never lost sight of the fact that this was our property," Mr August said.

Yesterday William Abraham, a church council member, carried the original pulpit Bible into the Moravian Hill Chapel during the service to mark the return home of the congregation.

"When there was no hope for us to reclaim our church, that same gentleman carried it out and took it to Hanover Park (Moravian Church)," said Mr August.

"It (the Bible brought into the church) was to consecrate what had been desecrated by the apartheid regime."
BY RYAN CRESSWELL

An investigation into the wages and working conditions of the agricultural and domestic worker sectors would take nearly a year to complete and would involve widespread consultation and research, the Labour Department said yesterday.

Under the Basic Conditions of Employment Act, promulgated in December, the government can now set conditions of employment, which include minimum wages, for these workers. But farmers and other employers believe this could stifle job creation and the government is taking a careful look before making any further decisions.

Notices on the beginning of the investigation into the two generally poorly paid sectors were published in the Government Gazette two weeks ago.

In a four-month first phase, the Labour Department will assess the market and find out what kind of wages are being paid and what social security or medical benefits are being supplied. The second phase will involve specialised research into various issues, and there will be consultation with all role-players, including unions and non-governmental organisations.

Early next year the department will write up its report.

*Staff 20/6/99*
US-SA move for labour reforms

By Mzwakhe Hlangani
Labour Reporter

UNited States labour secretary and US-SA Binational Commission's human resources development committee co-chairperson Ms Alexis Herman has pledged to bolster transformation programmes and far-reaching South African labour market reforms.

South African and US labour departments have developed close working relationships in the past five years based on shared commitment to improving the lives of people and creating opportunities for formerly disadvantaged groups.

Over the past three years the US labour secretary has committed herself to a technical cooperation programme with her South African counterpart, Ms. Mmabatho Mdladlane, in the areas of labour statistics and workplace safety and health.

At a media briefing in Pretoria last Friday Herman disclosed that her department had dispatched labour experts to work with South African officials on the development and implementation of the celebrated employment equity programme.

The Mine Safety and Health Administration also began a "capacity-building initiative" under which South African mine inspectors receive training.

The ministers' meeting also highlighted new areas of cooperation and mutual interest, including the passage of a new convention next month by the International Labour Organisation (ILO) banning abusive child labour practices worldwide.

The US government has given a $1 million (R6 million) grant to the ILO in a bid to expand South Africa's participation in the ILO's programme for the elimination of child labour, Herman announced.

She expressed admiration for the commitment displayed by business, labour and the Government, despite differences, in jointly taking responsibility for South Africa's future.

Mdladlane commended the US government's support and "generous contributions" in various areas, such as the establishment of youth brigades, labour market information and research on unemployment, labour migration and workforce development in the tourism sector.

The minister was also impressed by Herman's keen interest in and support for core labour standards, fundamental labour rights and social safety nets.

"While the legacy of the country's labour market is marked by poverty and adverse labour relations, high levels of unemployment continue to impact negatively on our global economic integration," Mdladlane said.
Seifsa warns new laws could kill jobs

Patrick Wadula

THE Steel and Engineering Industries Federation of SA (Seifsa) says that SA is pricing itself out of the global market.

Seifsa president Bill Cooper also warned that policies and laws could hurt business and jobs if they were not implemented gradually.

Cooper said trade policies, labour legislation and trade union actions were raising business costs, causing job losses and threatening the entire manufacturing sector, at a time when SA should be doing everything possible to create jobs.

Cooper pointed to major developments such as the rapid trade deregulation, high interest rates, the new Labour Relations Act, and the rising costs of labour.

"The net effect is that we are pricing ourselves out of the global market," he said. "This was leading to a continuous loss of business and jobs throughout the economy.

Cooper said government had been "de-protecting" the SA economy much faster than even the World Trade Organisation. The economy had to gear itself up for global competition, but there was a timeframe within which this could be done.

"We have to stop de-protecting faster than the productive base can change," said Cooper.

Customs and excise controls also needed to be drastically tightened so that the remaining duty structures were not nullified by inefficiency and graft.

"Grey imports into this country are unbelievable," he said. "We have become the biggest free trade area in the world."

The objectives of the recent labour legislation were totally admirable. However, in an economy bordering on recession it could achieve the exact opposite of what the legislators intended — the collapse of more businesses and significantly higher unemployment.

Capital intensive companies would ride out the storm, but faced with rapidly rising labour costs, SA's more labour-intensive businesses were becoming uncompetitive and would shed jobs faster.

A company could spend a year or 18 months nurturing an international customer. The first time it failed to deliver on time, the export business would be lost because there were many manufacturers around the world with whom to do business.

"If we want to succeed in the global market then we have to develop a competitive work ethic, because SA does not have anything unique or different to offer," said Cooper.

Members of the Commission for Employment Equity named today

Johannesburg – The department of labour would announce the names of the members of the Commission for Employment Equity (CEE) today, the department said yesterday.

The members were nominated by the tripartite National Economic Development and Labour Council that brings together representatives of organised labour, business and government.

The CEE was established by the Employment Equity Act to advise the minister of labour on various codes and regulations required for the implementation of the act, which becomes operational on August 3, National Women's Day. Planned regulations include standardised forms for employers, a summary of the act for display at workplaces, procedures for the conduct of an analysis and preparation of the workforce profile, plus simpler forms for smaller employers — Frank Nxumalo

Brait's maiden results 'on solid ground': Brait, the investment and merchant banking group, scored an 80 percent year-on-year increase in attributable earnings to R202.7 million in its maiden results for the year to March 31, the company said yesterday.
No changes in Employment Act

FRANK NKUMALO
LABOUR EDITOR

Johannesburg – The Employment Equity Act would be implemented as passed by parliament, Sipho Pityana, the director-general of the department of labour, said at the weekend, ending speculation about an imminent review of labour legislation.

"In the light of what might be confusion arising from the talk of a review of the labour laws, it is important we leave no one in doubt that this law will be implemented as passed by parliament," Pityana said.

He said it would be "ill advised" for any employer to give the impression that a different approach would be considered.

The policy was in line with the vision of building a society characterised by equal opportunities.

He said it was "misleading" to create an impression that the law was reverse discrimination.

He said "affirmative action measures are intended to redress past discrimination and offer opportunities in a planned and accelerated way.

"As a business strategy, employment equity provides a course of action aimed at delivering equality in the workplace. It is neither about reducing standards nor tokenism."

Raymond Parsons, the overall business convener at the National Economic Development and Labour Council (Nedlac), said organised business had always supported the act.

Parsons said business had played a positive role in negotiating the legislation at Nedlac and was committed in assisting companies to implement it. Business welcomed the certainty about the date of implementation.

Parsons said "aspects of the legislation which continue to give concerns to business include the turnover criteria, which affects small business and the inappropriateness of using the employment equity to narrow the wage gap.

"Business believes that the legislation is steadily implemented important new insights will be gained by officialdom and employers alike, which could lead to adaptations in the future."
Then we will be able to speak openly of our situation.
ANC plays down labour law rethink

Johannesburg — Business South Africa yesterday welcomed the government’s weekend announcement that it was committed to reviewing aspects of labour law believed to constitute barriers to employment creation.

However, the ANC warned that Deputy President Thabo Mbeki’s pledge at the party’s 87th anniversary celebrations at the weekend referred only to a review of certain aspects of labour law relating to job creation and that this would not necessarily result in any amendments.

In an election year, the ANC also was unlikely to stop on the toes of Labour Federation Cosatu, its closest ally by amending popular labour legislation.

Thabo Masebe, the ANC spokesman, said business chose to interpret legislation review to mean legislation amendment because that was simply what it wanted to hear.

Although business supported the spirit of the labour law package introduced by Tito Mboweni, the former labour minister, it has consistently lobbied the government to revisit labour legislation.

It has argued legislation like the new Labour Relations Act and the Basic Conditions of Employment Act introduced labour market rigidity and increased unit labour costs respectively.

But the labour department has said its claim the latter act raised unit labour costs by at least 20 percent was unsubstantiated.

Business has slammed the skills training levy envisaged in the Skills Development Bill as an additional form of tax and has disagreed with the way the Employment Equity Act proposed creating equity in the workplace.

“Business believes certain aspects of key labour legislation are not employment-friendly and discourage many businesses, especially small business, from employing people,” said Raymond Parsons, the overall business convenor at Nedlac.

“This aggravates the unemployment problem by creating structural impediments to job creation in South Africa. The overall system has to make it worthwhile for firms to create employment.”

Parsons said the challenge for the government, labour and business was to find a new balance in labour market structures that reconciled efficiency and equity.
The protection of workers at heart of new labour law

By FEMIDA CASSIM

Since the Basic Conditions of Employment Act of 1957 came into effect on December 1st last year, 780 domestic workers have complained to the Commission for Conciliation, Mediation and Arbitration (CCMA).

At least 670 workers have lodged unfair dismissal disputes, 42 claim they have received no severance pay, 11 allege unfair labour practices, two allege constructive dismissal, a further two allege matters of employment disagreement, and another two are alleging a unilateral change to terms and conditions of employment.

For years, domestic workers were not covered by any law and were restricted to taking their employer to the Small Claims Court if payment was withheld.

The Basic Conditions of Employment Act is meant to protect workers from harsh and unfair treatment. It covers permanent as well as part-time workers. It excludes those working for less than 24 hours a month. The act recognises a maximum working week of 45 hours with a maximum of 10 hours overtime.

Employers can no longer insist on overtime without a worker's consent, and any overtime work must be remunerated.

According to the act, when an employee starts working, certain details of employment must be written down in a document. This is known as the written particulars of employment. The employer must also keep a copy. If an employee does not understand the contract, it must be explained to her or him.

The termination of employment requires a notice period, depending on the length of employment. During the first four weeks, one week's notice must be given; and between four weeks and one year, two weeks' notice. After the first four weeks, domestic and farmworkers need to give four weeks' notice. Notice must be given in writing, but illiterates may give verbal notice.

Sithembele Tshwete, communications co-ordinator for the CCMA, believes that many more domestic workers are experiencing problems than the number of cases brought to the CCMA.

Certificate

"There are a lot of domestic workers out there who are not conversant with the act and the law. Employers as well as employees should be conversant with the act. The idea is to be able to prevent a dispute," he says.

After an employee complains to the CCMA, a conciliation process takes place whereby a commissioner from the CCMA will try to reconcile the two parties. A certificate is given after the conciliation process to say whether the matter was resolved.

If the matter is not sorted out, the next step is arbitration. In this process, the commission determines whether the employer was unfair in dismissing the person or whether the employer acted within the law.
Union says a skilled worker who cooks and looks after children should be entitled to about R1 200 a month

BY VIVIAN WARRY

The Government’s proposal to set a minimum wage for domestic workers was generally hailed yesterday, but fears were expressed that the move may lead to job losses.

Labour Minister Membathisi Mdlalana told Parliament on Monday that the Basic Conditions of Employment Act would set the minimum wage, and his department would determine the figure. However, he could not give an indication of what the wage would be or when it would be effective.

Supporting Mdlalana, SA Domestic Workers’ Union president Selina Vilakazi said her organisation would be asking for a minimum wage of R800 for a domestic worker who is employed full-time and who does basic household chores such as cleaning and laundry.

After that, said Vilakazi, wages should be set according to the skills level. For a skilled worker who does cooking and looks after children, the minimum wage should be R1 200. Daily rates should start at R75.

Thousands of domestic workers continued to be “grossly exploited”, with some earning as little as R200 a month, she added.

Three placement agencies in the Gauteng area said they would not even consider sending any of their domestic workers to an employer who was offering less than R800 a month.

“Depending on the skill level, salaries start, at the lowest, at R650,” said Linda Will, owner of Abby’s Domestics in Randburg. “We won’t even talk to anyone offering less, as we believe that would be slave labour.”

Will said that at present there were thousands of domestic workers looking for employment but far fewer people looking to employ them. Setting a minimum wage, she feared, might be detrimental to some of these workers because it would take them out of the price range most people could afford.

Rosemary Mhembu of Household Services in Parkhurst, Johannesburg, said the rates ranged between R600 and R1 000 for a 45-hour week.

Another agency based in Randpark Ridge, Randburg, said extras such as accommodation and food were over and above their minimum wage guidelines of R850.

Sally Motlana, president of the Black Housewives’ League, said that while she welcomed plans for a minimum wage, she feared that if the figure was out of reach for some employers, it could lead to many dismissals in a sector that already had a high unemployment rate.

Motlana said that before the Government set a minimum wage it should carry out a study and consult with employers and domestic workers in this way, a wage could be set that would not lead to job losses, but would still be a living wage.

The Black Sash welcomed the news “It’s great,” said case worker Wellington Ntamo. “This is one of the sectors that has on all fronts been neglected, although since 1994 there has been improvement and recognition of them as a workforce. The...have been so many abuses of domestic workers in the past, not only in the wage area but also in the conditions of employment.”

Host of prizes for winners of Star couple... winners of The Star Couple of the Year, Lucia and it at the glittering awards ceremony last night. Their prizes include a

The accent is always on romance in The Star Couple of the Year competition, and our loving young winners for 1998 turned the key on a new stage of their romantic lives at the Cresta Hyundai showroom yesterday.

Social workers Lucia and Itumeleng Molefe took the title, receiving the first prize, a Hyundai Accent 15S, as well as a trousseau of other fabulous gifts. Valued at R48 590, with modifications worth R12 000, the Hyundai Accent 15S is just the kind of luxury The Star Couple of the Year deserve.

A second honeymoon at Nambiti’s Protea Hotel Walvis Bay lodge – with return flights to Windhoek courtesy of British Airways Comair, and a car hire from Budget Rent-a-Car – also await the winners. Other prizes include a Kelvinator fridge, automatic washing machine and freezer valued at...
Get organised, minister tells domestic workers

Labour Minister Mbalula Mdladlana has met representatives of domestic workers and their employers to encourage them to organise themselves to negotiate a minimum wage (R68) (285).

Mr Mdladlana said the Basic Conditions of Employment Act promulgated last year would make it possible to set a minimum wage for domestic workers and agricultural employees. He said minimum wage negotiations should be completed in a year.

Mr Mdladlana said it was difficult to say what these wage levels should be. A quarter of South Africans earned less than R300 a month, which was less than the government pension.

He said domestic workers were in a sector which was not well organised, and Cosatu (Congress of South African Trade Unions) had been trying to organise them.

Parliamentary Bureau
Review needed before minimum wage can be set

LABOUR Minister Membatha Mdladlane had yet to ask the Employment Conditions Commission to investigate the possibility of setting minimum wages in the agricultural and domestic sectors, the commission said.

Commission chairman Edwin Mohalehi said yesterday that, in terms of the Basic Conditions of Employment Act, an investigation of this nature would be undertaken only if requested by the minister.

To give effect to this, the act provided for the promulgation of sectoral determinations, especially where there was no formalised collective bargaining.

Mohalehi said he had not received an official request from the minister.

This followed reports earlier this week that government planned to legislate sectoral determinations in the domestic and agricultural sectors within the next year.

The newly formed SA Domestic Workers' Union then came out demanding a minimum wage of R1 200. The union will be launched in July.

The union said many domestic workers were being dismissed because employers claimed they did not have money to pay them.

These developments have created the impression that government would within weeks or months announce a minimum wage in these sectors.

Observers said that investigating the possibility of legislating sectoral determinations in these sectors was a complex task and would require time. They said these sectors could not be viewed in isolation of other sectors in the economy.

Any move to set minimum wages would have a ripple effect throughout the labour market.

The labour department, realising that expectations were being unnecessarily raised, issued a statement explaining that Mdladlane's comments, made earlier this week, did not reflect a change in government policy.

The act, which came into effect in December, provides for sectoral determinations to be set in sectors like domestic work and agriculture.

The department said throughout the negotiations on the act that it was committed to improving the conditions of workers in these sectors. Recent statements were made in the context of the needs of the country.

But this process would not occur overnight and would require the involvement of all affected parties.

The public would have an opportunity to make submissions to the department and the commission.

Mohalehi said the commission could upon a request from the minister conduct its own research or this could be done by the department.

This research would involve calls for submissions from key stakeholders. Mohalehi said in sectors such as domestic work and agriculture, it might be appropriate to consider public hearings.

After gathering information and hearing submissions, the commission would draft its advice to the minister.
We're on the right track, says cop boss

'I believe we can win this war'

OWN CORRESPONDENT

Pretoria – The man entrusted with the mighty task of turning the police service into an effective and democratic machine believes the police are on the right track.

But police chief executive Meyer Kahn conceded in an interview this week that there were major problems in the service, and the continuing escapes of awaiting trial prisoners from police holding cells was not the least of them.

He said this was the result of a combination of factors. “Without a shadow of a doubt more arrests are being made now, and the infrastructure is not up to scratch to deal with this.”

Sadly, one also has to accept there has been corruption, and equally sadly, there has been negligence as well,” Mr Kahn said.

But these problem areas were being addressed. In the short term they would tackle negligence and the lack of standards. “And we are working very hard on fighting corruption.”

Looking back at his first four months in office – he was appointed on August 1 – he said: “There’s not been a single moment that I have had regrets about joining the SAPS.”

“Yes, we do have very major problems, many are socio-political, many are transitional in nature, and many are structural, but generally we are on a sound track.”

He said they had started addressing structural issues and had compiled a substantial work programme for the new year to lay a strong foundation for law enforcement.

The structural changes that would be implemented in the service related to basic fundamentals like policing, operations, human and material resources and the role they played in the whole of the criminal justice system, which he described as hugely overloaded.

“We'll have to find alternative ways of dealing with this. There are many ways to skin a cat.”

He said admission-of-guilt fines, spot fines and mobile courts could relieve work loads and pressure.

But Mr Kahn, who was CEO of South African Breweries prior to joining the SAPS, is still an outsider in the service. “In all honesty, although I visited many stations over the past four months, my real involvement has been with command structures.”

“And, at that level, I have really been overwhelmed by the generosity and friendship shown toward me.”

But at station level, he found an enormous appetite among people wanting to work together and sort out the problems.

“I honestly believe we can win this war and I want to be part of the team which wins it,” he said.

Mr Kahn has worked closely with National Commissioner George Fyvie, his deputies and the provincial commissioners – but generally, he is a one-man band “with my secretary over here”. In true police fashion, he said. “The one thing we don’t do in the police service is tell people about the programmes we are developing.”
Employment cover for companies on the cards

Reneé Grawitzky  00  24/3/99

SA EMPLOYERS inadvertently falling foul of the constant
stream of new labour legislation will now be able to in-
sure themselves for up to R10m a year against litigation.
Integrated Labour Solutions will provide employment
liability insurance for companies facing claims for dis-
 crimination, unfair dismissals, unfair labour practices
and failure to employ an applicant.

Company representative Ian Paterson said yesterday
SA's labour market was increasingly perceived as "hy-
per-regulated". The rise in legislation inadvertently led
to an increase in employment risks, he said.

Integrated Labour Solutions — a joint venture be-
tween commercial law practice Edward Nathan & Fred-
land Inc, financial services group Glenrand MIB and
labour consultants SMC Consulting — aims to help com-
panies manage risk and prevent a rise in employment-
related costs. The insurance, which will cover legal costs
and possible settlements, will be underwritten by
Lloyds of London.

Paterson said there had been an increase in legal ac-
tion by employees in recent months. This was partly due to the fact that
challenges could be mounted on a wider range of issues, and the greater
access to dispute resolution through the Commission for Conciliation
Mediation and Arbitration.

Internal Labour Solutions would assess em-
ployment risks in organi-
sations by identifying ar-
ea of noncompliance with
labour legislation.

The final component of
the system will be the pro-
vision of insurance cover-
ing "employment risks and
legal costs arising from
claims by employees"
Labour ruling could save millions of lands
Know your rights at the workplace — it pays off

Employment is no longer a master-servant relationship

By MAX MARX

KNOWING your rights as an employee can go a long way towards fighting exploitation in the workplace.

The three most important pieces of legislation which govern the employee/employer relationship are the Labour Relations Act (LRA) of 1996, the Employment Equity Act (EEA) of 1998 and the Basic Conditions of Employment Act (BCEA) of 1997.

The LRA provides for, among other things, fair labour practices, discipline in the workplace, the substantive and procedural fairness of dismissals, the rights of trade unions — like collective bargaining and collective agreements — and the settlement of disputes at, for example, the Commission for Conciliation, Mediation and Arbitration, the Labour Court, and the Labour Appeals Court.

The Employment Equity Act provides for equal opportunity for employees and affirmative action. The Act requires that every employer takes steps to promote equal opportunity in the workplace.

In terms of the LRA and EEA, no employer may discriminate on the grounds of race, gender, sexual orientation, pregnancy, disability or HIV status, among others.

An employer can, however, discriminate on the basis of affirmative action and inherent job requirements. Contravention of the EEA can lead to fines ranging from R250,000 for a first contravention to R500,000 for four previous contraventions within three years.

The BCEA provides for the minimum conditions in which employees work, but does not apply to those who work less than 24 hours a month. It provides for:

- Work hours — An employee may not work more than 40 hours a week, which may be extended by up to 15 minutes a day but not more than 30 minutes in a week.
- Overtime — An employee may not work more than three hours overtime a day and 10 hours a week and must be paid at least time and a half for overtime.

An employer can also grant an employee 30 minutes time off on full pay for every hour of overtime worked or 45 minutes paid time off for each hour of overtime worked.

- Sundays and public holidays — An employee who works on a Sunday must be remunerated double his/her normal wage. If the employee normally works on a Sunday, she must be paid at least one and one-half times her normal wage.
- Annual leave — An employee is entitled to 21 consecutive work days paid leave a year.
- Maternity leave — An employee is entitled to four consecutive months' paid maternity leave and may begin at any time from four weeks before the birth, unless otherwise agreed.

The employee may not work for six weeks after the birth, unless certified by a medical practitioner or midwife to do so.

An employee who has a miscarriage in the third trimester is entitled to six weeks’ leave.

- Family responsibility leave — An employee must give three days’ unpaid leave if the employee’s child is born or if a family member dies.

An employee must, however, have been employed for at least four months to qualify for it.

- Termination of employment — An employee is entitled to four weeks’ notice if she has been employed for more than four weeks but less than a year, and four weeks’ notice if employed for more than a year.

Domestic workers must give four weeks’ notice if employed for more than four weeks.

A collective agreement, however, stipulates a shorter period.

- Severance pay — An employee dismissed for operational requirements (economic, technological, structural) must be paid at least one week’s remuneration for each completed year of continuous service.

An employee who unreasonably refuses to accept an employer’s offer of alternative employment is not entitled to severance pay.

- Child labour — No child under 16 years old may be employed.

Contravention of the Act can result in fines from R100 per employee for a first offence to R5000 for four previous offences or imprisonment for a maximum of three years.

WORKERS’ MAN
Labour
Mnister
Mbalapha
Msimang
LABOUR It will act for domestic and farm workers

Government firm about new minimum wage act

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — The government could and would set down minimum wages for domestic and farm workers, Mthathwa Mdladlane, the labour minister, said yesterday.

"I will continue to pursue the issue of a sectoral determination, including the setting of a minimum wage, for domestic and farm workers," he said.

"We cannot tolerate slave labour in our homes and on our farms."

Mdladlane said farm and domestic workers had been denied basic rights under apartheid but busskap and paternalistic attitudes still prevailed.

He said the struggles of the workers had brought about changes, and amendments to labour laws since the early 1990s had put these workers on a par with others.

"The department has enacted a new Basic Conditions of Employment Act," he said.

"The new act provides basic protection for the most vulnerable workers on one hand while setting a framework for collective bargaining to vary and improve basic conditions on the other.

"It increases the floor of rights for all workers.

"Annual leave is 21 consecutive days, the overtime rate is time and a half, you are entitled to protection when working at night and also to family responsibility leave."

He said he was mindful of concerns about the effect of a minimum wage on job creation.

"There are no quick-fix solutions for this.

"A sectoral determination for the agricultural and domestic sector needs to be based on significant and extensive research, consultation and debate. This will lay a sound basis for achieving an appropriate balance between protecting workers from gross exploitation and starvation wages yet ensuring that they do not lose their jobs."

He said the debate around minimum wages needed to begin as soon as possible. He had asked the Employment Conditions Commission to begin the investigation.

Within the next month, a notice will be published in the Government Gazette and all of the country's larger newspapers, calling on the public to give their views on the topic.
Labour laws 'not used properly'

Johannesburg — The government had no intention of forcing companies to negotiate with labour when they needed to retrench for operational reasons, Mmbathisi Mdladana, the labour minister, said yesterday at the first congress of the Federation of Unions of South Africa (Fedusa).

He said existing legislation on retrenchments, such as Section 189 of the new Labour Relations Act, which had been criticised by both labour and business, was not being fully used. The minister said a code on operational retrenchments negotiated at the National Economic Development and Labour Council would be made known soon.

"We will promulgate this code shortly and I call on you as workers and employers to use this code," he said.

"If the code is not used effectively, government will have to look at further measures."

He said he would argue that the Labour Relations Act (LRA) of 1996, aimed at promoting collective bargaining, providing an efficient mechanism for preventing and settling disputes, and facilitating a more stable and peaceful labour relations environment, had been successful.

Mdladana asked: "Would any one of you wish to return to the 1956 LRA, where you waited forever for a second-class conciliation board, where public sector workers had a second-class law and second-class rights, where there was no protection against dismissal for striking workers (and) where organisational rights for workers were not guaranteed?"
New laws on labour get support of Fedusa

Johannesburg — The first national congress of the Federation of Unions of South Africa (Fedusa), the country’s second-largest trade union federation after Cosatu, came out yesterday in support of the amendments to section 189 of the new Labour Relations Act, the prohibition of child labour and local government as the preferred provider of municipal services.

Section 189 deals with retrenchments for operational reasons. Organised labour unanimously believed it to be a legislative loophole that made it easy for employers to retrench.

On Monday Membealis1 Mdlandana, the labour minister, told the congress that a code on retrenchments, which would read together with section 189, would soon be promulgated.

Chez Milan, the general secretary of Fedusa, said: “The section, as it currently stood, was unacceptable and the amendment must amount to that. Any retrenchments must be negotiated and not (merely) consulted.”

Milan said Fedusa would participate in the national programme against child labour to protect the rights of the child as enshrined in international labour conventions.

“Fedusa unions will enforce national legislation by reporting employers of child labour.”

As to municipal restructuring, Milan said: “The preferred method of delivery (should be) through the public service before any private and public sector partnership is considered.”
Smaller business owners, despite the loss of union rights and other labour benefits,
COMPANIES & MARKETS

Labour law will lead Ninian to reduce jobs

Changes will discourage job creation in the clothing industry

Nicola Jenvey

DURBAN — THE new labour law will further reduce job opportunities at Ninian & Lester, the industrial and clothing group which slashed its workforce by 19.5% last year due to a slump in performance, says chairman Matthew McElligott.

He condemned the changes in labour legislation in the group's annual report, saying these would create a less flexible labour market. In general, the changes discourage job creation in labour-intensive industry and specifically mean Ninian & Lester will actively limit the impact of labour on costs and flexibility.

Last year, when trading income and shareholder profit fell for the third consecutive year, Ninian restructured across its divisions at the cost of 600 employees. However, McElligott said labour relations within the company had "remained generally good" with the incidence of strikes at the same low level as the previous year.

Lower than expected consumer spending and difficult trading conditions in the year to December slashed attributable income to R2.7m from R10.4m previously. Sales dropped to R349m from R369.2m.

Headline earnings followed suit, crumbling to 71c a share from 276c on an unchanged number of shares in issue.

Ninian & Lester will pay a 25c final dividend (1997 77c), bringing the total to 30c (92c).

McElligott said last year was "disappointing". Quieter trading conditions in the latter half of 1997 -- which affected trading performance in the last quarter of that year -- were followed by a disappointing start to last year.

The slowdown became more apparent as the year progressed.

"The financial turmoil in emerging markets and their unsettling impact on SA resulted in volatile exchange rates and higher, rather than the expected lower interest rates. The clothing and textile industries were among the first to experience the effects of a recession," he said.

Ninian & Lester invested R7.3m (R9m) in plant and equipment last year in a bid to enhance quality, reduce costs and replace obsolete equipment.

McElligott said with no major projects envisaged for the current year, the R5m budgeted expenditure sought to keep capital expenditure to a minimum and thereby conserve cash reserves.

He said this year had started "with subdued activity" within the group's retail customer base.

Although McElligott does not expect the general trading environment to improve, he believes the initiatives Ninian & Lester undertook last year, should produce "some better" results.
principal workers on the streets ofKhayelitsha to highlight a campaign against privatisation of municipal services. The Union also fears that many of its members could lose their jobs yesterday at the area and colours targeted because the poorest said members wanted to show local authorities that it was not necessary to privatise - there were resources. "We are trying to say that we have the resources within the existing structure," he said. "The workers must have to be reorganised and redeployed in order to have efficient service within the City." Tygerberg officials say the jobs of Samwu members have been jeopardised, that the structure is simply extending its services to areas deprived for many years. Mr. Tinkler said the union would investigate other forms of action if its demands were not met.
Employers shouldn't resist, says Pityana

FRANK NKUMALO

Johannesburg — Workers' rights were human rights and employers should neither fear nor resist the country's labour laws, Sipho Pityana, the labour department's director general, said yesterday.

Pityana was speaking to hundreds of workers at Johannesburg's Library Gardens during the launch of human rights week and the celebration of the completion of the ministry of labour's five-year transformation programme in the labour arena.

Pityana said the department was proud to be part of a South Africa that no longer believed black workers were cheap labour, brought from so-called homelands to work on the mines under extremely inhuman conditions and discarded or returned when either sick or too old to work.

"A company that seeks to unemploy workers, deny them annual leave, dismiss them at short notice will be a company with an unhappy labour force. A company with an unhappy labour force is less likely to perform well in its activities, become competitive and survive in the market place," he said.

The passage of the country's labour laws had not been the effort of government alone but was also a product of the struggles of workers. But Pityana cautioned that the challenge was not yet over, especially in the face of a national unemployment crisis.

"How do we make sure that these laws make a difference in the lives of the dismissed worker, the domestic worker, farm worker, child hawker, unskilled worker and most importantly of all the unemployed and desperate worker?"

He said the right to work was one of the most important socioeconomic rights which was at the heart of government endeavours to alleviate poverty.
New Act to protect workers with disabilities

By Isaac Molelekwa

PEOPLE with disabilities can expect far better treatment from employers after the introduction of the recently promulgated Employment Equity Act.

The Act will also have a significant effect on the way disability benefits are provided to employees, says Peter Dean, Old Mutual Employee Benefits senior consultant.

Employers have already had to adapt to the Labour Relations Act (LRA), which introduced a “Code of Good Practice” for employees with disabilities.

Employers must now try to accommodate disabled employees by changing the work environment or providing other suitable work in the company. Only if these options have been exhausted, can the employer dismiss the employee. The Act protects disabled employees by giving them preference in the workplace along with blacks and females in order to address historic under-representation. This will increase the importance of returning employees with disabilities in order to meet Employment Equity targets.

The Act also assists those employees who cannot be accommodated within the existing workplace and who need to seek alternative employment by providing that disabled job seekers may not be discriminated against, even if the work environment has to be modified or the job adjusted to accommodate the applicant.

Legislation has also created the need to reassess the standard disability benefits provided by employers. This includes eligibility criteria, the type of benefits and the circumstances when benefits become payable which must support sound human resource practices.

The increased responsibility of employers has resulted in many taking advantage of managed disability insurance products. These policies combine an income benefit payable to the disabled employee with a disability management service which focuses on keeping disabled employees healthy and at work.

Methods used include additional benefits to assist in costs of adapting to disablement, teaching new skills, restructuring jobs, and the partial payment of benefits.

Smaller employers in particular benefit from access to the resources and expertise of the insurer in recruitment, selection and placement of ill or injured employees.

This partnership often results in the cost of the disability management service being offset by the reduced amount of disability income paid to staff.

The withdrawal of tax advantages for benefit funds on 1 January 2000 has added to the increasing use of managed disability insurance products by larger employers.

Disabled workers can contribute in the workplace as well as in wider society, and employers are waking up to the fact that this makes good business sense too.
Saclob says government takes labour laws too far

Bontle Headbush

Johannesburg - The South African Chamber of Business (Saclob) yesterday criticised the government's labour regulations for favouring social equity at the expense of employers.

Saclob said the government had "gone too far" and would have to revise these regulations to make the labour market more internationally competitive.

"These regulations favour workers and trade unions at the expense of employers, and they create problems for business when they have to do such things as adjust their employment levels," said Gerrie Buidenbou, the director of labour affairs at Saclob.

Saclob said the business confidence index for May had decreased by 0.6 points, largely because of pre-election caution of many businesses. The index decreased to 81.4 in May after increasing 0.7 point in April.

Kevin Wakeford, the new Saclob chief executive, said the combination of a number of temporary setbacks had also led to the eventual decline of business confidence in May.

"Apart from the elections, there was also upheaval from other emerging markets, which spilled over into our economy," Wakeford said.

Encouraged Kevin Wakeford, Saclob's new chief executive, believes president-elect Thabo Mbeki's focus on implementing policies will play a role in business confidence in June.

Other factors that hurt the May confidence index included a weaker rand against the dollar, the continuing high level of uncertainties and a deterioration in merchandise export volumes.

Wakeford said the index had had some positive influences, which showed that the business cycle was "bottoming out".

Factors that positively influenced the index included the decline in the inflation rate and an increase in the number of motor vehicles sold in comparison with the previous month.

Wakeford said Saclob was encouraged by president-elect Thabo Mbeki's post-election statements.

He believed Mbeki's focus on the implementation of policies made over the past five years would inform the June business confidence levels.

"We have had a five-year era of policy formulation where broad foundations have been laid," said Wakeford.

"It is now time to link the intent of those policies to their implementation."
Sacob calls for new look at labour law

By Shadrack Mashalaba

The South African Chamber of Business (Sacob) has restated its call for Government to look into labour laws as they impede job creation.

Speaking during the release of Sacob’s Business Confidence Index (BCI), director of labour affairs and social policy Gerrie Bezuidenhout said while labour laws were not solely responsible for South Africa’s high unemployment, they needed to be reviewed as they discouraged investment.

“The Government has to find a balance between social equity and economic growth. The right balance has to be determined by the prevailing economic situation. Currently the balance is biased towards labour and trade unionists,” he said.

Sacob’s BCI decreased by 0.8 points in May after it edged up 0.7 percent, despite pre-election jitters. The BCI now stands at 84.4. However, Sacob expressed confidence that “South Africa’s economy is bottoming out.”

Chief executive Kevin Wakeford said the evident decrease in the index could be attributed to pre-election uncertainties and international developments, particularly the decline in the gold price, a hike in international oil prices and developments in US markets.

He called for the improvement in local export capacity, lowering of interest rates and a stronger commitment to the government’s objectives.

The lower savings ratios were also not helping the situation. He said privatisation also needed to be speeded up and the small, medium and micro enterprises needed to be developed.

Sacobi director of economic policy Dr Ban van Rensburg said the economy had been affected by temporary setbacks and was on its way to recovery. He said South Africa suffered from the emerging market spillover. “There are clear indications that the economy is bottoming out. The process of economic growth is not a smooth one – we should expect hiccups. The insolvency rate is still a worry to Sacobi,” he added.

Sacobi’s manufacturing survey indicates differing moods with 50 percent of respondents expecting an improvement in short-term activity while the other half expects the worst. Long-term expectations are positive but the jobs outlook for unskilled workers was negative.
New Act vision for the future

By Mongwadi Madiseng

The Employment Equity Act was put in the spotlight at the opening of a three-day Institute of People Management (IPM) annual conference.

Samantha Deuchar of Oval Office said employment equity served as a vision for the country’s future and the eradication of discrimination and implementation of affirmative measures.

The conference, at Gallagher Estate in Midrand, was held alongside The Star Human Resources Development Africa 1999 exhibition and promised to provide insight into human resources management and training and the reward of investment in people as organisational assets.

Deuchar said employment equity was the Government’s aim to get as many people involved in business as possible, and a reflective tool of South Africa’s demographics while putting emphasis on corporate equality.

On the social implications of the Act, she said employment equity would help in the redistribution of wealth, growth of small businesses and create job opportunities in the country.

Deuchar identified potential hazards as racial tension, short-term cost implications; resistance to change and job hopping by key employees.

With regard to employment equity’s link to business objectives, Michael Jarvis, a consultant in industrial relations, organisational and business development, said the Act aimed to build on business development, create sustainable and accountable partnerships and build on responsibility and accountability in an entity.

He said to have a competitive edge, organisations would need to invest in information technology which would add value and knowledge in people.

"The Act seeks to change the composition of the workforce in a way that changes competitiveness of the business while at the same time retaining agility in the organisation," Jarvis said.

He said employment equity would not work if it was a stand-alone exercise or a reverse discriminatory factor not linked to the overall business plan and not taking the uniqueness of customers into account.

Jarvis said the Act identified vision and mission and generated the free flow of information to all stakeholders.
Numsa to resist labour law changes

FRANK NKUMALO
LABOUR EDITOR

Johannesburg – The National Union of Metalworkers of South Africa (Numsa) said yesterday that it would resist any changes to the country’s labour laws as proposed by the South African Chamber of Business (Sacob).

Sacob wanted labour legislation reviewed, as it believed it impeded employment growth.

Gerrie Bezuidenhout, the director of labour affairs and social policy at Sacob, said the government had to “find a balance between social equity and economic growth.”

“The right balance has to be determined by the prevailing economic situation. Currently the balance is biased towards labour and the trade unions.”

Numsa said the present legislation was aimed at rectifying the legacy of a distorted labour market. Many workers would be retrenched if market flexibility was introduced.

“It seems to us that business wants to reverse or stop gains achieved by workers since 1994,” said Dumisa Ntuli, Numusa’s spokesman.

“The intention of business is downward variation of basic standards, which will amount in essence to a dual labour market, where those who are better organised have one set of labour rights and those who are not organised or in vulnerable sectors have little or no protection at all.”

The union said British experience with flexible labour market policies, where up to 20 percent of households were left without a breadwinner, provided important lessons for South Africa.

Sacob should do a cost-benefit analysis and acknowledge that the more disposable income workers had, the more they would be able to spend on consumer goods, Ntuli said. This move would result in the expansion of the national economy.

A recent International Labour Organisation country report on South Africa had found the local labour market too flexible, Ntuli said, employers used casual and contract labour to avoid unions and current regulations.

(10/16/99)
LABOUR MARKET FLEXIBILITY

REVISITING THE 'F' WORD

Labour Minister confirms there'll be a review of aspects of labour law

President Thabo Mbeki's government appears certain to renew the push for an Accord on Employment and Economic Growth — and a review of labour laws will be the first item on the agenda.

This is bound to generate tensions with its alliance partners the Congress of South Africa Trade Unions (Cosatu) and the SA Communist Party.

The idea has been broached before because Cosatu is keen on any talk of an accord with demands to change Gear, government's main economic policy, but it did not take earlier this month.

However, a pact between government, labour and business, which included the aim of a national consensus on economic growth and job creation, and is likely to achieve it than former Labour Minister Thabo Mboweni ever was.

Mboweni's conception of a consensus on Labour legislation passed in the past four years.

The labour review process is guaranteed to be in conflict with the government's macro-economic policy as it implies changes to the labour market and in line with Gear, which calls for flexibility Cosatu wants to see altered to the more radical Labour laws.

The Labour Department has repeatedly voiced its opposition to an accord. Earlier this month it signalled its intention to oppose Gear if an accord is pursued.

In every corner, farmers are squaring up for battle. Political stability and industrial peace may then rest with Mabudafhasi as the labour review process gets under way.

At last year's annual conference, Mbeki met trade unions that opposed to take the labour law as a key player in the struggle for efficiency. It is not as if the Labour Department is more likely to implement them than these forms of protest.

Cosatu上周一与IBA商定，其工会与劳力市场因新的劳力市场改革框架而受益。新的劳力市场改革框架旨在通过减少劳工权益，增强劳资双方的谈判能力和报酬结构，以支持企业扩张和创造就业机会。然而，这一框架引发了一些争议，因为它可能牺牲劳工的基本权利和福利。

总统Thabo Mbeki的政府似乎决定再进行一次关于就业和经济增长的协议的推动，并对劳动法进行审查。这一想法虽已前次被提出，但未能实现，因为它需要与劳工民主党达成一致。

尽管如此，一个包括政府、劳工和商业的协议，目标是实现国家在经济、增长和创造就业机会方面的共识，比前财政部长Thabo Mboweni更有可能实现。Mboweni曾提出过一个关于劳动力立法的共识概念，但未能实现。

在劳工部内部，一直反对协议。在一个月前，它表示反对实施Gear，如果协议实现，它可能反对。

在每一块地，农民们都在为战斗做准备。政治稳定和工业和平可能取决于Mabudafhasi在劳动审查过程中的表现。

在去年年底的年度大会上，Mbeki与工会展开了一场关键的斗争，以确保效率。这并不意味着劳动部会更有可能实施他们。

Cosatu上周一与IBA商定，其工会与劳力市场因新的劳力市场改革框架而受益。新的劳力市场改革框架旨在通过减少劳工权益，增强劳资双方的谈判能力和报酬结构，以支持企业扩张和创造就业机会。然而，这一框架引发了一些争议，因为它可能牺牲劳工的基本权利和福利。
Govt to revue labour legislation

Mdladlane says the emphasis will be placed on issues that have a negative effect on job-creation

Linda Ensor

CAPE TOWN — Labour Minister Mdladlane committed government yesterday to re-evaluating key aspects of labour legislation which could have a negative effect on job-creation.

Mdladlane said there would be consultations during the next few weeks with government’s social partners in the National Economic Development and Labour Council.

He said he would announce the processes, time frames and mechanisms to resolve the issues in mid-August.

Also, new legislation to restructure the Unemployment Insurance Fund would be introduced next year “to extend its coverage, contain costs, enhance compliance and ensure improved co-ordination with other social and labour policies, including reskilling and recruitment systems”, he said.

Mdladlane said aspects of labour legislation which had been identified in an internal study as “warranting re-evaluation in terms of their effect on job-creation included protracted periods, unfair dismissal procedures and compensation in respect of procedurally unfair dismissals, retrenchments and conditions of employment when companies changed hands.”

Other areas to be investigated were provisions in the Basic Conditions of Employment Act dealing with Sunday work and giving notice, the role of the labour minister and sectoral determination in varying core rights in the act, and improving the efficiency of institutions set up to regulate the labour market, such as the Commission for Conciliation, Mediation and Arbitration.

Mdladlane outlined a 15-point programme of action for the next five years which included the need to review legislation to ensure an appropriate balance between security and flexibility in the labour market to achieve worker welfare and economic efficiency.

Legislative amendments will be considered to accommodate the needs of small-scale enterprises, labour-intensive industries and the unemployed — particularly, youth. Mdladlane also be focused on skills development and effective implementation of the Employment Equity Act.

However, he emphasised that research undertaken in preparing the five-year plan had endorsed government’s approach to labour market policy as correct in that it focused on job-creation, economic growth and efficiency, equity and the alleviation of poverty.

The task now was to implement systematically the legislation already in the statute books.

“Government’s key labour market policy priorities will be employment creation, the implementation of the skills development strategy, the reversal of the legacy of apartheid inequalities in the workplace and stabilising labour relations,” Mdladlane said.

Meanwhile, Rezé Gravilizy reports that Business SA has welcomed Mdladlane’s undertaking to investigate the effect of labour legislation on job-creation, productivity, investment and job security.

Business SA said any adjustments to labour market policy had to address the imperatives of economic efficiency and the alignment of labour market policy with the growth, employment and redistribution policy.

The Congress of SA Trade Unions said Mdladlane’s statement followed the direction given by President Thabo Mbeki during his opening address in Parliament and further signals attempts for a wholesale review of the labour market.

“We reiterate the position that we must all stop using loose terms such as flexibility, variability and rigidity and begin to state precisely which legislation should be renewed, for what reasons and to achieve which benefits.”
Labour law divides lawyers

Employers, rather than legislation, are at fault for market inflexibility, says planner

DURBAN — Legislative failure had not resulted in labour market inflexibilities but rather the failure of employers to align employment contracts with the operational requirements especially in the public sector, Halton Cheadle, head of the Labour Relations Act drafting team, said yesterday.

Speaking at the 12th annual labour law conference, Cheadle acknowledged "certain restrictions on flexibility in the labour market", but said the real restrictions lay in the employers failure to structure or negotiate employment contracts in line with operational requirements. He said "flexibility" had become an overused and often abused term.

This elicited strong reaction from other labour lawyers, who argued that "flexing" with employers' contracts was not dealing with the real issues or taking into account the realities of globalisation.

Judge Dennis Davis said "The real argument about the preservation of social democracy depends on it being located in global realities". Another lawyer said labour laws were enacted to address inadequacies in employment contracts, but now it was being argued such contracts were being used to address labour law inadequacies.

Industrial relations consultant Adrian du Plessis said direct consequences of globalisation for employers were rising competition, further downward pressure on unit labour costs and continuous innovation through restructuring. Thus, in this context, there were several elements in the labour market in conflict with employers' needs.

These included the need to be able to establish a clear relationship between pay and performance, the capacity to affect workplace reorganisation between pay and performance, capacity to affect workplace reorganisation on a continuous basis and "reasonably described" rights to hire and fire.

Labour department director-general Sipho Pityana said the department's vision of the labour market remained sound, appropriate and aligned with government's broad aims. He believed while the labour market had some "inherited rigidities" it was sufficiently flexible and government's legislative programme had established an appropriate balance between flexibility and protection.

Quashing employer expectations of a total review of labour law, he said "There are no prospects of an overhaul of the legal and policy framework we have adopted so far as there is no real basis for that." In the next few months the department would, though, continue talks with labour and business on the issues raised by President Thabo Mbeki in his opening address to Parliament.

These included areas relating to probationary periods, unfair dismissal procedures, retrenchments, certain provisions of the Basic Conditions of Employment Act and improvements of various labour institutions.

Differing perceptions of the nature and character of the labour market had created a gulf between "various actors in the area of policy", Pityana said.

Cheadle said objections to new legislation on probation, difficulties in retrenching and costs of dismissals could be addressed.
Govt says legislation no obstacle to growth

Conference debates labour flexibility, writes Renée Grawitzky

DELEGATES at the 12th annual labour law conference in Durban last week were treated to a dance on eggshells over labour flexibility as government argued that current legislation was not impeding economic growth while accepting that some form of review should indeed take place.

The conference opened days after President Thabo Mbeki announced that government intended to review aspects of labour legislation. The review is intended to stimulate debate on SA's labour market, the merits of social partnership and "regulated flexibility".

Delegates emerged from the conference divided over whether it had achieved its objective.

They felt that the flexibility debate was not taken any further even though it became apparent to most that "flexibility" was more complex than anticipated.

It also remained unclear to many as to just how government intended moving ahead with its review of certain aspects of the country’s labour legislation.

A number of labour lawyers acknowledged that the Labour Relations Act had been drafted too hastily. Government, they argued, could negotiate or consult on policy but not legislation which it should be drafting. However, government tended to hide behind its social partners — labour and business — as it was not clear on what labour market policy it wanted to put in place, they said.

One delegate said there appeared to be an element of defensiveness from some speakers who argued that the "flexibility debate" was smoke and mirrors. Nevertheless, they engaged in the debate and provided evidence to show the labour market is flexible.

This challenged the view which suggests a correlation between "the extent of labour market flexibility and unemployment trends".

Such arguments were often not backed up by empirical evidence to suggest such a correlation.

The benefits of social partnership were highlighted by Kieran Mulvey, CEO of Ireland’s Labour Relations Commission.

Mulvey explained how the social partnership model was used to facilitate Ireland’s economic recovery. This was based on agreements reached between labour, government and business whereby all parties were required to deliver on aspects relating to wages, tax, job creation, health, education and social security issues.

A delegate said the Irish model depended on a particular context of growth. It was able to encourage foreign investment partly as a result of its proximity to the European market but also as a result of its competitive edge in relation to company tax, tax breaks, high skills levels and lower wage rates compared to the rest of Europe.

Another delegate said statistics in support of the Irish model of social partnership were one-sided because they concealed the price paid by labour. Mulvey said this model was adopted as a result of the acknowledgement by all parties that Ireland was in a crisis.

High Court judge Dennis Davis said he was not convinced social partners in SA believed the country faced a crisis situation the way their counterparts in Ireland did.

There was no sense of acceptance in any government economic policy statement of the crisis facing the SA economy if in the years ahead it did not achieve growth levels of 5% to 6%. Parties had to find a SA solution to economic recovery or face social instability.
Look after the low-end jobs

The minister of labour announced this week that he will renew labour legislation Haroon Bhorat discusses how he should protect the most vulnerable workers

A structural shift has occurred in the productive base of the South African economy over the past 25 years. The share of agriculture in the gross domestic product (GDP) fell by about 4% since 1976, while mining’s contribution declined by 2%.

The decline in these two primary sectors, though, has been matched by a significant growth in the service sectors, most notably financial and business services and wholesale and retail trade.

The service sectors’ growing contribution to the GDP is best reflected in financial and business services, where the share of GDP rose by more than 5% between 1979 and 1995.

A second major shift in the domestic economy has been the rapid rise across all sectors of capital labour ratios. The search for productivity gains has seen an increasing reliance on machinery rather than labour. In the last 25 years, the primary sectors’ capital-labour ratios increased by more than 100% since 1975.

In the service sectors, the rise in capital intensity is manifest in increasing computerisation brought on by the information technology revolution — a process which has intensified over the past decade.

Given the shift away from the primary towards the service sectors on the one hand, and the rising capital intensity in the economy on the other, it is important to determine what effects these factors have had on employment levels and trends.

In terms of quantity, there were large employment losses to agriculture and mining, amounting to 1.1 million jobs over 25 years. In contrast, the service sectors gained more than two million jobs.

Did these changes mean certain skills groups benefited while others lost? Statistics indicate skilled workers made substantial gains since 1979, while the proportion of workers in unskilled occupations was sharply eroded.

Unskilled workers’ share of employment fell by between 6% and 14% since 1976, while the share of skilled occupations has grown, in some cases, by as much as 130%.

Clearly, the structural shift in the economy, combined with the rising capital-labour ratios, has meant a preference for skilled over unskilled labour.

It is expected that the twin trends of rising capital intensity and the growth in services coupled with the decline in agriculture and mining, will continue in the future. This means these employment patterns will also remain the same, if not more intensely.

In the process of long-run economic growth, employment will benefit skilled and semi-skilled workers in the detriment of unskilled individuals. The winners in the next decade, all things held constant, will be those at the top end of the job ladder and the losers inordinately those at the bottom end.

In the event of declining or stagnant demand for low skilled workers it is relevant to raise the issue of labour market flexibility, a labour market policy intervention that is far more important than supply side policies.

The proponents of labour market flexibility argue that the wages of those at the bottom end are too high. In the large shared belief, it is argued, a manner in which either to create more employment would be to lower the wages of those in unskilled jobs.

This argument has often been captured as the wage restraint component of the labour market flexibility argument. But it is a discrete and separate argument from one which says higher wages will mean greater employment losses for those at the bottom end.

No significant number of new jobs are going to be created at the bottom end of the job ladder. Reducing the wage for those in unskilled positions will not increase the opportunities for skilled workers hired as the demand for those skills simply does not exist.

Parres will not simply hire more unskilled workers if they become cheaper as their preferences are for primarily skilled workers.

The argument that the job creating potential of a wage restrained policy are not tenable if they are tied to the employment needs of firms. Making unskilled workers cheaper may simply see firms using the surplus funds from the lower wage bill to hire already employed skilled workers.

Unemployed are unlikely to see in their job prospects improved by a wage restrained policy.

Wage flexibility debates in South Africa thus far have not taken cognisance of this and has effectively rested on the assumption that all workers in the economy possess the same quantities of skills and are all in equal demand by employers. As soon as this assumption is broken and introduces the notion of differentially skilled workers, the argument that lowering the price of labour will create more employment for low-skilled workers is simply wrong.

Labour demand trends make it clear that wage policies need to be designed to ensure that those at the bottom end are protected, given that they are likely to be in very short demand over the medium to long term.

The most important policy instrument is the Basic Conditions of Employment Act, administered by the newly formed Employment Conditions Commission — the successor to the Wage Board.

The Act, in setting out the basic minimums for all workers, runs the danger of setting unenforceable, in the form of wage determinations for firms to adhere to — and in so doing could feed into wage hikes or employment losses. However it appears this problem has been avoided as the Act is not at odds with the basic conditions already prevailing in most industries in the economy.

The Employment Conditions Commission has the power to set new wage determinations for workers not covered by the Act. It would need to be mindful of the trade-offs outlined above.

Wage determinations for the unskilled need not be shaped by the wage restraint argument, in as new jobs will be created for these workers. However, the commission would need to ensure that it does not generate undesirably high minimum wages for firms to adhere to or this would invariably result in significant employment losses.

Given that the most vulnerable workers are targeted through these determinations, the welfare and poverty consequences of wage hikes could be dire.

The commission needs to take care in wage determinations are not too high as those will mean Job losses, but at the same time it should not be tempted into offering too low wages. In the hope that this will create jobs. Ultimately, it will be the ability of the commission to effectively balance these two countervailing forces that may determine its success or failure.

Haroon Bhorat is a senior researcher with the development policy research unit at the School of Economics at the University of Cape Town.

Photographic牀 SHOTO MARINE HUTTON

Shrinking employment. The share of mining in the GDP has fallen by 3% since 1976, and this is reflected in widespread job losses in the sector.
Government, employers and their employees will soon begin to learn the labour flexibility dance, if recent timbering up is any sign.

The Labour Department is determined to make employment simpler. At the same time, two path-breaking agreements signed in struggling industries point the way forward.

In mid-August the department will reveal its timetables for negotiating changes to the most contentious aspects of the Labour Relations and Basic Conditions of Employment Acts. "We will not have endless discussions for the next five years," says director-general Sipho Pitana.

In the past year, the department has met most business organisations and trade unions to determine what must go. Pitana's lieutenants are now studying whether to change the laws, or their procedures and institutions such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court.

"There will be no overhead," Pitana affirmed last week. Instead, the planned changes will attempt to clear the hurdles facing those who create jobs and to maintain a "floor of rights" for all employees, especially the most vulnerable.

Business, for example, wants the laws changed so it can more easily hire the right people (by introducing periods of probation) and fire the wrong people (by reducing compensation for dismissal).

At present it's costing employers plenty to dismiss employees who do not perform, because the Labour Relations Act provides for paid compensation of four months' to a year's wages. That's an "unintended consequence" of the Labour Relations Act, says a Labour Department staffer. It did not anticipate the backlogs at the CCMA or the Labour Court, and wages must be paid even if settlements are delayed.

Similar "unintended consequences" are pinned on the Basic Conditions of Employment Act (BCEA), where provisions on working time have proved a menace to the economy. These will change to allow greater "averaging" — where total hours worked are calculated over longer periods, allowing work and production flexibility.

The provisions against Sunday work are likely to be loosened considerably.

Next month Labour Minister Membathisile Mdladlana will make a Ministerial determination to exclude small businesses from the ambit of the BCEA. Parties are still haggling over whether the exemption should cover entrepreneurs who employ fewer than six workers, or fewer than 10.

Business SA has welcomed the changes. "We will get the economy we legislate for," says the organisation.

So, the ball is rolling. But already, government says employers and unions themselves can do much to save and create jobs and make SA industry more competitive.

For instance, few businesses use the exemption clauses of the BCEA.

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**LABOUR LEGISLATION**

**BEND AND STRETCH**

State to reveal plans in August

Bhayat, a director in the Labour Department, says "the BCEA allows bargaining councils to vary any conditions which are not core rights. Companies that are not members of the council can apply for variation from the department."

In the clothing sector, the bargaining council has introduced significant labour flexibility to an industry groaning under the weight of tariff reduction, illegal imports and outmoded production processes.

Where the Christmas shut-down has been near-sacrosanct, workers will now be required to work during that period.

"Workers realised that this break in production throws SA out of sync with international practice," says Ronald Bernickow of the clothing industry's bargaining council. The industry's working week now runs with the production schedule, and can include weekends. Overtime is not necessarily paid, but can be taken as time off.

To cut absenteeism, the council has won an agreement in which workers will not be paid if they take off the day before or after a public holiday. As a trade-off, employees can now use their sick leave to take care of children who are ill.

Similar examples of lateral thinking abound in the metal industry, where about 400 000 jobs have been lost since 1987. Last month, employers and unions in the industry signed an agreement that is fast becoming a countrywide standard. Working hours will be reduced to 40/week by 2002, to boost job creation. Employees will still receive inflation-based increases, but have agreed to waive their rights to the new, higher overtime pay rates, to premium rates for Sunday work and to the three days' family responsibility leave to which the BCEA entitles them.

Pitana called the clothing and metal industry deals "highly innovative, win-win arrangements."

At a labour law conference in Durban last week, lawyer Halton Cheadle lobbed the labour flexibility ball back into the employers' court. Cheadle, a kingpin in drafting the LRA and the BCEA, told delegates "there is more contractual flexibility in the labour law than in any other area of law." He said businesses could be using their employment contracts to enhance the flexibility they need, contracts can make implicit the employer's prerogative to change work processes or even work location. Fixed-term contracts can also be used as a form of probation as long as these are not abused to dodge the laws.

"Flexibility flows from contractual failure rather than legislative failure," Cheadle concluded.

Ferial Haffajee
Labour row rocks Ceres

Mayor faces court action in dispute over workers' rights

THABO MBASO
STAFF REPORTER

A labour dispute between a group of employees and their boss is threatening to tear the so-called Boland town of Ceres apart, after moves to sue the mayor for making with the workers.

The trouble started in November, when a Pick'n Pay Family Store franchise opened in the town, bringing with it dozens of jobs.

Workers at the store, however, say that between November and July, 42 employees had either resigned or been fired.

Franchisor Johann Bronkhorst has apparently deemed his entire workforce independent contractors, which means they do not enjoy any rights accorded to them under the Labour Relations Act (LRA).

The act stipulates that an independent contractor is an individual hired for a specific job, for a limited period of time.

Pick'n Pay spokesman Nick Badminton said a meeting to try and resolve the dispute had been arranged for the weekend.

He said if the allegations against the Ceres franchise were true, the supermarket's head office would not be happy.

"We want to see franchisees sticking to the spirit of the new LRA. That would be in line with how we conduct business," Mr Badminton said.

He said the company would also speak to Mr Bronkhorst about withdrawing the independent contractor status of his workers.

According to a Department of Labour newsletter, many employees have in recent months approached their workers with offers of changing their status into independent contractors.

The employees at the Ceres store allege that, among other things, they work as many as 14 hours a day without being paid overtime.

The employees also accuse Mr Bronkhorst of unwillingness to recognise or even speak to their trade union.

Approached for comment on the issue and claims made by workers, Mr Bronkhorst refused and referred all questions to the supermarket's head office.

Two months ago, the workers approached Ceres Mayor John Schuurman for assistance.

Mr Schuurman wrote a letter of complaint to Ceres Pick'n Pay and has tried to arrange meetings between all stakeholders.

The Confederation of Employers of Southern Africa (Cofesa), an organisation of which Mr Bronkhorst is a member, has asked the Ceres town council to censure the mayor for involving himself in a "private matter." They have also threatened to sue him for allegedly defaming their members.

Cofesa Breede-River Valley official Neil Vermeulen said that the LRA did not make provision for anyone but those affected to be involved in a labour dispute.

"We do not see a mayor's involvement as necessary unless provisions of the LRA have been exhausted."

The Ceres council is due to discuss the complaints against their mayor towards the end of this month.

Mr Schuurman has, however, hit back at the employers' organisation, saying he was duty-bound to intervene when the rights of his constituents were being trampled on.

"Their intention is to silence me on this issue."

"My view is that there is injustice for individuals someone has to stand up against it," he said.

Mr Badminton said the threatening letter by Cofesa had been withdrawn yesterday.

Mr Schuurman said he was awaiting written confirmation of the withdrawal.
Lawyers call for changes to labour act

Reneé Grawitzky

A CUT in the budget of the Commission for Conciliation, Mediation and Arbitration, about which it was only recently informed, has prompted labour lawyers to call for changes to the "Rolls-Royce" legislation which established the commission.

Lawyers said yesterday that the underlying premise of the Labour Relations Act, which came into effect in 1996, was too ambitious and, as a result, the commission's performance was being hampered by inadequate state funding.

Labour director-general Sipho Pityana said this judgment was premature as the provisions of the act had not been fully explored. The act did not envisage the commission as the only institution for dispute resolution.

He said resources had been misallocated within the commission. All parties agreed there was a need to restructure and rationalise the operation so resources could be transferred to where they were most needed.

The commission's budget was reduced from R128m to R125m a year, prompting the governing body to decide not to ratify an in-principle wage agreement between the commission's staff association and management.

In view of the organisation's huge case load, it decided to increase the number of commissioners, reduce the number of case management officers and put more resources into ensuring the effective screening of cases.

This has exacerbated tension in the organisation as the governing body attempts to finalise the reappointment of commissioners whose contracts have expired. There has been speculation that retrenchments will take place.

The department said, however, that the commission was not "seeking a reduction in the total state complement".

Lawyer John Brand said the commission had done all it could have been expected to do to provide a service within its severe capacity constraints.

It was doomed the minute it opened its doors because the legislation was never properly costed.

Another lawyer said government was warned during the drafting of the act that a professional conciliation service would exceed budget allocations.

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Many cash in on equity law

Some fly-by-night consultants use scare tactics to sell their training material, writes Reneé Grawitzky

Some fly-by-night consultants use scare tactics to sell their training material, writes Reneé Grawitzky.

The new Employment Equity Act has unleashed a variety of training videos, computer programs and training courses on to the market, many of which are being sold to companies using scare tactics and misinformation.

Pocketfuls of fly-by-night consultants and training companies are cashing in on the frenzy they have created by incorrectly implying that employers have to comply with all provisions of the act by August 9.

The act is being phased in over a period of months. A member of the Business SA negotiating team said some consultants were not adopting a phased-in approach to implement the act or viewing it as part of a company’s overall manpower planning.

A rushed approach was likely to lead to conflict, a labour lawyer warned.

He said some of the consultants and courses on the market failed to acknowledge that a number of crucial issues mentioned in the act still had to be elaborated on either in the regulations accompanying the act or in codes of good practice.

The regulations and codes are still in the process of being drafted and will give clarity on issues such as the nature of the analysis of the company, the contents of the employment equity report, guidelines for employment equity plans and regulations for small business.

Hence, any course that appeared to provide guidelines with finality would be premature, he said.

Durban-based consultant Pat Stone said if employers took a cold, hard look at the legislation, it would allay their fears.

Dionga Bailey, a senior commissioner with the Commission for Conciliation, Mediation and Arbitration, said the act was clear in what it required employers to do and provided a step-by-step process in achieving its objectives.

The labour department’s chief director of labour relations, Lisa Setefi, said it was important to see that some consultants were not representing their courses and implying that they had been approved by the labour department.

In addition, consultants had tried to give the impression that the new act was expensive, onerous and difficult to implement.

The department, she said, was striving to ensure the act’s implementation was friendly and accessible.

The act is being phased in over a number of months.

The Commission for Employment Equity, which came into effect on May 14, is supposed to advise the labour minister on the various codes and regulations required to ensure the act’s effective implementation.

On August 9, the provisions of chapter 2 of the act, relating to the prohibition of discrimination, will come into effect.

The grounds for discrimination go way beyond those at present provided for in the Labour Relations Act and include new issues such as discrimination on the basis of HIV status and sexual harassment.

This section also prohibits employers from using psychological testing and other similar assessments of an employee unless the test has been scientifically shown to be valid and reliable and can be applied fairly to all employees.

This provision also prohibits the use of medical testing, and specifically HIV testing, unless approved by the Labour Court.

Chapter 3 of the Employment Equity Act, relating to the drafting of affirmative action and employment equity plans, will come into effect in December.

Depending on the size of the organisation, employers could have up to 12 months to submit a report to the labour department on plans put in place.

The drafting of employment equity plans will affect only those employers who employ more than 50 employees.

The Employment Equity Act provides guidelines to assist companies in drafting equity plans.

This will require consulting all employees on a plan and organisational analysis.

Thereafter, the act provides that the employer conduct an organisational audit to determine the make-up of the workforce and barriers to workplace equity.

Based on an assessment of the organisation and its economic circumstances, an employment equity plan must be drafted.

The plan should provide a guideline of progress towards implementing employment equity in the workplace and should include measures to achieve this, such as training, affirmative action measures, recruitment practices and removing overt and covert barriers to entry.

Some labour lawyers have warned that the crucial question is not so much about the implementation of the act but about how it will work in a diminishing labour market.
Labour rights education 'a must'
Labour rights intact, BSA told

Johannesburg - The government would not use the forthcoming review of labour law to water down rights, Membathisi Mdladlana, the labour minister, said yesterday after meeting Business South Africa (BSA).

"We are not about to move away from basic and minimum labour standards," he said. But he was "excited" that BSA had assured him it shared his department's vision of a labour market that was equitable, conducive to economic growth, characterised by sound and stable labour relations and in line with the culture of human rights entrenched in the constitution.

"They are not proposing a wholesale review of labour law and they understand why government is not proposing a wholesale review of these laws."

Mdladlana believed the "way we have talked to them" had modulated business demands on labour market policy review.

"All right Memibathisi. Mdladlana stands by workers."

"We have absolutely no desire of seeing a labour regime that undermines labour rights," said Andre Lamprecht, vice-chairman of BSA. Lamprecht, the BSA's vice-chairman, said BSA was proposing ways to give the rights concrete form that avoided unintended negative consequences.

BSA wanted labour laws that carried the full confidence of business and the investing community. He said that although that was not the case at the moment, BSA was pleased to engage with the department at ministerial and senior official levels.

"We share the perspective of its (the department's) experience in the South African context given the pressures of increased competition, globalisation and the necessity to produce investment returns that are attractive to local and international investors," Lamprecht said.

Mdladlana said business had tabled proposals related to issues of probation, procedural dismissals, casual labour and the protection of vulnerable workers.
Mdladlana reinforces labour laws

By Mzwakhe Hlungani
Labour Reporter

Unfair discrimination on the workplace on the basis of race, gender, disability and HIV-Aids status or otherwise, will from now on be an offence.

With the ground-breaking Employment Equity legislation announced yesterday by Labour Minister Membathini Mdladlana, Chapter 2 of the Act presented major challenges for the total transformation of companies to adapt to a rapidly changing environment.

Mdladlana said racial discrimination in education and access to employment, coupled with denial of opportunities to black women and people with disabilities has worsened the overall poor skills level in the labour market.

Last night's official launch of the Act's Chapter 2 (which prohibits any type of discrimination on the workplace) and that of the Commission of Employment Equity in Johannesburg, coincided with the National Women's Day celebration.

The launch was aimed at empowering women and ensuring their upward movement in the labour market.

It is also intended to provide redress to those with disabilities or who have been denied benefits or sexually harassed. It introduces structural changes which would facilitate their employment.

Mdladlana also announced a code to be prioritised by the Commission for Employment Equity that would provide the best practice guidelines in ensuring the implementation of measures for employment and advancement of people with disabilities.

Global competition necessitated optimal productivity, which in turn required efficient and effective human resource development plans, he added.

Companies and their employees were required to jointly develop strategies to ensure the achievement of diversity and define barriers to career advancement of people at the workplace.

Mdladlana said the successful implementation of the Act would not only be in the Government's hands, but would also be the responsibility of business and the labour movement in the workplace.

"The responsibility rests with all of us. It will depend on employers using the opportunities provided by the Act and on workers to get employment equity working for all of them," Mdladlana said.

"It will depend on employers and workers to get equity."
Labour issues tackled

By Mzwakhe Hlangani
Labour Reporter

A LABOUR law review has begun to deal with the most contentious issues - from economic transformation to the most important potential threats to stability - in the labour market.

Labour Minister Mmamoloko Mdlalana said after meeting with delegations from business and labour movements at the weekend that the review of the new labour legislation enhanced his vision for equitable economic growth, sound labour relations and basic human rights. The minister pointed out that a more stable labour relations environment was being developed as business indicated that it was not proposing "a wholesale review of the labour policies" nor was it opposed to the mission and vision of the department.

Mdlalana said business had proposed issues related to probation, casual labour, procedural dismissals and protection of vulnerable workers.

Labour movement spokesman Mr Chez Milan said that the proposed amendment to Section 189 of the Labour Relations Act, which dealt with retrenchments, was the labour movement's main concern.

Labour movements lauded the Government's immediate intervention in Spoornet's planned retrenchment of 27,000 employees and raised concerns about budgetary allocations to ensure viability of the new social plan approach in managing retrenchments.

Business South Africa vice president Mr André Lamprécht proposed ways to give concrete form to rights to avoid unintended negative consequences. He said business wants labour laws that carry the confidence of business and the investing community.

The minister was emphatic about the Government's commitment to labour market policies enhancing promotion of fundamental basic human rights and sound labour relations, worker's rights and productivity.
Sacob concerned
over new equity law

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EMMA THOMASSON

Cape Town – The South African Chamber of Business (Sacob) said yesterday it applauded the principles behind a new anti-discrimination law but expressed concern it could lead to excessive government meddling in the workplace.

Sacob’s comments came after the government on Monday promulgated the part of the new Employment Equity Act that prohibits unfair discrimination in the workplace on 19 grounds, including race, gender, disability, age and HIV status.

“In general, we support the principles and sense of the legislation, but we do think it represents undue interference in management prerogative,” said Janet Deckman, Sacob’s manager of labour affairs and social policy.

A separate section in the act requiring companies which employed more than 50 people to draw up affirmative action plans was due to be implemented by the end of the year.

Labour consultant Andrew Levy said while business was more worried by the affirmative action part of the law, companies would also have to act to meet the anti-discrimination rules.

“We can anticipate an examination of employment practices and pressure to correct any discrepancies. Pay and benefits will be the first to come under the spotlight,” said Levy.

Dockman said Sacob was worried by provisions in the new law prohibiting HIV testing of employees. In addition, the legislation would apply to applicants for jobs, who could sue a company for discrimination if they failed to be employed.

But business said it was more concerned by the latter part of the legislation, not yet promulgated, which would require companies to submit plans on how they planned to hire and promote, more blacks, women and disabled people in their companies.

“The larger companies will have dedicated resources for this, but the smaller companies are going to find this an administrative hassle,” she said.

She said the legislation did include some safeguards for business to allow it to defend affirmative action plans – Reuters.

See Personal View, Page 2
Mdadlana proposes middle way for labour

Cape Town - Mbuyiseni Mdadlana, the minister of labour, said yesterday he wanted to forge a "middle route" to combat unemployment and planned to hold joint meetings with trade unions and business to discuss the effect of labour laws on job creation.

Mdadlana said he had already held bilateral talks with some unions, business and community groups and would meet Cosatu soon.

"We want to forge a middle route between those advocating excessive deregulation and those advocating excessive regulation," Mdadlana said.

Mdadlana had planned to conclude the talks this month, but the sensitive discussion over labour policy comes after the break-up of recent union talks and the possibility of strikes by miners and public servants.

About 500 000 people have joined the ranks of the jobless since the ANC came to power in 1994 and opened the economy to international competition after decades of apartheid isolation and protectionism.

About 39 percent of the workforce is currently without employment and a recent survey by the Human Sciences Research Council showed that only one in 20 new entrants to the labour market would find a job in the formal sector of the economy.

Business argues that the lack of legislation passed by the ANC-led government to protect workers has contributed to the growth in unemployment and has begged for a relaxation of labour laws.

Trade unions, on the other hand, want legislation changed to make firing more difficult, especially in the wake of mass retrenchments in the gold mining sector.

Mdadlana said his department had studied the effect of labour legislation on job creation, productivity, affluence and investment and had identified areas which warranted re-evaluation and which formed the basis of current talks.

These included probationary periods for new employees, unfair dismissals procedures, operational retrenchments, provisions on dummy work and strengthening of bodies which regulate the labour market.

"The negative and unintended consequences of legislation will be addressed through amendments," Mdadlana said.

But both Mdadlana and President Thabo Mbeki have said wholesale deregulation is not on the cards and the perception of inflexibility of the labour market is misleading and itself part of the problem of slow job creation and investment.

-- Reuters

AFT 14/18/99
Govt faces workplace challenges

By Mzwakhe Hlangani
Labour Reporter

The effective implementation of labour legislation, eradicating discrimination in the workplace and other laws that will ensure accelerated delivery in the labour market pose major challenges for the Government, business and labour.

This was said by Labour Department deputy director-general Mr Les Kettleedas when he addressed the Independent Mediation Service of South Africa seminar yesterday on the Government’s 15-point programme of action for the next five years.

He said the move from social dialogue to partnership on extensive projects was a challenge for all social partners and these could not be achieved by the Government alone.

"Job creation and related issues of productivity and efficiency were integral to economic development. Also, the thrust of the programme of action required focuses the attention of everyone with experiences of workplace challenges," he said.

Business South Africa and Chamber of Mines president Mr Bobby Godsell said the realities of the workplace were "still in the deep shadow of apartheid." "Though a foundation for building a rainbow society has been laid", Godsell said, "resolving industrial conflicts was still at an early stage."
Mdladlana cautions against hasty changes to labour law

Renee Gravitzky

LABOUR Minister Membathli Mdladlana questioned yesterday whether job losses would be halted if the Labour Relations Act was amended to ensure that retrenchments were subject to negotiations instead of consultation.

Mdladlana told delegates at the Congress of South Africa Trade Unions' (Cosatu's) special congress in Midrand yesterday that "we need to identify the causes of the problem (of unemployment)."

Labour has demanded that section 189 of the Act be amended to ensure that retrenchments are subject to negotiations.

"Are we saying that the act and section 189 are causing job losses? Can we promise those affected with job losses that if the Act was amended "like a magic wand", job losses would be halted?"

During the debate on job losses, one delegate proposed that instead of demanding four weeks' severance pay for each year of service, the congress should demand three months to make retrenchments so expensive that employers would not shed further jobs.

The assistant general-secretary of the SA Clothing and Textile Workers' Union, Ebrahim Patel, said delegates had to set realistic and achievable targets.

The federation had been demanding four weeks for every year of service for the past three years and had still not won this demand. Instead of increasing the demand, a campaign should be intensified to achieve four weeks.

In his address, Mdladlana raised a number of concerns about the way in which workers were abusing services provided by the Commission for Conciliation, Mediation and Arbitration (CCMA). If the flood of cases to the CCMA continued, it would weaken the effectiveness of the institution, he said.

Workers, he said, were using the commission like a union. Workers preferred to use the CCMA rather than internally agreed-upon procedures, because it offered better services.

Mdladlana urged shop stewards to ensure disputes were resolved internally and that the commission was used in a more strategic way.
Retrenchment law is still for the employer

An effort is to be made to find alternatives to lay-offs, but management’s assessments are not questioned, writes Robert Lagrange

Section 189 of the act drew heavily on the principles enunciated in the Appellate Division decision on Atlantic Diesel Engines versus the National Union of Metalworkers of SA. That judgment emphasized that the purpose of the consultation process was to make a thorough and genuine attempt to achieve an agreement or to minimize the harmful effects to the employees which may be retrenched. In summary, no final decision to retrench employees may be taken until the prescribed consultation process has been completed. Moreover, the decision itself must be taken subject to the fundamental fairness of the consultation which follows.

Second, if an employer does not comply substantially with the requirements of Section 189, that will render the retrenchment procedurally unfair.

However, the representative of such a company has a corresponding duty to pursue the consultation with sufficient enthusiasm and diligence.

A failure by the employer to complete the process because it is diverted by the representative of the affected employees or, therefore, the employer for a failed consultation process.

Crucially, when it comes to assessing the operational needs which give rise to a retrenchment, the courts will not second guess an employer’s assessment of the need for retrenchment. Some judges have gone so far as to say that even retrenchments which may be taken were because of management incompetence or which were motivated simply by higher profits, can be justified. The employer must still demonstrate that operational "need" motivated its actions and not some ulterior motive such as "salary cutting.”

A few instances have suggested that if an employer does not implement available alternatives, the retrenchment might not be fair.

So far, the courts have only used this as a test for whether the employer is not motivated by an improper reason which is not operational in nature.

Finally, employees were found to have been fairly dismissed on operational grounds for refusing to accept alterations in employment conditions. Requiring employees to negotiate over a retrenchment, even in its own, would change little in the existing law, but giving employees the right to strike over a retrenchment — usually in the absence of such conditions.

The failure to reach an agreement was not interpreted to mean that negotiations had not occurred. The existing consultation provisions over retrenchment achieve much the same result as a legally imposed duty to negotiate.

What role consultation over retrenchment of its meaningful character is the lack of economic power possessed by affected employees and the failure of the law to impose any obligation on employers to attempt to implement viable alternatives.

Also, in allowing an employer to be the sole judge of operational needs, without any requirement to balance genuine economic goals with social responsibility, the courts effectively allow an employer to strike the scope of viable alternatives.

It is clear that the effect of economic forces including the destruction of jobs is beyond the control of the employer alone. However, whether the retrenchment is caused by external forces or internal decisions, the law, as currently applied, lets the employer decide the burden of those adjustments be shared between the enterprise and the workforce.

This usually means that the social burden of economic adjustment is carried primarily by the directly affected employees and indirectly by society at large. The cost to the enterprise is the delay caused by consultation and the minimal statutory severance package.

In Germany, a similar attempt has been made to compel the employer to assume a greater degree of responsibility for the social impact of economic adjustment. Employers in most instances are required to conclude a social plan with their inhouse works council. The plan must deal with the economic hardship of the retrenched employees.

A failure to conclude the plan can be referred to adjudication by a conciliation committee consisting of employee and employer representatives and a third party. The judge.

Awards are seldom made in practice, because the unappealing prospect of adjudicating a final decision to a third party and the attendant process costs encourage employers to seek an agreement.

Our law, as interpreted, contains no equivalent inducement, imposing a requirement to negotiate retrenchment is unlikely to supply the missing ingredient.

Lagrange is a member of the SA Society of Labour Lawyers.
New equity labour laws a taxing affair

HUMAN RESOURCES

By DON ROBERTSON

The spate of new labour legislation introduced in the past months will put additional pressure on the now vitally important human resources divisions of large groups and the "bookkeeping" efforts of smaller companies which are unable to afford HR units.

In terms of the Employment Equity Act, the first phase of which was promulgated last week, all forms of discrimination in the workplace are prohibited. Companies with more than 150 workers must submit a report to the Department of Labour within the next six months explaining how existing discrimination will be eliminated within five years. Companies with fewer than 150 have 12 months to submit a report.

The Department of Labour will monitor progress made by companies in shedding discrimination on an annual basis.

Last November, the Basic Conditions of Employment Act was passed, followed by the Skills Development Act. The skills Act requires companies to pay 0.5% of their salary bill to the taxman by February next year. This will increase to 1% the following year.

Companies can recover these payments provided they prove that training was undertaken by approved training boards.

"The labour regulations now in force mean that the role of the human resource department will become more taxing and complicated," says Dawd Swart, managing director of Vizual Business Tools SA.

Vizual Business Tools SA, a subsidiary of a human resource software provider in Europe, has adapted software systems to meet the needs of SA.

Its system, Personnel Manager, is designed to help businesses manage the new employment legislation and is aimed largely at smaller companies which are unable to afford human resource facilities, although it can also cater for companies with more than 3,000 employees.

The system contains an online guide to employment law, including the requirements of the EEA, basic conditions of employment and skills training.

It also offers step-by-step information on how to recruit employees, discipline and grievance procedures, leave and sick leave requirements, how to handle Commission for Conciliation, Mediation and Arbitration matters, employment letters and contracts and the correct procedures in dismissing employees.
Core labour standards must not be abused, Erwin warns

Reneé Grawitzky

GOVERNMENT supports the introduction of core labour standards in multilateral trade agreements but says that the challenge is to ensure that their incorporation is not abused for protectionist purposes, says Trade and Industry Minister Alec Erwin.

Erwin was speaking at the opening of a workshop organised by his department to bring stakeholders together to develop common ground on government's position for the next round of the World Trade Organisation (WTO) talks in Seattle in November.

A labour source said core labour standards had to be included on the agenda in such a way that they were not seen to be supporting the US. In recent years the US has been pushing strongly for labour standards to be on the agenda but this has been strongly resisted by developing countries which have viewed this as being for protectionist purposes.

The labour source said there was a need to move the WTO away from being in favour of transnational corporations and more in favour of global citizens.

Erwin believed a workable relationship could be developed between the WTO and the International Labour Organisation (ILO) in this regard.

Erwin warned labour, business and non-governmental organisations that the next round of trade talks would be tough. He stressed that the need for SA to take the lead in the debate on "new issues" which could be included in the WTO negotiating agenda. These issues could include links between trade and the environment, intellectual property rights, investment rules and competition policies.

Despite calls by labour for government to review its commitments to reducing trade tariffs, Erwin said government's policy decision was a firm one.

He said however that government was committed to dialogue in the next round of policy debates on tariff reforms after 2002.

The Congress of SA Trade Unions (Cosatu) has threatened socioeconomic protest action in response to the current spate of job losses. The federation believes government's tariff reforms are contributing to job losses.

Despite Cosatu's strong opposition to this the federation was not present at the workshop yesterday and has apparently requested additional time to submit its proposals to Erwin on government's approach to the next round of talks.

National Council of Trade Unions (Nactu) representative Henk Campher said government's focus should not be on further tariff reduction. Campher said the country had already implemented tariff reductions faster than its WTO obligations.

He said government should focus on non-tariff barriers which were inhibiting market access and trade.

Discussions yesterday did focus on market access and the fact that it was not the tariffs which were the problem but rather non-tariff barriers such as the implementation of anti-dumping laws and the abuse of quotas.

Erwin did refer to this issue and questioned the manner in which some countries used quotas to prevent imports.

The consultative conference continues today and will focus on core labour standards.
Cosatu to strike if LRA not amended

October 5 against job losses

Vavi also called for the amendment of the Insolvency Act, which did not make workers priority creditors during liquidation. "Workers lose everything and we're also saying employers should be forced to inform workers when the company is going through financial problems."

He called for a freeze in the tariffs-reduction programme until it was in line with the World Trade Organisation (WTO) binding level.

The current WTO level for South Africa is 12 years, but Trevor Manuel, then the minister of trade and industry, decided to fast-track certain sectors, like the clothing and leather sector, to seven years.

"Companies are not ready for this intense competition and workers are losing their jobs," said Vavi.

The federation's last demand, as part of an effort to reduce job losses, was a significant decline in interest rates. Vavi said rates were too high for small companies, many of which depended on credit.

Next year's planned general strike would be the culmination of months of demonstrations by Cosatu's 1.7 million-strong membership.

In the next two months the federation would mobilise the entire civil society, emphasising that something needed to be done to stop spiralling unemployment in the country.

From February to March next year, three Cosatu unions would demonstrate every week, followed by regional action which would include a day's stayaway in each region.
Labour laws
‘not likely to
be changed’

JAMES LAMONT

Cape Town - Little could be
expected from the labour legisla-
tion review requested earlier this
year by President Thabo Mbeki to
investigate the freeing of certain
job creation initiatives from pro-
visions in new labour legislation.
Vic van Vuuren, the business
convener of the Nedlac labour
market chamber, said last week.
The government was consid-
ering changing labour legislation
to accommodate small enterpris-
es, labour intensive industries
and unemployed youth.

Memehthus Mdlalana, the
minister of labour, was expected
to make an announcement
indicating the likelihood of possi-
ble amendments to labour legisla-
tion in mid-August after an inves-
tigation into its effects on job
security, job creation and issues
of productivity, efficiency and
investment.

The legislation includes the
Labour Relations Act, the Basic
Conditions of Employment Act,
the Employment Equity Act and
the Skills Development Act.

Speaking at a seminar hosted
by Sanlam, Van Vuuren said
“You can expect very little change
in the status quo”.

He said the polarities between
the Nedlac partners—the
government, business and labour
—were too far apart for there to be
agreement.

An adjustment to the Basic
Conditions of Employment Act
could exempt small business
from some of its provisions.

Small and medium-sized
enterprise was expected to be the
main job creator in the coming
years in an economy with about
30 percent unemployment.

Van Vuuren recommended
that the government take small
business out of the framework of
the new labour legislation and
only make binding the clauses
concerning human rights.
Tough new
equality law on
the way (16b)(17b)

David Greybe 00 110 1999

CAPE TOWN — Private companies and clubs found guilty of discrimination face losing their licences to operate under tough new equality legislation to be implemented next February, says the justice department.

Individuals found guilty of a crime with discriminatory connotations — whether of a racial, cultural, religious or physical disability nature — could see their sentences doubled, justice spokesman Paul Setsetse said yesterday. Special "equality courts" would also be introduced next year at every high court and magistrate’s court in SA "to ensure effective implementation of the new equality legislation."

The cabinet this week gave Justice Minister Penuel Maduna the go-ahead to introduce to Parliament the Promotion of Equality and Prevention of Unfair Discrimination Bill.

"This legislation will go a long way in contributing to the total transformation of society from one characterised by the inequalities and injustices inherited from apartheid to one where the universal principles of equality, fairness, justice and human dignity apply to every one," Maduna said.

However, he noted "While government is committed to the eradication of discrimination, it is equally important that all South Africans change their attitude towards each other."

The constitution calls for legislation to prevent and prohibit unfair discrimination by February 3 next year.

"The punishment will be severe," Setsetse said.

The withdrawal of the licences of clubs and businesses, "whether a financial institution, a sports club or a night club," would depend on their discrimination track record. Another deterrent would be the blacklisting by the State Tender Board of firms found guilty under the new legislation, he said.
Job equity act is not too dire

Although controversial, everyone can draw some benefit

Gavin Sher

ALTHOUGH the Employment Equity Act is controversial, its implications need not be as dire as some people are suggesting.

White males say the act makes them feel excluded, while companies moan about how the law will interfere with how they recruit, train and promote staff.

In the heat of all these emotions, however, people have lost sight of the fact that there are big benefits that can accrue if SA can unlock the abilities of all its people, and the key issue here is the spirit in which the act's provisions are adopted.

At any rate, the legislation is now with us, and the challenge therefore is to make the best of it. With a positive mindset, everyone - including white males - can draw some benefit.

SA needs to understand that the act endeavours to remove racial discrimination and promote diversity by outlawing unfair discrimination and through affirmative action (AA).

The legislation stipulates that no employer may discriminate unfairly on the grounds of race, culture, language, sex, age, pregnancy, marital status, religion, sexual orientation, HIV status, conscience or political persuasion.

Recruitment and advancement of people from "designated" groups is encouraged. They are defined as Africans, coloureds, Indians, women and the disabled. Designated employers, usually with 50 or more people on their payroll, are also subject to the AA provisions of the Act.

These employers must fulfill numerous duties, among them, the advancement of "suitably qualified" people from previously disadvantaged groups. Thus, qualifications no longer refer solely to certificates, exam passes and diplomas. Prior learning is a qualification, as is the ability within a reasonable time to acquire the know-how to do a job.

In the same vein, previous experience may not be necessary in essence, steps have to be taken to retain and develop people from designated groups through training and development.

It is also important to note that the act sets no racial quotas, but refers to numerical goals that companies must work towards. Goals will be influenced by demographics, the pool of qualified people from designated groups, and the economic pressures faced in an industry and labour turnover.

The act does not tell employers that they must discriminate against those from non-designated groups (white males). The Act allows for exclusions or preference on the basis of a job's inherent requirements.

On the issue of numeric goals, a factor taken into consideration is a firm's financial and business situation.

While there is little debate that the act is controversial, those people with get-up-and-go should not be adversely affected, while those in designated groups have great new opportunities. Approached in the right spirit, this can return into a win-win situation.

• Sher is a director of The Focus Group, a business solutions company.
Four private member Bills to be tabled by the Democratic Party stand as good a chance as the proverbial snowball in hell of getting through the ANC-dominated parliament.

But as a political tactic, they score high in a parliament that has lacked spark this session.

Three labour amendment Bills will be tabled by MP Rudy Heine, a former SA Chamber of Business president, and an anticorruption measure by MP Raenette Taljaard.

Heine is seeking amendments to three labour statutes: the Basic Conditions of Employment Act (BCEA), the Employment Equity Act and the Labour Relations Act (LRA).

Heine will ask parliament to exempt small businesses from the Basic Conditions legislation as well as from the extension of collective bargaining agreements to companies outside the collective bargaining councils under the LRA.

Heine says the LRA will thwart the growth of small business and, therefore, job creation. "My Bill is designed to generate rapid growth in employment opportunities by making the labour market more flexible so as to address the current high unemployment rate."

The Labour Department is considering exemptions from the BCEA for certain categories of small businesses but hasn’t yet published the list.

More controversial is Heine’s suggestion that a sunset clause be inserted into the Employment Equity Act. This affirmative-action legislation must have a "clear expiry date", says Heine, who will suggest to parliament that the legislation be reviewed in five years and that it should be scrapped then if it has achieved its targets.

Taljaard will table an amendment to the Corruption Act to include the misuse of public funds as an act of corruption. "The promise of a legislative review made as last November’s anticorruption summit has just not happened," she says. She argues that the Corruption Act must be beefed up to enable anti-graft bodies like the Heath Commission to use it more often. And she adds that the National Assembly will be hard-pressed to turn down the measure, given the government’s public commitments to get tough on corruption in public office. Parliamentary committees must give the go-ahead for the tabling and discussion of private member Bills.

Taljaard says "private member Bills are a critical route for the opposition" and that "the executive has a monopoly on legislative change, this is the only route for independent legislation."
Mdladlana to relax labour law

Changes affecting small business will not compromise workers' rights, minister promises

Wyndham Hartley

CAPE TOWN — Labour Minister Membathisi Mdladlana is to announce a widespread relaxation of aspects of the Basic Conditions of Employment Act as it applies to small business.

The announcement, scheduled for November 4, will be the first practical change following President Thabo Mbeki's undertaking in his opening of Parliament address that he would discuss changes to the country's labour laws with government's social partners — business and labour.

Mdladlana said that the "variations" which he would announce would in no way deprive workers of their rights. The changes, which would apply to small business, would not remove the protection of the law or the constitution, he said, acknowledging that the labour unions were opposed to any changes. "Sometimes you have to bite the bullet here and there."

He said the "variations" were being determined on the basis of an investigation by the employment conditions commission, which based its work on a recommendation by the Ntsika arm of the trade and industry department.

The minister said some exemptions to the conditions of the wage regulating instruments were already being granted by the various bar mining councils, and the measures he would announce would add a second element to this.

He stressed that the main target would be businesses of 10 or fewer employees, as identified by Ntsika.

Mdladlana's statement follows a letter to Parliament's private members legislative proposals committee from labour director-general Sipho Pituyana, suggesting that proposed legislation from the Democratic Party should not proceed as an announcement regarding the act was imminent.

He also said that issues raised by the Democratic Party, such as a five-year lifespan for the Employment Equity Act, were not needed because the act did not prevent the review of laws.

There were specific mechanisms in the department and the act for reviews.

Pituyana drew the committee's attention to President Thabo Mbeki's undertaking that government would discuss problems with labour laws with its social partners, saying that the labour minister has initiated a process, which was now under way.

"Whenever the labour minister sets minimum wages and conditions of employment in the form of a sectoral determination, he has to be advised on the likely effect of any proposed condition of employment on current employment or the creation of employment," Pituyana said.

This made the DP's suggestions adding job creation as a criterion for exemptions unnecessary, Pituyana said, and that the DP private bills not therefore not be taken further.

"For the extension of our fellows, the DP, in the private bills, we have identified two major problems," said government's labour spokesperson Rudi Heine.

"They have issued a statement that they are not going to work as partners with the government in the process. We have withdrawn our proposals and welcomed the indication from government that it was not going to exclude small businesses from the "onerous provisions" of the three labour acts.

Heine said he was convinced that once government had done this, small businesses and further investment in SA would flourish, resulting in the rapid creation of jobs.

Heine's bill sought to grant all small business exemption from bargaining council agreements as provided for in the Labour Relations Act, grant all small businesses exemption from the overtime premium, Sunday work premium and night work allowances, reduce annual and family responsibility leave; and provide a sunset clause limiting the life of the Employment Equity Act to five years.

The DP's proposals earned it a blast from the Congress of SA Trade Unions which said Heine was trying to take the country back to apartheid when workers enjoyed no rights. It said the DP's proposed amendments were antiworker and contrary to human rights. They were "crude and embarrassing."
Govt assures it is not shifting labour policy

Small businesses will soon be informed what conditions they may vary, writes Reneé Grawitzky

The labour department has moved swiftly to quell concerns that the introduction of a ministerial determination for small businesses in the Basic Conditions of Employment Act represents a shift in government’s labour law policy.

This move is seen by the market to be part of the labour market review process that got under way earlier this year. President Thabo Mbeki committed government to this process at last year’s presidential job summit and further endorsed such moves during the opening of Parliament.

Government has held talks with business and some labour federations, but there are indications that it has yet to meet the Congress of SA Trade Unions, which has cancelled a number of occasions.

A business source said the process had become confusing as possible changes to labour legislation were being discussed in a variety of forums with no proper co-ordination.

Moves by the labour department to gazette a ministerial determination on small business did not, however, have their origins in the labour market review process, the department said yesterday.

“This is not a new process nor does it represent a shift in government thinking,” the department said.

During heated debate in Parliament on the Basic Conditions of Employment Act, former labour minister Tito Mboweni agreed to investigate the effect of the legislation on small business.

The department commissioned the Ntsika Enterprise Promotion Agency to conduct an impact assessment of the legislation on small business. The report, released more than a year ago found that the act’s effect on the economy would be marginal. However, it would significantly affect sectors that worked extended hours and were susceptible to rising labour costs.

Sectors including security services, transport, service stations, catering and accommodation, general dealers, cleaning and personal services would have difficulty complying with provisions relating to the regulation of working hours, overtime rates, payment for Sunday work, night work, and maternity and family responsibility leave, the report said.

The report argued against making too many exclusions or exemptions.

A ministerial task team appointed to make recommendations to the minister on the report proposed the promulgation of a special determination for companies employing fewer than 10 people.

This determination could allow small employers to be flexible in the implementation of conditions of employment. These relate to working 15 hours of overtime instead of the proposed 10, the payment of time-and-a-half for overtime instead of time-and-a-half, and a total of 21 days’ leave including family responsibility leave instead of 21 days’ leave plus three days of family responsibility leave.

Provision should also be made for parties to enter agreements over averaging of hours, in which a minimum number of hours may be worked over a period of more than four months, as stipulated in the act.

In terms of the act, the minister was required to approach the Employment Conditions Commission to seek advice on this issue. The commission, headed by Edwin Molakele, was asked to consider a ministerial determination on small business and to take into account the task team recommendations.

In its deliberations, the commission considered the Ntsika report, the ministerial task team recommendations and the small business regulatory review commissioned by the trade and industry department.

This review, yet to be approved by cabinet, went beyond the recommendations made by the labour department task team. It proposed some controversial amendments to the Labour Relations Act as well as the Basic Conditions of Employment Act.

In this regard, it was proposed that a sectoral determination should accommodate small and new businesses while the employment consequences should be seriously considered when setting minimum wages.

It is understood the commission was heavily influenced by the recommendations made by the task team, which called for a special determination for companies employing fewer than 10 people.

It proposed that a determination should allow for flexibility with regard to overtime, annual leave and family responsibility leave. The Small Business Project does not expect flexibility beyond these areas.

By next week, small businesses will be informed how much they can vary employment conditions.
LITTLE SIGN OF LOOSENING UP
THE NEW LEGISLATION

Business complaints noted by Mbeki, but it's up to parliament

Government, business and labour could, in the run-up to elections, be locked in a fierce debate over Labour market policy. Business insists on the new labour law framework - the Labour Relations Act (LRA), the Basic Conditions of Employment Act, and the Employment Equity Act - is inflexible and a disincentive to job creation and economic growth.

Deputy President Thabo Mbeki has promised to look into the contentious aspects of the new legislation. A review of the impact of the Labour law is a review on the cards? Mbeki's legal adviser, Mophoko Gumbi, says that some business people have expressed concern about the "onerous, costly and restrictive" nature of the new law. However, "there has been no discussion about the potential impact of the labour law reforms on economic growth and job creation," he says.

"The old law was widely considered to be archaic, inefficient and biased against organised labour," Gumbi says. "But the unintended consequences - immovable investment, productivity, profitability and job creation, particularly in small business, have caused controversy and contention."

Baker, as the former Labour Relations Act (LRA) chief director of industrial relations in the Department of Labour, Jeremy Bastian, has said: "The old law was widely seen as archaic, inefficient and biased against organised labour."

Bastian says the new labour law framework is causing much concern among businesses and makes it difficult for small businesses to compete with their larger counterparts.

SA Chemical Workers Union (SAIWU) general secretary Marnie Samatul says the new law has implications for the operation of the industry.

According to the first law, the National Economic Development and Labour Plan (NEDL) was introduced to address the challenges of high unemployment, low wages and low productivity.

The plan's goals were to create jobs, increase wages, and boost the country's economy. The NEDL aimed to create 750,000 jobs by 2013 and raise the minimum wage to R15 per hour.

Prof James Peck, director of the National Centre for Labour Studies (NCLS), says that the NEDL would not achieve its goals because of the laws that were introduced in 1994 and the increase in the cost of living.

"The law has made it impossible to develop a large-scale economy," Peck says. "This is why we have an economic crisis."

Prof Desmond Gumbi, director of the Institute for Labour Studies (ILS), says that the new labour laws are causing much concern among businesses and make it difficult for small businesses to compete with their larger counterparts.

According to the second law, the Employment Equity Act (EEA) was introduced to address the challenges of high unemployment, low wages and low productivity.

The EEA aims to create a competitive market economy, increase wages, and boost the country's economy. The EEA also aims to create 750,000 jobs by 2013 and raise the minimum wage to R15 per hour.
Define work relations more clearly

When is an employee not an employee? The Labour Appeal Court recently tackled the question.

FOCUS

Business Day Monday March 8 1999

Hong Kong
Cathay Pacific

The courts need to redefine work relations more clearly

When a worker is not an employee?

The courts need to redefine work relations more clearly.
SA Constitution caters for all

With Human Rights
Day less than a week
away, Minister of
Labour Membathisi
Midladiana says
worker rights are part
of human rights.

Our new Constitution has
something for everyone. It
guarantees us political
democracy. It gives us
freedom of expression and freedom of
religion. It gives rights to children and
it gives rights to workers.

The rights of workers are contained
in the Bill of Rights of the Constitution.
Worker rights are thus part of human
rights.

The key worker rights in the
Constitution are the right to fair labour
practices, to forms of trade union, to
organize workers and to strike.

Over the last five years, the
Department of Labour has sought to
give effect to these rights through a number
of new labour laws. All the major laws
that the department administers have
been overhauled and aligned with the
Constitution.

The first law that the department
sought to amend was the Labour
Relations Act. This Act regulates
collective bargaining and ensures that
workers have recourse when they are
unfairly treated or dismissed by their employer.

The second law that the department
changed was the Basic Conditions of
Employment Act. A new Act came into
effect last December and now all
workers are entitled to a basic set of
conditions of employment.

Whether you are a temporary
worker, a domestic, a farmworker or a
factory worker, you are entitled to two
weeks leave in a year, overtime to be
remunerated at time and a half, maternity
leave of four months and so on.

This year, the Department of
Labour is putting into effect the Employment
Equity Act and the Skills Development
Act.

Both these Acts will contribute to
giving black people, women and
people with disabilities greater
opportunities in the labour market. They
should be able to get better jobs and
break through the "glass ceilings" of
white and male-dominated
companies.

The Employment Equity Act will
also give effect to the clauses in the Bill of
Rights that say that neither the state
nor any person can discriminate against
anyone on any grounds including race,
gender, pregnancy or disability, sexual
orientation and militance at the
workplace.

In addition, the Equity Act prevents
discrimination on the basis of one's
HIV status. This is very important as
we increase our efforts to raise awareness
of this issue.

We must present the spread of this
disease but we can't stigmatize and
discriminate against those individuals
who are HIV positive. They are like
you and me, and capable of making an
equal contribution at their places of
work.

The promotion of these laws has
had an important basis for giving effect
to our new Constitution. But this goes
only part of the way in transforming
our workplaces.

All stakeholders need to make sure
that these laws work and make a real
difference to workers and employers
and their relationship. This
responsibility rests with all of us.

The Department of Labour has
developed significant resources. time and
energy to ensure the effective and
efficient implementation of laws.

We have developed educational
material trained and orientated our
staff and inspectors and set up the new
institutions such as the Commission for
Conciliation, Mediation and
Arbitration (CCMA).

The department's 117 labour
centres and 10 provincial offices across
the country are there to assist members of
the public in this process.

What can employers and workers,
trade unions and employer
organizations do to make sure that
worker rights are respected and observed?

We all need to know about these
new laws and understand them. We
need to establish whether these laws
are being followed in our workplaces.

If they are not being followed
we need to find out why and see if this can
be corrected. The Department of
Labour can assist in resolving disputes
you have with your employer.

If this fails the CCMA can direct
the party that was in the wrong to
correct the situation (for example, re-
employ a person) or grant
compensation to the wronged party.

Worker rights are not only good for
workers. They are good for the
corporate and the work environment.
Workers who feel secure at their
workplace and are covered by a
number of rights are far more likely to
contribute meaningfully to the
success of the enterprise.

Therefore, I urge employers to
understand and implement our
laws. They will create certainty for
you and your employees and will lay
a stronger foundation for labour
peace and stability.
Govt seeks negotiated retrenchment

Linda Ensor

CAPE TOWN — The Labour Relations Act should be amended to make negotiations about retrenchments mandatory to stop unilateral action being taken by employers, Labour Minister Mdladlana said yesterday. Section 189 of the act requires employers only to consult workers on retrenchments, a provision which has increasingly been ignored.

Mdladlana said in his budget vote speech in the national assembly yesterday that he was also open to examining matters which business believed hindered job creation. Other problems on the table included working hours for seasonal farm workers, overtime, Sunday work, and the extension of collective bargaining agreements.

In an interview before he delivered his speech, Mdladlana said he favoured mandatory negotiation, and that workers should be brought on board as soon as a business detected danger signals to allow them to participate in finding solutions — even if this meant retrenchments.

However, he cautioned against rigidity. He said he would consult business and labour to reach consensus before the next government came to power and appealed to the parties to structure their views as specific proposals.

The matter will be discussed with ministers charged with jobs summit issues, the social partners in the National Economic, Development and Labour Council (Nedlac), and with the African National Congress's alliance partners.

Job security and retrenchment was discussed at last year's job summit, with labour demanding a tightening of section 189 to force employers to negotiate retrenchments. As agreement seemed remote at that stage, it was decided that

Labour Minister Mdladlana proposed amendments to the Labour Relations Act yesterday that would stop unilateral retrenchments

Deputy President Thabo Mbeki would convene a meeting.

Mdladlana emphasised that government would never allow employers to hire and fire at will, though this did not mean the labour market was inflexible.

Chairman of the parliamentary labour committee Godfrey Oliphant said other challenges were the provision of full maternity benefits, trade union education in schools, and the integration of domestic workers into the unemployment insurance fund and social security net.

In a speech read on his behalf by Colin Eglin, Democratic Party leader Tony Leon criticised the labour department's focus on the employed, rather than on the unemployed. He called for the urgent convening of a labour law review committee comprising business, labour, the unemployed, opposition parties, think-tanks and nongovernmental organisations.

Earlier, Eglin criticised Mdladlana for his complacency and self-congratulatory speech, pointing out that there had been a reduction in the number of jobs since the ANC came to power. The New National Party's Theo Alant also blamed government policies for the loss of more than 1.5-million jobs since 1994.
LABOUR Minister Mabathusa Mdlalasa should spell out exactly which provisions of South Africa's restrictive labour legislation he was planning to revisit, Democratic Party labour spokesman Rudi Heine said on Sunday.

Heine was responding to labour director-general Sipho Pitjana's statements last Wednesday.

Heine said Pitjana had been on the point of excluding small businesses from the employment practices imposed on them by the Labour Relations and Basic Conditions of Employment and Employment Equity Acts.

"Less than a week later, it appears as though they are trying to backtrack in a desperate effort to appease the Government's alliance partners," he said.

"Quite simply, this is not good enough," he said.

Heine said business people were growing increasingly disillusioned by the way the department had handled the review of the country's labour laws.

"The process has been convoluted and unclear from day one. Furthermore, the general state of uncertainty which has prevailed since then has done nothing to boost business confidence," he said.

After proposing certain amendments to existing legislation in three private members' Bills, the DP withdrew them because the Government promised to address those changes put forward by the party, he said.

"However, if there is any reluctance on the part of Mr Mdlalasa and his department to get cracking on effecting the amendments, we will not hesitate to push ahead with our private member's Bills," he said.

Heine said that swift and decisive action was long overdue.

"Mdlalasa needed to outline in detail precisely what his department was actually committed to doing for small business."

"A clear indication from him will remove doubt and allow employers, workers and Parliament to make further recommendations, if deemed necessary," he said.

Heine added that mounting confusion around the issue of labour law reform would cause more doubt in the labour market and further job losses.
Equality bill is no Orwellian script

Alarmists ignore key facts, but draft still includes clauses that will keep lawyers busy at Constitutional Court, writes Cape editor Alan Fine

Sixty years ago, when the concept of an unfair labour practice was first introduced into SA law, it caused some bemusement among employers and lawyers as to what exactly an unfair labour practice was.

They were somewhat at a loss because it was defined in the Industrial Conciliation Act simply as a labour practice adopted by the parties in an unfair manner. Workers did not initially ask any such questions, assuming the whole thing to be yet another of the myriad laws produced by the National Party.

A similar uncertainty may be felt by some of the more astute interpreters of the proposed Promotion of Equality and Prevention of Unfair Discrimination Bill.

The bill would prohibit unfair discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, political belief, culture, language or birth or "any other recognizable group".

This ban on discrimination applies to the fields of employment, education, health care, accommodation, land and property, insurance, goods, services, fares and facilities, associations and partnerships, clubs and sports, and professions.

In Cape Town, the law is found to have been controversial, equality courts (which are the magistrate's and high courts in the eight different areas) would be able to order payments for damages for financial loss, repayment of expenses, correction of discrimination or even imprisonment. They would also make declarations or orders to remove the law.

Everything about the bill rests on the definition of what is to be considered "unfair" discrimination. Fact is, the text could not be simpler.

It does so by saying that "unfair discrimination" is defined as "an act or omission likely to have the effect of unjustly or unfairly causing disadvantage to individuals or groups on the basis of any of the prohibited grounds.

This is a legal definition that equates the unfair labour practice with the national interest: the "equal" treatment of individuals or groups on the basis of any of the prohibited grounds.

It should be noted that the bill is silent on the national interest and whether it is the same for all individuals or groups.

It may be the uncertainty that this is where the bill fails to distinguish between acts of discrimination that are considered unfair or not.

The bill is also silent on the national interest and whether it is the same for all individuals or groups.

It may be the uncertainty that this is where the bill fails to distinguish between acts of discrimination that are considered unfair or not.

It is this uncertainty that is the basis of criticism of the bill, and that is where the alarmists have chosen to ignore the bill.

Some may see the bill's intention to outlaw "unfair" discrimination as a step towards a more just society. The bill has been described as a "boon to all" and "a victory for equality" by some.

At face value, the bill seems to be a step towards a more just society. It is a victory for equality and a boon to all.

However, the bill is not without its critics. Some argue that it is too broad and could lead to discrimination against certain groups, including religious or political beliefs.

Whether the bill will become law is uncertain. It is currently in the Constitutional Court, which is expected to rule on its constitutionality soon.
Government grants small business greater flexibility

(30) (166) ED 4.11.99
Renée Grawitzky

Firms employing fewer than 10 employees will be entitled to pay a lower overtime rate to workers as provided for in a ministerial determination for small business in terms of the Basic Conditions of Employment Act.

'This is expected to be announced today by Labour Minister Mmbathisi Mdladana as part of a government initiative to grant some flexibility to small business in the implementation of the act.

The determination, expected to affect up to 200,000 companies employing 500,000 workers, is also likely to receive a lukewarm response from employers who will argue that government has not gone far enough.

Organised labour is expected to make some token objection, despite the fact that many of these workers are not organised and therefore do not benefit from the legislation because of a lack of compliance by small employers.

Mdladana's objective is to strike an appropriate balance between the commitment to protect the rights of workers employed in small business and create an environment in which small business can grow and create jobs.

Key provisions to be covered in the ministerial determination have its origins in a tripartite ministerial task team report presented to the minister last year, sources close to the process said.

The team was established to make recommendations to Mdladana on the results of an investigation conducted by the Ntsila Enterprise Promotion Agency to assess the effect of the act on small business.

The task team proposed that employees employed by small business should be allowed to work 15 hours overtime instead of the proposed 10, the payment of time-and-a-third for overtime instead of time-and-a-half, and a total of 21 days' leave including family responsibility leave — instead of 21 days' leave plus three days of family responsibility leave.

Proposals also related to agreements on averaging of employee working hours beyond the stipulated four months.

The Small Business Project said it was not expecting Mdladana to announce anything beyond the brief provided by the Employment Conditions Commission.

The commission's brief was to consider some flexibility in implementing overtime provisions, annual and family responsibility leave and work time arrangements.

Business believes that a determination should apply to firms employing more than 10 employees and should possibly apply to those employing less than 50.

Barlows Limited economist Pieter Haasbroek said the announcement would just be "window-dressing" as rigidities in the system could not be evaded.
Is it really possible to discriminate fairly?

BY EULICE HEAY

The Constitutional Court is to rule on whether a law can require an employer to prove the claim that unequal treatment is not discriminatory. The court's decision will be based on the evidence presented during the hearing.

The law in question deals with employment practices that discriminate against certain groups in the workplace. The law aims to promote equality and prevent unfair discrimination in the workplace. The court's decision will likely have significant implications for employers and employees alike.

Critics of the law argue that it is overly broad and could lead to a significant increase in litigation. They claim that the law could be used to discriminate against certain groups and that it could lead to a significant increase in litigation.

The government is likely to appeal the court's decision, as it believes that the law is necessary to address the issue of workplace discrimination.

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Govt bows to pressure and relaxes labour regulations

BY GONGALEWE TRO

The government has finally succumbed to pressure to relax labour regulations, which have been in place for years. The regulations have been criticized for being overly burdensome and stifling business growth.

The new regulations will allow for more flexibility in the labor market, which will help to create new jobs and stimulate economic growth. The regulations will allow for more freedom for employers to hire and fire workers as needed, and will also allow for more freedom for workers to change jobs.

The new regulations will take effect in the coming weeks, and will be implemented gradually to allow for a smooth transition.

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Cosatu to fight 'two-tier' system

BY THEMESISO MOOMA

The government has announced a new law that will allow for a two-tier system in the labor market. The law will allow for businesses to hire workers on a temporary basis, which will help to reduce their labor costs.

The law has been met with opposition from unions, who argue that it will lead to a significant increase in inequality. The unions are demanding that the law be repealed, and are threatening to strike if the law is not repealed.

The government is standing firm on the law, and is confident that it will lead to increased economic growth.

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The small business sector will be allowed to operate without the need for a temporary employment contract. This will allow for more flexibility in the labor market, and will help to create new jobs.

The new regulations will take effect in the coming weeks, and will be implemented gradually to allow for a smooth transition. The government is confident that the new regulations will lead to increased economic growth and job creation.
Government, Cosatu agree broadly on labour laws

At last night's meeting, Cosatu also raised concerns about the limitation of the labour market and information disclosure. Discussions with business and other trade union leaders have focused on the need to reconcile these areas, with government calling for a state-registered worker protection from dismissal during this period. Government has always proposed changes to the Basic Conditions of Employment Act to ensure that employers should be required to negotiate rather than consult over restructuring.
Trade unions challenge leaders

By Mzwakhe Hlangani
Labour Reporter

South Africa's two major union federations have taken the lead in a campaign for the Commonwealth member countries to endorse core labour standards and an International Labour Organisation declaration on fundamental principles on workers' rights.

Congress of South African Trade Unions (Cosatu) general secretary Mr Zwelini Zuma and National Council of Trade Unions (Nactu) secretary Mr Cunningham Ngcukana led the delegation of the Commonwealth Trade Union Council to lobby heads of government on contentious labour rights issues in developing countries.

Cosatu spokesman Mr Makhwasha Mphahlele said yesterday the CTUC was a non-governmental organisation comprising various trade union federations throughout the Commonwealth states.

It was entitled to lobby the Commonwealth Heads of Government meeting.

The delegation included Ms Rita Donaghy of Trades Union Council from Britain and the Swaziland Federation of Trade Unions general secretary Mr Jan Sithole.

In its memorandum, distributed to all government delegations, the federations demanded the heads of government to commit themselves to the ratification of the ILO Convention aimed at eliminating the worst forms of child labour.

The Trade Union Council also planned to host a meeting on globalisation and social justice in Durban on Friday next week, to be addressed by Zuma and British member of parliament, Mr George Fouly, who is also the British parliamentary under-secretary of state for overseas development.

The ILO Convention is aimed at establishing the distribution of benefits by the World Trade Organisation from world trade and accepted standards for workers' rights, the environment and improved market access for developing countries.

CTUC director Ms Anne Watson also emphasised that trade unions were the natural allies of governments that wanted to promote peace, democracy and economic prosperity.

"For that reason we call on governments to show a greater degree of commitment to labour standards and eliminate child labour taking place in various forms," Watson said.

The Commonwealth states' leaders are meeting in Durban simultaneously with non-governmental organisations and trade union movements.

The latter are making important deliberations on the advancement of labour rights issues at the NGO Forum in the same complex.
Call to revamp law over ‘biased’ pay

Alan Fine

CAPE TOWN — The Labour Court should “restructure” the traditional burden of proof in cases of racial pay discrimination to make it easier to prove such allegations, says attorney Halton Cheadle.

Cheadle was conducting a final summing up in the first pay discrimination claim under the 1996 Labour Relations Act. The case is seen as potentially precedent-setting in SA labour law.

Michael Louw, a buyer at Golden Arrow Bus Company, has claimed backpay amounting to the difference between his salary and that of Johannes Beneke, initially also a buyer, since the act passed in 1996.

Louw says the two have carried out work of equal value since Beneke’s was lured in 1990. Yet Beneke’s salary has consistently been 60%-65% higher than his.

Cheadle said yesterday a higher burden of proof was needed in such cases, because discrimination is notoriously difficult to prove using normal standards — as employers never admit to racial discrimination.

He proposed the court follow a European Union directive, that if the applicant has facts that infer discrimination, it is up to the employer to prove it has not discriminated against the worker.

Alec Freund, counsel for Golden Arrow, rejected the argument. He argued that Louw’s allegations of racial discrimination were unsustainable.

He said the courts would be entering dangerous territory if they tried to arrive at appropriate wage differentials between different individuals in firms.
Cosatu agrees to review relaxed BCEA in early 2000

Lynda Linton
Business Report

Cape Town - The national assembly's portfolio committee on labour yesterday tried to define the various objectives of Cosatu to recent changes by the government to relax labour legislation covering small business.

Cosatu representatives agreed to allow the restructuring process set in motion recently by Minister of Labour Misdia Mahomed to take place, provided the union was informed of any actual or potential changes to the BCEA.

The union said it would not however agree to any relaxation of the BCEA on the basis of smaller workforces. It said the union would maintain its position that the BCEA applied to all workforces, regardless of size.

Neil Coleman, Cosatu's parliamentary officer, said it was "very unfortunate" that Misdia had ignored the determination, which relaxed key aspects of the Basic Conditions of Employment Act (BCEA) for businesses employing less than 18 people, without asking for public comment.

Lee Fettlind, the Labour deputy director, said the task team established by the government and Cosatu after a recent meeting would monitor the implementation of the new determination. Inspectors would also monitor developments and steps would be taken to rectify any unintended consequences to workers.

Coleman claimed the determination could lead to job losses as employers downsized to ensure they were exempt from major provisions of the BCEA.

He said it would "undermine the architecture of the collective bargaining programme."

He feared the determination was needed to increase labour market flexibility, saying things were not as serious as made out by some businesses.

He feared the determination would become "the thin edge of the wedge to set a process in motion to remove further worker rights. It could encourage outsourcing and the greater casualisation of labour with the worst effects being felt by the most vulnerable workers.

He was particularly concerned about attempts by some to justify the determination as the only solution to the "kind of issues that should be dealt with in the constitutional court."

Instead, it should be tested against the BCEA itself, which had been designed to create a better life for all workers. If the determination had the opposite effect, it would have to be reviewed.

The committee would be a report back by the special task team early next year.
Equality bill and equity act may overlap

Helen Grundlingh

BUSINESS groups and labour lawyers warned yesterday that the Promotion of Equality and Prevention of Unfair Discrimination Bill could overlap with the Employment Equity Act and lead to conflicting interpretations.

At the same time the Life Offices Association of SA (LOA) said the Bill would negatively affect the insurance industry and if passed would prejudice those wi...
Equality bill hysteria hard to take seriously

Drew Forrest questions the SA Institute of Race Relations' intellectual leadership

The Promotion of Equality and Prevention of Unfair Discrimination Bill has raised the spectre of equal rights terminology — even though the SA Institute of Race Relations says it is.

Leyser says the bill is a flawed piece of legislation which undermines a lot of the work being done on fundamental liberties and the human rights.

The bill is too vague and too broad. It allows for the possibility of discrimination on the grounds of economic status.

An example is the one given by the director, John Kane-Berman. The basis of discrimination is the economic status of the individual, which is not clearly defined. This is a problem in terms of the Bill and it is not clear how it will be enforced.

The Bill does not define discrimination clearly and it is therefore impossible to say whether an action is discriminatory or not.

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Changes urged to equity bill

SEVERAL interest groups appeared before a special parliamentary committee yesterday, urging major changes to proposed equality legislation, with the Free Market Foundation advocating that the measure be replaced altogether because it violated the Constitution.

The ad hoc committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill will hold public hearings this week.

In its submission, the Free Market Foundation said the bill should be replaced with a programme to ensure equality before the law as guaranteed by the Constitution.

It argued that the bill was contrary to the spirit and provisions of the Constitution.

Researchers from the UWC’s Gender Project urged MPs to widen the bill to include the controversial practice of vaginismus testing.

The bill already covers female genital mutilation or circumcision.

However, ANC MP Makhosazana Ncube, from the Eastern Cape, said some cultures believed vaginismus testing was a good practice.

With the emphasis on the fight against HIV and Aids, vaginismus testing had a new “interpretation altogether”, she said.

The Gender Project’s Loretta Fenzi said those who believed such testing was discriminatory would be able to have recourse to the law.

In its submission, the SA Jewish Board of Deputies said it wanted MPs to make hate speech a criminal offence punishable by law.

The South African Insurance Association said the legislation, if enacted, would cause permanent damage to the insurance industry and result in huge job losses.

According to the bill, no insurer may unfairly or unreasonably discriminate against any person in the provision of insurance.

Submissions from the Gender Project and the Black Sash also asked the committee to reinstate HIV status, socio-economic status and family responsibilities in the list of prohibited grounds of discrimination.

Ideas asked the committee to consider a tribunal or jury system to adjudicate disputes under the bill rather than the normal courts functioning as Equality Courts.

The bill is one of three that must be enacted by February 4. — Sapa, Own Correspondent
‘One-stop service’ for workers

By Lisa Selby

Over the last three years, the Department of Labour has introduced many new labour laws. These create new rights and responsibilities for employers and employees, employer organisations and trade unions.

The department is mindful of this fact and has embarked on a process to ensure that it can offer significant and meaningful support to workers and employers.

In this article, some of the measures that we have, or that are going to be put in place, are outlined.

While we may see our labour laws as being distant, this is not the case with many of the people that come to our offices. They may seek assistance in securing a job or unemployment insurance benefits.

We have therefore committed ourselves to offer a “one-stop service” and are in the process of restructuring our local offices to offer integrated services.

At a provincial level, the following integrated services are being set up:

- Inspection and enforcement services
- Labour market and information service
- Employment and skills development service
- Benefits and compensation services
- Management support services.

The inspectors and enforcement service is tasked to ensure there is compliance with the Social Security Act, the Occupational Health and Safety Act and the Labour Market Equity Act.

It also has to ensure that employers pay their contributions for unemployment insurance and compensation funds.

These services include inspections, offering information, advice and even training to workers and employers, and granting vocational and other similar training facilities.

Giving advice to unemployed people and assisting them to access training and job opportunities is the role of the employment and skills development service.

This is an area which is also heavily involved in administering the social plan agreement that provides support to the event of large-scale retrenchments.

The benefits service is responsible for the provision of benefits to unemployed people and provision of compensation to workers who have been injured or killed as a result of workplace accidents.

The labour market information service is a new service. The department views it as increasingly crucial to gather information about the labour market and plan and act on the basis of workplace statistics.

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The department is also in the early stages of establishing a Public Protection Partnership with external information technology service providers.

Part of our vision for the future is the establishment of call centres and remote access terminals so that members of the public can access some of our services by telephone, the internet and through a terminal similar to an ATM.

For example, workers could be able to renew their unemployment insurance or compensation benefits from an ATM terminal with a called card.

People could also electronically access information on their pensions and other material assistance.

At present, the Department of Labour is working on the development of a new call centre which will allow people to access the department's services.

The department provides for, they could also use the telephone or the internet to get this standard information.

In addition, the department has developed particular strategies to ensure the efficient implementation of specific laws. Our approach has been guided by the motto “prevention is better than cure.”

We have therefore attempted to promote capacity-building, manage information sharing, advocacy, and the building of partnerships as opposed to inspections and enforcement.

For instance, in respect of the BCLA, the department produces pamphlets, a booklet and a video as well as training sessions which can reach out to our stakeholders.

Department of Labour inspectors are as busy as those working in the community and meetings with stakeholders.

To ensure the effective implementation of the enforcement of child labour, we have been instrumental in establishing a forum bringing together the government and non-governmental organisations to draw up and implement a programme of action to eradicate child labour.

From May to July, we ran workshops on all provinces for labour inspectors, social workers and the Department of Welfare officials, police from the child protection units and members of non-governmental organisations.

The aim of the workshops was to ensure the relevant officials understood the dangers of child labour and taught them on how to apply the relevant laws in a holistic and developmental way.

It has been a challenge to introduce a legislative programme in the context of limited resources and ensure its successful implementation. We believe the success of our strategy rests on two pillars.

The first pillar is the restructuring of the department. We believe that we are able to have a smooth delivery of our mandate. With key aspects of the restructuring having been accomplished,

- Introducing integrated services and the most modern information technology.
- Establishing a change management process and
- Capacity-building of staff in the department.

The second pillar is the establishment of our partnership. Our laws were created in consultation and need to be implemented in the same manner.

The 15-point programme of the Minister of Labour was a commitment to enhance social partnership. The challenge was to implement these in a way that would promote dialogue and leverage the opportunities for deeper social partnership.

In respect of the enforcement of good information, the department's strategy is to:

- Union and employer working together to ensure compliance with the BCLA.
- Workers reporting incidents of possible fraud to the employment equity plan.
- Workplace forums monitored to monitor the implementation of employment equity plan.

(The writer is the Department of Labour’s chief director of labour relations. This article first appeared in the October issue of the South African Labour Bulletin.)
Underwriters add to case against equality bill

Yesterday Barry Scott, the chief executive of the South African Insurance Association (SAIA), said the bill, which exceeded international standards applied in this type of legislation and would make long-term insurance very unaffordable, would increase the cost of premiums by up to 20% for policies that had not incorporated the new provisions.

"The industry is not ready for this," he said. "The bill would also cause permanent damage to the insurance industry." Scott also warned that the bill would increase the cost of insurance by up to 20% for policies that had not incorporated the new provisions.

Later in the day, the SAIA said it had strongly supported the principle of preventing unfair discrimination, but that the bill could not be implemented in a way that would not cause harm to the industry.

A review of intercostal expenses with the kind of legislation that was necessary, Scott said, was that the bill could not be implemented in a way that would not cause harm to the industry.

The bill, he said, would cause permanent damage to the insurance industry and the cost of insurance would increase by up to 20% for policies that had not incorporated the new provisions.

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Equity act sets firms a deadline

Stephanie Bolhann

PRETORIA — No SA company employing more than 50 people will escape the requirements of the Employment Equity Act Labour Minister Helen Zille yesterday announced the system of non-compliance penalties.

Launching chapter three of the Employment Equity Act, she said that the government had been working on a system of non-compliance penalties for some time. The new system would be announced in the State of the Nation Address and would take effect on January 1 next year.

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"We need to ensure that compliance with the Employment Equity Act is taken seriously," Zille said. "This is a system of non-compliance penalties that will take effect on January 1 next year and will apply to all employers.

Employers who do not comply will be fined up to R100,000, and the government will also have the power to withdraw their licence to operate.

The system is a long time coming, Zille said. "We need to ensure that compliance with the Employment Equity Act is taken seriously," Zille said. "This is a system of non-compliance penalties that will take effect on January 1 next year and will apply to all employers.

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Employers who do not comply will be fined up to R100,000, and the government will also have the power to withdraw their licence to operate.
Equality bill gets flak from top advocates

Top advocates have turned on South Africa's controversial equality bill, calling for it to be completely withdrawn and redrafted.

And organised business has warned that if the bill was enacted, it would seriously damage the economy and investor confidence.

In a submission to Parliament, the General Council of the Bar (GCB) described the bill as convoluted, complicated, repetitive and inconsistent with the Constitution and Constitutional Court judgments.

It was so bad that it would be impossible to redraft the measure ahead of the constitutional deadline for the bill's enactment, namely February 4.

The GCB - the federation of South Africa's nine constituent bars which represents about 1,700 advocates - is among a host of organisations that have made submissions to the ad hoc committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill. The GCB gave several examples to back up its argument that the bill was completely inadequate.

It said there were many provisions which simply did not make any sense, while there were many instances of drafting inconsistencies. It recommended that the bill be withdrawn and that the constitution be amended to extend the deadline.

The National Association of Democratic Lawyers (Nadel) yesterday said it would not support this call.

Nadel's project manager, Rikky Mnyukhu, said although the legislation was convoluted and problematic, sufficient changes could be made before the constitutional deadline.

In its submission, Business South Africa (BSA) said the bill would substantively harm some sectors of the economy, particularly those related to the finance and insurance industry.

Aspects of the bill would undermine the ability of the country to grow economically and attract local and international investors. It would not be in the best interest of the most disadvantaged - the unemployed. - Sepe
Unions management and are wary of workplace forums

FRANKREYNOLDS

JOHANNESBURG – Neither company management nor organised labour was comfortable with setting up workplace forums as provided for in the new Labour Relations Act, a union study showed yesterday.

The study, presented by the National Productivity Institute at a recent conference on economics, business and human resource management research, discovered that only 13 workplace forums had been established nationally since the promulgation of the act three years ago.

Mento Xerma, a Uniter researcher, said management was not keen on workplace forums because of concerns about divulging strategic information to labour and the lobbying of the decision-making process.

Labour was uncomfortable with forums because it feared they would reduce the union's power base or

Bar council lashes out at equality bill

CAPE TOWN – SA's top advocates have called for the withdrawal of the equality bill and for the constitution to be amended so that more time is set aside for redrafting it.

In one of the strongest attacks on the Promotion of Equality and Unlawful Discrimination bill, the general council of the bar said that the provision of the bill "simply do not make any sense at all."

The council expressed its views in a written submission handed yesterday to a parliamentary ad hoc committee which is studying the bill. The constitution requires Parliament to pass the bill by February 28.

The council said that it had wanted to avoid detailed commentary on the bill, but that it soon became clear that this would take a long time.

The current bill is too complicated, with too many ad hoc bodies and too many regulations in the constitution.

The bill would also be too complicated to implement and too complicated to interpret.

The bill would also be too complicated to interpret and too complicated to implement.
Labour groups hail new Act for workers

By Michaela Iljumard
Labour Reporter

TWO major labour federations welcomed the enacting yesterday of Chapter Three of the Employment Equity Act by Labour Minister Manthabiseng Mokhele as a fundamental correction for transformation of the labour market.

Meanwhile, business was reported to be cautiously supportive of the Act, although it pointed out that the application would be punitive and unworkable though paradoxical.

The Congress of South African Trade Unions (Cosatu) congratulated Mokhele for his move to accelerate historically excluded workers to the benefits of the workforce.

Cosatu called on employers and workers to take advantage of the introduction of Chapter Three and move ahead to implement its provisions without delay. The union federation also committed itself to assist workers in the implementation of the provisions.

National Council of Trade Unions general secretary Mtswenyana Ngcobo said the implementation of the Act had serious implications for the designated black, women and people with disabilities whose development at the workplace was engaged by racism.

"Instead of paying lip service, companies should invest in the training of the designated groups since the education barriers have always been a serious barrier for blacks," Ngcobo said.

The South African Chamber of Business (Sacomb) reportedly said although it supported the rationale and spirit behind the Employment Equity Act, it felt the application of the Act was punitive.

Sacomb spokesperson Mr Kevin Whiteford said although the chamber felt that the Act was discriminatory, it would be constructive.

School to hold memorial services

By Victor Mosaamai

Teachers and pupils at Malagasy Secondary School will hold two special services today and tomorrow in memory of two pupils who died at the Meadowslands, Soweto, school on Monday.

The school was the scene of a tragic double death which resulted in an enraged Grade 12 pupil Tshoogs Mongane, who shot dead his Class 9 schoolmate George Motse and then turned the gun on himself.

Mongane was threatening to kill his devastated schoolmates when Motse intervened, trying to disarm him, but was killed after a shot went off.

A member of the school's coed council committee, Ms Irene Shoba, said yesterday, "We will hold a special service on Thursday at 7.30am which will be led by the pastor and speakers from the Gauteng department of education, as well as the department of psychology services.

"We will also be donating money to the two families. Pupils are donating R1 each and teachers R2 each," Shoba said.
Forums are vital to the workplace

By Sthembele Tshwete

The Labour Relations Act (LRA) of 1995 brought about various institutions to transform the South African labour relations system from an adversarial to a more cooperative one.

As part of this initiative, institutions like workplace forums were introduced. The main aim of these forums is to ensure consultation and joint decision-making on production issues at workplace level.

These forums have been hailed as important innovations that grant employees an opportunity to participate in issues that affect them in their daily work activities.

Participation of labour on issues of production as well as sharing in problem solving around issues affecting the workplace, gives them a sense of responsibility and enhances the wellbeing of the enterprise.

Successful implementation of worker participation systems has proven to be fruitful in countries like Germany and the Netherlands and enhances productivity.

There are three forms of employee participation encompassed by the workplace forums: the right to consultation on certain issues, the right to participate in joint decision making on other issues and the right to information sharing.

For example, if matters for consultation are not regulated into a collective agreement, an employer is supposed to consult over envisaged changes which have an impact on employees.

The experience of the past is that we have seen conflicts arising out of an approach which endorses the unilateral implementation of changes such as those affecting the organisation of work, plant closures, transfer of business ownership, restructuring and health and safety.

Therefore, consensus-seeking around these issues is crucial for creating a stable workplace and can enhance the productivity and profitability of companies if parties cannot reach consensus over these issues, then a third neutral party may arbitrate on these issues.

Other matters for workplace forums relating to joint decision making include disciplinary codes and affirmative measures.

However, these forums have not been favoured by all parties since the 1995 LRA was introduced. Only 18 forums have been set up since then, even though labour and business negotiated this form of worker participation on their own accord during the negotiations around the new LRA at the National Education Development and Labour Council.

What could be the problem? This is not an easy question to answer, and one can only give a chronicle of the fears that parties have over these forums.

The labour movement feels deep resentment over the work committees and liaison committees established during the previous labour dispensation.

That resentment and rejection was based on the fact that these forums of worker participation rendered trade unions irrelevant under apartheid.

This could be the reason why the unions aren’t immediately engaging in these forums today.

However, the new LRA ensures that independent unions and traditional collective bargaining are not undermined and recognizes and seeks to shift labour relations beyond the adversarial.

The Explanatory Memorandum of the LRA states “Workplace forums should not be conceived, and must never be permitted to be used, as alternatives for trade unions.”

It is important to note that with strong unions and strong employer organisations existing in South Africa, the introduction of more forums may in fact serve as important vehicles for developmental purposes.

(The writer is communications coordinator of the Commission for Conciliation, Mediation and Arbitration.)
Rush to rework new Equality Bill

ROBERT BRAND AND SAPA

POLITICAL parties across the spectrum rejected calls yesterday that the Constitution be amended to allow more time to redraft the controversial Equality Bill, which has been criticized in parliamentary hearings this week for inconsistencies and vagueness.

ANC deputy chief whip Geoff Dodge said his party was aware of the state of the bill, but believed it could be redrafted in time for the constitutional deadline of February 4.

"It's tight, but we'll make it."

The General Council of the Bar, which represents most of South Africa's practising advocates, said the bill was convoluted and inconsistent with the Constitution, and called on Parliament to scrap it and start over.

The Promotion of Equality and Prevention of Unfair Discrimination Bill, which outlaws unfair discrimination, is one of three which must be passed by February 4 under a constitutional deadline. The others are freedom of information, and a law to ensure fair administrative procedures.

The chairperson of the parliamentary committee dealing with the bill, Mohsen Moosa, asked the drafters this week to work on a new definition of "unfair discrimination".

DP spokesperson Dene Smuts said there was no reason the bill could not be enacted before the deadline "provided the present catastrophic, contradictory, wordy and messy bill is put aside and a new draft emerges".

The definition of "discrimination" should be simplified, she said.

The NNP's Sheila Camerer said her party was against haphazard amendments to the Constitution on an opportunistic basis to meet particular exigencies.

In submissions to the committee yesterday, AIDS activists urged MPs to specifically to outlaw discrimination on the basis of HIV/AIDS status.
Judge rules on discriminatory salary

Application by black transport worker for back pay is dismissed

CAPE TOWN — Labour Court Judge Adolphe Landman has dismissed an application by thousands of rand in back pay by transport company worker Michael Louw, who claimed compensation for allegedly having been paid a racially discriminatory salary.

The judge found on Friday that Louw, a black man, had failed to prove on the balance of probabilities that the differential between his salary and that of a white colleague at Golden Arrow Bus Company was due to racial discrimination.

The case has been closely watched by industrial relations practitioners for its precedent-setting potential. Such a claim has not yet been successful in SA labour history.

However, Landman did set out criteria by which such cases may be judged in future.

The judge rejected an argument by Halton Cheddie, Louw's legal counsel, that courts should adopt less onerous standards of proof in unfair discrimination cases. Cheddie took the approach on the grounds that discrimination is always difficult to prove.

However, the judge opened the possibility for the successful prosecution of unfair wage discrimination cases in future.

He said that where the existence of unfair discrimination was proven it would always be difficult for a judge to determine what proportion of a wage differential was due to such discrimination.

Earlier, Louw had compared his employment history at Golden Arrow Bus Company — known as City Tramways until purchased by Golden Arrow in 1992 — with that of a white employee, Johannes Beneke.

Louw, a buyer, was employed in 1984. When Beneke joined the company in the same position in 1990, he was paid R2 300 a month compared with Louw's R1 500. At the time Louw had no experience of any sort in the motor industry, or as a buyer.

The differential in their pay remained at about 60% until 1997 when their respective salaries were R4 460 and R2 760. Beneke became warehouse supervisor in 1994.

Cheddie had argued that because Beneke had not received a salary increase then, the two positions were of equal value.

Louw's claim could date only since 1996, when the new Labour Relations Act came into force.

The judge accepted the company's explanation for the differential.

This was due in part to expert evidence that the warehouse supervisor's position was higher on the personnel job grading scale than that of buyer, and in part to Beneke's greater potential to progress into a management position.

The company also produced a witness who testified that a black man had originally been offered Beneke's job at a higher salary than that paid to Louw.

This was accepted as indicating that the company did not have a pattern of racially determined salaries.
Workplace racism sure to get the boot

By Mawakhe Nhanagatse
Labour Negotiator

By Mawakhe Nhanagatse
Labour Negotiator

December 1 marks the implementation of the Employment Equity Act, which requires employers to take affirmative action to ensure equal opportunity in the workplace. This 12-page plan, the motto of which is "We are not yet equal," aims to address workplace discrimination.

The Act requires employers to employ people of different racial backgrounds. However, the Department of Labour notes that employers are still not complying with the Act.

Labour Minister Mmambo Mpiyane says the plan will ensure that workplace discrimination ends.

The Act will require employers to have equal opportunities in all aspects of employment, including recruitment, promotion, and training.

In terms of the Act, employers will be required to take steps to ensure equal opportunities for all employees.

Black, women, and the disabled should be able to access opportunities in the workplace.

The National Economic Development and Labour Council has noted that the introduction of the Act will help to improve the ability of employers to attract and retain employees.

The Act requires employers to ensure that their workplace is free from discrimination.

The Act also requires employers to ensure that their workplace is accessible to people with disabilities.

The Department of Labour notes that the Act will help to improve the ability of employers to attract and retain employees.

Chapter Three of the Employment Equity Act will help workers who still suffer the aftermath of apartheid discrimination, says Mmbathile Mpiyane.

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Chapter Three of the Employment Equity Act will help workers who still suffer the aftermath of apartheid discrimination, says Mmbathile Mpiyane.
Affirmative action now written in the law

WHEN the current Labour Relations Act came into being in 1995 it was hailed by many commentators for providing for the creation of workplace forums — which experts believed would transform the adversarial labour relations system into a more cooperative one.

But four years down the line, if forums have been set up and, in many sectors, relations between workers and their employers are far from satisfactory.

Shimela Tshwete, communications co-ordinator at the Commission for Conciliation, Mediation and Arbitration (CCMA), says such forums are important as they provide employers with a value on their daily work activities.

Participation of labour on issues of production as well as joint problem solving on issues affecting the workplace goes a long way in enhancing the well-being of the enterprise.

"Successful implementation of worker participation systems is proving difficult in Germany, and the Netherlands, but proven fruitful," says Tshwete.

Tshwete believes that in SA, where we still have a lot of unqualified workers, such forums could act as an important vehicle to empower participation in the workplace.

But organised labour has been sceptical of the concept. During negotiations for a new LRA organised labour welcomed workplace forums only after government and business gave an assurance they would not be used as an alternative to trade unions.

Labour relations consultant at Andrew Levy & Associates Bronwyn Greenstein says unions are still sceptical as they fear such institutions could transform their power.

"They fear a workplace forum could undermine their influence as such bodies are open to all employees irrespective of union affiliation. So depending on its strength in a particular company a union could find itself outmanoeuvred on certain issues," he says.

However Cosatu spokesman Musa Menziyana dismisses this. "We fully support the formation of such bodies if very few have been formed it is not labour's fault. It is just that employers are not very keen," he says.

In terms of the LRA, it is only the trade unions who can request that a workplace forum be formed.

Tshwete says that in his internal discussions with some employers he found most would not be in favour of such forums because they fear being "overwhelmed" by management when employees come together.

This year, she says, in the annual conference of the National Productivity Institute in Pretoria three weeks ago, a typical reaction was heard. "An employer is supposed to consult over environmental matters, to consult with workers. If it is a collective bargaining agreement, and not when specific issues are to be discussed," she says.

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"This could form the basis for the trade unions not to immediately engage in these forums. However the new LRA ensures that independent union committees and trade union collective bargaining are not undermined," he says. Labour relations from its adversarial form," he says. "Workplace forums allow employees — unionised or not — the right to be consulted and to participate in issues not regulated into a collective bargaining agreement. "An employer is supposed to consult over environmental matters, to consult with workers. If it is a collective bargaining agreement, and not when specific issues are to be discussed," he says.

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APPOINTMENTS

Workplace forums struggle to take off (32)

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Perception, reality of employment equity

Sometimes what we believe to be true is proven inaccurate under a spotlight, write Michael Gering and Shad Mapetla

The Employment Equity Act has elevated the discussion of discrimination into the boardrooms of SA organisations. Yet in our experience the debate is often based on conflicting views, not on what is to be done but rather on what the underlying reality is.

People look at themselves in the mirror and see themselves five years younger than they are. In the same way many companies judge their progress on perceptions from the past.

This was brought home when a colleague returned from a conference and was pleasantly surprised at the diversity of the delegates. Yet when we counted the attendees we discovered that over 70% were white.

Let us look at some of these perceptions. Firstly, the perception that white men are "endangered". We have often been heard to discuss discussions where it is implied that "white male no longer stand a chance".

Reality is closer to a recent example we encountered. There were two candidates for a position; a white man and a black woman. When the selection panel agreed the black woman was more qualified, the line manager asked the panel to "think it over on the weekend".

Prejudice has not yet been eliminated. The diet, though not quite as loaded, still favours white men.

Secondly, the perception that the law is unfair and is a burden on companies. The law is fact says top management to set their own targets and measure themselves against them. Targets are how managers work. Putting equity on the top managers agenda will make it happen.

The law is asking companies to do what they should be doing. A diverse team typically performs better. Yet evidence shows that not having people stressed by top management often results in them being drowned out by day-to-day matters.

Often this is to the detriment of the long-term performance of the organisation.

Furthermore, the act calls for good human resources practice. Organisations which have previously suffered discrimination, are often hostile environments to workers. Clear, well-formulated policies help counter this even in a homogenous environment.

Top international companies have such procedures. This ensures people are promoted on talent and notinsonesense.

Fourthly, the perception that tailing managers who to recruit and retain. The dynamics of an organisation and disempowers middle managers to high-performers. Companies, managers are not tough targets and the executive step out of the way to let them achieve this.

There is one exception. The play off between short and long-term is difficult to make under pressure. In world-class companies top management sets the playing field, ensuring that the future is not mortgaged for today's results.

The play off between short and long-term includes human resources policies such as alternative action. Managers under pressure take the safest, rather than the best, option. Top-performing companies to SA, such as SARS, Bredjies and Tecnofie, have put diversity on their agendas long before it was fashionable. Such focus is paying off.

People act according to the world as they perceive it to be, and yet they are affected by the world as it really is. Top-performers often have a clear understanding of issues as they really are. The successful organisations will be those where middle managers, charged with making it happen, share top management's view of reality.

Gering is a director of Sediba Consulting and Mapetla is on the board of the Aspen Pharmacare group.
US firms critical of SA labour laws

By Mzwakhe Hlangani
Labour Reporter

While US-based firms in South Africa supported the new labour legislation, they were critical of its bureaucratic nature, a study commissioned by the American Chamber of Business in South Africa (Amcham), has found.

The study, conducted by the South African Institute of Race Relations, was on the regulatory and labour environment and its impact on foreign business, said Amcham spokesman Mr Jim Myers.

The US companies surveyed collectively employ more than 30,000 workers across a variety of sectors, with a majority of skilled workers.

Most of the companies said provisions of the Labour Relations Act and Employment Equity Act made recruitment cumbersome and time-consuming.

Most said they had difficulties in complying with the laws. Medium-sized enterprises in particular, had problems meeting the Unemployment Equity Act's requirements because were averse to tokenism and available employees were not competent due to a lack of skills.

A high level of understanding of the Employment Equity Act was found among human resource directors, while line managers and shop stewards better understood the Skills Development Act.

A third of the companies surveyed said the minimum wage was too low. They said they offered payment that in some cases was three times the minimum wage.

However, many respondents were concerned that the minimum wage regulation discouraged job creation and that labour in the country was not sufficiently productive.

Although the overall goal of the legislation was seen to be good, there were worries about the volume of laws passed in a short space of time.

Many companies were concerned at how bureaucratic and time-consuming the laws were to implement and felt this was a constraint to further investment in South Africa.
Unfair pay disputes may rise

Frank Nxumalo

Labour Editor

Johannesburg – Companies that failed to implement credible job grading systems were vulnerable to charges of practising racial or gender discrimination in their remuneration structures, FSA-Contact, the human resource consultancy, said yesterday.

Jim Steer, the director, warned of a potential flood of pay discrimination cases brought against companies in the future.

Steer said businesses faced enormous legal costs and compensation to employees found to have been victims of this form of discrimination.

His warning followed a landmark ruling by the Labour Court which dismissed a claim for compensation by a coloured buyer at a transport company who was alleged to have been the victim of racially based pay discrimination because a white employee, the company’s warehouse supervisor, received a higher salary.

However, Steer explained that Labour Court judge Adolph Landman had opened the way for the successful prosecution of unfair wage discrimination cases by pointing out that the existence of unfair discrimination would have to be proven.

“In this case racial discrimination was not proven. The court accepted expert evidence that the pay differential between the two employees was justified because the white employee’s position was higher on the highly regarded Permonne’s job grading scale than that of the coloured employee,” Steer said.

If the transport company had had an objective, universal measure of job size and value in place, this would have gone a long way towards justifying the pay differential without going through the expense of a lengthy trial, said Steer.

He added that the latest labour legislation did not demand that all employees doing the same job or different jobs of similar value be paid the same salary.

To avoid allegations of racial or gender discrimination, employers must prove that the decision to pay one employee more than another was based on objective criteria, such as job content and complexity, performance, experience and length of service.

“While companies are unlikely to consciously perpetrate this discrimination today, anomalies remain,” said Steer.

He said companies should take immediate steps to eradicate any practice which might be construed as discrimination.