LABOUR LEGISLATION

1998

...Cape Town's city council has ap- ...Bank was over.

Cape Town approves new housing plan

Robyn Chalmers BD 6/7/98

CAPE Town's city council has approved an innovative low-cost housing model which marries 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 Cobbett, 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 R23m 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 said delivery of new low-cost housing stock was at a record low in Cape Town and the quality and size was 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

Reneé Grawitzky BD 6/7/98 (166)

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, for fear of being accused of being racist or sexist."

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."

Effect of act on small firms 'will be limited'

BD 8/7/98 (166) (288)

Reneé Grawitzky

THE Basic Conditions of Employment Act would have only a limited effect on small business, 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 business.

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 Ntsika 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

MARTIN BRASSEY, left, author, legal academic at Wits and a labour specialist, was denounced as a racist when he criticised the new Employment Equity Bill at a labour law conference in Durban last week. So angry were some of the delegates that several walked out of the hall. Here an unrepentant Brassey outlines his concern that criticism of the new law, which proposes setting racial and gender quotas for the workplace, is taboo and warns against the resulting silence

None so silent as those afraid to speak

After apartheid, critics of new laws risk being branded racist

ST 12/7/98 (166)

THE proposed Employment Equity Act is important, not just in itself, but for what it signifies

When it is passed — there seems to be no "if" about it — it will be the first major piece of race-based legislation to enter the statute book since our country became democratic In any society this would be significant in ours, it is a watershed, signifying the perpetuation of the institutionalised race consciousness that has proved so divisive and destructive in our country Yet nothing is being said about it beyond a few comments of a technical nature

This reluctance, it might be argued, is fuelled by a recognition that blacks have suffered under apartheid and by a respect for their pain It seems churlish to attack a legislative measure aimed at redressing past wrongs But a better explanation is that the silence is politically constructed

Critics of the Act are reluctant to enter the area for fear of being stigmatised as racist The epithet is easy to use, hard to shake off and quickly results in ostracism and the loss of the state's patronage

Since few wish to run this risk analysis is muted, if the Act is attacked at all, it is simply on matters of a technical nature The champions of the Act may rejoice at this, but the rest of us should not

A better argument still, I think, is that the reluctance proceeds from a fear of the complexity and indeterminacy of the issues No one likes to venture beyond their intellectual depth, and the waters here run deep The comparisons they entail are by no means self-evident and they are intensely value-laden They are, moreover, teeming with confusion, which results from mixing up arguments based on justice with those based on utility

The argument that blacks are best hired if we want to sell insurance in Soweto is a utility argument so is one that urges the appointment of blacks to give legitimacy to the Bench or to keep a restive public quiet

Equality arguments seek a redistribution because of some characteristic — need, past disadvantage, poor upbringing, whatever — that warrants its grant, despite the attendant sacrifice in efficiency Sometimes both arguments can be invoked to support the same programme but they are best approached separately We seldom do this and as a result often become angry with each other

In considering equality we start with the notion that we are concerned with the extent to which, and the respects in which, two things are the same Nothing, we must recognise, is ever exactly the same as something else even the same two numbers can differ if our concern is with the position they occupy on the page or the hand in which they are written

The choice of a basis for comparison is neutral in itself in themselves, statistics which measure the discrepancy between the wealthy and the poor say nothing The criterion by which we choose to make comparisons becomes important, however, when we seek to draw conclusions from the result of the comparison

This choice is value-laden, as we see if we make a gender-based comparison The received wisdom is that women are victims of discrimination, and this certainly seems to be borne out when we look — as the Act's explanatory memorandum so insistently does — at the extent of their representation in managerial circles

This is a narrow criterion, however when we broaden it, we find (perhaps to our surprise) that women, white if not black, are actually better off than their male counterparts So much, at any rate, seems true of white women in the US they came out top worldwide in a recent International Labour Organisation study, based on longevity, education and access to resources

Choosing broader criteria completely alters our vision of the problem Deciding who to compare with whom tracks this process In itself the comparison is neutral, but it becomes value-laden when we seek to give meaning to its outcome

This point is important when we come to consider the comparison between groups Groups are not self-defining, whatever our unfortunate history may have lulled us into believing they are a social construct created either by their members or by others normally by both

An example from sixth century Constantinople makes the point People there were apparently largely unconcerned about race what drove them crazy was whether they were Blues or Greens The division originally reflected support for the city's two chariot teams, but eventually it became a fundamental cleavage in the social polity of the metropolis and culminated in the killing, during a few days of rioting, of 35 000 Greens Today we can find many examples of divisions on a basis other than race — national and religious divides spring to mind — and they can lead to violence no less intense

Our task, bound up as it is with imponderables, becomes all the more difficult to resolve when we must decide whether a perceived discrepancy should be rectified Now we have to ask whether the difference is wrong and so should be rectified

Equality is not an absolute virtue but competes with others that depend on difference for their legitimacy Awards, prizes and medals bear testimony to this, so does an argument in favour of a programme that would produce benefits for all even if the result were huge benefits for some We have to decide, by reference to ethical standards whether to tolerate the difference or eradicate it

These standards might encourage us to promote equality of opportunity, but the choice is not an inevitable one We might just as readily prefer equality of outcome (in terms of recompense for effort, say, or a distribution according to need)

No set of values is incontrovertibly right or wrong, each is sustainable depending on one's vision of society, and generally a balance has to be struck between them Striking this balance is difficult

Liberals shrink from the task of making group-based comparisons We prefer to focus on the individual This is not because we are opportunistic, but because we recognise how value-laden these assessments are and how hurtful they can be

And we seek to sterilise them to forestall unproductive inquiries of the sort the Bell Curve study into competence and genetic 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

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

Picture: GREAT STOCK

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netic 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 veil is lifted and the debate, we are told, must proceed Most of us shrink from engaging 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, dumbstruck. Therein lies an irony, and it is exquisite when liberals, from the best of motives, prefer to keep silent they are forced to speak — and in speaking are promptly silenced

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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) BD 14/7/98

A POLITICAL challenge to the proposed Employment Equity Act seems doomed to fail. 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 outlaws 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 a redistribution in favour of the Khoi San would have failed both tests when Van Riebeeck first rowed ashore at the Cape The groups did not start in the same place and there was, at that moment, no interaction between them that might be classified as oppressive. Much the same, presumably, can be said of the United Nations mission in 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 exercise on which we are now embarked, we must look at the period as a whole and compile our balance sheet accordingly We must ask to 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 developments, follow the decisions each group made along the way, and weigh the result in the scales

In making the assessment we might come to the conclusion that, on 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 unquestionably 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, it might simply open a further debate about whether the whites should not have behaved still better If it does, we must ask how we set the standard is it by reference to the conduct of other colonialists, perhaps, such as the French in Central Africa? Or is it by some abstract standard of decency between races that colonialists 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 inarticulate stuff of the value-laden choices on which constitutional adjudication proceeds

Demographic testing

Difficult as they are, however, they pale into insignificance compared to the problems posed by the Employment Equity Act Its concern is not 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 individuated 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 This is, broadly, what the US Constitution requires before an employment affirmative action programme will be legitimate and the same is, arguably, true under ours A statute that required this kind of assessment might be rather more complex than the Employment Equity Act, whose crudeness 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 preferment 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 geared 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 baleful 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 structure for race-based patronage of the sort that seems to bedevil contemporary Zimbabwe, outside employment it will act as a harbinger for racialist policy-making until no social welfare measure will be complete without its racial component

It would be wrong to cherish the hope that the act will produce practical benefits to outweigh these deficiencies of principle Those who will profit from the act are not the working class they have no need for demographic representivity, for they are already overrepresented 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 statutes It will be those unfortunates, aspirant white employees and the black unemployed, who cannot secure jobs because statutes such as these accelerate the contraction of a labour market already feeling the impact of over-regulation It will also be the public, poor more than rich, because the poor service it receives is being rendered by a people appointed under a system that gives significant weight to factors other than competence This may be a price worth paying, but I happen not to think that it is

Labour minister Tito Mboweni, right, prepares for his last news briefing before he takes up a position at the Reserve Bank on Monday With him is labour minister-designate Shepherd Mdladlana, left Picture ROBERT BOTHA

Mboweni slams critics of employment legislation

BD 17/7/98 (166)

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 pack of change in SA workplaces, he said.

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

Mdladlana said the unemployment insurance fund would have to be restructured.

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 Mdladlana would also become involved in the process.

Equity Bill tops agenda as stormy session opens

(166)

ANDRE KOOPMAN
PARLIAMENTARY BUREAU

ET 20/7/98

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 elections 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 NP 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

(166)

CLIVE SAWYER
POLITICAL CORRESPONDENT

ARG 21/7/98

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

BD 22/7/98 (166)

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 this is 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 50 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 hassle factor associated with labour, will increase the level of mechanisation, and might cost the state millions in lost revenue as these companies are induced to under-disclose and conceal income to avoid obligations."

Neither Labour Minister Shepherd Mdladlana 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

Mdladlana 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

Star 22/7/98

(166)

PARLIAMENTARY BUREAU

The Government's showpiece affirmative action measure, the Employment Equity Bill, has struck an early obstacle in Parliament, with organised business claiming that a new draft did not reflect concessions it had won during negotiations.

Parliament is set to pass the bill before the end of the year. It will compel firms with an annual turnover exceeding R10-million to set aside a quota of jobs for members of previously disadvantaged communities

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 Federated 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 Mullins said Mangope had during the period 1979 to 1994 misused the position of trust bestowed upon him by the Bahurutshe-Bo-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 he 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 Mullins said.

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

Star 22/7/98

Guilty ... Lucas Mangope

Bill 'no return to apartheid'

(166)

Sowetan 22/7/98

TO argue that with the Employment Equity Bill the Government is reintroducing apartheid racial classifications is incorrect and mischievous, Labour Minister Mr Shepherd Mdladlana 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," Mdladlana said in his first media conference since being appointed labour minister last week

Mdladlana 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 Mdladlana

"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"

Mdladlana 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*

(٣٦٠)

Horns locked over equity bill

ET (BR) 22/7/98 (166)

CHRISTO VOLSCHENK

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

Director-general Sipho Pityana

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 60 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's Defence, Page 11**

Mdladlana defends work equity bill

CT (BR) 22/7/98 (166)

FRANK NXUMALO
LABOUR EDITOR

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 this 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 Mdladlana 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.

Mdladlana 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 pre-supposes 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

CT 22/7/98 (166)

Bill 'deviates' from Nedlac agreements

CT 22/7/98

ANDRE KOOPMAN
PARLIAMENTARY BUREAU

(166)

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 of the past in the face of strident 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 Whereas before, 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 (Nafcoc), representing black employers, welcomed the bill.

Aubrey Tshalata of Nafcoc, 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 employer 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"

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 Mdladlana 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

THABO MABASO
BUSINESS REPORTER

Companies with less than 50 employees will no longer be excluded from the Employment Equity Bill if the bill is passed by Parliament in its new draft.

The bill's original draft excluded such companies from compiling affirmative action plans

But the new draft includes all companies whose annual turnover exceeds R10-million

Department of Labour director for employment equity Loyiso Mbabane told Parliament's labour portfolio committee yesterday that the small companies issue had been hotly debated at the National Economic Development and Labour Council (Nedlac)

"If you have a turnover that is above that of a small business, then you cannot claim to be a small business," Mr Mbabane told the portfolio committee, which is holding two-day public submissions on the bill.

The inclusion of the turnover aspect in the employment equity bill follows concerns among trade unions that companies would try to keep their workforce below 50 in order to escape harsh punitive fines imposed against employers who do not heed the bill's provisions.

Newly appointed Labour Minister Shepherd Mdladlana told a news conference yesterday that substantial progress had been made at Nedlac in negotiations on the bill.

Some problems which had arisen earlier had been the result of misunderstandings or misreadings of the bill, he said

Mr Mdladlana met business and labour representatives last night to discuss their concerns about the bill.

Equity bill will put the brakes on job creation, says Suzman

ARGUS CORRESPONDENT

Helen Suzman, a member of the Human Rights Commission, has distanced herself from HRC support for the Government's showpiece affirmative action measure, the Employment Equity Bill.

Mrs Suzman said in a statement today that the bill was counter-productive to South Africa's priority need, which was to provide jobs for millions of people.

"It will inhibit the expansion of existing enterprises and will discourage new investment from local and foreign sources," she said.

"It introduces an inflexible labour policy based on race. It will encourage further emigration of skilled white males whose expertise is required for economic growth," added Mrs Suzman

She said the bill would be impossible to implement because of the supply problem. "There simply are not enough available people to meet the racial targets laid down within the suggested time frame as far as skilled, professional and qualified people are concerned"

The bill will compel companies with an annual turnover of R10-million or more to set aside a quota of jobs for members of previously disadvantaged groups.

Yesterday, at the first of two hearings in Parliament, Business South Africa said an earlier agreement reached at the National Economic Development and Labour Council had stipulated that only people "suitably qualified" for a particular job should be considered under the proposed legislation

But the new draft provided simply that a person have "the capacity to acquire the ability to do the job"

Business South Africa said the new definition would lead to compulsory tokenism. The National Federated Chamber of Commerce, representing black employers, welcomed the bill

Govt stung by 'bad faith' allegations

BD 23/7/98 (166)

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 Mdladlana 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 Mbazima Shilowa said he dismissed BSA's contention that the drafters of the bill in its latest form had not accurately reflected what was agreed upon.

Comment: Page 15

Nedlac to mediate in row over equity bill

(166) (222) Star 22/7/98

By Cecilia Russell 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 Mbhazima 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 Sani Abacha from executing playwright 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 – protested 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 sympathisers 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 Amendments Bill is passed in its present form by

KEN SARO-WIWA: Protested to the end

Parliament this year.

The bill, expected to be debated by the parliamentary portfolio committee on justice later this month, has raised the hackles of magistrates and has met with sharp criticism from the South African Institute of Race Relations (SAIRR).

This bill proposes that trials involving serious violent crimes, and crimes of a serious and prevalent nature, must be presided over by a magistrate and two lay assessors. In any dispute of fact, the decision or finding of the majority of the court's members will be the decision or finding of the court. In other words, the two assessors can overrule a magistrate.

Minister of Justice Dullah Omar introduced the lay assessor system 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."

Omar wants lay assessors to participate in decisions on bail, verdict and sentencing.

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 SAIRR, 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.

SAIRR parliamentary affairs manager Martin Schönteich says, in the institute's latest *Fast Facts* 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 populist 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."

jackie CAMERON

One sceptical senior magistrate echoed this concern, and said: "The assessor system could be particularly problematic in politically motivated criminal matters, if the 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 objecting 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 trials.

"Assessors are no less vulnerable to bribery and intimidation than magistrates. We will have to – that the assessors are without minal records, for example, undertake such responsibilities.

Schönteich also "practical difficulties" with the proposed system, ing the risk of additional delays trials if assessors failed to in court, and drawn-out procedures for assessors if the tim or crime suspect contests on grounds that they come from ent economic/ethnic

"Assessors also have to be At the moment they are permanent employees. They paid about R100 a day. This cost about R16-million a year.

"This may not sound like but remember that the went on a go-slow over that of money this year.

"Compulsory lay assessors

DULLAH OMAR: Says system could be a great success

unnecessary. Existing legislat permits the use of lay assesso presiding officers consider this be expedient for the administra of justice.

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

Schonteich said his organis shared the concerns of the Society of the Transvaal's mot region, which said in its subm sion to the committee: "In a such as ours, where elements tribalism, ethnicity and racism still prevalent, there is no that the use of lay assessors promote bias, prejudice, and fairness."

Bill 'in line with affirmative action'

Structures of privilege

Equity Bill 'won't bridge wage gap'

Sowetan 23/7/98

(166) (4886)

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 Shilowa said the Bill focused narrowly on wage discrimination among those doing similar work

Shilowa said it did not "address the massive gaps between the various strata of the work force, between management and lowly-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

Shilowa also said the Bill was in line with an agreement on affirmative action legislation reached in the National Economic Development and Labour Council (Nedlac)

(47)

Era of old school tie drawing to an end

(166) CT 23/7/98

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 employees 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 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 was silent on "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

(166) ET(BR) 23/7/98

FRANK NXUMALO
LABOUR EDITOR

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

Mbhazima 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 materially 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.

DEVIATIONS FROM NEDLAC DEAL — BUSINESS SOUTH AFRICA

Jobs bill in line with affirmative action deal, says Cosatu

(166) ET 23/7/98

LEGISLATION AIMED AT eliminating discrimination in the workplace did not go far enough to close the apartheid wage gap, Cosatu leader Mbhazima Shilowa said yesterday

THE Employment Equity Bill tabled in Parliament last month was in line with an agreement on affirmative action legislation reached in the National Economic Development and Labour Council (Nedlac), Congress of South African Trade Unions (Cosatu) general secretary Mbhazima Shilowa said yesterday

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 government.

Shilowa said the Nedlac agreement was not a legal document and anyone who wanted to raise objections to the way the legislation was drafted was free to do so Parliament also did not need permission to change the Nedlac agreement.

Appearing before a National Assembly labour committee hearing on the bill, Shilowa expressed reservations that the bill did not do enough to ensure the apartheid wage gap was closed.

The bill aims at eliminating past discrimination in the workplace, and requires companies with 50 or more employees — or whose turnover exceeds a defined limit — to draw up and implement plans for doing so.

Mark Heywood, head of the Aids Law Project, told the committee that research conducted this month under supervision of the University of the Witwatersrand's management faculty had found that 10,65% of companies surveyed conducted HIV tests on prospective employees, and 59,4% of these companies believed this was appropriate in the employment context.

Heywood said HIV infection rates among the workforce topped 25% in some provinces, and because the problem was not being dealt with it would remain a feature of the labour market for some time.

The bill did not go far enough to protect Aids sufferers or people with HIV, Heywood said.

The Southern African Catholic Bishops' Conference (SACBC) welcomed the bill, saying it was "a significant and well thought-out attempt" to deal with the imbalances and injustices of the past.

However, the SACBC urged that the definition of people with disabilities, who are among those who will benefit from the legislation, be broadened to include those people who are HIV positive or are suffering from Aids

The Human Rights Research and Advocacy Project, an initiative of the National Association of Democratic Lawyers, also welcomed the bill, but called for some aspects of it to be strengthened.

It was disappointing that the issues of poverty and the apartheid wage gap between highly and lowly-paid workers was not addressed in the bill, project spokesperson Bonnie Berkowitz said.

The National Assembly's welfare committee also held public hearings yesterday on the welfare implications of the bill, and were addressed by representatives of the National Coalition for Gay and Lesbian Equality as well as the Aids Legal Network.

The presenters appealed for the inclusion of people with HIV or Aids in the definition of people with disabilities for the purposes of non-discrimination in employment, but not in the affirmative action measures.

In a statement yesterday, the National Party said it supported the main principles of the bill. But the party rejected any form of discrimination it contained. The current deviation from the agreement reached at Nedlac was totally unacceptable and the party would not support the bill, the statement said. — Sapa

THE CRIMES AND PUNISHMENTS OF THE EQUITY BILL

ITS AIMS

- To eliminate unfair discrimination by compelling business to diversify its workforce and employ more blacks, women and disabled people across the spectrum of businesses.

WHO IT AFFECTS

- Companies with more than 50 employees.
- Companies with fewer than 50 employees with an annual turnover of more than R10 million

THE 6 CONTRAVENTIONS

Employers must:

- Consult with trade unions or employees to reflect the interests of all occupational categories, blacks, women, disabled employees, as well as others.
- Collect information and analyse its policy, procedures and practices and identify barriers which adversely affect black, women and disabled workers (including a profile of the workforce to determine the degree of under-representation of these groups)
- Prepare and implement an employment equity plan
- Report to the director-general within a specified time.
- Publish a summary of the report in the annual report or in the case of government departments a report must be tabled in Parliament
- Prepare a subsequent employment equity plan before the end of the term of its current employment equity plan

THE PENALTIES

	Maximum fine
No previous contravention	R500 000
Second contravention for the same offence.	R600 000
A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within three years.	R700 000
Three previous contraventions in respect of the same provision within three years	R800 000
Four previous contraventions in respect of the same provision within three years.	R900 000

Cosatu stirs up new row over jobs equality bill

(116) (888)
ART 23/7/98

BUSINESS EDITOR

A new row is brewing over the Employment Equity Bill, with the Congress of SA Trade Unions urging 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 60% 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 work force, 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.

i on corruption

ct ministerial ethics code

CLIVE SAWYER
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 says 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

gifts 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 memorand

Cool business reception awaits Skills Development Bill

CT(BK) 24/7/98 (166)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town — The Skills Development Bill, which will force companies to pay a levy of 1 percent of their payroll for skills training, was tabled in parliament yesterday, but the money bill to authorise the levy is only expected to be tabled over the next few weeks

Both are expected to pass through parliament this session, although the money bill will have to be considered by the portfolio committee on finance as well as the labour committee, possibly in joint sessions

Twenty percent of the levy will go towards a national skills fund, with the balance being paid as grants to firms carrying out training needs that meet certain criteria linked to the skills plan in their particular sector.

Bill Lacey, the SA Chamber of Business senior economist, said although he was not fully acquainted with the details of the proposal, it was unlikely that business would be "overly enthusiastic" about it.

He said this was especially the case because about 17 other levies and taxes were being proposed, in addition to the company tax, which was already high.

The additional taxes and levies included the skills development levy, a land tax, health insurance, a road tax, electricity levy, waste water charge and capital transfers tax.

"The proposal is a worthy one, as are all these additional taxes and levies. But clearly, business will be a bit punch-drunk if they were to cough up more money by way of this proposed levy.

"Further to that, if the proposed contribution is to have the impact envisaged, it is unlikely it will be voluntary, meaning that there will be no choice for participation in the fund. The question to ask is where will this all stop," he said

Credit guarantee economist Luke Doig said any proposals with a developmental goal had to be considered

"I like the notion in theory, but it should not be seen to be punishing companies, whose tax burden is already high," he said

The memorandum attached to the bill said it aimed to "develop the skills of the South African workforce and thereby increase the quality of life for workers, improve the productivity of the workplace, promote self-employment and the delivery of social services"

Minister pushes ahead new labour bill

But business is unhappy

(166) (1666)

ARG 25/7/98

ESTELLE RANDALL
POLITICAL CORRESPONDENT

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)

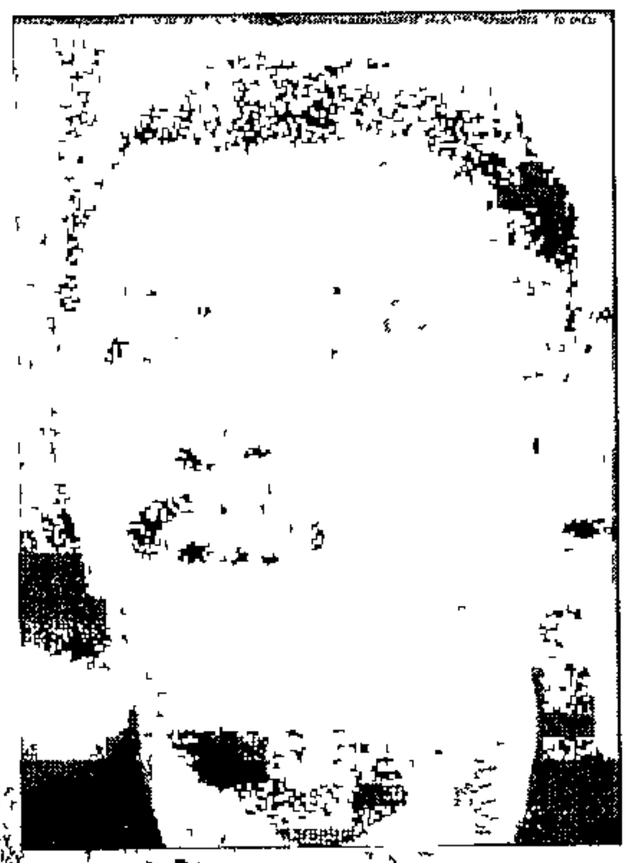
The law obliges government, trade union and business representatives in Nedlac to try to reach consensus on proposed labour legislation before it is finalised in Parliament

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 "acquire 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



FIRM: Shepherd Mdladlana

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, sexual orientation, political opinion, culture, language, religion or belief

Employers will also have to justify why employees should undergo medical tests or psychometric tests, if these are administered

Firms with 50 or more employees or whose annual turnover is more than 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 Tshalata 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 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"

Sunday Times Business Times
July 26 1998

Equity Bill: 'State will decide if others cannot'

Mdladlana says Nedlac will not be reopened for the labour row, writes THABO KOBOKOANE

ST (BT) 26/7/98

THE government says it will eventually decide on controversial aspects of the proposed Employment Equity Bill itself if no consensus can be reached with business and labour

New Labour Minister Shepherd Mdladlana said he had no intention of reopening the Nedlac process

His statement came after a new row blew up this week over agreements reached at Nedlac, raising questions about the body's role

Business SA (BSA) told the parliamentary standing committee on labour that the department of labour had failed to keep agreements reached at Nedlac, but later denied it had accused government of reneging on any agreements — or anyone of negotiating in bad faith

The dispute centres on the term "suitably qualified" and the clause on the wage gap

According to BSA's submission this week, despite agreement at Nedlac on the definition of the term "suitably qualified person", the drafters of the Bill had modified the definition way beyond the "parameters of what was agreed"

It said the definition of "suitably qualified" had been materially 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

BSA also said it had reservations about the insertion of the turnover threshold, as it would cause administrative chaos in government by bringing an untold number of small and even micro business into the fold

"It would make the Act impossible to implement, cause many employers to disregard the law and bring it into disrepute," BSA said.

Mdladlana met business and labour on Tuesday and also with Nedlac executives to try and resolve the stalemate The row is set to lead to questions over the role of Nedlac and its credibility if such agreements were indeed reached.

Nedlac's objective is to achieve consensus between labour, business and government on contentious issues

Picture: RICHARD SHOREY

ULTIMATUM . . . Labour Minister Shepherd Mdladlana warns that government will act on employment legislation

Business, govt iron out differences over jobs bill

(166) (BD)

Reneé Grawitzky BD 27/7/98

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

(166) (226) CT(BR) 28/7/98

LYNDA LOXTON

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 20 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'

(166) ET 28/7/98

ANDRE KOOPMAN
PARLIAMENTARY BUREAU

DEMOCRATIC PARTY leader Tony Leon has disclosed several proposed amendments that would make the Employment Equity Bill more incentive driven

The main thrust of the key provisions of the bill were punitive and coercive, whereas the DP believed in "bushels of carrots and a paucity of sticks", Leon said

Another amendment proposed by the DP was changing designated employers from those with 50 employees to those with 100 or more employees

The National Federation of African Chambers of Commerce at parliamentary hearings on the bill has opposed similar suggestions, saying most of South Africa's businesses are small

The Employment Equity Bill is aimed at eliminating inequities of the apartheid past by removing discrimination in the workplace and encouraging affirmative action

It requires companies with 50 or more employees or with a turn-over greater than R10 million a year to draft and implement equity plans

Leon said at a press conference that the DP could not sanction the bill in its present form, as it would place an onerous and unfair burden on small business

"Our amendments aim to soften the harmful effects the bill may have on economic growth and job creation, while ensuring that individuals who have been disadvantaged will receive the benefits of the bill," he said

"We have included several proposed amendments to exclude small businesses from provisions of the bill which may impose undue hardship on them"

The DP amendments would make for easier implementation of the bill and would provide for additional guidance to business, Leon added

He said the DP would also prefer an incentive-based rather than a punitive approach

Among the DP's proposals for providing incentives to employers to create employment equity was the establishment of a performance system to encourage workplace empowerment and compliance with the act

Factors that should be taken into account in determining an employers workplace performance would be

- The percentage of the payroll spent on training low-skill employees
- The speed and extent of advancement of low-skill employees and the rate at which literacy levels improved
- Productivity levels and the rate of their improvement

Among the incentives which could be offered to employers, Leon suggested were the fast-track treatment of applications for exemption from bargaining council agreements, preferential access to loans from state-funded enterprise promotion agencies, and preferment in the allocation of state tenders

The proposed amendments would be debated by the National Assembly's labour committee today, the DP said

Opposition parties split over employment bill

(166) BD 29/7/98

Vuyo Mvoko (166)

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 Fourie said: "The NP rejects even the slightest attempt to reintroduce the principles of apartheid or any discriminatory provisions of whatsoever nature, or reverse discrimination"

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

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

Fourie 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 Ndlovu 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

Ndlovu said the programme advocated by the bill "should only be temporary and be revisited by Parliament once it has redressed 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 Ngila 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 Sipho 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 needs to be clarified

(166)
Sowetan 29/7/98

By Frank Horwitz

THE explanatory memorandum accompanying the Employment Equity Bill clarifies the draft legislation's goal of achieving equality in the workplace by eliminating discrimination

The Bill also aims to implement positive measures to redress disadvantages experienced by black people, women and the disabled, and to ensure equitable representation in all occupational categories and levels

To mollify companies' concerns about statutory quotas and regulations, the Bill attempts to facilitate workplace reform through self-regulation by employer and employee parties

Certain terms and clauses need to be clarified, particularly for parties such as the Commission for Conciliation, Arbitration and Mediation (CCMA)

This is important in establishing clear parameters for employment equity plans, guidelines for employers and labour and clarity in settling disputes

The following terms and clauses should be defined and explained

- Racial or sexual "harassment" as a form of unfair discrimination is not defined in Section 5 (3) of Chapter 2 It could be interpreted as using racist or sexist speech as well as conduct,
- Section 5 (1) refers to direct and indirect discrimination. These terms and the differences between them should be defined and examples should be provided, and
- The term "equitable representation" is used in several sections of the draft legislation

The Bill allows employers to consider regional, sectoral and industry-specific factors, demographics and the labour-market supply of certain skills The longer-term goal, however, is a diverse workforce reflecting the national demographic profile of groups at all levels

There is a need to give clearer guidelines on "equitable representation" This is important in defining the meaning of appointing "suitably qualified people" This could describe academic, occupational or experience-based competencies

Employers will be required to train and develop people from designed groups (Chapter 3, 12 (e)) Using the excuse that there were not enough "suitably qualified" people to hire from one of these designed groups will not necessarily be acceptable

Proactive measures, such as scholarships and bursaries, are important in promoting an active employer role in tertiary occupational education

Too much legal specificity limiting terms such as "equitable representation" will likely result in the practice of setting quotas This may discourage the setting of targets, one of the Bill's more flexible features Targets or goals take situational factors into account in a more pragmatic way

Employer fears

The Bill tries to allay employer fears about quotas (Section 3 (a)), appointing people not suitably qualified (Section 3(b)), and appointing white males ((Section 3(c)) Employers are also not required to create supernumerary posts for designed groups

Despite this apparent flexibility, the penalties outlined in Chapter 2 are severe, particularly those dealing with the payment of compensatory damage This is especially true for smaller organisations

Punitive damages lie within the discretion of the Labour Court. Fines of R500 000 to R900 000 are somewhat high.

Larger organisations, realising they are not making progress, or who show little intention of addressing employment equity, may set aside funds for this contingency

Flexibility is important but it will be difficult to make reasonable progress if labour turnover is low because employers are not required to hire new employees The Bill should rather have a mix of penalties and positive incentives to achieve equity plans

As the Bill has the long-term goal of creating a diverse workforce, it seems unlikely that legislation on employment equity and affirmative action will be an interim measure

More likely, employment equity plans, programmes and reporting requirements will continue indefinitely, subject to review

One of the Bill's positive features is that it permits employers, employees and trade unions to regulate themselves Section 17 addresses employment equity plans and contains many vagaries which need to be explained.

Two fuzzy concepts concern the "under representation" of people from designated groups and "reasonable progress" towards implementing equity

The CCMA or the Labour Court may be left to interpret or give substance to these terms Instead of these prescriptive definitions, the Ministry of Labour should provide guidelines or codes of practice

The notion of "reasonable accommodation" in Section 61 is limited to people with a disability

One could ask whether this concept should not be extended to other areas with discriminatory potential, religious observance and working mothers, for example

Sections 39 and 40 give the director general of labour wide powers These controls should be given as a last resort, given the dispute resolution procedures envisaged through the CCMA and the Labour Court.

An employer can, however, challenge the director general's decision in the Labour Court.

The Bill's dispute resolution procedures is complemented by Schedule 7 of the Labour Relations Act (LRA), which includes unfair discrimination provisions which can be referred to the CCMA for conciliation and to the Labour Court for subsequent arbitration

Section 24 calls for disputes about duties of designated employers to be referred to the CCMA for conciliation, and if not resolved, to the CCMA for arbitration

These duties include consultation, disclosure, analysis of employment practices, an employment equity plan and an annual progress report on implementation to the Labour Ministry

A dispute about protection of employee rights conferred by the LRA (Section 48) may be referred to the CCMA for conciliation under Section 49 If unresolved after conciliation, it may be referred to the Labour Court for adjudication by the CCMA

These procedures are satisfactory, but the CCMA is likely to carry a large additional load as a result of this Bill

Resolving disputes

To alleviate the CCMA case load, alternative dispute resolution provisions should be included in the LRA

The Bill does not provide for bargaining council dispute procedures and the use of alternative agencies such as the Independent Mediation Services of South Africa.

This is a serious omission. The law should encourage preventive dispute systems

Discrimination disputes are often complex and mediation and arbitration may not always be effective

The Bill should include provisions encouraging joint problem-solving and alternative, proactive forms of dispute resolution

The LRA's current procedures provide a remedy for aggrieved individuals, but do not address the underlying basis for discrimination and inequity

It can be argued that the law should seek to remedy only symptoms Providing a broader framework which includes provisions for alternative dispute resolution might be a step towards resolving deep-rooted problems and conflicts.

To achieve equity through affirmative action, measures contained in the Skills Development Bill should complement the proposed legislation

Equity will not be achieved without substantial investment in human resource development linked with strategic organisational goals

Legal "carrots and sticks" will help Effective human resource development, however, is a function of the strategic importance given to it within an organisation

This requires mobilising materials and assets and showing the wherewithal to create a culture of people development and equity

(The writer is a part time CCMA commissioner and professor of human resource management at the University of Cape Town. His article was first published in the June issue of South African Labour Bulletin *)*

Labour director general Sipho Pityana ... the Employment Equity Bill gives him wide powers in the resolution of disputes Maybe he should be given this authority as a last resort.

ANALYSIS & COMMENT

DP's proposals for employment bill are market-orientated

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

(166) DD 30/7/98

THE Democratic Party has just tabled its proposed amendments to the controversial Employment Equity Bill

Our amendments are not aimed at simply repealing or blindly criticising the present draft of the bill They are a practical, market-orientated answer to the many concerns that have been raised against the bill.

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

Unemployment affects 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 climate conductive to job creation and foreign investment.

Yet the legislation will place onerous obligations on the employer, increase government intervention in the labour market and is likely to provide a disincentive against investment. SA should aim to address the problems of unemployment and poverty by concentrating on education, training, literacy, health, welfare and population development.

Moody's Investment Services vice-president Kristen Lindow recently said SA's international investment grade rating was being reviewed, and possibly downgraded, because of government policies that have not been supportive of foreign direct investment inflows that SA needs to fulfil its development requirements The bill should be amended in order to prevent this downgrading

The DP's proposals strive to make the bill more attractive to investors, entrepreneurs and small business — for example, our proposed amendment to the "designated employer" definition increases 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 to or above the applicable minimum annual turnover of a small business in terms of the Small Business Act, it would be deemed to be a designated employer for the purposes of this bill This insertion of an annual turnover threshold trawls the net so wide that even the "mom & pop" stores — small family businesses — and every petrol filling station in the country will fall in its net. The DP finds this unacceptable and has amended the turnover threshold to vary according to the specific industry

The most important DP amendment relates to the definition of "designated groups".

The bill refers to blacks, women and disabled persons as the members of the designated group the DP's proposal follows the wording of the constitution's section 9(2) which refers to "all persons or categories of persons who have been disadvantaged by unfair discrimination" This amendment will ensure that past imbalances are redressed, but by way of individuating the bill and moving away from primarily race or gender classifications

It will ensure that nobody "falls through the cracks" by not belonging to a certain group It will also ensure that this legislation does not, for all time, concretise race and gender as the cross and star of the new SA.

The DP's proposed amendments are in tune with international trends of deregulation and globalisation of the labour market. The amendments strive to taper down the punitive and coercive provisions of the bill by adding incentives in a word, more carrots, less stick.

These measures include a performance rating system, which can be used by any employer to apply for a number of possible incentives, such as preference in the allocation of state tenders, fast-tracking applications for exemption from bargaining council agreements and preferential access to loans from state-funded enterprise promotion agencies A list of all designated employers who have complied with the provisions must also be published by the labour department each year

The amendments relating to state contracts are more attractive to potential investors, whereas the draft makes it possible for existing state contracts to be cancelled forthwith and without recompense in cases of non-compliance by a designated employer

The maximum fines imposed for contraventions of the act, ranging from a half a million rand upwards, are destructive to the small business sector and provide a disincentive to this sector to create jobs The DP has addressed this by proposing lower fines that are not as draconian.

These amendments have been drafted to make the bill more attractive and to ensure compliance They are practical, incentive-driven and will create a climate conducive to job creation and to long-term investors.

In contrast, the bill, as drafted, could slit its own throat. It wants to move away from apartheid, yet uses race classification as its lodestar; it wants to narrow inequalities and redress historic imbalances, yet will ensure that the unemployment queues lengthen. SA needs change and transformation, but let us not destroy better than we know

LEON

Labour court judges differ on how much companies must pay

(Hoff) (166)

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 initially unfair procedure of the employer.

Regrettably, the Labour Court is not yet unanimous on 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 Chothia v Hall Longmore (J39/97), Judge Basson took the view that "compensation" is equivalent to damages suffered or the

BO 30/7/98

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 f(J109/97), Acting Judge Maserumule 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 CWIU v Johnson and Johnson (P3/97) distinguishes 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 month's 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

Star 1/4/98 (166) (2250)

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, backdating 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 Minister Tito Mboweni addressing a media briefing yesterday on the annual report of the Commission for Conciliation, Mediation and Arbitration

Picture TREVOR SAMSON

Mboweni shies from labour relations talks

(166) BD 21/4/98

Renee Grawitzky

LABOUR Minister Tito Mboweni said yesterday he would not engage in major negotiations on amendments to the Labour Relations Act, some of which might prove controversial — one year ahead of the 1999 general elections

During a briefing on the Commission for Conciliation, Mediation and Arbitration's annual report, Mboweni said he hoped organisational bottlenecks and shortcomings had been identified and resolved — some through legislative amendments.

However, when questioned, Mboweni appeared hesitant to consider further amendments this year

Reviewing the commission's work over the past year, he said consideration had to be given to charging users for some of the commission's services

This would not only raise revenue but would act as a deterrent to those taking trivial disputes to the commission

According to its annual report, the commission received more than 60 000 referrals during the past year To date it had received more than 80 000 The commission handled 30 068 disputes last year, while 10 898 cases awaited conciliation and 3 952 were still to be arbitrated It emerged that 78 arbitration awards had been taken on review to the Labour Court, with eight successful

Commission director Thandi Orelyn said the settlement rate for conciliations had been 67% and 86% for arbitrations She said more than 70% of referrals related to individual dismissals. Twenty percent of disputes came from the retail sector

The labour department's annual report, also released yesterday, showed that trade union membership in SA — contrary to international trends — had risen with current union density amounting to 24% of the estimated 14,2-million economically active population. Membership of registered trade unions rose last year by 13% to 3,4-million as the number of registered unions grew from 334 in 1996 to 417 by the end of last year

Sapa reports that the SA Chamber of Business (Sacob) said many recent changes to labour laws were blatantly biased in favour of labour. Sacob was making a submission to the National Assembly's labour portfolio committee

Changes to labour laws biased – Sacob

(166) Sowetan 21/4/98

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'

BD 23/4/98 (166)

Transformation and competitiveness are not mutually exclusive, says Tony Manning. The best firms profit by doing both aggressively

THE proposed Employment Equity Bill threatens to saddle companies with costs and hassles that will prevent them from becoming world class competitors.

However, those organisations that act first and fastest to embrace diversity stand to gain a valuable advantage.

Firms must learn work with local realities even while chasing global market opportunities South African managers have a choice. They can either stay here and deal with the changes or go offshore and play a different game What they should not do is stay here and complain about how unfair things are

Nor does it help to waste time arguing that the new bill is racist, that it will cause white skills to leave the country, or that it will add to the unemployment problem.

The fact is that the masses of this country want things that do not suit business Government's agenda is dictated by their votes. So while politicians proclaim their commitment to competitiveness, they will act in ways that hurt firms' ability to compete

It is sensible to lobby against legislation that will hold companies back, but there is no point in having endless internal debates about the impossibility of change.

Managers spend too much time talking about what is wrong and why things cannot be done, and too little thinking about what to do and how to do it.

It is tempting to point at the failure of high-flying black-run firms as proof that "blacks cannot make it" in business. One could point equally easily to many more examples of trouble at white-run companies No one has a monopoly on screwing up

To make positive changes, companies will have to begin by rethinking their assumptions about the development of people

The most limiting view is that it takes a long time to prepare a person for a senior job. Human resource managers like the idea of career path development

This is the age of the portfolio career. People tend to move fast from one position to another, and from company to company or into self-employment Many firms have seen the value in bringing in outsiders who have a fresh point of view. Experience does not have the cachet it once had.

In any event, how do you explain the astonishing success of local figures like Nail chairman Ntatho Motlana, Saki Macozoma at Transnet, or Zwelakhe Sisulu at the SA Broadcasting Corporation, none of whom had the benefit of long preparation for their present business leadership positions

Of course, firms do need professional engineers, accountants, and lawyers. However, there are also people with valuable experience gained over many years The first priority should be to use them effectively.

A key reason that companies cannot cope with new challenges in business is that they are wedded to either-or thinking They are paralysed by paradoxes

What they need to discover is the value in doing this and that rather than this or that As long as they think there is one right answer or one best way, they limit their options

Some companies assume they can either choose to transform or become more competitive. They will lose ground to firms that set out aggressively to do both at the same time.

Many tender documents now require specific details of vendors' affirmative action practices So transformation is already a factor in competitiveness

The best way to make progress on both fronts is to involve people in strategic debates as early as possible The more informed they are, the more competent they can be

What companies should do is put the tough issues on the table and talk about those. How, for example, can you cut manufacturing time by 20% in the next ten days? How can you improve customer service levels by 50% in the next two weeks? Participation and empowerment are essential in the new workplace. So is discipline Firms need to spell out strategies, define what is not negotiable, measure performance, and give people fast feedback

Companies must make it clear that success in a hostile competitive environment is hard to achieve and demands hard choices And they must keep communicating the message that personal contribution counts

The time has come to abandon the notion of transformation or profit, and start working at transformation for profit

□ *Manning is a strategy consultant*

ANALYSIS

LEON

SA's unemployed face far too many obstacles

The Democratic Party, in a document drawn up for the presidential job summit to be held later this year, has proposed a voucher-based scheme as one way of providing jobs and training Party leader **Tony Leon** gives an overview

POLITICAL freedom is an increasingly empty concept in SA.

Millions of poor and destitute South Africans have seen no material change to their lives, inequality between the employed and unemployed is now greater than that between whites and blacks

However, the Democratic Party (DP) believes that there is hope for those mired in poverty — provided we make the right policy choices The single most significant difference between poverty and the beginnings of a decent standard of living is a job Yet since 1994, the unemployment rate has increased to anything between 25% and 33% and it is still growing

There are 2,3-million South Africans under the age of 30 who are unemployed, 65% of whom have never had a job To this troubled generation is added half a million school leavers every year, most of whom cannot find jobs either

The state cannot provide either employment or training opportunities effectively The labour department reported in 1995 that it had spent R32m on training 48 000 people, but that only a fifth of them had found jobs Other such failures are easy to find.

Government-set regulations are outdated, expensive, and restrict industry's ability to train prospective employees in the skills they actually require Restrictive labour laws produce a vast number of disincentives to employment.

Our message is simple We need to remove the obstacles which prevent the unemployed from gaining skills and getting jobs, and give practical help in developing skills and employment opportunities with a minimum of red tape

We propose that, for the next five years, each matriculant should receive an "opportunity voucher" with his or her matric certificate

The voucher will consist of 12 monthly mini-vouchers, each worth R250 Nongovernmental organisations, education institutions and private businesses will bid for the right to distribute another 200 000 vouchers a year to unemployed people under the age of 30 who are not matriculants

The most important thing about these vouchers is that the recipients will be able to decide for themselves how to use them, thus maximising the effectiveness of the system and simplifying its administration

Recipients will be able to use the vouchers in several ways they can use them to pay all or part of the costs of education or training at any accredited institution, as well as apprenticeship training at an accredited company, or if they prefer to, they can use their vouchers to subsidise employment at any accredited employer for one year, subject to controls to avoid abuse During this time they will be able to develop work skills and prove the value of their continued employment. A voucher beneficiary will hand a R250 mini-voucher to his or her employer at the end of each month worked, in return for a wage of at least R250

Finally, in recognition of the fact that a third of all new employment opportunities are in the informal sector, vouchers can be used to buy self-employment kits, supplied by nongovernmental organisations, businesses and self-help groups.

The kits will include the basic equipment, seed capital, materials and training needed to set up a micro enterprise in one of a wide range of fields such as sewing, food processing, appliance and motor repair and child care.

Voucher holders will approach the suppliers of the kits with simple business proposals, which the suppliers will evaluate for their likelihood of success The quality of the kits and the seriousness of the evaluations will be assured by the competition between suppliers

The voucher will not be an entitlement. recipients will have to prove that they are prepared to work. School leavers will have to pass their matric exams, other unemployed youth will have to pass a simple test.

Organisations and employers wishing to participate in the voucher programme would be required to have a simple form of accreditation to avoid abuse of the system.

Accreditation will be awarded by chambers of commerce, employers' bodies, private examination boards, the Committee of University Principals, and representative bodies of non-governmental bodies

The opportunity vouchers will cost R1,5bn a year for five years, plus an additional R50m for administration, distribution and publicity This represents considerably less than 1% of the budget. If tackling unemployment really is a priority — and we are convinced that it is — then the money can be found.

We have suggestions for a few sources. Money could be raised by abolishing the failed job creation programmes of the public works department (R50m) The labour department's equally unsuccessful training programmes for the unemployed (R300m) could be scrapped.

The opportunity voucher scheme will give 2,5-million young people skills, confidence and a real chance of lasting employment.

DP, NP must help black professionals gain full access to the old boys' clubs

The Employment Equity Bill is to enter the parliamentary process later this year **Jonny Steinberg** looks at party and race divisions on the legislation

SA's parliament is not a pretty sight On its one flank, a sea of black faces, on the other a handful of whites The issue dividing them is the Employment Equity Bill a piece of legislation designed to open white-collar ranks to the black majority

Parliament has become the arena in which a national middle class has turned against itself on racial lines, fighting over the spoils of privilege

For their part, the National Party (NP) and the Democratic Party (DP) point back wryly to the Nationalists in the late 1940s and argue that with the African National Congress (ANC) in power we are seeing more of the same a nationalist movement using its parliamentary majority to fill the ranks of commercial and public institutions with "its own"

Politics at the moment, leading white politicians complain, is shaped by a monolithic African nationalism abusing its vast electoral strength to pursue narrow and greedy ends

The irony is that this complaint could turn into a self-fulfilling prophecy If the DP and the NP really want to crack the nationalist monolith they need to go beyond the flexible and negotiable measures spelled out in the bill, and to lead the white business classes into a robust and creative programme of affirmative action

If they fail in this task national politics will remain the battleground of a racial middle class war for a while to come

How might affirmative action fail and what will SA look like if it does? In their efforts to avoid falling foul of legislation, white companies will twin certain middle- to senior-managerial positions They will also invent a range of new portfolios which place black faces in the shop window, but remove them from line functions All but a handful of blacks in the corporate world will thus remain cultural exiles, spectators to a world whose inner sanctum they will never penetrate

One or two large black consortiums will thrive They will fill their white-collar ranks with black faces, and will provide business for the handful of black legal and auditing practices, employment agencies and management consultancies.

Government too will be a key market for emerging black professionals and commercial enterprises Tender procedures will be followed to the letter, but business relationships are built on familiarity and trust, on the security of dealing with people with whom one can bond, and so much of black business will cluster around government.

In short, the bulk of the corporate and professional world will remain the preserve of a white business culture Those with managerial aspirations who are not white will have to turn their blackness into a source of leverage From small-time lawyers to CEOs, they will require an African nationalist party in power, and that is precisely what the ANC will remain a guarantor of black middle class interests

This scenario will only begin to change if and when black people begin to make successful careers, and wield significant power, independent of the network of African nationalism When blacks access places of power and of voice a common political vehicle will become less important. People will gain the confidence to speak with different voices and to rally behind different causes

However, this will only happen when white firms and corporations effect a sea-change in the culture of their own organisations For a cultural sea-change is what is required before institutions of power really open their ranks

The challenge is an extremely difficult one, partly because its ingredients are so hard to define Recruiting and training skilled people in a country where education remains racially skewed, is a difficult task, but it is not the real tester More difficult is the job of tampering with that fine, almost invisible connection between cultural familiarity and organisational functioning

White professionals need to tear down their old boys' clubs and build bonds of an entirely different sort. They need to create a milieu, one which does not yet exist in any significant form, in which communication and trust cross racial boundaries

Anyone who has visited the offices of a gold mine, or who has walked through the corridors of a large legal practice, will know the task is a formidable one It will require powerful and creative moral leadership on the part of senior managers Such leadership will not materialise unless success in this matter is considered urgent and crucial.

Who then is to inspire this project?

It cannot be business and professional leaders alone The bulk of their daily tasks is more or less narrow this or that market, this or that sector The only people whose vocational responsibility is to provide vision are political leaders.

We are talking of the NP and the DP Jointly, they represent the white business class Either they can think short-term and ingratiate themselves to their constituency by giving voice to their most comfortable and least reflective instincts, or they can do what they are paid to do inspire their constituency by lifting them out of themselves to see a bigger picture

It is easy to hide behind one's support base, and difficult to lead it. The NP and the DP can keep hiding, but then they should not complain of a menacing nationalist monolith, for they will have done more to nourish it than anyone else

□ Steinberg is doing his doctoral thesis on politics at Oxford University in England.

Labour law 'will undermine merit'

Louise Cook

(166)

LABOUR Minister Tito Mboweni's proposed Employment Equity Bill was a "technicolour nightmare" 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

McIntosch 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 30/4/98

Slow moves: Recent gains in the labour rights of farmworkers have yet to filter down to South Africa's heartland. PHOTOGRAPH: DANNY HOFFMAN

One step forward, two steps back

M+G 30/4 – 7/5/98 (166)

Ann Eveleth

Cash-strapped rural unions are battling to translate the gains of new labour legislation into practical benefits for the nation's estimated eight million farm dwellers, most of whom are unorganised and unaware of their rights, say union leaders

The South African Agricultural, Plantation and Allied Worker's Union (Saapawu) is the fastest growing farmworkers' union, but secretary general Dixon Motha said rural recruitment is still a case of one step forward, two steps back.

Motha told the *Mail & Guardian* that Saapawu s growth from 29 000 paid up members at its launch in 1995 to 35 000 today was hard won in an industry marked by massive retrenchments "In the first two weeks of the Congress of South African Trade Unions's [Cosatu] April recruitment drive, Saapawu signed up 2 000 new members, but last year we lost 4 000 to retrenchments in the Eastern Cape agricultural parastatals alone We did manage to secure some agreements on a social plan for training and replacement for those workers, but organising farmworkers is still an uphill battle, said Motha.

The new Labour Relations Act and the Basic Conditions of Employment Act marked, together with post 1994 land reform legislation, the beginning of a new legal regime for South African rural labour relations, as farmworkers gained recognition of their rights for the first time in South Africa's history But Motha and Ignatius Simunyu, the national organiser of Saapawu's National African Congress of Trade Unions (Nactu)-aligned sister union, the National Union of Farmworkers (NUF), say these legal frameworks are only the first step down a long road to the improvement of rural working conditions

With less than 10% of farmworkers organised into a plethora of rural unions we are a long way from the 30% threshold demanded by the Labour Relations Act for organising statutory bargaining councils Without these we are hard pressed to push for tangible benefits," said Motha.

Simunyu, whose union boasts 7 000 paid up members, said part of the problem is that "many workers still have no idea of their rights"

Motha said the gains promised by the Labour Relations Act and Basic Conditions of Employment Act are "often overshadowed by outdated legislation like the trespass Act which gives farmers the right to shoot at unionists who come on their land without permission"

Added to this, said Simunyu, is the fact that "farmers often use the recognition procedures outlined in the Act to stall recognition with the help of highly paid labour consultants who make excuses about why meetings can't happen They also claim they don't want meetings at night because of the killings of farmers It's just one of the excuses they use "

And the risks of union activity affect more than just organisers Motha said farmworkers are often threatened with dismissal if they try to form unions "In this context it becomes difficult to push for substantive gains like a R750 a month minimum wage or an end to the use of about 80 000 child labourers in the sector

Even [Minister of Agriculture and Land Affairs] Derek Hanekom came out opposing a minimum wage in the farm sector We say he is free to say what he wants, but we will keep pushing for a living wage Most of our members earn between R80 and R450 a month. In the Karoo we know some workers who don t even get any cash. They get a sheep a month and they must slaughter that sheep tomorrow because it must not be seen grazing on the farmer's land. And then they must eat it over the weekend because they have no refrigerators "

But, added Motha, "the biggest obstacle we face is that less than 6% of farms have recognition agreements with unions We have about 5 000 unofficial members on farms that don't recognise us "

Both union leaders said the plethora" of rural unions has further complicated the problems for organising farmworkers Motha said.

Nobody knows how many unions are out there Between the fragmented nature of the industry and the appalling working conditions, people are so desperate for help that when you go to tell them about their rights, they think you are the messiah

' A lot of fly by nights take advantage of that and collect money from the workers Then people are wary as they have just lost their money "

Motha and Simunyu are hoping that merger talks which have long been mooted between Cosatu and Nactu could spark greater unity in the farmworker sector, help to expose fly by night unions and pave the way toward greater bargaining power for some of South Africa's most marginalised workers

Cosatu seeks 1999 election pact

Ferial Haffajee and Sechaba ka Nkosi

The Congress of South African Trade Unions (Cosatu) has decided not to field candidates in next year's election. In a break with a tradition set in 1994 when the labour federation sent 20 top unionists to Parliament, it has now decided not to do so

Among the Cosatu members sent to Parliament were current high flyers like Minister of Trade and Industry Alec Erwin and business magnate Marcel Golding who quit Parliament to take up a corporate career This time around, Cosatu could instead seek an electoral pact with the African National Congress in return for putting its might behind that party in the run up to next year's election

Cosatu representative Nowetu Mpati confirmed the decision not to field candidates

Amid some unhappiness in Cosatu ranks over the outcome of its decision to "deploy" its leaders to Parliament in 1994, some militants are looking beyond the 1999 poll to the possible formation of new socialist party Among the beefs of some members are that Cosatu MPs were not accountable to the trade union movement and some labourites speak of "betrayal" by former unionists who now support the macro-economic planning blamed by trade unionists for job losses in the country

Cosatu militants have started criticising the paternalistic nature of the alliance

But for now, the debate within the federation remains focused on securing gains from the ANC in exchange for the union movement throwing its weight behind the campaign

"We were never intended to be a labour bloc," says one of the Cosatu MPs, Philip Dexter, adding "we went to Parliament on an ANC ticket." Dexter was one of few MPs who attempted to stay in touch with his worker constituency He regularly attended trade union congresses and executive meetings but adds that the pace of parliamentary work "makes it difficult to extend that accountability on the ground. Cosatu took the right decision at the time It gave a strong signal to workers, but it was a special time It was a once off, there's no reason to repeat it."

Mpati says Cosatu will still support an ANC victory in next year's elections but its members have to work in ANC branches if they want to be elected to office "They must hope people in their communities will elect them."

One of Cosatu's key strategists, Mbuyi Ngwenda, says there is ambivalence in the labour federation about its election strategy Some members urge a rethink on unconditional poll support for the ANC because "delivery" has been slow "Others say the key question is how to give the ANC a two-thirds majority so that it can consolidate political power to deliver " says Ngwenda, who is the general secretary of the National Union of Metalworkers of South Africa.

Cosatu is one leg of the tripartite alliance which also includes the ANC and the South African Communist Party Its election strategy will be fine-tuned in the next two months when it will meet with the ANC and raise topics it wants to form part of the election manifesto

Among the questions which the ANC is likely to field from its labour ally include the slow pace of delivering jobs and houses as well as the accountability of MPs and local councillors. "We might also look at the closure of the Reconstruction and Development Programme office and the lack of maximum consultation in the [tripartite] alliance " says Ngwenda.

Ngwenda's assertion represents a feeling shared by many in Cosatu. Yet this year's May Day celebrations would provide some answers about the state of the alliance, and possibly the extent to which Cosatu will mobilise its resources for the ANC in the run up to the election when relations among partners in the tripartite alliance have reached record lows

This year's celebrations will see Cosatu's deputy general secretary Zwelinzima Vavi sharing a platform with ANC president Thabo Mbeki in Vryburg

But in the shade of the stage Cosatu militants have started criticising the paternalistic nature of the alliance and questioned whether it is still relevant in changing times.

The militants, most of whom belong to the federation's educated and influential elite, represent workers who come mainly from more urban and literate industries such as metal, chemical and food and beverage factories

But key individuals in these unions have also lent their support to the election pact argument. They want the election pact to deal directly with problems within the alliance, and secure clear undertakings that the disillusionment felt recently by many in Cosatu would be assuaged by 1999

One of these militants is John Appolis of the Chemical Workers Industrial Union In a recent discussion paper he criticised the alliance for being a fire extinguisher rather than a forum where policy issues are debated

"The alliance is crisis-driven. In other words, it is only involved when there is a threat of mass struggle or a political disagreement with Cosatu," argues Appolis, who is also considered one of the federation's leading militants

Cabinet challenged to reveal price of state jobs equity

NP quizzes ministers on bill

(166) ARG 30/4/98

CLIVE SAWYER
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 parastatals

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, ethnic 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 50% 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 having been a public holiday, by 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

(166) ARG 30/4/98

MOTSHEKGA HOPEWELL RADEBE
POLITICAL REPORTER

Gauteng Premier Mathole Motshekga'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 the National Institute for Public Interest Law (Nipilar) in the 1980s

Premier: Mathole Motshekga

The report heaps some of the blame for the chaos that was Mr Motshekga'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 in a "disorganised 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 Motshekga) accounted for the spending of Trocaire (foreign) donor funds was flawed and insufficient But it cleared Mr Motshekga on charges of nepotism

Nedlac considers equity bill report

BD 4/4/98 (166)

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 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'

PD 5/5/98

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 16 He warned, however, that the level of preparation for the summit was in a "critical zone"

Nedlac agrees on code to eliminate sexual harassment

BD 6/6/98 (166)

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 revolving 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 arbitrators' 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 innuendo 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.

Negotiations on Skills Development Bill to be finalised today

Reneé Grawitzky (166) BD 6/5/98

NEGOTIATIONS on a revised Skills Development Bill presented to labour and business last month would be finalised today in the National Economic, Development and Labour Council (Nedlac), sources close to the process said yesterday

Parties indicated that a Nedlac report — outlining areas of agreement and disagreement reached during negotiations on the bill — would be finalised today.

It is understood that business intends reserving its position on the bill's proposal that 20% of revenue collected from a training levy of 1% of payroll will finance a national skills fund while 80% will go into a sector specific education and training fund.

Government has indicated that the 20% directed to the national skills fund would be used for social plan purposes.

Companies engaging in the retraining of retrenched employees or other social plan activities could claim moneys from the skills fund.

The broad thrust of the bill is to encourage training at company level in line with an overall sector skills development strategy.

Sector education and training authorities will emerge out of the current industry training boards

They will take up the function of designing and implementing skills-development strategies as well as monitoring training in sectors.

Cosatu has 'reservations' on new wage gap clause

Renee Grawitzky

- THE Congress of SA Trade Unions (Cosatu) has expressed reservations about the inclusion of the compromise clause on the wage gap hammered out during negotiations on the Employment Equity Bill
- The reservations come ahead of the ratification today of a report on the outcome of negotiations in the National Economic Development and Labour Council (Nedlac). This position, conveyed to the overall labour convenor of the labour market chamber in Nedlac, comes after the labour constituency apparently approved the adoption of the clause during heated negotiations
- Negotiations around the adoption of this clause proved to be the most difficult part of the process, a source close to the process said
- At the outset of negotiations, Cosatu argued that the bill should promote the closure of the apartheid wage gap Cosatu's position was not fully endorsed by Nedlac's labour component which includes represents from Cosatu, the National Council of Trade Unions and the Federation of Unions of SA
- Cosatu has expressed reservations about the wording in the Nedlac report which states "Where instances of unfair discrimination occur in terms of wage differentials, employers must attempt to address these in a manner appropriate to the circumstances which may include collective bargaining or other measures such as those provided for in the Basic Conditions of Employment Act"
- Cosatu has proposed wording which would directly compel parties to reduce wage disparities induced by the legacy of apartheid
- It is unlikely that Cosatu wishes to delay the ratification process
- However, if it fails to give its approval to the Nedlac report, it could unravel the whole process
- However, indications are that the federation's reservations would be taken up for discussion within alliance structures.

Star 12/5/98

Equity bill focus is in wrong direction

(166)

Incentive and reward are better than control and punishment, suggests Ruth Rabinowitz

The 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 far 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 7,7 million domestics and farm labourers It will negatively affect 39 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 commissars 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

PD 14/5/98

Removing provisions in the proposed Employment Equity Bill that will once again polarise SA along racial lines will ensure greater private sector co-operation in implementing the legislation, argues Ewald Wessels

(166)

NEGOTIATIONS over the proposed Employment Equity Bill have reached a conclusion and cabinet approved it yesterday Concessions have been made, but in its current form the bill will still reintroduce race into law

Racial thinking is so ingrained in the collective unconscious of SA that it has made otherwise reasonable people blind to alternatives

The bill introduces race classification by proceeding from the implicit assumption that, in the absence of discrimination, the composition of the workforce in every company, and at every occupational category, would have approximated the national or regional demographic mix.

Companies will be required to classify their employees to determine the underrepresentation of "designated groups" (everyone other than "white" able-bodied males) at every level Where "white" males are "over-represented" in any category, a company will be required to practise racial discrimination to "rectify" the situation over time

What is wrong with this approach? To start with, the members of the task group who drew up the proposals clearly have little understanding of mathematical statistics Natural variation will normally ensure that even the most fair and equitable of employment practices results in large differences in the composition of the workforces of different companies To impose an artificial uniformity on the economy would take a fearful toll in economic inefficiency

At the moral level, the consequences of passing the bill in this form would be profound The principle of individual rights rests on the notion that every person has the right to be treated on his or her own merits Martin Luther King once said "I have a dream my four little children will one day live in a nation where they will be judged not by the colour of their skin but by the content of their character " No one has the right to place any person in some category and assign rights to that person according to some presumption concerning the category

For this reason, many companies refused to supply racially classified data to the former government They were not prosecuted. The draft employment equity bill threatens to penalise repeatedly any employer who continues to be true to this principle, with fines ranging up to R900 000

Why have employer representatives in Nedlac not argued more forcefully against the racial elements of the draft bill? They have a dilemma. Organised business recognises the need to redress the effects of past discrimination and is sympathetic to the basic objectives of the bill The overwhelming majority of companies would like to see every individual able to rise to the level of his or her abilities and aspirations

How is one to implement affirmative action if one does not re-introduce race classification?

The answer is clear The racial and "group think" blinkers should be taken off and concepts such as disadvantage should be defined functionally The problem lies in the use by the bill of the term "designated groups", which is defined to be "black people, women, and people with disabilities" to describe those who would qualify for preferential treatment

There is an illusion in the apparent logic that leads from statements such as "black people, women and people with disabilities are the most disadvantaged groups in our country" to the conclusion that all members of these groups should therefore be favoured. As with many such sweeping statements, the devil is in the detail.

Realistic analysis of the practical effects will soon show that the harmful consequences of a bill based on simplistic thinking of this kind would greatly outweigh any advantage The thought that companies in Nelson Mandela's SA could be required to treat people according to the colour of their skin, rather than the content of their character, is bizarre

Is it possible to remove the racial element of the draft bill without robbing it of its force? The main practical measure of the bill is the duty placed on employers to analyse their employment practices, to eliminate any discrimination, and to prepare, submit and implement a plan detailing positive actions that will result in greater employment equity

Very little, if any, of the positive effect of this measure would be sacrificed if the racial and group elements in the definition of people qualifying for preferential treatment were deleted. Since the great majority of people against whom there has been discrimination in the past are black, women, or disabled, such people will automatically be in the majority among beneficiaries of almost any honest plan to implement employment equity But the courts should not be obliged to accept skin colour as a sufficient criterion, on its own, to justify discrimination in employment decisions, as the current wording of the draft bill would require

By simply replacing the reference to "designated groups" in the draft bill by a reference to "designated people", defined as "people who are at a disadvantage because of discrimination suffered by them in SA in the past", much of the objection to the current draft bill could be met. The purpose of the bill should be to advance as rapidly as possible South Africans who have not been able to achieve their potential because of past discrimination

For an individual company, the rate at which people can be employed or promoted is determined by the growth of the company and by the personnel turnover Both these factors are normally related to the size of the company The existing racial composition of the workforce is almost irrelevant.

It is logical, therefore, to evaluate the affirmative action plans that companies will be required to submit to the labour department against the number of people employed by the company, not against the racial composition of its workforce Only where a company claims that its past employment practices have been such that it requires no corrective action, should it be required to submit evidence that would exempt it from the equity planning requirements

Such evidence could include data on the composition of its workforce in terms of the race classification determinations of the previous government. The current government should not embroil itself in attempts at race classification

In deciding whether an individual is entitled to preferential treatment in terms of the bill, companies should be required to determine whether that individual is disadvantaged as a result of past discrimination in SA. The first point of reference should be gender, disability status, and whether the individual was classified by the previous government as anything other than "white"

However, the favouring of immigrants — on the basis of skin colour — who did not suffer discrimination in SA, and the "poaching" of people who have already reached their full potential to convey an illusion of equity, is immoral and should not be encouraged. Where uncertainty exists over the "disadvantaged" status of individuals, the Labour Court would soon develop a body of case law which would provide guidelines in the application of the act.

There is going to be a severe problem of administrative incapacity in implementing the bill regardless of its detailed content, and the willing co-operation of the private sector is vital if the aims of the bill are to be met A bill that does not again polarise SA along racial lines will obtain this co-operation much more effectively

□ *Wessels is a member of the Cape Chamber of Commerce and Industry executive and the Seifsa council.*

Cabinet backs two labour bills

CTIBER 14/5/98 (R19) (R36) (166)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

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.

FORUM

WORKPLACE *A trio of employment bills carries severe implications for management on affirmative action and training, yet few companies so far are heeding the message*

Employers with heads in the sand will be kicked in the rear

CT (BR) 18/5/98

South African employers must rapidly remove their heads from the sand if they are not to be faced with a rude wake-up call 18 months down the line.

Dr Denise Meyerson, who heads Johannesburg based Corporate College International, warns that time is running out for employers who are finding it convenient to ignore the SA Qualifications Authority Act, the Employment Equity Bill and the Skills Development Bill.

She finds employers are particularly indifferent to the implications of the Employment Equity Bill, which, if it becomes law in its present form, will require employers to pay 1 per cent of their payroll bill as a levy to the sector authority, which will repay the levy in accordance with the training conducted within the employer's organisation.

The rub comes in the requirement that the training in question must comply with the National Qualification Framework (NQF) as laid down by the SA Qualifications Authority Act (Saqa) and the Skills Development Bill.

"The framework", says Meyerson, "encapsulates the entire restructuring of training and education in South Africa, whereby qualifications will be competence-based and workplace-assessed. It is a complete mind-switch for companies to move in that direction."

JOHN SPIRA

How have employers reacted?

"Some are taking the stance that they will pay the 1 percent as an RDP donation, because they don't want anyone to tell them how to run their training programmes.

"What they fail to realise is that they then have to contend with the employment equity legislation, which imposes a fine of up to R900 000 for non-compliance. Few appreciate they have a mere 18 months to compile and implement their training and employment equity plans."

Meyerson says many employers are hoping to escape the consequences of non-compliance by producing expensively bound, impressively constructed documents which they will submit to the labour department.

"But when the inspectors come back the next year, they're going to want to see movement; to see how many affirmative action managers have been appointed. The employer might respond that the necessary skills were not available; that one cannot promote people who do not have the requisite skills.

"Upon which the inspector will demand the employer's training and development plans for each person in the organisation. The employer will be obliged to provide some very hard facts to explain why those promotions have not eventuated.

"He will have to demonstrate that he did indeed plot each employee's training and career development path, that the employees had attended relevant training programmes and could not thereafter prove competence."

Meyerson cautions that it is not enough to prove an investment of, say, R5 million in a training centre within the firm. The employer also has to demonstrate results.

"You cannot plot career paths unless you have the competencies and the standards for every position within your organisation. Standards will eventually be generated in South Africa, but it will take another two years before this is achieved." In the interim, Meyerson advises employers to buy international standards.

Corporate College International, formed six years ago, offers a variety of programmes, among them literacy, English upgrade, numeracy, business proficiency, supervisory management and customer service.

Meyerson says the firm always accredits its programmes internationally, through Pitmans, because local examining boards do not exist for every discipline.

Meyerson tells reluctant employers not to shoot the messenger, but make changes

Three years ago she spent time in Britain to learn how to upgrade South Africa's teachers and trainers. She learned the way they were trained in Britain differed markedly from the local approach.

"Everything there is competence-based. In other words, employees are invariably assessed by teams of workplace assessors in the workplace. Here we do training programmes but we don't follow through and monitor employees where they work; how they apply the skills they have acquired."

When she returned, she decided it was essential to go the international route. She brought out an international trainer to train workplace assessors here.

As a result, Corporate College International is the first registered City & Guilds centre in South Africa offering this type of training. City & Guilds is the largest examining body in the UK, processing about six million students annually.

Hence, Corporate College international's training is NQF-aligned, which, Meyerson stresses, is crucial.

"When a person comes out of any training course, the qualification has to have the Saqa stamp if the employer is to receive the training grant.

"Most employers haven't a clue as to what is involved. I've been doing many presentations, and at the end most employers want to shoot me. It won't help them to shoot the messenger."

Meyerson points out the bills were passed through Cabinet last week, highlighting the need for urgent action by employers.

She identifies the cost of changing the system as a prime reason why employers are railing against the proposed legislation. And the changes will be radical.

"Eventually you will only train in the skills gaps, where you need to upskill someone. It won't be a case any longer of sending 10 people on a supervisory programme — people who were not assessed beforehand, nor after completion of the course.

Without prior assessment, you don't know what skills they are bringing into the training room. That's a waste of time and a waste of money."

Meyerson envisages training becoming highly targeted, with a growing number of one-on-one programmes.

"Time, of course, will be a big factor. Everyone will need to be assessed according to predetermined standards. The individual will have to collect all kinds of evidence to prove that he or she is competent to do his or her job at a certain level.

"And that person also has to be assessed by a qualified observer. You will have to carry around with you your portfolio of evidence, which will contain proof of all your skills."

PLAIN TALKING *Denise Meyerson, head of Corporate College International, has been telling employers they need to reform*

Equity bill 'follows good global practices'

(176) (166) CT (BR) 21/5/98

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

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

Loyiso Mbabane, 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 recognise 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", Mbabane 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 Mbabane said the bill, which would be tabled in parliament next week, clearly spelt 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

Justice Minister Dullah Omar and his deputy, Manto Tshabalala-Msimang, address the media at the launch of the Equality Legislation Drafting Project at the Union Buildings in Pretoria yesterday.

Picture TREVOR SAMSON

State role essential to end discrimination, says Omar

Taryn Lamberti (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.

"Those 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 in 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 misinterpretation of the Bill (166)

While acknowledging that the Bill was contentious, he said the Government was forced to come up with this legislation 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 miscomprehension of the laws as their basic 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 – *Sapa*

Lowveld 27/5/98

White kids won't get raw job deal, says Mboweni

Demographics key factor

(166) ARG 28/5/98

CLIVE SAWYER
POLITICAL CORRESPONDENT

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

Replying to questions by Pieter Groenewald of the Freedom Front, Mr Mboweni 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 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 Mboweni 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 Mboweni 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

Mboweni to plug labour loophole (166)

ET (PR) 28/5/98

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, Trto Mboweni, 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 (Cofesa), which claimed to represent about 120 000 employers with a workforce of 2,4 million. Mboweni said it had consistently argued against wage regulations, "often using one-sided information in an endeavour to discredit the bargaining council system"

Mboweni said he met Cofesa 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 Cofesa 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 Mboweni 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 Olifant, 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 MPETA

Star 30/6/98 (166)

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 89 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.

EMPLOYMENT EQUITY

CT (BR) 2/6/98 (164)

Alliance to support employment bill

Several non-governmental organisations in Gauteng and the Western Cape joined forces yesterday to form an employment equity alliance to support the application of the Employment Equity Bill. "This alliance is made up of women's organisations, organisations of the disabled, legal and human rights organisations, lesbian and gay rights organisations, HIV and lobbying organisations as well as the statutory Commission on Gender Equality," alliance spokesman Mahlodi Jara said yesterday. Jara said the bill correctly proposed affirmative action measures to address racial and gender inequality in the workplace.

The alliance plans to mobilise civil society organisations to discuss and enrich the bill with the aim of securing an employment equity act which effectively deals with the issue of unfair discrimination and the implementation of affirmative action measures. The work of the alliance will include joint meetings and seminars to discuss the bill and its effects on various sectors, joint and individual submissions to parliament and lobbying parliament, political parties, business and labour. — *Sapa*

'Govt told police to commit illegal acts'

PRETORIA — The former government ordered security police to commit illegal, including bogus terrorist attacks, to fight the African National Congress (ANC), retired police commissioner Gen Johan van der Merwe told the truth commission yesterday.

"In 1988, the security police was the only line of defence against total anarchy in the country," Van der Merwe testified in the amnesty application by him and nine other policemen for offences arising from the death of Mamelodi activist Stanza Bopape on June 12 1988.

Bopape died under police torture, but police secretly disposed of his body and claimed he had escaped.

Van der Merwe headed the security police at the time.

Five of the applicants were directly involved in subjecting Bopape to electrical shocks. They are Lt-Col Adriaan van Niekerk, Maj Charles Zeelie, W/O Hendrik Mostert, Sgt Johan du Preez and Const Jakobus Engelbrecht Brig Schalk Visser and Capt Leon van Loggerenberg are seeking pardon for their role in getting rid of Bopape's body.

Van der Merwe and two other former police generals, Gerrit Erasmus and Petrus du Toit, were involved in covering up Bopape's death.

Van der Merwe said the months preceding Bopape's death had been worse than a conventional war.

The ANC/SA Communist Party had embarked on a full-scale people's war, seeking to mobilise the masses against the government. It also used intimidation to compel moderate blacks to join the revolution, he said

"This was an undeclared war in which the enemy operated outside the Geneva convention" The government ordered the security police to commit acts outside the law Former law and order minister Adriaan Vlok, for example, instructed police to blow up Cosatu House in Johannesburg.

He said Vlok later told him that former state president PW Botha also wanted the Johannesburg offices of the SA Council of Churches, Khotso House, destroyed as well.

Both operations were planned and carried out by members of the Vlakplaas security police base.

The aim of bogus terrorist attacks, Van der Merwe said, was to create a climate for justifying cross-border raids on ANC bases

The Bopape family's legal representative, Gys Rautenbach, earlier asked the amnesty committee to subpoena Vlok to testify. "We have to know whether it was only the police or the politicians as well," Rautenbach said.

The committee decided to give a ruling on the matter only after all the evidence had been heard

Capt Van Loggerenberg testified that he was worried he might be grabbed by crocodiles while disposing of Bopape's body. He said he rolled Bopape's body into the Komati River between SA and Mozambique on the night of his death "I later visited the place again for braais," Van Loggerenberg said. — Sapa.

Sanco demands taxi regulation

THE SA National Civics Organisation (Sanco) called yesterday for immediate regulation of the taxi industry to end violence and hinted at boycott action.

Government had to protect the poor who were most affected. People used minibus taxis because public transport was inadequate Lack of regulation led to "mad capitalism" and "extreme" competition.

"We cannot allow our people to be maimed, killed and become victims of a war that has no end," it said.

Sanco called on Transport Minister Mac Maharaj for a single industry association with which all minibus taxis would have to register. It also urged business, which punished workers for lateness and absenteeism, to become involved. — Sapa.

Slating of equity bill 'based on ignorance'

Reneé Grawitzky

FEARS of affirmative action should not result in unnecessary criticism of the Employment Equity Bill, Arthur Andersen's employment law unit head William Berry said yesterday.

Berry said negative criticism was based partly on the fact it had not been read properly.

The bill proposed a great deal of flexibility and encouraged employers to find their own solutions to employment equity, he said. Affirmative action was central to the democratisation of the workplace

Government had initially adopted a hands-off approach and made some provision for affirmative action in the Labour Relations Act. This did not, however, facilitate sufficient progress in implementing programmes, he said.

The bill currently facing debate in Parliament was an attempt to get employers to implement programmes without too much government interference, and if this did not work government might be forced to implement quotas

The Employment Equity Bill and the Skills Development Bill have yet to be tabled as they are facing approval by the state law adviser. It is understood public hearings will be held on the bills after the parliamentary recess near the end of July.

Little mercy will be shown to those found guilty of crossing the line

Nedlac has recently adopted the code of practice drawn up to handle sexual harassment in the workplace. Dhaya Pillay looks at the issue

IN 1989 the industrial court heard its first — and one of the few reported — complaints of sexual harassment. Recently, such complaints have been made with ever-increasing frequency An awareness of individual rights and a sense of self-worth and dignity have encouraged the reporting of sexual offences

On the other hand there are those who need to unlearn old, bad habits, to undo a socialisation which excused or accepted sexual harassment as "macho" Adjudicators have shown little sympathy for harassers. In most reported cases, their dismissals have been upheld. Those caught unawares have seen their careers and existences catapulted into chaos and despair for a single indiscretion

The public needs to be alerted that, like dishonesty, sexual harassment is a dismissible offence The code of Good Practice on the Handling of Sexual Harassment Cases, recently adopted by the National Economic Development and Labour Council, is a useful tool for education It captures what adjudicators have developed in recent years

This article tries to explain what sexual harassment is and what the consequences might be of being found guilty of this in the workplace

In 1989, the industrial court accepted that sexual harassment meant unwanted sexual advances in the employment sphere The code defines sexual harassment to be "unwanted conduct of a sexual nature" This definition suggests that the test is subjective In other words the conduct must be "unwanted" by the recipient. A harasser is therefore unlikely to escape by pleading that the recipient was overly sensitive

Another definition of sexual harassment is "the unwanted imposition of sexual requirements in the context of a relationship of unequal power" By definition, the word harassment implies an uneven power relationship

The definition used when conducting a survey in 1990 of employees of the US government was "the deliberate or repeated unsolicited verbal comments, gestures or physical contact of a sexual nature that is considered to be unwelcome by the recipient" The code is wider It does not require the conduct to be "deliberate" or "intentional", nor does the conduct have to be repeated. The code includes as an example of sexual harassment the putting up of offensive posters, which is not covered by the survey definition.

Is there a distinction between bad taste and flirting and sexual harassment? There is Jokes, remarks or conduct which are in bad taste or flirtatious do not necessarily create an intolerable environment. When they do, such as when conduct is persistent and becomes unwelcome, it would amount to sexual harassment. The culture of the workplace should be considered when demarcating the boundaries of acceptable conduct. Bad taste and flirtation may be a breach of a workplace rule warranting a penalty short of dismissal

The code draws a distinction between sexual attention and harassment. Sexual attention can become harassment if it is persistent, offensive or unacceptable to the recipient.

The facts of the 1989 industrial court case were that a senior executive had on many occasions touched and caressed female subordinates in a sexual way, fondled their breasts, slapped their buttocks Among the victims was a 19-year-old who blew the whistle on him. The others followed suit. In his defence the executive bragged that when he did not touch them, they seemed to complain. He described his conduct as being no more than "mildly flirtatious" or "Mediterranean"

Complaints of sexual harassment will usually surface in one of two ways the harasser is dismissed and challenges his dismissal or the recipient resigns on the basis that employment has become intolerable

Either way, the opposite party is usually the employer This is so because the employer has an obligation to provide a safe working environment. An employee who resigns from an environment which is not safe is said to be constructively dismissed. In the case of the dismissed harasser, the employer has to justify the dismissal by proving the harassment and also that fair procedure was followed before the dismissal.

Sexual harassment usually takes one of two forms The first is the quid pro quo variety which takes place when the harasser offers or promises a reward, benefit, better conditions of employment or a promotion in exchanges for sexual favours

The second is the hostile environment type The harasser's conduct creates an intolerable situation sometimes leading to the constructive dismissal of the recipient. Both types may coexist.

The industrial court recognised the two forms of harassment in the 1989 case It also accepted that

- ☐ Sexual harassment violated the right to integrity of the body and personality which were protected criminally and civilly;
- ☐ The responsibility for providing a safe working environment free of sexual harassment rested with the employer;
- ☐ Sexual harassment amounted to misconduct,
- ☐ The misconduct was of such seriousness as to warrant the dismissal of the harasser; and
- ☐ Sexual harassment was not confined to members of the opposite sex, nor was it only limited to harassment by men of women only

The code endorses this approach.

In December last year the labour appeal court found guilty of sexual harassment a supervisor who, under the influence of alcohol, hugged and tried to kiss a subordinate and made advances to her over a period of about four hours The presiding judge said it was a violation of the constitutional right to human dignity, although the court heard that not every act of sexual harassment would lead to dismissal.

Conspiracy between the complainant and the employer is often raised as a defence Such a defence is often hard to sustain. In the 1995 case in the industrial court the harasser submitted that the three women complainants had conspired with a number of managers to get rid of him. The allegation was unfounded as the matter surfaced only when one of the complainants was questioned about a deterioration in her work performance

As with most sexual offences, proof is a problem. It is usually the recipient's word against that of the harasser and vice versa. Recent rulings of the high court that "the cautionary rule shall not undermine the unequivocal commitment to gender equality" are helpful. In so saying, acting judge Dennis Davis shunned "the traditional stereotypes that the complainant had a dubious sexual past and had some mischievous feminine reason" for reporting on a man who never did anything to her

Corroboration is usually sought by looking at surrounding circumstances Gifts, cards and letters have been the downfall of many men. In an attempt to justify giving his secretary a pink, as opposed to a black G-string, an employer submitted that he had no sexual intentions in doing so He merely wanted to improve the company's image

A warning would probably be an appropriate sanction for conduct which is in bad taste or flirtatious Once the conduct enters the realm of sexual harassment, it infringes on constitutional and human rights Dismissal is the most likely sanction Counselling is another option.

However, in most cases the tendency is to deny the wrong to the bitter end. It is doubtful that counselling would assist a person who has not acknowledged his or her wrong

Compensation for constructive dismissal is limited by the Commission for Conciliation, Mediation and Arbitration (CCMA) to a maximum of 12 months' pay If the dispute is framed as a case of discrimination, it must be adjudicated in the labour court. In that case a maximum of 24 months compensation would be payable.

The victims of sexual harassment are not only the recipients but often the harasser's children. In an instant their lives may change from being children of an employed to an unemployed parent. No parent should expose their children to that risk.

☐ *Pillay is a senior CCMA commissioner and arbitrator with Independent Mediation Services of SA.*

Discriminatory employers will be on the block

(166) (KBB) (KBB)

FRANK NXUMALO
LABOUR EDITOR

CT (BR) 11/6/98

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

ET(PDR)17/6/98

LYNDA LOXTON

PARLIAMENTARY CORRESPONDENT

Cape Town — Although only 13 workplace forums had been established since November in terms of the Labour Relations Act, other forms of work place participation were being initiated, Tito Mboweni, the labour minister, said recently.

Answering questions in the national assembly, he said the Commission for Conciliation, Mediation and Arbitration had received 48 applications for the establishment of workplace forums since November. Thirteen had already been established and 22 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 work place participation," Mboweni said.

"We have had reports that various forms of work place participation have been initiated and are operating.

"Workers and employers are not required to follow the route prescribed in the (act) in respect of work place participation."

Ramaphosa calls for balanced labour law

(166) ET(BDR) 30/6/98

ANN CROTTY

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 policies 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 12 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.

CAPE TIMES
MONDAY, JANUARY 5, 1998 ★

PERIOD OF GRACE 'UNACCEPTABLE'

Equity Bill 'too soft' on private employers

CT 5/1/98

(166)

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 Ndlovu 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 it allows companies to start from a zero base and pretend they never knew about affirmative action legislation," he said

Ndlovu 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

Ndlovu 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 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," Ndlovu 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

(166)

Private-sector employers given too much time, says forum

Star 5/1/98

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 Ndlovu 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

Ndlovu 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

Ndlovu 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

Ndlovu 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 mind-set of our people, the bill should be driven from the deputy president's office," he said

Ndlovu said the forum would be willing to work with the Government to iron out differences before the bill becomes law

During the unveiling of the bill, Labour Minister 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 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

ARG 21/1/98 (166)

The 1998 edition of the South African Trade Union Directory and Industrial Relations Handbook is now available from the publishers.

The directory has summaries of labour Acts, information on all trade unions and federations, employer organisations, bargaining 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) 781 2505 or fax (011) 781 2504

Race relations institute surprised by business sector's acceptance

(166)

Employers 'in the dark' on equity bill

ET(BR)22/1/98

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 Sconteich, 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

IN DOUBT *Anthea Jeffery of the race relations institute*

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 75 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 R500 000 for a first offence and R900 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

(166)
ARG 22/1/98

ALIDE DASNOIS
BUSINESS EDITOR

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 Schonteich 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 qualifed" 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

ET (BR) 27/11/98 (166)

FRANK NXUMALO
LABOUR CORRESPONDENT

Johannesburg — Business was opening itself to potential litigation in terms of the new Occupational Heath & Safety Act because current job descriptions do not prescribe to the safety requirements of the act, Deon Binneman 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 and provide information, instructions, training and supervision that may be necessary to ensure the health and safety of employees," he said

Binneman said a job description was an important instrument for any company as it was both the basis for human resources planning and a fundamental reference document in disciplinary situations

Racial discrimination soon to be outlawed in the workplace

CT 30/1/98 (166) (557)

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 Ndlovu 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 necessarily require employers to engage in racial classification.

Said Leon: "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 "

PROMOTING EQUITY: Tito Mboweni

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) gives 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

(166) CT (BR) 30/1/98

VERA VON LIERES

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 far less 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 Nedlac 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 injured small business, pointing out that small businesses — defined as a 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 LOXTON

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

ARB 6/8/98 (166)

BUSINESS STAFF

Complex and onerous obligations in the Employment Equity Bill on employers will result in job losses, according to Business South Africa (BSA)

BSA expressed its concern yesterday at some of the new proposed 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 business

The new proposals would constitute further disincentives to domestic and foreign investors at a time when it was vital for South Africa to become competitive in a globalised economy, the BSA said

More storms over Equity Bill

CT(BR)6/8/98 (166)(1333)

FRANK NXUMALO AND LYNDA LOXTON

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 these 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 togeth er, 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"

Luiso Mbabane, the director for equal opportunities, said the department had been examining how similar monitoring programmes (of equity plans) worked in the US

NEWS

Cosatu outlines its position on Equity Bill

(166) (#6)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Cosatu said yesterday it wanted the ANC's proposed amendment to the new section 27 of the Employment Equity Bill read together with section 19 (3), another new section, and adopted by the portfolio committee on labour when it met again next week

This move would "send out a clear signal of the government's seriousness to concretely address the issue of apartheid income disparities"

Section 27, which the department of labour proposed be inserted in the bill, drew sharp reactions from Business South Africa (BSA) earlier this week, and voting on it was postponed until next week

BSA is seeking an urgent meeting with Shepherd Mdladlana, the labour minister, over the section and other areas of concern on the bill Both sections address the apartheid wage gap in the workplace

Section 19 (3) prescribes that an analysis of a company's wage structure must include "a statement as prescribed of the remuneration and benefits received in each occupational category and level of the employer's workforce"

Cosatu said section 27's wording — that employers "may" take measures to rectify any anomalies as prescribed by section 19 (3) — "did not oblige them to do anything about it"

It wants ANC amendment proposals inserted for section 27 to read that where disproportionate income differentials were reflected in the statement prepared in terms of section 19 (3), "employers must take measures" to reduce such differentials, including collective bargaining and compliance with sectoral determination

Cosatu said if approval were given to these amendments, it will be "able to wholeheartedly endorse" the bill

A spokesman for the department of labour said Mdladlana was expected to address BSA concerns at a media briefing in Cape Town this morning

CT (BR) 7/8/98

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 R900 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 messy compromise On the one hand, 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

(166) BD 11/8/98

Government's actions over key pieces of legislation indicate that it has not made up its mind whether it wants consensus or control, argues **Steven Friedman**

The Skills Development Bill, which aims to address one of SA's most pressing needs — developing skills — is an example of government overriding consensus between business and labour

IF SOME labour issues are anything to go by, government seems to have forgotten the old cliché that you cannot have your cake and eat it

On one hand, it wants to show it is in charge On the other, it wants a national consensus on important parts of its agenda However, the way it is tackling the first task is making it harder to achieve the second, and one reason is that it seems to have forgotten that you cannot win agreement from minorities and ignore them at the same time

Deputy President Thabo Mbeki has called for a new national consensus on measures to address racial inequality and poverty

Recently, government has had two opportunities to achieve at least a part consensus on key aspects of its agenda First was the Skills Development Bill, a vehicle for government to force action on one of our most pressing needs, building our skills base, particularly among the majority which was denied training in the past.

After heated public debate on the bill, business and labour hammered out a compromise which would have changed the proposed law, but allowed it to be enacted with the support of both interests

The cabinet rejected the deal and insisted on the original bill. So skills development, an issue on which we badly need a national consensus, may now become a cause of resentment and, at best, grudging compliance

Second was the Employment Equity Bill, which introduces legislated affirmative action. This is not only a key government goal but one of the most divisive issues in society It is the measure Mbeki repeatedly mentions when he calls for consensus

While white-led opposition parties denounced the bill, again the business-labour-government negotiation process (of which the National Economic, Development and Labour Council is the chief vehicle) began, and a deal seemed to have been reached.

It seemed that affirmative action would be legislated with the support of organised business — an important breakthrough for the consensus which Mbeki urges

However, again the deal has been overturned, at least in part. Either the labour department or Parliament's labour portfolio committee, or both, have added key clauses which were not negotiated in the original deal. Yet again, the effect may be to overturn a consensus and so turn an agreement into a cause for division.

Some important points flow from the two events The first is that there is a tension between the principle that an elected government should be able to govern without continually bowing to private interests and the argument that, in a society such as ours, we are far more likely to make progress if the key interests achieve consensus on key parts of the government agenda.

In some cases, the dilemma is less real than it seems Government is a party to Nedlac, if it does not like business and labour's proposals, it can place its own on the table This applies clearly to the skills bill If government is worried about becoming a rubber stamp for business and labour, but still wants support from them for its initiatives, it can do that by insisting on a negotiated three-party deal rather than simply throwing out the proposals of the other two

It is a little more difficult when negotiated laws reach Parliament Government negotiators at Nedlac represent the executive and it is a key democratic principle that lawmakers should check the power of the cabinet and government departments Reducing parliamentarians to rubber stamps for deals between the executive and private interests clearly violates that principle

However, the African National Congress holds a majority on the parliamentary committees If its legislators endorse a deal on a law such as the equity bill, they will presumably ensure that it passes Also, if government really wants a consensus it will need to take its parliamentarians along with it

This is particularly needed since the committees offer union federation Cosatu in particular (since it is more likely to persuade an ANC majority than business) a continued opportunity to itself undo negotiated agreements by appealing to MPs to add its favoured changes to bills

Either the governing party has not worked out in its own mind whether it wants to set the rules alone or to gain consensus, or it has failed to get the message through to its MPs (or some senior officials)

The issue may be one of strategy rather than principle An elected government is entitled to show that it is in charge by steering its agenda through Parliament, but this is of little value unless it can make sure that its intentions become reality

If government is convinced it can achieve its skills development goals without wholehearted business and labour co-operation, or its equity goals in the face of business resentment, it is entitled to go ahead, since it does enjoy a mandate from voters (which labour and business, of course, do not) However, if it cannot, its attempts to enforce its will may simply succeed in showing that it is not in charge.

It is obviously too early to assess the outcome of these two laws, but there is much evidence government needs the co-operation of private interests to govern.

In the labour arena we have clear and fresh evidence that government has difficulties in making some laws stick. despite clear rules on peaceful strike action, the Eskom and chemical strikes have been marred by violence A government strong enough to ignore private interests would simply have made sure the law was obeyed.

There is no shame in a government acknowledging that it needs private interests to work with it — all democratic governments probably need this and that is, after all, what Mbeki repeatedly implies However, there is a contradiction between recognising this and then overturning agreements which these interests reach.

Both incidents suggest that, at least where organised business is concerned, the consensus that Mbeki wants may be easier to achieve than some public rhetoric suggests

If we were really as divided as some public figures claim we are, there would be no prospect of a deal with mainly white business groups on a measure like affirmative action, but one was achieved. This removes one of the key elements of the argument for showing that government is in charge.

If everything it tried to do to steer through its programme was resisted by organised white interests, it would have little option but to ignore them. However, if it can achieve the consensus it says it wants, why jeopardise it by tinkering with details?

The problem grows when we bear in mind that deals with organised business are a great deal easier to achieve than a more general consensus between majority leadership and whites in general.

For a variety of reasons, organised business is often willing to negotiate deals which many businesses find unpalatable — later employer resistance to the Labour Relations Act which business representatives negotiated is an example So if a consensus cannot be achieved with business, it seems unlikely it can be reached with anyone else in the minority camp

Mbeki is right to seek consensus on key national goals He and his colleagues are also entitled to insist that it do more to reflect the goals of national political leadership, which has a mandate to implement its programme.

However, consensus cannot be achieved simply by commanding it — it requires compromise Still less can it be achieved by winning agreement from strong minority interests — and then overturning it on questions of detail.

□ *Friedman is director of the Centre for Policy Studies*

LABOUR *Department considers 'urgent changes' to law*

CT(BR)11/8/98

Mdladlana slams union violence

(166) (H[illegible])

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Shepherd Mdladlana, 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.

Mdladlana 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."

Mdladlana 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 150 of the new Labour Relations Act (LRA)

NOT AMUSED *Shepherd Mdladlana slates rash acts*

Mdladlana 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 the 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 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

(166)

Reneé Grawitzky

BD 14/8/98

CABINET approved a number of technical and noncontroversial 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 nonparties.

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 the application 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-

CIVIL SERVICE

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HANDCUFFED BY LABOUR LAW

Does Skweyiya have the will?

FM 14/8/98

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 1995 has declined by 9,8%, though the provincial share of the total has risen 3,5% to 70,5%

"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 twins' of the national Budget They constitute 58% 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 Malala

Committee clears way for equity bill

ous" and would discourage foreign investment, place an obligation on employers to "progressively reduce" the wage gap between workers and their bosses.

The amendments call for employers to disclose to government the remuneration packages of all their employees.

BD 14/8/98

Labour Minister Shepherd Mdladlana and his departmental officials met BSA last week to explore whether some common ground could be found. However, Mdladlana said this week that the parties at the meeting had "agreed to disagree".

Intensive lobbying by the Congress of SA Trade Unions (Cosatu) was a major factor that gave impetus to the government's decision to include the wage differential issue. Cosatu parliamentary lobbyist Neil Coleman applauded the passage of the amendments yesterday.

Coleman said "We welcome those aspects of the legislation which seek to transform the labour market to benefit the overwhelming majority instead of a tiny minority. However, the wording in its present form, meant to eradicate the apartheid wage gap, is not squarely confronting this legacy."

Cosatu would have preferred that employers "address disproportionate wage differentials in their equity plans"

Cosatu applauds passage of equity bill

CT(BR)14/8/98 (166)

FRANK NXUMALO
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, the 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 practice and 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

Zwelinzima 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"

☐ **Business Watch, Page 2**

Controversial labour equity bill set to be in force by October

(Pg) (166) ARG 15/8/98

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".

'Executives in South Africa take home 19 times as much as workers'

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 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 Tito Mboweni pointed out· "We cannot 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 harrowing 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 unnaturally large gaps in income are reflected, employers may reduce these through collective bargaining, compliance with sectoral determinations made in terms of 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 appear to have been addressed by an agreement that the information is disclosed only to the Employment Conditions Commission. Minister of Labour Shepherd Mdladlana 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 difference is eight, 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

Star 15/8/98 (166)

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

(166) (176) CT 19/8/98

GODFREY OLIPHANT

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

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

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 wisdom. 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.

To (expect) apartheid injustices to disappear naturally is naive and dishonest

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-discrimination 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 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, social origin, sexual orientation, age, disability, religion, HIV status, belief, political opinion, culture and language

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 progress because he was not a Broederbonder

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, has the second largest income gap in the world (Japan 7.1), an apartheid legacy Equity legislation must aim to eliminate this.

● *Godfrey Oliphant is an ANC MP and chairperson of Parliament's Labour Portfolio Committee.*

Job equity bill's wages clause irks business

ARLT 20/8/98 (166) (176)

CLIVE SAWYER
POLITICAL CORRESPONDENT

For bosses and workers, the final countdown towards a new workplace regime begins today as employment equity legislation enters its final round of legislative hurdles.

Although minority parties are expected to introduce last-minute amendments which will force postponement of voting on the Employment Equity Bill, the National Assembly is expected to approve the bill tomorrow.

It will then be forwarded to the National Council of Provinces for processing before the end of this year's parliamentary session in November.

The landmark legislation will require companies with 50 or more employees, or whose turnover exceeds R10-million, to implement plans for redressing past discrimination and for closing the wage gap between employers and employees

The provisions for narrowing the wage gap, which will compel employers to disclose to the Government the salaries of all employees, have infuriated organised business, which says the measure will deter foreign investment.

The Cape Chamber of Commerce and Industry said the wage-gap proposals would expose employers to unions re-opening wage negotiations after the normal bargaining process was concluded.

Chamber president Johann Baard said the wage-gap measure would amount to giving unions a second bite at the cherry "and as such severely undermine centralised bargaining and bargaining councils".

The wage gap was not as severe as the Congress of SA Trade Unions had claimed, he said.

The gap was larger in the United States and South Africa's wage differential was similar to that of the United Kingdom.

The Democratic Party and National Party yesterday submitted amendments to the bill which will mean it will have to be referred back to the Assembly's labour committee after today's debate.

Equity bill hits DP, NP roadblocks

ST (Mn) 20/8/98 (166)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Voting on the Employment Equity Bill in the National Assembly, originally scheduled for today, was postponed 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 necessarily 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 Mpati, 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," Mpati 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 Roteck 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 7,3 percent

Bill to reveal execs' salaries

CT, 20/8/98

(166)

JOVIAL RANTAO
PARLIAMENTARY BUREAU

A MAJOR political storm has erupted in parliament after the National and Democratic parties launched 11th hour action to delay the passage of the controversial Employment 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

Cosatu has applauded the planned laws, saying they will "transform the labour market to benefit the overwhelming majority instead of a tiny minority"

But Business South Africa has described the amendment regarding the disclosure of pay as "onerous" and a deterrent to foreign investors The Cape Chamber of Commerce and Industry also "vigorously opposes" the amendments

The wage gaps between bosses and workers which the amendments seek to close are large, with Labour department statistics showing that South African managing directors earn 100 times more than the lowest-paid workers

SA MDs earn 100 times more than the lowest-paid

The NP and DP's move yesterday in filing last-minute tech nical amendments to the bill has irked the ANC, which has accused them of irresponsible behaviour

Godfrey Oliphant, ANC MP and chairperson of parliament's Labour Committee, said "Both the DP and the NP have had months to submit these new amendments during all the different legislative stages

"It's hard to believe they're serious about it as they have never previously raised these issues "

The proposed amendments — which are largely of a technical nature — included substituting the definition of "black people" with "Africans, coloureds, Indians"

NP labour spokesman Willie Fourie denied his party was using delaying tactics

DP leader Tony Leon said the amendments had been tabled because those submitted earlier to the committee were rejected before being properly considered

The controversial bill, once it becomes law, would radically change the lives of millions of South Africans and reshape the workplace

The bill, which was subjected to thorough discussion at the National Economic Development and Labour Council (Nedlac), is set to be fiercely opposed by the National Party, the Democratic Party and the Freedom Front

However, the ANC is expected to use its parliamentary majority to push the bill through

The main objective of the legislation is to put an end to an era during which white males were preferred 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 redressing past discrimination and for closing the wage gap between bosses and workers

The Employment Equity Bill also intends to prohibit unfair discrimination in the employment policies and practices and unfair discrimination on the grounds of race, gender, sex, origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language or birth against employees or job applicants

It would also outlaw medical testing unless justifiable.

Once it becomes law, the bill would require designated employers to prepare and implement employment equity plans after conducting a workforce analysis and having consulted with unions and employees.

The bill also protects employees from victimisation for exercising rights conferred on them by the legislation

Incentives offered to companies which comply with the legislation would include access to state contracts worth R65 billion a year

On the other hand, companies which fail to eliminate discrimination in the workplace and introduce equal opportunities will face heavy fines and be denied access to lucrative state contracts.

The Democratic Party has charged that the bill may be unconstitutional

DP leader Tony Leon said yesterday 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

Cosatu and the Pan Africanist Congress have welcomed the bill, while the National Party has described it as "reverse 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

Star 20/8/98 (166)

By Jovial Rantao
Cape Town

Proposed 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,

Legislation prohibits unfair discrimination

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 for 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 as justifiable.

Incentives offered to companies which comply would include access to state contracts worth R65-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

sowetan 20/8/98

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 preliminary stages, is expected to use its parliamentary majority to steamroller 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 the 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 scrabble 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 SA 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*

Minister rapped over 'damaging' remarks

Sowetan 19/8/98

By Joe Mdhlela

THE year-long dispute between Mineral and Energy Affairs Minister Mr Penuell Maduna and auditor-general Mr Henri Kluever entered a new phase yesterday with the minister being found guilty by a parliamentary committee of using damaging remarks about Kluever.

At the centre of the controversy was a claim that Maduna accused Kluever of having misled Parliament about the alleged theft of R170 million from the Strategic Fuel Fund (SFF)

Maduna also accused Kluever of not being transparent and "sloppy" during auditing procedures in relation to the books of the SFF and the Central Energy Fund (CEF) in 1994.

Part of the controversy included the loss of R5,2 million in a crude oil freight-hedging contract that was in contravention of SFF regulations.

Yesterday, an *ad hoc* parliamentary committee found that Maduna had unjustifiably made "inappropriate statements" that were offensive to Kluever.

The committee also established that Maduna had contravened the rules of Parliament, in particular Rule 99, which stipulates that criticisms of institutions created by Parliament, such as the office of the auditor-general, could only be made by way of a substantive motion

The committee did not investigate the truth or otherwise of Maduna's allegations, as this is being handled by the public protector.

The committee rejected argument by Maduna's counsel, Mr Kessie Naidu, that the rule regulated the conduct of MPs only during debate and not during question time.

Earlier Maduna had sought to have the Parliamentary committee reconstituted, but the request was rejected.

During the hearing Maduna wanted representatives of the Democratic Party (DP), the National Party NP) and Freedom Front to recuse themselves.

Maduna's lawyers argued that the presence of members of DP, NP and FF had shown that during the public protector's hearings "the parties were institutionally biased against Maduna".

After lengthy deliberations the committee unanimously resolved to recommend to Speaker Dr Frene Ginwala that Maduna be ordered to withdraw the remarks in the House.

After the committee's decision was announced, Naidu said Maduna had accepted the decision. The committee had the support of the African National Congress (ANC). It was set up in August 1997.

Maduna had also charged that Kluever was not a qualified accountant, to which the auditor-general responded saying that the criteria for his office had been set out in the Constitution, which among other things demanded that the incumbent should have a thorough knowledge of stat finance and administration

The ANC also requested that public protector Mr Selby Baqwa investigate the auditor-general's SFF reports

The parliamentary committee's decision means Maduna will be forced to withdraw the allegations but this will not stop the investigation by Baqwa.

During the hearings chaired by Baqwa over a month ago, Maduna's lawyers accepted that the allegation was false and that no evidence existed that the R170 million referred to by Maduna was nothing other than a mere book entry.

Discrimination out as equity bill gets the nod

75% majority says yes

ARG 21/8/98

CLIVE 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 Mdladlana a racist, to be followed in solidarity by his party leader and caucus.

With his predecessor Tito Mboweni watching from the public gallery, Mr Mdladlana 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 Mdladlana

"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 nonracialism

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 Leon said the bill did nothing for the poor, marginalised or the rural masses in whose name the ANC claimed to govern

Nhlahla Zulu of the IFP said it was doubtful it would cause business to emigrate, because there had been wide input on the bill

Ngila Muendane 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'

ARG 21/8/98 (166) (196)

BLADE NZIMANDE, General Secretary of the SA Communist Party, argues that the Employment Equity bill is a call to action for South African workers

The passage of the Employment Equity Bill by the National Assembly is another victory in our 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, nonracial, 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

The criticism that this bill reintroduces race as a category in our society is, in essence, a defence of class and racial interests

The charge that to introduce measures to deal with the legacy of apartheid racism is "re-racialisation", is nothing but a new, and disguised form of racism to defend apartheid privileges

This represents a more sophisticated form of racism in the era of a democratising South Africa.

This demonstrates that the NP and DP are still largely dependent on the defence of racial privileges for their own political survival.

That is why there is now practically no difference between the two parties, instead, the DP is assuming the role of the NP in the post-1994 period. In fact, opposition to this bill is also an expression of the extent to which it threatens the regime of the capital accumulation of the apartheid era for significant sections of the capitalist class

The SACP is acutely aware that the response to this bill by elements of the old apartheid ruling bloc brings forth very sharply some of the contradictions facing these elements in a democratising South Africa.

While the dominant sections of the white capitalist bloc would like to see the creation of a nonracial capitalist South Africa, at the same time the creation of such a society must be at their own behest and not imposed on them.

> ***'The bill is a significant victory for the working class and previously oppressed'***

Opposition to measures such as the Employment Equity Bill further illustrates the extent to which capitalism in South African has been dependent on racism and on gender inequality

There is indeed a realisation from the dominant sections of the capitalist class that apartheid-type racism is no longer a viable means of maintaining capitalism in South Africa, but at the same time the deracialisation of the South African economy creates new uncertainties for this class and its parasites.

The SACP is under no illusions about the challenges to transform the workplace in South Africa.

The actual implementation of the Employment Equity Bill will require constant militant struggles by organised workers

This is particularly the case in relation to the closing of the apartheid wage gap

The bill, in its present form, gives options to employers and the Ministers as to how measures to deal with disproportionate income gaps, should be introduced. But the actual options being chosen and pursued will be a product of protracted struggles

The capitalist bosses will no doubt attempt to limit the effects of this bill to the promotion and appointment of women, the disabled and blacks largely to managerial positions.

Clearly the thrust of the bill is in favour of the empowerment of workers in particular and is not intended to create only an elite

Workers will, as always, have to remain vigilant and consistently mobilise and struggle to ensure that the bill becomes a tool for the transformation of the workplace, for an end to discrimination on the shopfloor, and for a progressive narrowing of the wage gap

• The working class should never forget that capitalism will never finally eradicate racism, gender inequality and the discrimination against the disabled.

The bill is a significant victory for the working class and the previously oppressed, and it is a measure that takes the national democratic revolution forward.

The SACP will ensure that its members – particularly those in the unions – learn to use this important opportunity to speed up the transformation of the workplace

We will also ensure that through our political work we will continuously educate the workers, women, youth the unemployed and the poor in general, that lasting and sustainable equity can come only through a society free of capitalist exploitation.

We see no contradiction between this socialist objective and the measures proposed in the bill. In fact, the struggles to implement this bill will magnify most clearly the relationship between discrimination and capitalism For the SACP, this bill is, therefore, a call to action for workers to engage with the bosses in the various sectors in which they are organised to ensure that this legislation is implemented.

It would indeed be a mistake for the working class, and organised workers in particular, to see this bill as the culmination of the struggles to transform the workplace Rather, it should be seen as an instrument through which workers' struggles need to be intensified to confront and transform the apartheid labour regime

SA leads the world in lighting the way across the racial pay gap

CLIVE SAWYER
POLITICAL CORRESPONDENT

South Africa seems to be leading the way internationally in requiring employers to disclose details of employees' salaries as a means of closing the wage gap

Making 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

Congress of SA Trade Unions researcher Kenneth Creamer, while cautioning that he had not gone into the issue in depth, said he understood transparency had been used elsewhere in the world as a tool to close the wage gap

In Norway this had enabled comparisons to be made between private sector and public sector earnings

In the United States a gender based mechanism for reporting of salaries of women in the public service had been used.

Mr Creamer said although there was some international precedent, South Africa was unique in that the measure was being used to close the apartheid wage gap

Research had shown that in South Africa there was a wage differential between the highest and lowest echelon of about 100 to one. Japan, in comparison, had a differential of about seven to one

One researcher said that practice in South Africa until now had been that balance sheets were not required to indicate salaries of directors – but this was not the case elsewhere

The Labour Research Service and Naledi, Cosatu's research arm, were unable to provide information on the issue

Democratic Party researcher Carol Johnson said her investigation of international equity legislation – including that of the United States, United Kingdom and Canada –governing equity for the disabled and on a gender basis, found no precedent for what was being proposed in the Employment Equity Bill.

Section 27 of the bill says that every employer covered by the legislation will have to submit a statement in a prescribed form on the remuneration and benefits received in each occupational category and level of that employer's workforce.

Where disproportionate income differentials are reflected in the statement, the employer must take measures to progressively reduce such differentials "subject to guidance given by the minister of labour"

These measures may include collective bargaining, compliance with sectoral determinations made by the minister in terms of the Basic Conditions of Employment Act, applying the norms set by the Employment Conditions Commission, relevant measures in skills development legislation, and "other measures appropriate in the circumstances".

The Employment Conditions Commission will have to research norms and benchmarks for proportionate income differentials – the bill's term for the wage gap – and will have to advise the minister on appropriate measures for closing this gap

The bill specifies in plain terms that the commission will not be allowed to disclose any information about individual employees or employers

But a notable exception to this rule will be that parties to collective bargaining will be able to request the information for collective bargaining, subject to rules in the Labour Relations Act.

This week, expressing a view backed by many labour researchers, labour portfolio committee chairman Godfrey Oliphant argued that, given the inextricable links between South Africa's racist past and the low wages paid to blacks, special measures were justified to redress the imbalance

Equity Bill debate evokes storm

(166)( ) CT 21/8/98

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 Mdladlana 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 Mdladlana

"For employment equity to be optimally implemented, it is essential that visible leadership is evident at all levels of companies," said Mdladlana, 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 Pieter Groenewald was ordered out of the House for refusing to retract his claim that Mdladlana was a racist

Before walking out, FF leader Constand Viljoen said the bill would result in "permanent joblessness and poverty for my people"

NP leader Marthinus van Schalkwyk said "skin colour now determines a person's success in life"

"Despite all the semantics and denials, 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 "a pernicious piece of social engineering — pious in intention but destructive in effect"

"It legalises the intrusiveness of a state bureaucracy to determine a range of matters which do not belong to any state but to the market forces," he said, adding that he believed it was unconstitutional and would burden business

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 Nhlahla 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 workforces Less than a third had a written equity policy

The survey was based on responses by 455 organisations, despite the fact that 6 000 questionnaires were sent out

Only 23% of these were major companies

Bowmaker-Falconer said the poor response could in part be attributed to Business South Africa (BSA) "BSA was 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 disregard people with disabilities, and they are certainly not considered in any plans," said Labour Minister Shepherd Mdladlana.

Department consultant Professor Harish Jain 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

21/8/98 Star (16b)

WHAT THE ANC SAYS

BY GODFREY OLIPHANT

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 work place in legislation 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 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, social origin, sexual orientation, age, disability, 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 Broederbonder, 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, deracialise 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 100 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 Oliphant is an ANC MP and chairperson of Parliament's Portfolio Committee on Labour*

Entrenching reverse discrimination

Star 21/8/98 (166)

By Willie Fourie

WHAT THE NP SAYS

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 every day

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 damage 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*

Today the ANC is expected to use its parliamentary majority to push through the National Assembly the Employment Equity Bill, which seeks to correct the uneven distribution of jobs and incomes created by the apartheid policies of the previous government Political Correspondent **Jovial Rantao** reports

A new dawn for workers

Star 21/8/98 (166)

DEBBIE YAZBEK

Hopeful . in the past people with disabilities were discriminated against but all that will change once the new bill is signed and approved by President Mandela.

The Employment Equity bill, popularly or notoriously known as affirmative action legislation, forms the nucleus of the Labour Ministry and the Government's plan to radically transform the workplace and the South African society

Ever since its introduction in March this year, controversy has been the bill's second name and the debating arena its second home. Provisions contained in the bill, together with those in the Basic Conditions of Employment Act and the Skills Development bill, will fundamentally change what most working South Africans do for eight hours, five days a week.

The Employment Equity bill, the Government has argued is meant 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. Opposition parties, in particular the National Party, the Democratic Party and the Freedom Front, have fiercely opposed the legislation as reverse racism.

The NP has claimed that the bill would re-racialise the workforce, have a negative impact on job creation and strain economic growth. The DP believes that the bill makes bad economic sense.

"It is not only discriminatory, but so sweeping in its compass that it will cover many small businesses with high turnovers, such as the so-called mom-and pop café and the petrol station on the corner," said DP leader Tony Leon.

Two other key stakeholders – business and labour – were co-architects of the bill as they were involved in its development through the National Economic Development and Labour Council (Nedlac) Despite differences, both business and labour have been supportive of the legislation.

Gosatu's main gripe has been that 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 bench marks.

But, does South Africa need affirmative action legislation?

To support its case, the Government has cited two key labour market studies, the Presidential Commission on the Restructuring of the South African Labour Market and the International Labour Organisation which arrived at the same conclusion with respect to the gross and very deep racial and gender differentials in the South African workplace.

A recent study by the Breakwater Monitor showed that:

- 87% of all management in the private sector was still white.
- 93% of all executive managers were white.
- 92% of all senior managers were white.
- Africans made up only 6% of all managers.
- Women made up 14% of all managers (77% of these being white women)

Former labour minister Tito Mboweni, who pioneered the legislation before leaving government for the Reserve Bank, said discrimination against women, and people with disabilities affected their motivation and commitment and had negative effects for productivity and the country's economic growth.

"As a result the bigger loser from discrimination and denial of equal opportunities, in the long run, is South Africa itself," he said.

In terms of the legislation, the Government would be required to establish a Commission for Employment Equity which would enforce the law 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 went to the National Assembly with major changes, including a clause which requires that employers should validate their psychometric testing and take measures to ensure that such testing was not biased against members of designated groups.

The definition of employer in the draft legislation has been broadened. Employers who were supposed to prepare equity plans, implement them and report on their progress were no longer defined simply on the basis of employing 50 employees or more, but the turnover of the employer has now been incorporated and defined in terms of the Small Business Act.

The third change means that the Commission for Conciliation, Mediation and Arbitration would no longer be involved in handling the enforcement of the provisions of the equity legislation. The disputes would be handled by labour inspectors and the director-general.

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.

The process that was adopted in the development of the bill was most extensive and participative. It took two years since (1995) Mboweni established the Affirmative Action Policy Development Forum This was a forum of key social partners, including some non-governmental organisations that have an interest in the area of employment equity.

Some labour analysts have, however, warned that the three pieces of labour legislation were too sophisticated for an economy of a developing country such as South Africa.

Next stop for the Employment Equity bill will be the National Council of Provinces, which could make amendments before passing it to President Mandela to be signed into law

FF walks out of Parliament during fiery debate on equity bill

Star 21/8/98 (456) (166)

By Jovial Rantao and Kerry 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 Mdladlana was racist

Earlier, members of the whites-only Mineworkers' Union staged a sit-in at Mdladlana'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.

Mdladlana 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

(166) (167)

Sowetan 21/8/98

SOUTH African companies are displaying a disturbing lack of progress in implementing employment equity practices, Labour Minister Mr Shepard Mdladlana said yesterday

Mdladlana 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," Mdladlana 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 comprise 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

Mdladlana 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.*

Stormy passage for Equity Bill

Unhappy NP calls it discriminatory and says its measures constitute 'neo-apartheid'

(166) (166) ARG 22/8/98

ESTELLE RANDALL

The Employment Equity Bill was approved by the National Assembly this week by a majority of 714 votes to 72 in spite of a last minute attempt by opposition parties to delay the legislation.

The bill now proceeds to the National Council of Provinces for verification before being signed into law

The National Assembly was due to vote on the bill on Thursday but the Democratic Party and the National Party stalled its passage when they tabled last-minute amendments.

The NP withdrew its amendment but its leader, Marthinus van Schalkwyk, said the bill was discriminatory and that it constituted "neo-apartheid"

He cited extracts from a speech by South African Breweries (SAB) acting chairman Cyril Ramaphosa to justify the NP's belief that the bill would jeopardise economic growth and job creation.

Mr Ramaphosa said in the 1998 SAB annual report: "The recent procession of labour enactments promulgated certainly have positive aspects However, they also include aspects that are unduly prescriptive, let alone cost burdensome.

"Failure to find an appropriate balance could well act to the detriment of both job preservation and job creation, right across the business spectrum."

Meanwhile, a study commissioned by the Department of Labour has found that most South African companies have no idea how to implement employment equity

According to researcher Angus Bowmaker-Falconer, only 20% of the companies surveyed had an equity plan which had set down goals and timetables for addressing racial imbalances in their workforce

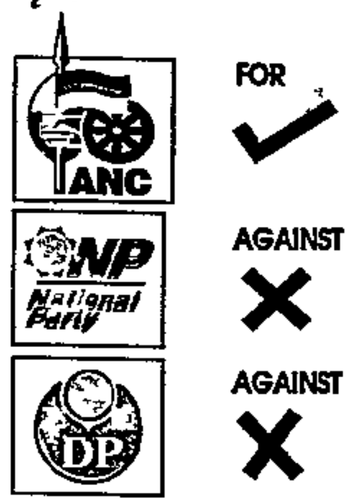
RESERVATIONS: Cyril Ramaphosa

STALLED: Marthinus van Schalkwyk

Fewer than a third had a written equity policy

He said the study clearly demonstrated the need for intervention to ensure workplace equity.

It revealed that African women constituted a mere 1% and African men 5% of senior management in the surveyed companies.



In contrast, the lowest categories of workers were 87% African.

The bill aims to achieve fairness in employment and to correct discriminatory employment practices which disadvantaged black people, women and the disabled.

It 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, culture, language, religion or belief.

Firms with 50 or more employees, or whose annual turnover is more than that set for a small business in terms of the National Small Business Act, will have to prepare and carry out employment equity plans.

Their equity plans must also include a statement of the pay and benefits received in each occupational category and level of the workforce.

Where there are unnaturally large gaps in income, employers must take measures to reduce these progressively

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 how to achieve these

The commission will not be empowered to publicise individual company information about salaries.

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

However, those guilty of contraventions face fines ranging from R500 000 to a maximum of R900 000

State knuckles down to enforce labour equity

ST (BT) 23/8/98

Study shows lack of progress in implementing equitable labour practice, goals and timetables, writes THABO KOBOKOANE

(166)

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 Shepherd 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 R28-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

'When judged against international best practice, our situation can only be described as abysmal'

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 87% of all labourers "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.

Clauses in act and bill at odds, says labour lawyer

BD 26/8/98 (166) (~~195~~)

Renee Grawitzky

FUNDAMENTAL contradictions existed between the provision in the Employment Equity Bill requiring employers to report on income differentials and provisions in the Labour Relations Act relating to information disclosure, a leading labour lawyer said yesterday

The introduction of this provision — to reduce wage differentials — could infringe on the right to free collective bargaining by allowing ministerial intrusion in the collective bargaining process between employers and employee bodies.

"No-one is denying that disproportionate differentials exist, the question is how we deal with this", he said.

The lawyer's concern follows the passage of the bill through the National Assembly last week amid heated reaction from various political parties.

The amended clause, aimed at facilitating reduction of wage differentials, will require employers to submit a statement to the Employment Conditions Commission on wages and benefits in each job category This statement should be submitted with the employers' report on employment equity plans

Where "disproportionate income differentials are reflected in the statement", an employer will need to take steps to "progressively reduce such differentials" on the basis of guidelines provided by the commission.

The commission is being set up in line with the Basic Conditions of Employment Act.

Mechanisms to reduce differentials could be achieved by collective bargaining, compliance with sectoral determinations, measures contained in the proposed Skills Development Bill or through the application of "norms and benchmarks" set by the commission

The commission will be required to conduct research and investigate "norms and benchmarks for proportionate income differentials" and to advise the minister on appropriate steps to reduce such differentials

These norms will have to be taken into account by bargaining councils in wage talks

Another labour lawyer said consideration had to be given to circumstances where disproportionate differentials were justifiable. Examples of this were cases where a company recruited external skills or recruited black personnel at a premium as part of affirmative action.

New employment act covers all of SA's workers

(166) BD 1/12/98

The new Basic Conditions of Employment Act will be promulgated today. Lisa Seftel looks at how the act will improve workers' lives and working conditions

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-third to time-and-a-half

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, mine and farm workers have been reduced from 48 to 45 hours This will be implemented on farms and mines from today Working hours for security guards have been reduced from 60 to 55 hours a week and will be further reduced to 50 hours in 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 that 45 hours a week without overtime

Because the new act improves the overtime premium to "time-and-a-half", workers will be paid more 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 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, they must be paid double time This is particularly 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 and safety risks They also often face danger if no transport is provided for them Previously, the law gave workers no special protection but the new legislation says night workers must be paid a premium or get additional time off The act also includes provisions to protect health and safety

The new act improves workers' leave provisions Annual leave has been increased from two weeks to three 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 a year

Maternity leave has been improved from 12 weeks to four months and extended to include women who have a stillborn child Women have greater choice as to when they take leave around the birth of their child — they are no longer obliged to take a month's 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 be present at the birth or illness of their children or the death of an immediate family member.

The act 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 farm and domestic workers For the first time, government will be able to set a minimum wage for domestic and farm workers With workers in these sectors earning as little as R100 and R200 a month, this measure is urgently needed

Some employers have argued that the act will raise labour costs and prevent job creation The labour department questions the basis of these arguments Jobs are nor created or lost by single laws 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

The act is nevertheless sensitive to the problems facing the labour market It is for this reason that it includes ways in which its provisions can be varied or changed to suit the circumstances of individual workers as well 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 tasked to enforce the law if there is noncompliance

Workers may be compelled to work only 45 hours a week.

□ Seftel is chief director labour relations at the labour department

LAW IN EFFECT FROM NOON

New rights today for workers in SA

CT 1/12/98 (166)

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 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 three-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 business 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 Saftel, 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 "

Labour lawyer Michael Bagraim 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 now 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 Bagraim "Whichever one gives you the better deal is the one that has precedence."

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

:onditions of Employment Act covers all in country from today, :ially the most vulnerable – domestic, farm, and contract sectors

Star 1/12/98 (166)

Now better protected ... workers on the way to dig trenches for street lights in Ivory Park.

Workers lose some chains

By Lisa Seftel

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 BCEA covers all

Most significantly, farm, domestic, part time and contract workers will have basic conditions of employment. Public service workers 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, mine and farm workers have been reduced from 48 to 45 hours. This will be implemented on farms and mines as 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

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 that 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 workers doing less overtime.

The new overtime rate could also be an incentive to employ more workers rather than pay 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.

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 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 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 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 give birth to stillborn children

All women, 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 month maternity leave before the birth.

However, the employer is still not obliged to pay the employee for the period for which she is off work due to her pregnancy

The act introduces a new form of leave called family responsibility leave. Workers are now entitled to three days paid leave per year to attend the birth or illness of their children or the death of an immediate family member.

The act prohibits children under 15 from working Children between 16 and 18 years of age will be better protected and prohibited from working in certain jobs, especially in the mining and manufacturing sectors.

New act allows for compulsory rest periods

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. With some workers in these sectors earning as little as R100 and R200 a month, this measure is urgently needed

Some employers have argued that the BCEA 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. 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 enterprises and sectors.

There is no prescribed minimum rate of remuneration

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 obliged to enforce the law if non-compliance occurs.

For further information contact your nearest Department of Labour office.

■ *Lisa Seftel is the chief director for Labour Relations in the Department of Labour*

This and other sample contracts, for instance one for small businesses, are available for free from the Department of Labour. These are not mandatory by law but are recommended by the department to protect both employers and workers.

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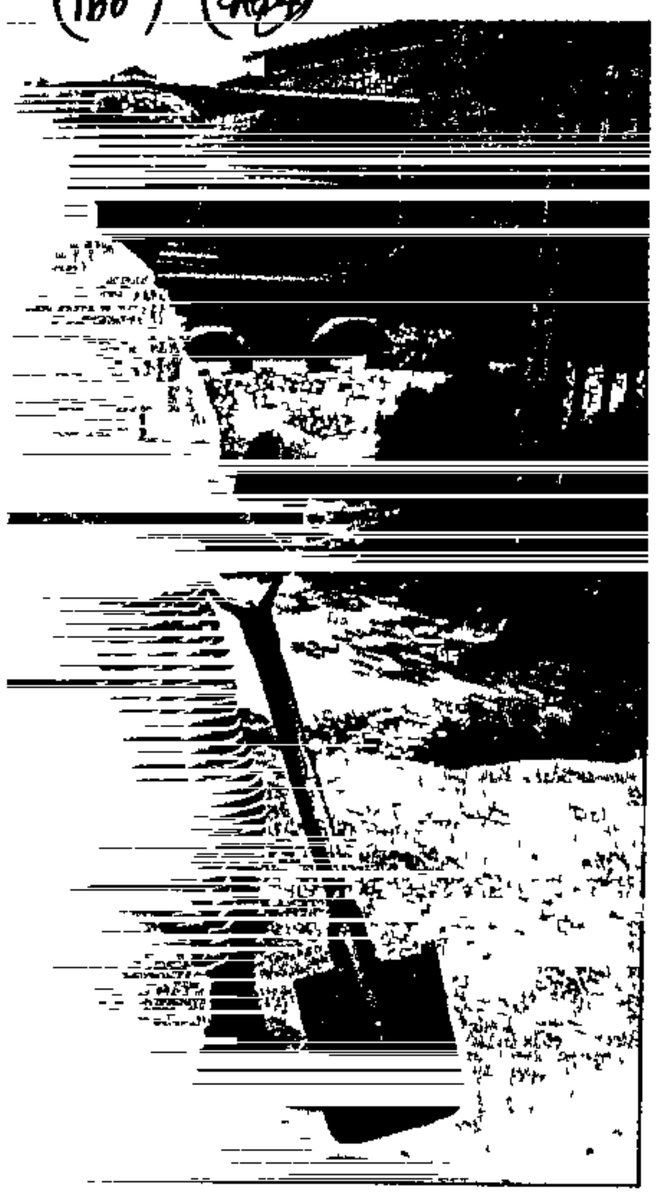

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SAMPLE CONTRACT OF EMPLOYMENT

Recommended by the Department of Labour for domestic employees

Entered into between ... ..
(herein referred to as "the employer")

Address of employer

and ... .
(herein after 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)*
Duties

4 Termination of employment
Either party can terminate this agreement with four weeks' written notice. In the case where an employee is illiterate, 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 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 R
(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 from 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 his/her 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 wage 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 after every 12 months of continuous service. Leave is to be taken at times convenient to the employer who may require that the employee take his/her leave at such times as coincide with that of the employer

11. Sick Leave

11.1 During every 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.

11 2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. 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 on pay
(Pick applicable clause)

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 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 visitors who wish to stay the night. However where members of the employee's direct family are visiting, such permission will not be necessary
(Pick applicable clauses.)

16. Clothing
sets of 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.

THUS DONE AND SIGNED AT ON THIS DAY OF 1998

EMPLOYER
EMPLOYEE
Witnesses.

New labour law will take time to kick in

Star 1/12/98 (166)

Experts says look to six months' confusion – millions will still operate outside the legislation

By Ryan Cresswell

The Basic Conditions of Employment Act – which changes the legal relationship between workers and bosses and gives more job security to millions of employees – comes into effect today.

But many will not feel the benefits of the act for months to come, according to experts.

Some of the conditions come into effect immediately but bargaining councils still have six months to work on hours of work and maternity and annual leave conditions.

These include compulsory work hour guidelines, leave times, overtime limitations, maternity leave, overtime pay, payment for work on Sundays, night-shift transport, maternity leave and a proviso that employers provide written information on the type and length of work.

Labour analyst Gavin Brown said domestic workers and farm labourers stood to benefit the most in the short term. Their work conditions were often the worst.

Hundreds of thousands of employers and millions of employees across the spectrum would operate outside the legislation for many months.

"You are looking at up to six months of confusion," he said.

Brown said smaller employers, especially on farms, would not be sure of what to do and many employees would be unaware of their rights.

Kobus Kleynhans, the chief director of general and social affairs for the SA Agricultural Union, said the SAAU planned to launch seminars around the country in February to inform farmers of the new laws.

Farmworkers would still work for 48 hours a week until next December under transition regulations, he said.

The SAAU was "a long way down the line" in organising a protocol with the labour department. Because of the current security situation labour inspectors should contact farmers and say they are visiting.

"Farmers must understand that these guys are just doing their job and should be helped."

Lisa Seftel, chief director of labour relations for the labour department, agreed that "millions of workers" would work outside the provisions of the act for some time. "It will take a while to come into full affect."

Seftel said the department would not use the "big stick" against employers initially, unless there were obvious and gross violations of the employment ethic.

"We will try education, briefings and visits to businesses first. If businesses do not comply, then we will act."

Seftel said employees should ask for written information on their work so that if the department wanted to prosecute at some stage, there would be more proof.

Brown said workers connected to large unions would probably fare better than most.

Brown said wage determinations would stay until they expired or the situation was changed by the Employment Conditions Commission.

Civil servants would not be covered by the act for another 18 months, Brown said.

▶ Workers lose some chains
Page 15

CAROLINE SUZMAN

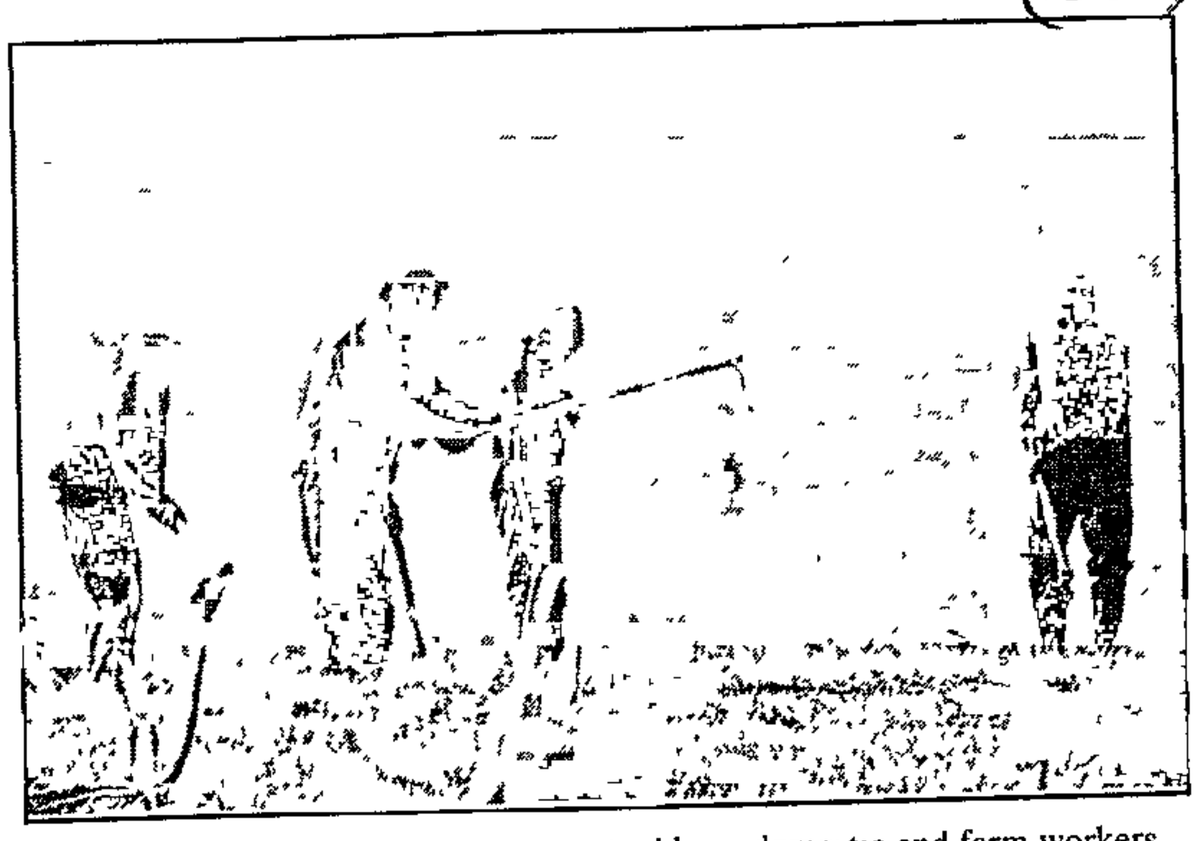
Help at hand ... Rabeeah

New deal for workers

Sowetan 11/12/98

The new Basic Conditions of Employment Act is set to change the conditions under which the lowly paid work. **Lisa Seftel** provides the details

(166)



The new Basic Conditions of Employment Act will improve the lives of farmworkers.

THE NEW Basic Conditions of Employment Act (BCEA) will be promulgated today This article looks at how the Act will improve the lives of workers

Firstly, the previous law did not cover all workers The new BCEA, on the other hand, covers all workers

Most significantly, farm, domestic, part-time and contract workers will have basic conditions of employment Public service workers will be covered from May 1 2000

South African workers work long hours and often overtime to make ends meet And many workers live far from home and spend far too much time away from their families

The new BCEA recognises this by reducing working hours and increasing the overtime premium from "time and a third" to "time and a half"

The law now says that the maximum that a worker can be compelled to work is 45 hours a week Weekly working hours for shift mine 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

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 that 45 hours a week without overtime pay

As the new Act improves the overtime premium, workers will be paid more 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 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 more 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 BCEA 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 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 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 choice as to when they take leave around the birth of their child – they are no longer obliged to take one month 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 urgently needed

Some employers have argued that the BCEA 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 Presidential Jobs Summit has shown, sustainable job creation requires a multi-faceted 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 if non-compliance occurs

(The writer is the Department of Labour's chief director of labour relations)

Labour Minister Shepherd Mdladlana at the Midrand launch of the new Basic Conditions of Employment Act yesterday.

Picture ROBERT BOTHA

'Act will not harm small businesses'

Reneé Grawitzky

LABOUR Minister Shepherd Mdladlana countered speculation yesterday that the new Basic Conditions of Employment Act — which came into effect yesterday — would harm small business.

At the launch of the act, he said a probe into the effect of the act on small business 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 onerous for small business" if certain sections were not varied.

The Employment Conditions Commission — set up in terms of the act to replace the Wage Board — 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.

BD 2/12/98

CAPEARGI

Workers get legal

2/12/98 (166)

Sick leave, holidays, hours laic

LISA SEFTEL

Now that the 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 that 45 hours a week without overtime pay.

The new Act improves the over-time 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 over-time 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 m maternity leave before the bir

However, the employer is not obliged to pay the employ the period for which she is off due to her pregnancy.

The Act introduces a new of leave called family respons leave. Workers are now enti three days' paid leave per y attend to a newly-born baby, children or for the death immediate family member.

The Act prohibits chi under 15 years of age from wor Children between 15 and 18 age will be better protected and hibited from working in cer areas, especially in the mining manufacturing sectors.

In addition to setting a flo rights for all workers, the le tion includes provisions for

New day dawns: millions of domestic, farm and contract workers now have rights in the workplace, thanks to changes in "

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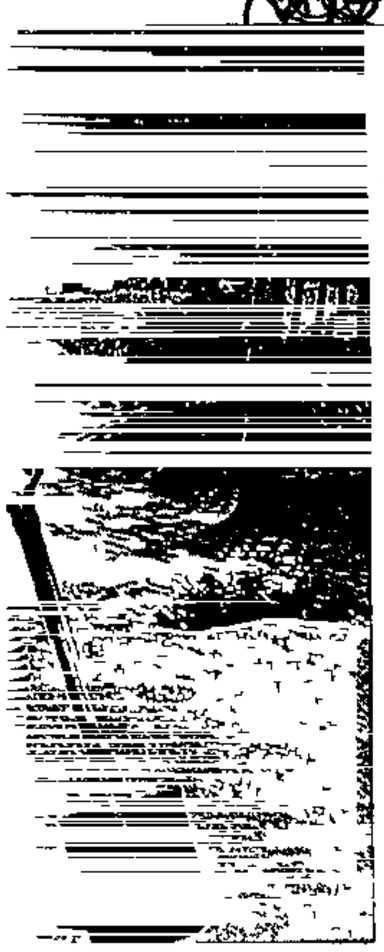

– thanks to changes in the law

lishing 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 With some workers in these sectors earning as little as R100 and R200 a month, this measure is urgently needed.

Some employers have argued that the Act will raise labour costs and reduce 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 improve productivity and reduce negative social consequences, and therefore the social costs, of poor working conditions

The Act is nevertheless sensitive to the problems facing the labour market

It is for this reason that it includes ways in which its provisions can be varied or changed to suit the circumstances of individual workers as well as enterprises and sectors.

There is no prescribed minimum rate of remuneration

Workers and employers are urged to ensure that their conditions of employment comply with the new law

Members of the Department of Labour are available to advise employers and workers on their rights and obligations. It is also obliged to enforce the law if non-compliance occurs

For further information contact your nearest Department of Labour office

■ *Lisa Seftel is the chief director for Labour Relations in the Department of Labour*

This and other sample contracts, such as for small businesses, are available from the Labour Department. They are not mandatory in law but are recommended by the department to protect both employers and workers

– to take one month's
– leave before the birth
–, the employer is still
– to pay the employee for
– for which she is off work
– pregnancy
Act introduces a new form
–alled family responsibility
–rkers are now entitled to
–ys' paid leave per year to
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–ing sectors.
– to setting a floor of
all workers, the legisla-
–ides provisions for estab-

SAMPLE CONTRACT OF EMPLOYMENT

Recommended by the Department of Labour for domestic employees

Entered into between ..... *(herein referred to as "the employer")*

Address of employer: .....

and ..... *(herein after 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)
Duties .....

4 Termination of employment
Either party can terminate this agreement with four weeks' written notice In the case where an employee is illiterate, 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 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 R .....
(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 from ..... 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 his/her 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 wage 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 after every 12 months of continuous service Leave is to be taken at times convenient to the employer who may require that the employee take his/her leave at such times as coincide with that of the employer

11. Sick Leave
11 1 During every 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
11.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked
11 3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. 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 on ..... pay
(Pick applicable clause)

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 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 visitors who wish to stay the night. However, where members of the employee's direct family are visiting, such permission will not be necessary
(Pick applicable clauses.)

16. Clothing
..... sets of 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

THUS DONE AND SIGNED AT ..... ON THIS ..... DAY OF 1998

EMPLOYER .....
EMPLOYEE .....
Witnesses .....

ANDREAS VLACHAKIS

Good news ... labour inspector Maria Engelbrecht hands out a pamphlet on the new Basic Conditions of Employment Act to a passer-by in Johannesburg.

Intensified drive to educate public on employment act

(166) Star 2/12/98

By Ryan Cresswell

A national campaign to educate people about the Basic Conditions of Employment Act was intensified countrywide yesterday to coincide with the launch of the new legislation.

The new act will provide more job security for millions, but the Department of Labour is concerned that workers do not know enough about the legislation.

Labour Department staff are confident that most workers know about the act. However, they have found that many employees do not know how the new law will affect their own lives, said Tommy Bangani, labour relations deputy director for the department in southern Gauteng.

Bangani was speaking at an information presentation held at Attwell Gardens in the centre of Johannesburg yesterday. Similar events were held around the country.

Bangani said about 300 Gauteng Labour Department staff members – mostly labour inspectors – were trained in July to provide information.

Since then, pamphlets had been handed out, information had been provided through the media, and talks had been held with non-governmental organisations.

But he said the campaign would now intensify, and administration staff in Gauteng would also be trained to provide information on the act.

Bangani said thousands of staff members around South Africa had been trained to educate people about the new legislation.

"In January we will go out to labour centres all over Gauteng. We will also give out summarised versions of the act to businesses and hold more meetings with employees and employers," he said.

Concern that workers don't know enough about legislation

He said his branch aimed to reach at least 300 000 people by the time the campaign ended in March.

The Labour Department has printed thousands of pamphlets and comics explaining various aspects of the new legislation in a simple way.

New job law not well received by Vaal farmers

(166)

Sowetan 2/12/98

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, Hartsenbergfontein 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 Parvus, 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 Masuku said she earned R100 a week and is not paid overtime

● See page 6

which left the Orange Free State delegates holding the balance, Natal having opted for Pretoria Bizarre claims were advanced to locate the capital in Parys Kroonstad, Potchefstroom, Mafeking Queenstown and, believe it or not, Rosmead Junction

The price of Union was compromise the tripartite division which has survived 90 years

The new Constitution continues the status quo but provides that national legislation can alter it and locate the capital elsewhere

Given the divisive nature of the issue this provision was a mistake because it potentially allows the majority party simply to ram the legislation through parliament

In the light of Deputy President Thabo Mbeki's call for more consensual politics I make the following suggestion let the issue be decided by a referendum

It may be objected that referendums are expensive but this could be minimised by piggy-backing the question on to the general elections in 1999

What weight would the outcome of a referendum carry?

The Constitution makes no reference to a referendum and leaves the question entirely up to parliament The referendum's significance would consequently only be political — in a sense advisory to parliament One hopes parliament would be reluctant to go against expressed popular wishes The exercise might also serve as a useful test of the strength of our democratic commitments

David Welsh Professor of Southern African Studies UCT

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city those who rifle the dumps claim they can make R100/week by selling waste to middlemen in this curiously distinctive market found of course in other world cities where the poor have been neglected

The majority of the squatters must be commended for at least seeking to obey the law despite the degrading and inhumane conditions in which they work They can be seen standing patiently along the N2 — the road to the airport — offering themselves for labour selling what they can bearing piles of wood across the motorway for fuel in the shantytowns or even herding goats Livestock on the N2 is as much a menace as fog or in times of political anger stone-throwing youths

As in Johannesburg, the hawkers have proliferated So have the prostitutes The street people — tiny frail glue sniffers among them — are everywhere

However — and this is a calculation in the minds of affluent folk from Gauteng in search of safer pasturage in the Cape — it is well known or believed that the city's crime patterns are sectionalised Hijacking rape and random murder are not yet common in the richer suburbs — though not unknown A white woman was recently killed on a golf course near Milnerton

The myth persists that crime is largely restricted to the Flats where the endurance of gangs and their traffic in narcotics and guns has spawned People Against Gangsterism and Drugs (Pagad) the vigilante group with fundamentalist Muslim affiliations Pagad was against the Olympic bid saying Cape Town should first rid itself of the scourge of the gangs Perhaps they have a point

In July a nine-year old girl Nazli van der Schyf was shot dead in an apparent attack on her father Last week another child was wounded in a similar attack There is little doubt that the Pagad-gangster conflict is escalating and the police — who can neither enforce the law nor rely on an effective justice system — appear helpless

The gangs perpetuate themselves over decades within prisons like Pollsmoor which earlier this year was reported as 200% overcrowded To assume that — like the Mafia — they only shoot their own people would be a radical miscalculation The coloured community is upwardly mobile and the City Bowl area can justly point to a multi-ethnic vibrancy of spirit and live-and let live attitude But once- safe suburbs like Woodstock are no longer so one senior University of Cape Town academic had to leave because Pagad was targeting a drug dealer who lived across the road

'Coloured' crime masks a far deeper malaise that has now begun to infect the alienated black youth on the Peninsula For the first time evidence is emerging that a new kind of gang culture is spreading within the black communities It is nihilistic with one gang adopting the dead US west coast rapper Tupac Shakur as its icon and another New York's Notorious B I G — whose last album was the prophetically named *Ready to Die*

Television pundits lament the influence of Americanism in SA The advent of gangsta rap with its essential glorification of a life of crack "bitches" (as hardcore rappers call women) and drive by shootings will generate more concern About which little can be done unless the caring sector with its cottage industry of nongovernmental organisations can do more than the Americans have and inculcate a renewed sense of dignity and self worth in the ghetto

There are other bleak signs of the times In an effort to redistribute services provincial health department head Tom Sutcliffe speaks of shifting resources to the primary sector The likely effect will be to vitiate centres of excellence — Groote Schuur Tygerberg and the Red Cross Children's Hospital — while not truly alleviating mass problems These include the spread of tuberculosis and malnutrition in the low-lying foetid settlements the huge number of trauma patients as a consequence of drink drugs family feuds and spousal abuse among the marginalised Aids and lack of government mandated access to abortion facilities

Financial levelling throughout the public sector has so far failed to achieve its objectives And the general lack of funds has thrown up some grotesque incidents At the Salt River State mortuary there are too many bodies and the staff — who understandably have a high rate of absenteeism alcoholism and depression — were recently the target of complaints from neighbouring businesses that malfunctioning freezing units had led to an unwholesome stench and a 'river of human blood" in the streets

Railway police report a new phenomenon black rural women stranded at railway stations often with children because the promises of employment that brought them to the city — possibly through paid labour agents — had vanished

The list of social evils is long what makes them unique all taken together, is that the social and political history of the Cape seems to have conspired to bring them together precisely at a time of scant national resources On top of that the ANC has indicated a resentment of Cape Town — which could have a real effect if parliament is moved north as it is widely believed it will be

In the face of all this the white inflow to the Cape seems trivial though it isn't so for those who want to move The Cape remains a breathtakingly beautiful setting for a city with schools and universities of distinction Crime is skewed and may yet slither up affluent roadways but it has not yet done so Despite the famed insularity of the true *kaapenaars* who can be extremely hostile to those they perceive as outsiders Cape Town is an artistic haven It is within SA perhaps the one city where the original wilderness interweaves its spirit with the structures of possession and dispossession alike

It is in short a remarkable place It would be even more remarkable if those who have work families shelter and security were to love their neighbours just a little more To use the Cape as a last redoubt for the unimaginative life of a colonial would be to waste what remains But how that is to be done as Alan Paton used to say is another story

Peter Wilhelm

THE REGIONAL WAGE PACKET

Western Cape gross regional product by sector

Sector	Rm	%	% of RSA
Agriculture and forestry	4 175	6,9	18 6
Mining	121	0,2	0 4
Manufacturing (incl fishing)	15 004	24,8	14 0
Electricity and water	1 633	2,7	9 5
Construction	2 178	3,6	15 2
Commerce, catering and accommodation	12 645	20,9	18 1
Transport and communication	5 082	8,4	14 5
Financial and business services	8 625	14,3	19 2
Government services	6 654	11,0	13 9
Social personal and other services	4 356	7 2	16 0
Total	**60 500**	**100**	**14,2**

SOURCE: DEVELOPMENT BANK AND IDC ESTIMATES

Feeling the pain *conflict between Pagad and gangsters is escalating*

SOWETAN Wednesday December 2 1998

New law 'a break with past'

(166) Sowetan 2/12/98

By Mzwakhe Hlangani
Labour Reporter

THE new Basic Conditions of Employment Act represents a break with the legacy of abuse that characterised the apartheid workplace, Labour Minister Mr Membathisi Mdladlana said yesterday

Speaking at the launch of the Act in Midrand near Johannesburg, Mdladlana said it laid the foundation for realising the vision of labour market transformation that would help bring about economic growth and employment creation

Mdladlana referred to a former asparagus farm in the Free State where workers had "worked for seven days with only 45-minute breaks"

The minister warned that such incidents of gross disregard for worker rights could lead to a fine of up to R300 000 being imposed on a farmer

"We all share the responsibility for its successful implementation as the new law will not help vulnerable workers on its own," the minister said

The most important challenge for the ministry was to go all out with its meagre resources to enforce the Act to effect a meaningful change in working conditions. The ministry needed competent inspectors to use the enforcement mechanisms provided

For the first time domestic workers, part-time workers and contract workers would be protected by the law. Only army members, intelligence services and volunteers working for charitable organisations were not covered by the Act

A ministerial task team commissioned to investigate the Act's impact on small business had recommended that employers with fewer than 10 employees may require a special dispensation in overtime rate, leave and other provisions

Congress of South African Trade Unions deputy general secretary Zwelinzima Vavi emphasised that the introduction of the Basic Conditions of Employment Act was a turning point in the restoration of the dignity of black people in particular

He said it would go a long way in ensuring fair treatment of workers as respectable stakeholders in the economy of the country

Prohibition of child labour and fair labour standards would make vulnerable taxi drivers, domestic workers and farmworkers see the benefit of their liberation and total package of what they fought for

Organised business also pledged to support the new Act, despite its objections to some of the provisions linked to overtime rate and leave entitlements

Business South Africa chief negotiator Vic van Vuuren assured the minister that business would ensure the utmost success of the Act and hoped to see it bring together all social partners for the common goal of improving the economic growth of the country

5/9/17

After bid blow, city can aim for new 'gold

2004 experience can be channelled now into development priorities

ARG 8/9/97

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 is having to face up to itself in the cold, sober light of day, the Olympic dream shattered, with the question on every one's lips "What comes next?"

While losing the bid has been greeted with disappointment and despair in many quarters, there is also a sense of relief as people begin to realise that our lives are not going to be dominated by preparing for the Olympic Games.

Instead, it's time to focus on priorities

Among these must feature economic development (with tourism and the building of an international convention centre at the top of the list), public transport (as a means to promoting development), the provision of "housing, housing, housing, housing and housing" (to use a phrase from city manager Andrew Boraine) and the protection of our most precious natural asset – the environment.

In a sense, all of these dovetail.

Public transport is essential for the growth of tourism which will be boosted by a convention centre which can only succeed if our natural environment retains its unique qualities This it can do only if the quality of life of people is improved, starting with housing.

Having said that, it is important to note that Cape Town is further down the road to healing itself than it would otherwise have been without the extraordinary experience of bidding for the 2004 Games

Bidding has taught the city many lessons in how to compete internationally and how to successfully forge public/private sector partnerships Cape Town has been given an edge in the international focus through the bidding process, and now has a window of opportunity to improve its tourism industry and attract associated investment.

But the main focus of the bid was developmental, starting from the premise that the Games would be used as a catalyst to fix structural problems entrenched by an apartheid past.

The problems the bid sought to address have not changed. The city will just have to work harder at finding the money to fix them.

Chief among these problems is that the vast majority of the poor are concentrated in areas furthest from economic opportunity, on the Cape Flats Olympic planning focused on creating greater opportunities in these areas and improving transport.

> *'What I love about us, and what makes us work, is that we keep comparing ourselves to the best'*

The question that now arises is how do you go about achieving the same objectives, but without access to the "quick-fix" resources that were likely to flow from a successful bid?

David Bridgman of the Western Cape Investment and Trade Promotion Agency (Wesgro) believes that the city's war is against poverty and the way to win this war is to promote economic growth.

The Olympic bid went hand in hand with some valuable planning tools

For starters, it drew heavily on the Metropolitan Spatial Development Framework (MSDF), a framework which aims to bring about a more compact city, offering work and leisure opportunities close to people's homes

One of its key components is the idea of developing activity corridors closer to where the majority of people live thus reducing the need for the great commute to and from dormitory suburbs to work opportunities

Thus was born the Wetton/Lansdowne corridor concept aimed at attracting development to the impoverished south-east corner of the city, with a new central business district in the Philippi area.

Money for the Wetton/Lansdowne corridor is happily not Olympic related but flows from RDP initiatives with the Department of Transport picking up much of the tab

The framework also addresses the issue of public transport.

This is a matter which it says should be given priority to reduce the number of cars on the road to prevent a burgeoning problem of congestion and pollution.

Dr Bridgman's view is that Cape Town is in the same position as London was in 1860 before it acquired effective public transport.

"At some stage, the city either stops growing or it puts in a public transport system and keeps growing he postulates

His view is endorsed by metropolitan transport director Dave Eadie, who makes the point that if Cape Town is to improve its transport, and is unlikely to get the money directly from the Government, some other way of raising the money will have to be found.

This could include making an appeal to the citizens of Cape Town to endorse a public transport levy which could be built into car ownership petrol or raised from toll roads

Ideally what he would like to see is the kind of public transport which is as successful off peak as it is during rush-hour commuting times

"To sell public transport, you have to cater for off peak," he argues

Draft legislation, which would enable transport providers to tender for certain routes within certain planning specifications is in the pipeline

On the housing front, the Olympic Games were never widely regarded as a major provider of houses

Fears were expressed, notably by the Development Action Group (DAG), that they might have quite the opposite effect.

The group argued that the Games would potentially heat up the property market to the point where it would drive out tenants vulnerable to price increases and put pressure on the construction industry to complete Olympic projects rather than focus on low-cost housing.

In its post-bid comment, DAG commended the Olympic bid company, the Government and business pursuing the bid with fervour on grounds that their ability to "harn tremendous resources has b encouraging"

The organisation has expres the hope that the same enthusia will be used to tackle developmen needs in Cape Town.

In anticipation of a yes-vote, c planners also came up with an im native idea for making Parliam more attractive in Cape Town encouraging the development of eastern section of the city as a par mentary precinct.

With the Games no longer on cards, this initiative adds impetu the argument that Parliament sho remain where it is.

While the Olympic Games wo have been a catalyst which co have spurred the economy into me ing these demands, this would or happen if key sectors were promot and developed.

Significant sectors include mar facturing (responsible at present 23,29% of the Western Cape's gro regional product), commerce, cat ing and accommodation (re tourism) which accounts for just ov 20% of the gross regional product.

In Dr Bridgman's view, touris has to be the biggest economic pote tial for the region.

This is because it reaches into many other sectors which have provide all the things which are nee ed to make it work.

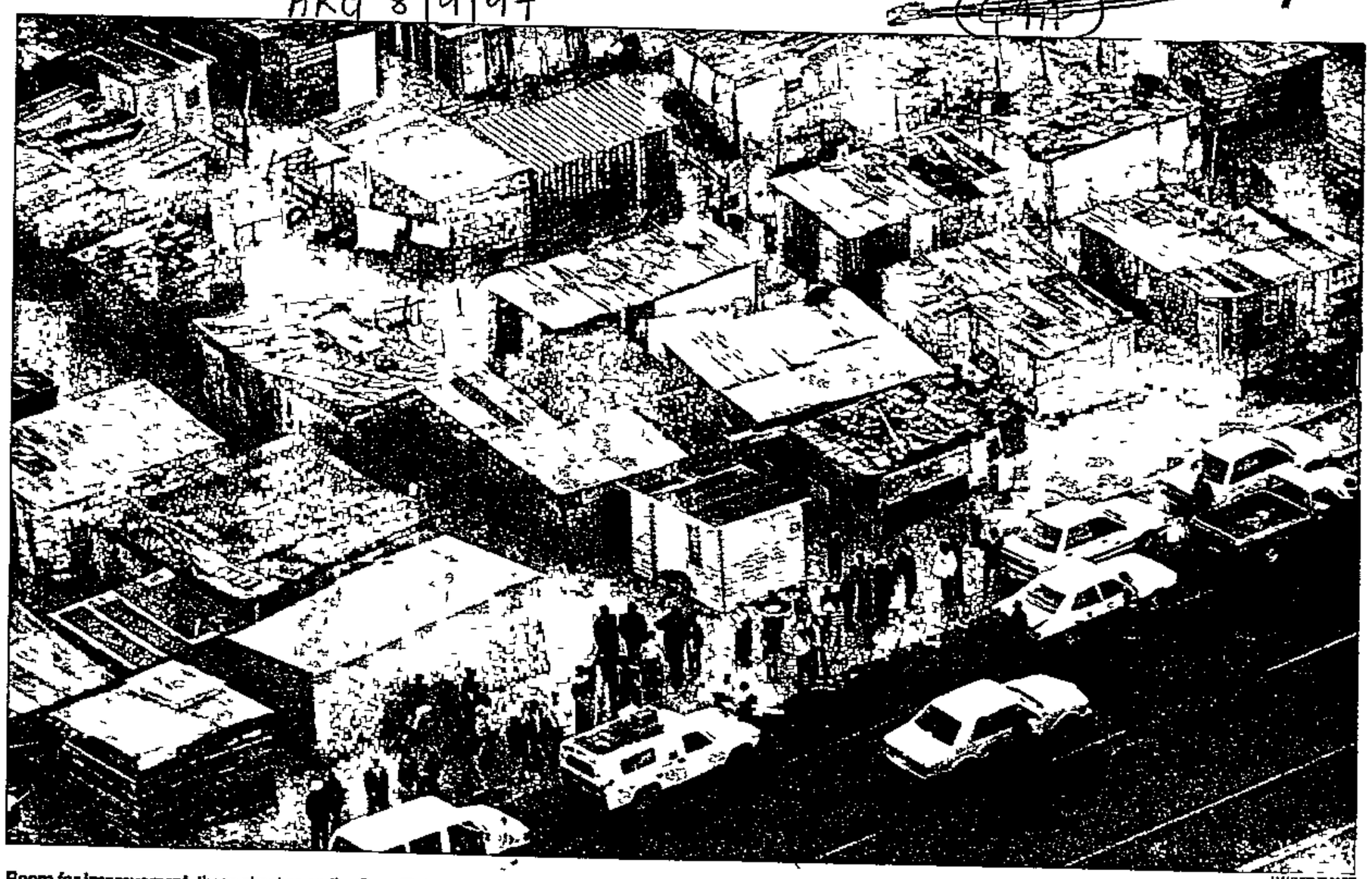
The convention centre, too, is the cards with the potential f attracting huge numbers of visitors the city

Ultimately it comes down to question of confidence.

"What I love about us and wh makes us work, is that we keep com paring ourselves to the best," says D Bridgman.

Cape Town was confident enoug to put itself on the line internation ly and emerged an Olympic finalist.

Now it needs to build on that conf dence to see it through to the 21st ce tury



Room for improvement: these shanties on the Cape Flats are just one area on the Peninsula that can be improved dramatically now that lobbying for the 2004 Olympics is over

HANNES THART

Unions 'must police deals'

Themba Hlengani (166) BD 3/12/98

UNIONS had not done enough to inform domestic and farm workers of their rights under the new Labour Relations Act and the Basic Conditions of Employment Act, Congress of SA Trade Unions (Cosatu) deputy general secretary Zwelinzima Vavi said yesterday.

Vavi said it was time unions started implementing agreements negotiated by Cosatu with government or employers, or they would be dismissed from the confederation. He was addressing a collective bargaining conference organised by the SA Municipal Workers' Union (Samwu) in Johannesburg yesterday

If unions had conducted follow-ups to check the implementation of acts adopted by Parliament, it would mean victory for workers represented by these unions.

"We have got to put our feet on the ground to protect vulnerable sectors of our workers."

Samwu president Peter Mashishi had earlier criticised the lack of implementation of resolutions. "We can come out of this conference with very good ideas and resolutions, but if we do not have an organisation on the ground to deal with implementation, this whole process will just be a futile exercise."

Cosatu deputy general secretary Zwelinzima Vavi at yesterday's conference in Johannesburg organised by the SA Municipal Workers' Union
Picture TREVOR SAMSON

Controversial new law draws companies into the fight against apartheid's legacies

Equity act's benefits won't come soon

(166) Star 5/12/98

Can race-based legislation be a cure for past employment disparities among races? Political Reporter XOLISA VAPI takes a look at the controversial Employment Equity Act

A loud outcry greeted the signing into law in October of a racial piece of legislation that seeks to achieve equity and promote the right of equality at the workplace, with its detractors calling the new law discriminatory.

Replacing a racial law such as the notorious 1956 Job Reservation Act with another form of race-based legislation to tackle the effects of unfair discrimination raises questions about the fairness of such legislation, dubbed "apartheid in reverse"

In seeking to de-racialise South Africa's labour market by applying the principles of equity to advance previously disadvantaged groups, the Employment Equity Act prescribes how employers should go about employing people without prejudice. Its main thrust is its affirmative action component, which compels "designated employer(s)" – who employ more than 50 people, or fewer than 50 but with an annual turnover of R10-million – to consult with workers in creating a workplace that mirrors South Africa's population.

There are misgivings about the Department of Labour's capacity to administer the provisions of the act

To ensure that suitably qualified people from previously disadvantaged groups have equal employment opportunities, the act further obliges employers to consult with workers in formulating and implementing an employment equity plan along the lines of affirmative action.

The legislation defines a suitably qualified candidate as one who has the capacity to acquire the ability needed to do the job within a reasonable time.

Labour consultant Lionel van Schalkwyk reckons employer organisations will not immediately reap the benefits of affirmative action, because fewer suitably qualified people will be absorbed into the workforce.

Besides placing a duty on employers to diversify the workforce by employing more Africans, women and disabled people, the act forces them to bear the brunt of training the new entrants into the job market to equip them with the necessary skills to meet the required labour standards.

"Employers will find it difficult to recruit the candidates they regard as better qualified because of a skills shortage on the part of affirmative action candidates," he says.

In line with the Skills Development Act, training and development are the key to implementing the new employment legislation, failing which hefty penalties ranging from R500 000 to R900 000 could be imposed. There are set time-frames within which employers should submit equity plans and progress reports to the Department of Labour.

Apart from monitoring and enforcing the implementation of the act, a labour inspector can issue a compliance order to an employer who has refused to give a written undertaking to abide by the provisions, including consultation with workers and identifying employment barriers "which adversely affect people from designated groups"

All employment stakeholders, including business, the government and labour, have embraced the clauses dealing with eliminating unfair discrimination at the workplace, but there are misgivings about the capacity of the Department of Labour to administer the act's provisions.

Even with their watchdog role to keep a watchful eye on employers who contravene the act, inspectors are not thought to have the capacity to police this policy framework.

Centre for Policy Studies researcher Khehla Shubane says he is not sure how the government will succeed in enforcing the law when it stands accused of failing to put crime legislation into action.

There are concerns that, in its attempts to advance equity, the new law will destroy prospects of job creation and create new hardships for small businesses.

By invoking the principle of affirmative action if an employer creates more than 50 jobs, the law will encourage companies to circumvent the legislation by either going underground or splitting into different units. Splitting their annual turnover will ensure that each component does not exceed the R10-million barrier.

South African Chamber of Business (Sacob) labour and social policy manager Janet Dickman believes that going underground will happen, but not on a large scale. She cautions employers that it is a business imperative to apply affirmative action to tackle the skills shortage.

While labour legislation must be seen in the context of economic realities, it is important that it does not create rigidity in the labour market, as that would inhibit business growth.

"Workers must have good and fair conditions of employment, but not at the expense of preventing business from growing," Dickman adds.

There are two clauses to which Sacob is fiercely opposed. The turnover criterion, which it believes is inappropriate in the definition of a "designated employer", and the obligation to close apartheid wage differentials.

"The wage gap is neither an equality nor an employment equity issue, but has to do with skills availability. As people become more skilled, they will climb the wage scale," says Dickman.

But the Congress of South African Trade Unions says wage differentials are part of the inequality the legislation is trying to address. Cosatu parliamentary negotiator Oupa Bodibe argues that attending to income wage gaps is part of the "flattening of work place hierarchies"

The International Labour Organisation's 1995 review of the South African labour market found that the country's economy is supervisor-intensive, creating a very hierarchical structure.

"Addressing inequality between race may just change the complexion without altering the status quo. That's why this must be linked to efforts to address vertical inequality to close the apartheid wage gap," explains Bodibe.

Describing the legislation as "cutting the nose of the South African economy in order to spite the economy of Africa", South African Institute of Race Relations president Professor Themba Sono says the law sends a bad message to companies to "stay small or start operating offshore", where the market is left to regulate itself.

"It's no accident that companies are looking for listings in world stock markets as soon as they realise that putting their eggs in the South African basket is not worth the effort," he adds.

Prior to the introduction of the new laws, the market had ample time to address inequalities. But it failed

Bodibe contradicts Sono's "red herring", saying that, left to regulate itself, the market can address employment inequalities.

"Prior to the introduction of new labour laws, the market had ample time to address these inequalities. But the fact that it failed demonstrated that a market-based approach perpetuates inequalities," says Bodibe.

There are differing options on which sector of business, small or big, will find it difficult to abide by the act's equity regulations and which one will reap the benefits.

Shubane believes big companies are not likely to be adversely affected by the new reporting requirements because they already have sound reporting mechanisms on their financial performances and large human resources divisions.

But small businesses will struggle to achieve their equity objectives. "For small companies it will entail a great cost to implement their equity plans, and job creation at the bottom of the scale will contract," he says.

It is at small-business level that employment is said to be created faster as big companies reeling from the world's economic crisis shed jobs.

Business South Africa convener Vic van Vuuren believes small businesses stand a better chance of doing well in comparison with big companies, which are facing the difficulty of devising employment equity plans to absorb new people in terms of the legislation; while shedding jobs at the other end because of a lack of skills.

"If the legislation is managed carefully, it can be a good tool for transformation in the private sector. In the past we used to have negative discrimination, but now it's positive in terms of the constitution," says Van Vuuren.

If implemented as it stands and embraced by most employer organisations, this race-inspired law will go a long way towards uprooting racial discrimination in employment practices.

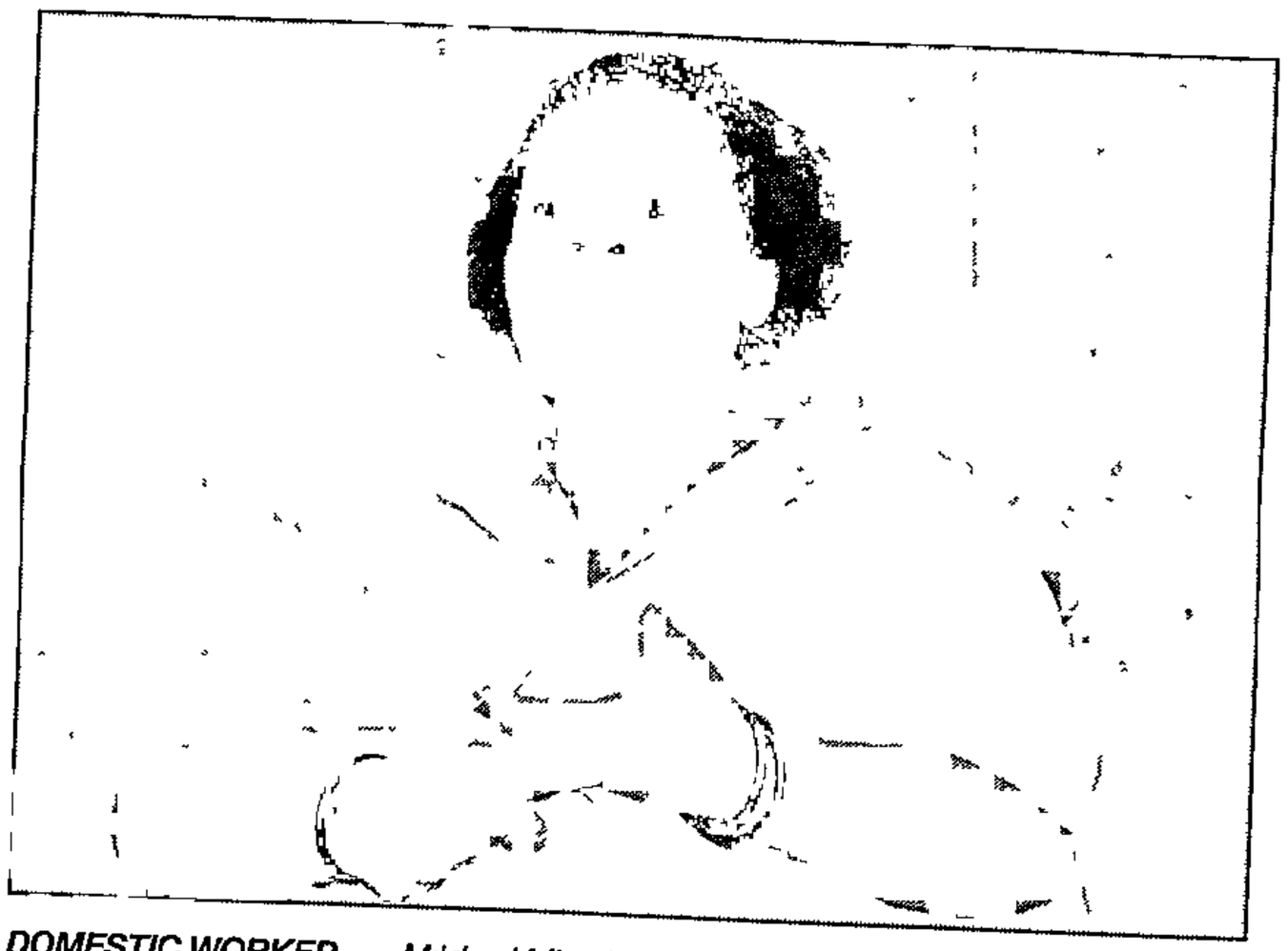
But its shortfall flows from its limited brief, which does not extend to challenging economic structures to achieve similar levels of equality

Notwithstanding efforts by black economic consortiums, enabling legislation is yet to be formulated to empower the same people who are being affirmed at the workplace with skills to own businesses.

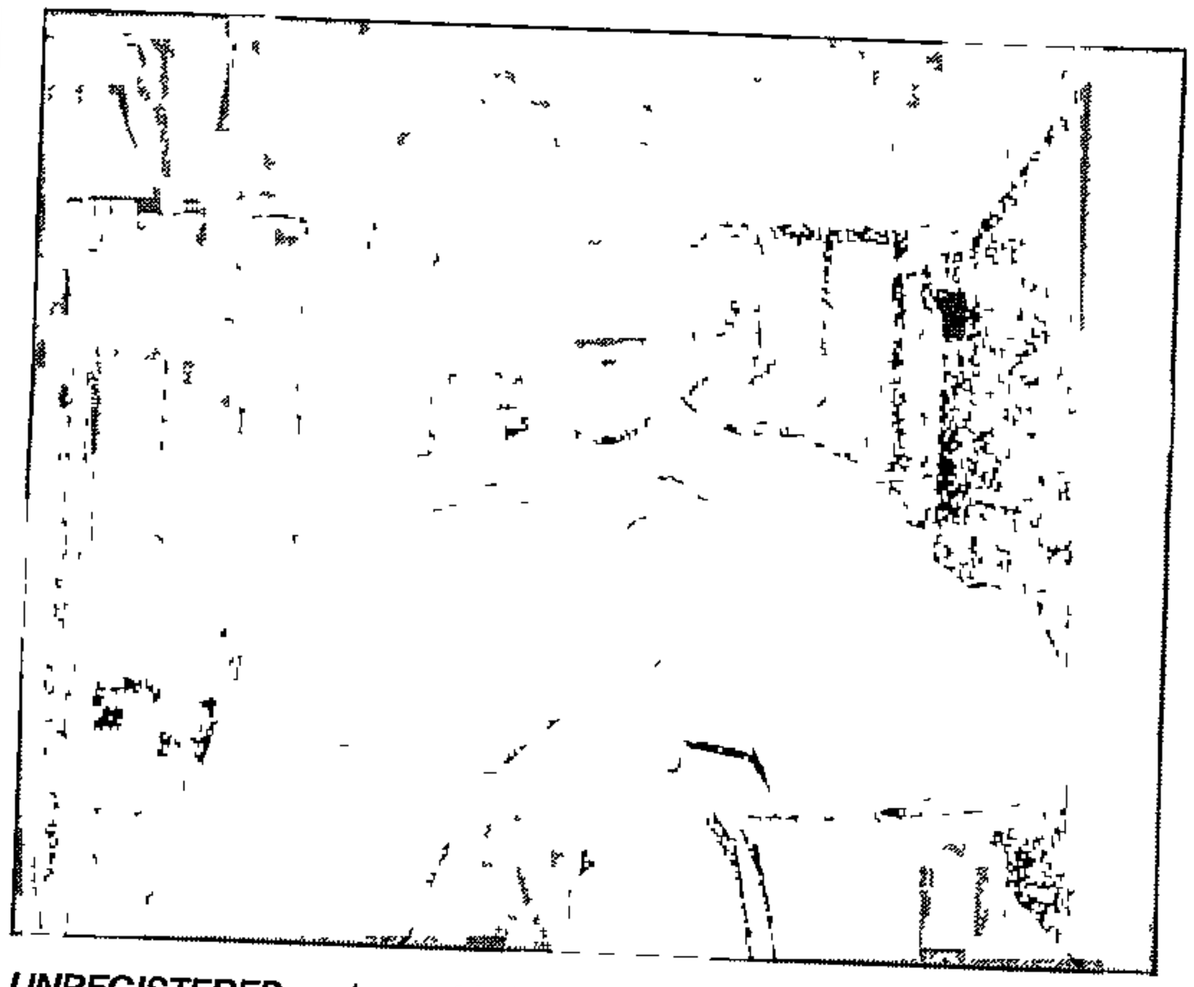
WORKING IN HARMONY There are concerns that in its attempts to address equity, the new law will destroy prospects of job creation and create new hardships for small businesses

Will the Employment Act free workers?

By ZOLILE NQAYI
and MAPULA SIBANDA



DOMESTIC WORKER ... *Mildred Mbatha says government must go door to door checking working conditions and whether workers have contracts*



UNREGISTERED ... *Lucas Mothopi says his boss is great, but he is not a registered worker* Pic: PANYAZA MCINEKA

IT HAS been hailed as one of the most significant pieces of legislation ever passed by the current government

Yet the new Basic Conditions of Employment Act (BCEA) has been criticised by workers and union leaders for failing to address fundamental aspects such as the regulation of a minimum wage and the Unemployment Insurance Fund

When former Labour Minister Tito Mboweni unveiled the Basic Conditions of Employment Bill last year, he said that it went "to the heart of the relationship between employers and workers".

The controversial BCEA, launched last Tuesday, will compel exploitative employers to modify their relationships with their employees who now have legislation protecting their interests

The act has been described as a revolutionary means of freeing workers from years of virtual slavery and abuse by their employers, and it breaks new ground in that for the first time, there is a piece of legislation that covers all workers

It is not uncommon in South Africa for farm and domestic workers to work long hours

The act has reduced the number of working hours a week to a maximum of 45

Mine workers and security guards who in the past worked some of the longest hours, will also see their working hours reduced

Their work hours drop from 48 to 45 and 60 to 55 hours respectively Security guards' working hours will be further reduced to 50 hours next year

The act has not gone down well with labour in that it does not regulate a minimum wage

Since the Bill was unveiled, business has consistently argued that the regulation of minimum wages and other conditions of employment will raise labour costs

"Failing to regulate wages will not have a significant impact on the basic conditions of employment," said general secretary of South African Agricultural Plantation and Allied Workers Union (Sappawu), Dickson Motha.

(166)

Many farm and domestic workers earn as little as R200 a month

Although the Act is long overdue, it is difficult to suppress nagging questions about the ability of the Department of Labour to implement and police it, particularly in households and on farms.

Detractors of the Act and workers' organisations as well as employees have stated their doubts.

"History tells us that farmers will find it extremely difficult to implement the Act because of the kind of attitudes they have towards these types of legislations

CP 6/12/98

"Up to 1994 there was no legislation that regulated working conditions on farms To reduce working hours on farms is going to be challenging to both the farmers and the Department of Labour," Motha said

"Farm workers themselves are not aware of the legislation Someone has to go to the farms and educate the workers about their basic conditions of employment, and unions will have to take much of this responsibility," said Motha

In response to their provisions in the act, domestic workers have also expressed concern on the will of employers to institute the act.

"I do not see employers changing out of the goodness of their hearts," said Mildred Mbatha, who has worked as a domestic since the 1970s.

Lucas Mothopi, a gardener from Schweizer Reneke in the North West province, said although his boss provided a medical aid scheme for him after the last general elections, he was not a registered employee.

His greatest concern was for workers to be educated about intervention structures where they could forward their problems

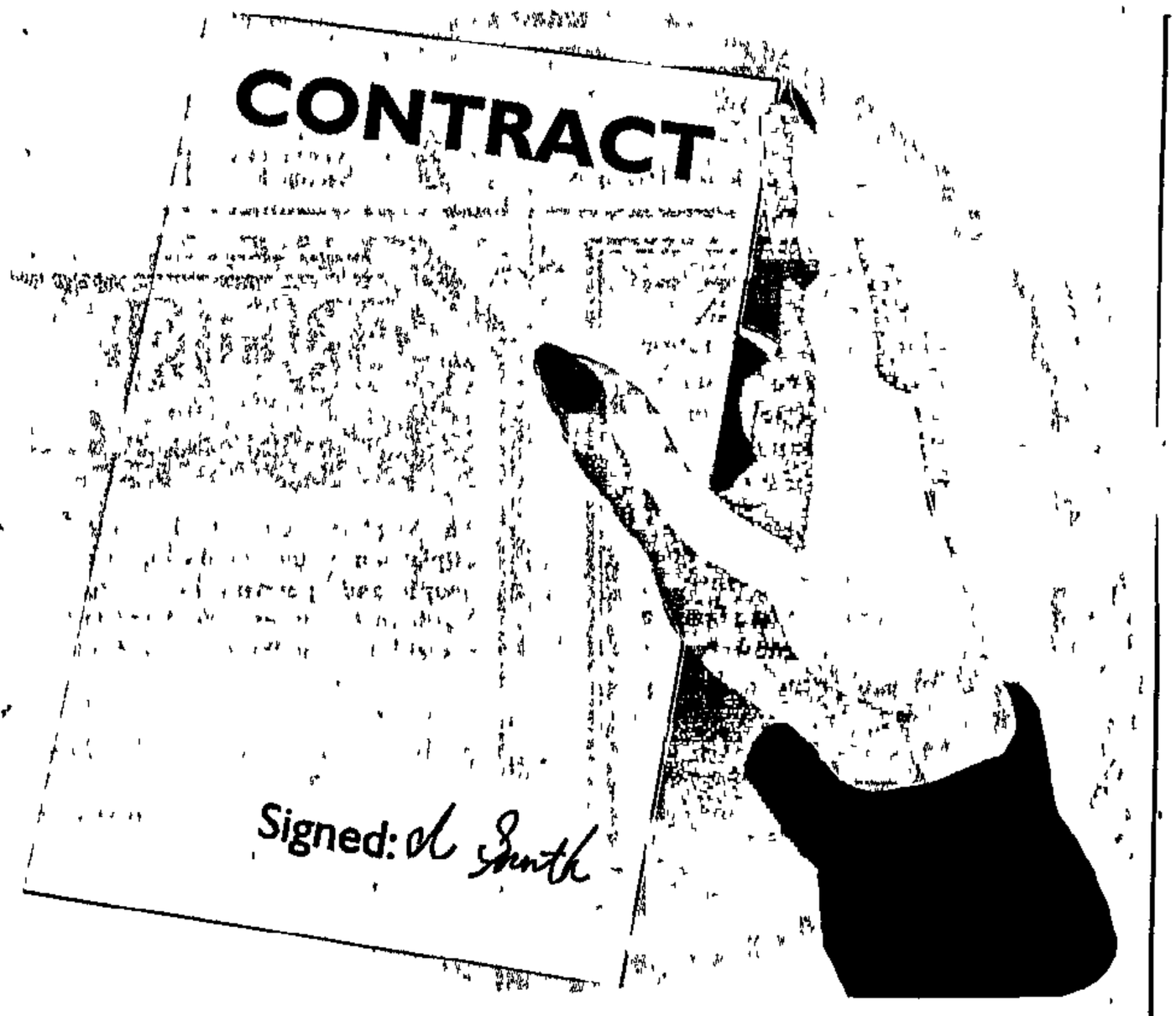
SECTION 2
Business Times APPOI

Employment contracts hide host of legal landmines

(166)

Drawing up contracts has turned into a nightmare for unwary employers, writes RAEL SOLOMON

ST(BT) 6/12/98



ON A daily basis, employers are inundated with articles and news items relating to the labour legislation protecting the rights of employees The one instrument, the employment contract, which is drawn by the employer often results in the employee using the very contract as evidence against the employer in a conflict situation

Despite all the hype and warnings, employers continue to shoot themselves in the foot by not taking action to protect themselves

Contract law is in itself complex and employment contracts are no exception Compounding the problem for the employer is that statutory labour laws take precedence over the common law Where there is a conflict with the common law involving conditions of employment, the labour legislation will prevail

The Basic Conditions of Employment Act requires that all employment contracts are reduced to writing When in doubt, a simple letter of employment stating that the employer's contract is covered by the conditions outlined in the current labour legislation is often preferable to a detailed contract giving the employer a false sense of security if it has not been drawn with professional advice To help employers protect themselves we address typical situations which have been found to cost employers the most in time and money

Despite the warnings, employers continue to shoot themselves in the foot

A three-month notice period is often specified for senior employees If the employee wants to leave, the employer is confronted with a situation where they may have an unproductive employee for a further three months If the employer decides to rather pay the employee in lieu of notice, the employer faces a three-month salary bill, even if the employee had only been employed for a short while If the employer wishes to dismiss the employee, he again loses out

Many small businesses that use a contract with an elaborate disciplinary code and procedure often get into trouble At the time of disciplining or dismissing their employee, the code is not followed as the small businessman reverts to his typically informal style The employee then goes to the Commission for Conciliation, Mediation and Arbitration (CCMA) and uses the employer's contract to prove his case

Many employers think that if various terms and conditions are contained in a contract, that the employee is bound by them This is one area where freedom of contract does not have the final say Employment contracts that differ from the minimum conditions provided for by the labour legislation are not valid

Many contracts have a probationary period where a typical clause states that either party may give 24 hours notice during the first three months (or one month) of employment The law requires one week in the first month, two weeks in the first year and one month thereafter Should the employer dismiss the employee during the contracted probationary period without following the required procedures, a claim for unfair dismissal may be referred to the CCMA with a demand for up to 12 months remuneration as compensation

Fixed-term contracts also bring problems for the employer A fixed-term contract that is renewed more than once by an employer can lead to a claim by the employee that he had a reasonable perception of permanent employment If the contract is not extended, the employee may claim that he has in fact been dismissed

The effect of employment law is not confined to employment contracts For example, should a company purchase a business as a going concern, the Labour Relations Act states that the new owners are bound by the prevailing terms and conditions of employment Should the seller agree to retrench certain employees to satisfy the purchaser, and does not follow the required procedures, the new owner may be held responsible for an unfair labour practice

Most employers believe that the employment relationship has been terminated when the employee formally hands in a written notice of resignation. The Labour Relations Act states, however, that if an employee resigns because the employer made his continued employment intolerable, this could be tantamount to an unfair dismissal As a result of this clause, many employers are demanding exit reports from employees who resign

In today's climate, anyone who thinks that being an employer is the easy way to go better have a rethink.

● Rael Solomon heads up The Labour Consultancy and prepares the Labour Guides found at www btimes co za

6

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 comprising retailers, undertakers, caterers, tavverners 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 that black business' contribution to the Act was important

Congress of South African Trade Unions spokeswoman 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 trade unions

The South African Commercial and Catering Allied Workers' Union (Saccawu), representing 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 a 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

TARIFF POLICY

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 anti-dumping 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, nonpayment of salary or any job-related benefits have now been decriminalised – 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

BD 10/2/97

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) — have been 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 nonreciprocal 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 of mutual 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 fo 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 kitty.

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 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 intact 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

ET(BR)11/12/98 (166)

FRANK NXUMALO

Cosatu this week warned employer organisations throughout the country that it was not only prepared to defend the new floor of labour rights enshrined in the Basic Conditions of Employment 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 Membathisi Mdladlana, 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

Zwelinzima 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 meekly 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 "revisiting 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 act 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 Bester, 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

Bester 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 interests rates would make it "almost 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," Bester 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 R89 455 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

Olympic Bid gone haywire

By VICTOR TSUAI
Sports Editor

WHEN the city of Cape Town made it to the final five candidates for the 2004 Olympic Games in March this year there were wild scenes of celebration

Now, two months later, the euphoria that greeted the city's breathtaking nod from the International Olympic Committee (IOC) appears to have receded like a mirage

Cape Town received the thumbs-up from the IOC together with four other strong candidates from an equally tough contest by 11 countries

The Mother City, whose bid was described as "very well thought out" by the IOC, made it to the last five together with Rome, Stockholm, Buenos Aires and Athens

With three months left before the selection of the sole and final candidate in September, the Cape Town Olympic Bid seems to have degenerated into organisational shambles and has been widely described as a possible non-starter

It is no secret that since the formation of the Bid Company two years ago it has been bedevilled by petty bickering and mistrust among its key players

Lately, the Bidding Committee s woes have spilled into the open with claims that the committee has failed dismally to promote the bid both internally and internally

It is an open secret that since Cape Town's inclusion among the final five candidates in March, the Bid Committee has inexplicably withdrawn into a shell and retreated into their fiefdom the city of Cape Town and its environs

If anything, the Cape Town Bid seems to be only just that There seems to be little if no word at all from the committee about the virtues of Cape Town making it as the final candidate city

The more than 45-million South Africans, who are every bit of the way a sports partisans lot, have been constantly kept in the dark about what is happening

Olympic experts fear that with Cape Town facing formidable opposition from the four others, with Rome and Stockholm the most serious, the low key profile adopted by the committee in marketing the bid could help torpedo South Africa s challenge

The fact that Cape Town s bid is considered to be Africa's bid has already to "get the physical chemistry into play

Should Cape Town fail in their attempt the effects of this will be felt far and wide throughout the continent

The continent of Africa is the only one so far among the five member continents of the Olympic Movement that still has to host the Olympic Games, which started way back in Athens in 1896

The Olympic Movement completed a century of the games with 1996 Atlanta Centennial Games in Georgia, USA

Most observers, as well as sympathisers, feel that the IOC owes it to Africa to bring the 2004 Olympics to the continent They argue that apart from being staunch members of the Olympic Movement, Africa has over the years provided the games with above par opposition and has subsequently become an intergral part of the whole process

Some of the most notable athletes who have made an indelible impression in the Olympic Games include Ethiopian 10 000m runner Haile Gabreselasie Mozambique's 400m star Maria Mutale, Zambia's Samuel Matete and Namibia s 100 and 200 sensation Frankie Fredericks

As recently as last year South Africa staked its claim among its Africa's Olympic powerhouses by producing an Olympic marathon champion in Josiah Thugwane and swept the boards in the 100m and 200m swimming events through sensational Penny Heyns

Heyns and Thugwane contributed three gold medals South Africa s highest since our return to the Olympic in Barcelona in 1992

These factors, more than anything, have placed more strain on the Cape Town Bidding Committee to win the games for Africa

The decision this week by the Government to lift the bid off its feet' by co-opting key cabinet members to the Bid Committee in a concerted effort, is a last-ditch attempt to stymie the lethargy and rot that seems to have set in

In terms of the new agreement, the powers of Bid Committe chief executive officer Chris Ball will be substantially watered down

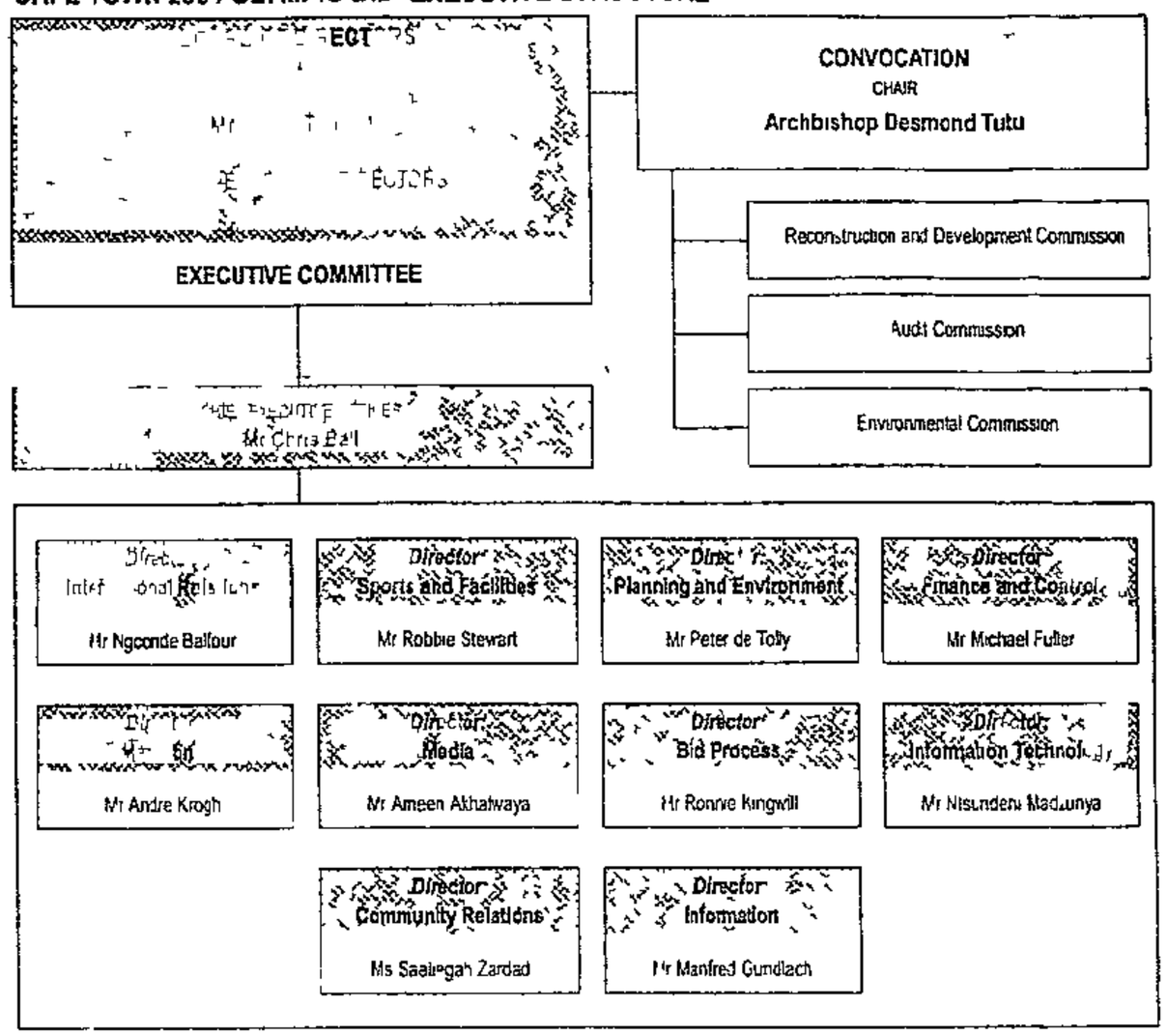
The incumbents, appointed this week by the cabinet committee are Mojanku Gumbi from the office of the Deputy President Thabo Mbeki cuka, the Minister of Trade and Industry

Last month a Cape Town Bidding Cabinet Committee consisting of Steve Tshwete, the Minister of Sport and Recreation, Professor Kader Asmal the Minister of Water Affairs, Penuel Maduna, the Minister of Energy Affairs, Derek Hanekom, the Minister of Agriculture and his deputy Thoko Msane Didiza, Jeff Radebe, the Minister of Public Works, Aziz Pahad, the deputy minister of foreign Affairs Lionel Mtshali, the Minister of Arts and Culture Essop Pahad and Gumbi from Mbeki's office and Ngcuka was put in place

In another development aimed at maximising Cape Town's bid, part of the committee's publ c relations task will be moved from Cape Town to Johannesburg It was announced that a Johannesburg public relations company, Gilian Gamsy International, would handle part of the bid's media work, especially inland

With barely two months left before the announcement of the final city it remains to be seen whether the changes would finally secure the

CAPE TOWN 2004 OLYMPIC BID EXECUTIVE STRUCTURE



BIDDING HEAVYWEIGHT
Sports Minister Steve Tshwete

GOLDEN PRIDE Marathon king Thugwane and ace swimmer Heyns

Legal aspects in line for Olympics

THE CAPE Town 2004 Organising Committee of the Games (OCOG) will be a company incorporated under the South Africa Companies Act It will be an autonomous legal entity not for gain having as its main objective the organising of the Summer Olympic Games in Cape Town in 2004

Its members and directors will include the South African International Olympic Committee member; the president and the secretary-general of the National Olympic Committee of SA (NOCSA), representatives of the Government of SA, the Cape Metropolitan Council, the city of Cape Town and other municipalities in the Western Cape representatives of business labour, environment, cultural, sport and other interest groups

The chief executive officer will be appointed by the directors The board of directors will be representative of the society of Cape Town, and of South Africa.

Representatives of the Government, provincial government, city of Cape Town, private sector and NOCSA will ensure continuity bewteen Cape Town 2004 Olympic Bid and Cape Town 2004 OCOG

Mandela's guarantees to the IOC

PRESIDENT Nelson Mandela has provided the International Olympic Committee (IOC) with the following covenants

I, the undersigned, Nelson Rolihlahla Mandela, in my capacity as President of the Republic of South Africa, and by virtue of the powers vested in me, do hereby state that my Cabinet and I have carefully considered all the terms of the Olympic Charter and the Host City Contract to be signed in the event of the Bid of the City of Cape Town being successful, which Charter and Contract we will honour and respect

I confirm that my Government

games of the XXVIII Olympiad in Cape Town in 2004, understands that all representations, warranties and covenants contained in the City's Candidature File as well as all other commitments made, either in writing or orally, by the City or NOCSA (National Olympics Committee of SA) to the IOC, shall be binding on the City, guarantees that it shall take all necessary measures to ensure that the City fulfills its obligations completely and guarantees free access to and free movement around the host country for all accredited persons on the basis of a

gether with appropriate executive authorites and in terms of Trade Marks Act and supported by common law relating to unlawful competition and passing off, is capable of providing adequate and continuing legal protection for the Olympic symbol, the terms 'Olympic" and ' Olympiad' and the Olympic motto in the name of the IOC

Should this protection however, not be to the satisfaction of the IOC, undertake to promote the legislation of further provisions to the satisfaction of the IOC

Aims of Labour Relations Act in dispute in Cape

(166) CT(PR) 14/12/98

EDWARD WEST

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 Baard, the president of the Cape Chamber of Commerce and Industry, said last week.

Baard 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 1994, 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 R560 a month, a figure below the poverty datum line

In addition, nearly all strikes this year were procedural as opposed to the wildcat 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

BD 26/3/96

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 13

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.

Public has been duped about new labour act

It is a myth that the Basic Conditions of Employment Act has significantly advanced the protection of workers, argues **Sara Gon**

BD 18/12/98 (166)

HAVE you read these headlines announcing the new Basic Conditions of Employment Act? "New security for domestic workers" and "Law governs domestic employment" If so, you did not read them last week. They appeared in The Sunday Star on April 11 1993 and in Business Day on October 19 1993 respectively

The labour department appears to be indulging in classic propaganda through the misinformation presented in the media about the new act since December 1 The public is led to believe that it is new and innovative and the present government alone is responsible for the protection it affords domestic and farm workers

At best this is thoroughly dishonest (or incompetence on the department's part) At worst it is intentional propaganda for pre-election consumption Either way, we have been duped

In 1993 act 137 of 1993 extended the protection afforded to office, factory and shop workers by the previous Basic Conditions of Employment Act 3 of 1983 to domestic and farm workers These rights included

- ☐ A maximum of 46 working hours a week (now 45 hours),
- ☐ A working day of nine hours and fifteen minutes (now nine hours),
- ☐ A limit of 10 hours overtime a week or three a day (still the same),
- ☐ Paid sick leave of between 30 to 36 working days (still the same),
- ☐ Two weeks of paid annual leave (now three weeks), and
- ☐ A month's notice of termination of employment (still the same)

Under the 1993 amendment act, domestic workers became the only workers whose employers were obliged to enter into written contracts of employment with their employees

Labour Minister Shepherd Mdladlana is quoted as saying the act marks a decisive break with the "notorious conditions and abuse that characterise the apartheid workplace" In the same article, an official of the SA Domestic Workers' Union says that for the first time domestic workers would have an employment contract and be entitled to notice of termination of employment

Radio reports last week gave the erroneous impression that the act was new and dramatic in that domestic and farm workers are now protected from excessive employment conditions and that employment contracts have to be entered into with them for the first time

This was reinforced by a Business Day article (Perspectives, December 1) titled "New employment act covers all of SA's workers" by Lisa Seftel, chief director of labour relations at the labour department Seftel says that the new act will, unlike the previous law, cover all workers "Most significantly, farm, contract, domestic and part-time workers will have basic conditions of employment," she says

The clear impression given is that these workers are being covered by the act for the first time This is completely untrue. All of them were protected by the old legislation

The employees who were previously excluded from the old act included persons working for charities unremunerated, state employees, employees working for universities and technikons that were partly state funded, employees of bodies like the Atomic Energy Corporation and the SA Reserve Bank, those employed on vessels at sea, and so on

Seftel mentions a number of the conditions of employment which the new act amends, such as a reduction in working hours and greater overtime pay What she does not state is that these amendments apply to all employees, not just domestic and farm workers

The following are her comments on aspects of the new act, and my replies

"The new act allows for compulsory rest periods, which protection did not exist in the past Workers could work for months without (getting) a day off "

Under the old act the majority of employees were allowed to work no longer than 46 hours a week or nine hours and fifteen minutes a day No employer could allow an employee to work for a spread of more than 12 hours a day The effect was that an employee could work for no more than a total of 12 consecutive hours a day

The situation under the old act was little different from that under the new act No one could work for months on end without a day off Workers must have every Sunday off unless they agree otherwise.

Those who work regularly on a Sunday must be paid at time-and-a-half and those who work occasionally must be paid double time. Under the old act any employee who worked a full day on a Sunday had to be paid double time whether it was done occasionally or regularly

"The new act prohibits children under 15 from working " Subject to certain exceptions the old act also prohibited the employment of children under 15

"For the first time government will be able to set minimum wages for domestic and farm workers through the minister establishing sectoral determinations "Previously the same could be achieved through wage determinations established under the Wage Act 5 of 1957 Minimum wages have never been set for domestic and farm workers because of the risk that minimum wages could result in substantial unemployment

"The new act is sensitive to the problems facing the labour market and therefore it includes ways in which its provisions can be varied to suit the circumstances of individual workers, enterprises and sectors " The new act provides that numerous conditions of employment may be varied by collective or individual agreement

However no variation, even one granted by the minister, can allow for more than a 45-hour work week — even if such variation is mutually agreed upon between an employer and a union who have an established sophisticated relationship and the arrangement agreed upon suits both parties

Industries such as tourism require a level of flexibility generally not available under the new act

Seftel opines that many workers live far away from their homes and spend far too much time away from their families This is undeniably true.

She then says that the law now provides that a worker can be compelled to work no more than 45 hours a week. The implication is that the change from 46 hours to 45 hours is going to alleviate these hardships — which is unlikely

☐ *Gon is a partner in the industrial relations and employment law department of attorneys Webber Wentzel Bowens*

The public has been led to believe that the present government alone is responsible for the protection it affords domestic and farm workers

Labour Bill can expect a stormy passage

(166) ST 1/2/98

Opposition goes on the offensive as Parliament prepares for business

CYRIL MADLALA
Political Correspondent

THE long-awaited Open Democracy Bill, intended to give citizens access to information held by the government, will not make the first semester of Parliament's legislative programme

Although a draft Bill was produced in 1995, the process has been snarled up by extensive consultation and objections by the Department of Justice

The office of Deputy President Thabo Mbeki invited public comment on the Bill towards the end of last year, but this week a spokesman could not say when the Bill would be tabled

Public interest in the proposed law is huge

Not only will it provide access to information held by government bodies, it will also provide for protection against the abuse of information about individuals held by governmental or private bodies

The Bill also provides protection of individuals who reveal evidence of contraventions of the law, serious maladministration or corruption in government bodies

President Nelson Mandela will open Parliament on Friday to sketch the scene for what is expected to be a robust year as political parties gear up for the election in 1999

Already Labour Minister Tito Mboweni's Employment Equity Bill, which will go before Parliament later in the year, is under fire from the National Party and the Democratic Party

NP labour spokesman Adriaan Blaas said on Friday that it constituted direct interference by the government in the private sector

DP leader Tony Leon described the Bill as misguided at best and said that, at its worst, it reflected the ANC government's insistence on re-racialising all aspects of life in South Africa

He said "South Africa's problem is not to find a way of creating a black management and professional class

"A black management and professional class is already undergoing such explosive growth that it will outstrip any targets that might result from the Employment Equity Bill — without the use of any legislative or punitive force"

Leon said the real problem was to create employment opportunities for the millions of unemployed who were predominantly black and female.

"This Bill has less to do with achieving equality of employment opportunities than with advancing the ANC's racial agenda," the DP leader said

Blaas said the proposed legislation expressly enjoined employers to seek the equitable representation of black people, women and the disabled at all levels of employment

"In this sense, merit and educational qualifications take a back seat to racial composition," Blaas said This, in effect, made race the determining factor in any company's future employment actions

The Bill discarded merit and experience — the backbone of any efficient and successful business — in favour of racial composition, Blaas said

"This will inevitably lead to a lowering of standards in both the production and service sectors, which in turn spells trouble for the already struggling South African economy"

For South Africa to compete internationally, the country needed a highly skilled and educated workforce

Factors such as the Bill served only to accentuate the unacceptable "brain drain" being experienced, Blaas said

Among the first proposed laws to come before Parliament this year will be the Regulation of Foreign Military Assistance Bill, which seeks to govern the involvement of South Africans in conflicts in other countries

The government has in the past been severely embarrassed by having to intervene when South Africans participated in wars in foreign lands

Existing laws that will be amended this semester include the Financial Markets Control Act, the Unit Trusts Control Act, the Electoral Commission Act, the Stock Exchanges Control Act and the Land Bank Act

A comprehensive new Water Bill, a number of laws to improve the criminal justice system and a legal framework for local government are also earmarked for Parliament this year

Sowetan 2/2/98

'Devious' Equity Bill will hurt SA labour

(166)

New legislation promotes ANC's affirmative action programme

By Tony Leon

THE Employment Equity Bill promises to be the focus of one of this year s hottest 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 for 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

In so doing it rivals the Abolition of Passes Act and the Extension of Universities Act for legislative doublethink

The Bill requires designated employers – those with a workforce larger than 50 people – to implement positive measures in order to ensure the equitable representation of blacks women and the disabled by eliminating under-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 where necessary the institution 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

Unashamedly, the Bill provides for this by requiring the Minister of Labour to draw up a "Code of Good Practice" which will outline how such classification must be undertaken

To add insult to injury, employers 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 inquisition) to determine whether an employer is complying And in 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 R500 000 and R900 000

And if the director-general does not grant a "certificate of compliance" to an employer that company will not be able to tender for any state contract

The introduction of this Bill is misguided at best and, at worst reflects the ANC Government s apparent insistence on re racialising all aspects of life in South Africa

It is misguided because it misconstrues the problem The problem is not to find a way of creating a black management and professional class

A management consultancy FSA-Contact predicts that 33 percent of professionals will be black by 2000 while the Breakwater 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

Democratic Party leader Tony Leon says the Employment Equity Bill will be the focus of one of this year's most controversial and potentially most racially divisive political debates

"The implications of this piece of legislation are explosive. The success of any employment equity plan will necessarily require employers to engage in racial classification"

A black management and professional class is thus already undergoing such explosive growth that it will outstrip any employment equity targets that might result from the Employment Equity Bill and that without the use of any legislative or punitive muscle

The real problem is to successfully create jobs for the unemployed, who are in any event predominantly black and female As Professor Laurence Schlemmer has recently shown unemployment has superseded race as the primary factor in income inequality

Yet employment equity is being driven by the very minister whose party steamrolled through Parliament such employment hostile legislation as the Labour Relations Act and the Basic Conditions of Employment Act

The truth is this Bill has less to do with achieving equality of employment opportunities than with advancing the ANC s racial 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 job seekers 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 prioritises 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 in our national life of the values of merit and hard work

Popular solutions

That may not be a popular solution with the quick-fixers in the ANC but it is the only solution nonetheless

Before enacting this latest piece of legislative mischief, the ANC should reflect on the cumulative effect of its recent initiatives the shedding of up to 200 jobs a day from the formal sector and increased rigidity in the labour market

This latest Bill is social engineering writ 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 serious 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

BD 3/2/98 (166)

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 'repeats apartheid employment methods'

ONE OF THE OBJECTIONS to the Labour Equity Bill is that it allegedly enforces racial classification in the workplace Political Writer **KARIN SCHIMKE** reports

A NEW "super sleuth" of labour, who will check that companies are putting blacks, women and disabled people at the front of the employment line, could become a feature of the new employment landscape — and companies dragging their feet in creating employment equity could face fines of up to R900 000

Due to be enacted in June this year, the Employment Equity Bill has been accused by president of the South African Institute of Race Relations Professor Themba Sono of reintroducing the "bureaucratic management of companies that was typical of the apartheid era"

Last week he called the bill "racially divisive" He also said it was not conducive to reconciliation, that it discouraged economic growth and foreigners from investing in South Africa and was an impingement on citizens' freedom in a democratic society

"Enforced integration is as bad as enforced segregation," Sono told the Cape Times

His biggest gripe, however, was that corporate South Africa "seems not to be fazed by it at all"

Asked why, if the bill was so dangerous, there was such apathy from business, Sono said "They (business) were apathetic during apartheid, why should they change now? They've simply accepted the new Caesar

"Also, people in South Africa have a profound guilt complex and business wants to atone."

However, Mr Charl Adams, human resources manager of the Cape Chamber of Commerce and Industry — which is making its submissions on the bill through the South African Chamber of Business (Sacob) — said business had been expecting some form of employment equity drive, but would have preferred a "voluntarist system", that was not punitive and could kick in on an incremental basis.

Business had suggested that the bill could contain a sunset clause "so that once you've reached parity, the bill falls away", he said.

Adams said there was a major concern that the human resource legislation issuing from Parliament (like the Labour Relations Act, the Basic Conditions of Employment Act and now the Employment Equity Bill) would have negative consequences for small- to medium-sized enterprises which together employed large numbers of people. He had made a suggestion that an investigation quantifying such an impact should also consider the Employment Equity Bill in its range.

NO TO BUREAUCRACY: Themba Sono

"The world of work," said Adams, "is reeling under fairly poor economic circumstances and the introduction of (this human resource legislation) could create a cycle of despair among employers What about the affordability? Smaller business, as principal job creators, do not have the infrastructure or the means to adapt quickly and are subject to the vagaries of the market."

Adams said that while political change could take place virtually overnight, business took longer to adapt The goal of the legislation was not in question, but the process was.

"Business is like a major oil tanker it takes time, effort and a lot of skill to turn it around "

In a note prefacing the bill, Labour Minister Mr Tito Mboweni says "Apartheid has left behind a legacy of inequality reflected in disparities in the distribution of jobs, occupations and income. The government is of the view that it is necessary to redress these imbalances and to inculcate within every workplace a culture of non-discrimination and diversity When it comes to jobs, training and promotion, we want a fair deal for all workers. Let this bill be the subject of debate in every workplace and by all workers and employers."

While Sono and his colleague Dr Anthea Jeffery, believe there is consensus that the objectives of the bill are noble, they are worried about its wording and its possible consequences.

Sono said the bill repeated the very methods of the past that had produced the problem of unfair employment policies in the first place.

The fact that the bill demanded race classification in the workplace indirectly resuscitated the Population Registration Act, Sono said. It also:

- Demanded a workforce based on quotas.
- Compelled companies of more than 50 people to appoint a senior manager of employment equity;
- Compelled such companies to submit annual reports to the department of labour on their equity progress.
- Left the burden of proof with a company, should it be sued, to show that it did not discriminate indirectly
- Put government inspectors in place to ensure employers were meeting their targets.
- Established a "super sleuth" in the form of a director-general of labour, with the power to conduct a review of the workforce of any employer, even those with fewer than 50 employees.

"These Big Brother tactics," Sono added, "will clearly undermine an already hobbled economy They will act as disincentives to employment growth and business expansion. Those who would not want to be so hobbled would close shop or simply refuse to invest in the economy"

He said "all rational people would support government policy (on equity in the workplace), but it's the fact that it is legislation that makes it wrong Once you have a law, you have to enforce it. Public officials will become the super chief executive officers of companies. It's just plain bad."

Jeffery said that if business was as positive about the bill as it seemed to be, the implication was that it did not understand its full significance or that it was unwilling to confront the government on so sensitive an issue.

The bill allows for an employer to be taken to a labour court, which can impose a fine of up to R500 000 for a first offence or R900 000 for a fifth offence. Jeffery said other important provisions were.

- That employers could be fined for failure to retain black people they had earlier appointed.
- Employers who tried to avoid the bill's provisions — by splitting up their operations into units with fewer than 50 employees each — could be subject to a maximum fine of R10 000.

Jeffery asked whether, if people did not leave of their own accord and make space for new "affirmative" appointments, employers would have to retrench white staff

"Such policies," said Jeffery, "encourage racial consciousness, race prejudice and racial tension. The declared intent of government might be to end racial prejudice, but the inevitable effect of race-based policies is to promote it South Africa, of all countries, should know this by now"

- Written comments on the Employment Equity Bill can be made to. The Director, Equal Opportunities, Mr Loyiso Mbabane, Private Bag X117, Pretoria, 0001 or faxed to (012) 309 4737 or e-mailed to Loyisom@labourhq - pwv gov.za.

A copy of the bill can be read on the Internet. Visit: http //polity org.za/govt/bills/1997/equity.html

'Use carrots, not stick'

USING the "big stick" to ensure that formal business upholds equity for blacks, women and disabled people in the workplace is not the way to make staff structures more representative of the demographics of South Africa. This is the opinion of Professor Themba Sono, president of the South African Institute of Race Relations.

He suggests that change is already taking place and that in 10 or so years most businesses will be managed or owned by black people. He believes there is an "easier, voluntary way" that would ensure employment equity but would not lead to quota-based employment, tokenism and "dangerous employment manipulations"

Sono suggests incentives, rather than "enforced integration", for employers. These could include:

- **Tax credits for companies that have made progress towards a more representative workforce.**
- **The government's favouring such companies when granting tenders and contracts.**
- **The government's monitoring progress and publicising the names of companies that are reluctant to transform their workforces.**

"Public shame can do wonders."

How the employment equity law would work

IN the bill, every employer of more than 50 people must:

- Analyse his workforce according to race, gender and disability
- If this analysis finds "under-representation" at any level, he or she must draw up an employment equity plan with "numerical goals" and a timetable for making "reasonable progress" towards achieving these in one to five years.
- Report each year on the progress.

Dr Anthea Jeffery, special research consultant to the South African Institute for Race Relations, gives this example of how this could work in practice.

"Assume an employer in the security business has 100 employees, only 20% of whom are female. At management level, blacks constitute only 20% and women a mere 5% The employer cannot unfairly dismiss existing employees, but must also make 'reasonable progress' within five years towards a workforce which, at all levels, is approximately 75% black, 50% women and 5% disabled.

"If natural attrition is limited and he can't afford to take on new staff, his progress towards these numerical goals is likely to be slow If it is deemed insufficient, he faces a fine of up to R500 000 in the first year, R600 000 in the second, R700 000 in the third, R800 000 in the fourth and R900 000 in the fifth."

Real labour reform

Sowetan 4/2/98

Democratic Party leader Tony Leon has criticised the Employment Equity Bill. **Nowetu Mpati** explains why his reasoning is at fault...

(166)

THIS is the response of the Congress of South African Trade Unions to Democratic Party leader Tony Leon's article, published in *Sowetan* on February 2

First, it is disappointing to note that someone of Leon's calibre did not read the Employment Equity Bill – or, if he did, he misunderstood it

Leon's misconception pertains to what he terms "the African National Congress's programme of racial transformation", which he claims the Bill is based on The ANC does not have such a programme

Cosatu would not be in an alliance with a racist organisation while our founding principles are based on nonracialism, nondiscrimination and gender equality

We therefore find it absurd for Leon to even suggest that the ANC is a racist organisation

Cosatu's understanding of the Bill is that it seeks to finally transform the labour market by redressing the imbalances of the past pertaining to job reservations promotion opportunities, gender imbalances, income distribution, training and development

Leon has misinterpreted the Bill, particularly the employment plan, which is to be drawn up by designated employers on an annual basis

It is outrageous that he sees the Bill as an institution of racial preference in appointments, promotion and training

Employment Equity Plan The Employment Equity Plan is regarded as a promotion mechanism which will be aimed at achieving reasonable progress on the following

- Analyses and identification of employment barriers,
- Steps to be taken to eradicate barriers,
- Identification of positive implementation measures, and
- Annual timetables of the plan for the achievement of goals and objectives (other than numerical goals) which rule out the question of targets as portrayed by Leon

The Bill emphasises the question of long-term measures to eradicate this phenomenon It further encourages internal measures to resolve disputes arising out of the implementation of the plan

Monitoring mechanisms The Bill is broad Leon deliberately ignores other provisions of the Bill and mistakenly said the monitoring of the Bill's implementation will depend on trade unions (probably having Cosatu at the back of his mind)

However, the Bill is inclusive It talks about the workforce, including senior managers, taking responsibility for the implementation and monitoring of the plan

Leon's mind is preoccupied with the concept of self-determination and therefore he is struggling to distinguish between the role of individual employers and that of the democratically elected Government of the people

Nowetu Mpati says the Employment Equity Bill seeks to transform the labour market by redressing the imbalances of the past.

He is strongly opposed to the role of the Minister of Labour, director-general and inspectorate with regard to the implementation and monitoring of the Bill

He wants employers to draw up a plan, monitor, implement and evaluate it, without subjecting themselves to nationally agreed criteria

But the Government has a responsibility to be involved in defining these criteria

According to Leon's confused state of mind, we are not supposed to have a Government – employers should govern this country, with Leon being the self-imposed president

Penalties You cannot have a plan that does not have mechanisms to monitor compliance

Any law in any country will impose a fine as a deterrent to non-compliance

The question of a fine should be regarded not as a punitive measure, but as a tool to promote the eradication of racial discrimination in the labour market which Leon purports to be in favour of

Leon uses statistics from the Management Consultancy FSA which predicts that 33 percent of professionals will be black by the year 2000

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 (Paterson F Grade) Africans constituted only 2,99 percent, coloureds 0,43 percent, Asians 0,21 percent and whites 96,38 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 Leons 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

(The writer is Cosatu's head of communications.)

Employment act 'might come into effect only later this year'

(166)

Reneé Grawitzky

BD 6/2/98

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 business. 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

bungle

Minister R1m pay up after breaking his own labour laws

CARMEL RICKARD

(166) ST 8121198

LABOUR Minister Tito Mboweni has been ordered to pay an employee more than R1-million after falling foul of his own laws

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 had 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

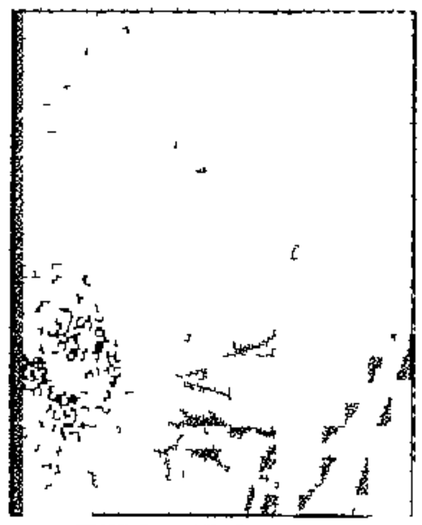
A number of other cases brought by members of the Industrial Court are pending against the minister and his director general

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



TITO MBOWENI

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 job, 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 to 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

Standing up for a better deal for workers

Picture: JULANI VAN DER WESTHUIZEN

UNAPOLOGETIC ... Sipho Pityana says government is not neutral on labour rights

Labour Department director-general Sipho Pityana's tenure has coincided with a dramatic change in SA's labour laws, as well as rising unemployment. He talks to CIARAN RYAN

BUSINESS leaders, infuriated at the raft of "pro-labour" laws enacted under his tenure, have accused Sipho Pityana of batting for the ANC rather than performing the task of an appointed public servant One of the principal complaints is that the new labour laws impose rigidities and cost burdens on business at the expense of job creation

"I am here to enforce the policies of the government These policies are not neutral on the issue of labour rights, nor are they intended only to ameliorate the conflict between labour and business A key pillar of government policy is poverty alleviation, and labour represents a significant body of poor people "

At an International Labour Organisation forum in 1996, Pityana and Anglo American director Leslie Boyd bumped heads on the issue of job creation "Boyd said the overriding concern of government was to create jobs, and that the kind of jobs created were of lesser importance. I find that a flippant assertion Some 40% of those in employment earn below the poverty line, and that gives rise to a high propensity for conflict Wage disputes are the biggest cause of strikes These are anti-poverty conflicts, and very disruptive to the work environment If we went the Boyd route, we would create even greater wage disparity than currently exists "

Pityana points to the sharp reduction in strike action in 1997 as proof of the efficacy of the new Labour Relations Act, which creates various mechanisms for dispute resolution, regulates collective bargaining, guarantees freedom of association and the organisational rights of workers "The reduction in strike activity will contribute to an improvement in productivity "

So who stands up for the unemployed? "Job creation is not one of the department's responsibilities," answers Pityana. "The Labour Department does not possess all the policy tools to effect job creation We have no control over the gold price, industrial and macro-policies or other state interventions, which belong to other departments "

The jobs summit scheduled for later this year — although dismissed by many as a non-starter in view of the inability of government, business and labour to agree on a common platform from which to proceed — should mark an important milestone in the war against unemployment.

"But don't expect any miracles," says Pityana, who adds that the summit will be a culmination of negotiations at Nedlac

"Government will table a range of proposals aimed at reducing unemployment, but business and labour will have to come to the party with their own suggestions The single most important project of government this year is job creation There are no short cuts. Our unemployment is structural rather than cyclical, so the solutions must address the structural impediments to job creation We must look at how to create labour-generating industries, rather than hanging on to the dinosaurs of the past that were created as part of the apartheid siege economy "

Pityana, 38, describes himself as a social democrat, a fair step from his roots as a student of the late Harold Wolpe, a Marxist academic whose theories on democracy and economic emancipation of the poor nurtured an entire generation of exiled South Africans. (166) ST(BT) 8/2/98

Pityana, brother of Barney Pityana, chairman of the Human Rights Commission, ran foul of the security police in 1981 as an organiser for the Motor Assembly and Component Workers' Union This was a particularly brutal period for trade unionists Pityana was detained without trial for nine months

On his release in early 1982, he was banned and went into exile, first to Lesotho and Mozambique, and then to the UK. He abandoned any ambitions of becoming a lawyer to study government and sociology under Wolpe, himself an exiled South African with radical views on redistribution of wealth in a liberated SA.

Wolpe's teachings, and those of other radicals such as Joe Slovo, the Pahad brothers and Pallo Jordan, were tempered by the realpolitik of exiled ANC leaders such as Oliver Tambo and Thabo Mbeki Tambo remains one of the most formative influences in Pityana's political life. "He had the ability to see five or 10 years ahead and, most importantly, he was able to get others to share his vision," he says

Pityana rose to the rank of ANC secretary for the UK and Ireland, with Frene Ginwala as his deputy and Nkosazana Zuma as chairperson. He later became a research officer for the International Defence and Aid Fund for SA, tasked with monitoring the SA media.

"This gave me a very good perspective on the internal view of events in SA," he says "But I also had the benefit of interacting with others who had recently arrived from SA. This led me to believe that the underground structures were far more effective than the SA authorities would admit."

Pityana held many other positions in exile, editorial board member for Anti-Apartheid News and Focus on Repression, co-ordinator for the Nelson Mandela International Reception Committee and a researcher for the Commonwealth Secretariat Group on skills requirements for a post-apartheid economy

He returned from exile in 1991 and threw himself into labour relations and educational issues as an adviser to various university and training institutions, good preparation for his appointment as Labour Department director-general in 1995

Bill allows interference in private sector — NP

BD 9/2/98

THE new Employment Bill, due to be enacted in June, should send warning signals to business in SA, the National Party (NP) said yesterday.

"Not only does it constitute direct interference of government in the private sector, it also highlights the perception that neo-racism is alive and well in the new SA," said NP outgoing labour spokesman Adriaan Blaas, MP.

In terms of the new bill, employers are to seek the equitable representation of black people, women and the disabled at all levels of employment.

Blaas said the penalties for noncompliance were severe to say the least.

"The new Employment Bill discards merit and experience, the backbone of any efficient and successful business, in favour of racial composition."

The NP also condemned President Nelson Mandela's opening address to Parliament on Friday, saying he was ill informed about the realities of local government. Spokesman on local government Watty Watson said Mandela had not presented the full picture when he had boasted on Friday of an increase in water supply to 600 000 South Africans and 400 000 new electricity connections.

The statistics referred to services rendered by local government, but made no mention of the percentage of services not being paid for, he said.

"The promise of an additional R3bn to local government is welcomed, but if this will mean a further drain on the already overburdened taxpayer in order to keep alive' unsustainable and unaffordable municipalities, it will merely be another nail in the coffin for SA," he said. — Sapa.

vote his full attention to the province.

ANC spokesman Ronnie Mamoepa ... chairman at the weekend.

ensuring conformity with the amended ANC constitution" — Sapa.

Housing

Continued from Page 1

BD 9/2/98

The proposed parastatal should be seen within the context of a second housing white paper which was being drafted, the source said. The document was being driven by a sense in the housing ministry that there was "a need to take charge" of the housing process in a manner which had hitherto not been possible.

No government spokesman was prepared to comment on the proposals for the liquid fuels industry referred to in Mandela's speech. The communications director in the minerals and energy ministry was unavailable.

Mandela told Parliament the restructuring of state enterprises also meant strengthening the management of existing enterprises, a programme government had intensified recently. Efforts to fight corruption in the public service had also been stepped up.

Mandela said he wished to thank the media for its vigilance in this regard. While there may have been instances where fingers had been pointed at individuals without justification, there were many examples where investigative journalism had "helped uncover the scoundrels — old and new — who prey on the public purse".

Comment: Page 11

PEANUTS By Charles Schulz

NEW

Subpoenas served on Cofesa members who redefine themselves as contractors

Battle looms over new labour law

(166) CT(PR)10/2/98

SHIRLEY JONES
KWAZULU NATAL EDITOR

Durban — The Clothing Industry Bargaining Council is about to clash with some employers who have redefined themselves and about 150 000 workers as contractors — a move which may enable them to avoid labour legislation

The council has subpoenaed about 40 members of the Confederation of Employers of Southern Africa (Cofesa) to explain their failure to register with the council.

Piet Pelser, Cofesa's KwaZulu Natal representative, accused the council yesterday of blatant victimisation, saying that the members were no longer subject to labour legislation

Pelser said Cofesa had redefined more than 3 000 factories and 150 000 workers as contractors over the past few months

He said the clothing manufacturers who had been subpoenaed intended to ignore the council's request because, as contractors, they were excluded from the council's jurisdiction in terms of section 213 of the Labour Relations Act.

"The council was informed that the factories concerned have changed to contractors outside its jurisdiction. We will protect our members," he said

But a council spokesman said the subpoenas had merely formalised requests for first-hand explanations sent to the clothing manufacturers in December

He said the council wanted first-hand information on why the manufacturers had withdrawn from the council and on what grounds they had declared themselves and their employees independent contractors It had no intention of pre-judging individual cases and would not comment further, the spokesman said

'Contractors have doubled their income and go-slows are a thing of the past'

Pelser claimed that the manufacturers he represented felt the council's actions were meant to intimidate them and were a violation of their freedom to trade

"We retain our rights regarding civil action for damages suffered," he said.

He alleged that the companies concerned had reported massive productivity increases after being redefined as contractors "Most contractors also doubled their incomes, and waste and go-slows are something of the past," he said.

He said Cofesa's strategy supported the government's Gear policy "The old concept of workers being subordinates is also now contrary to the fundamental constitutional right of equality"

In addition, the exclusion of contractors from the Labour Relations Act enabled Cofesa to create new entrepreneurs who, from protected environments, would grow into fully fledged traders, he said.

Pelser said Cofesa had trained a large panel of experts to assist companies with transformation in terms of the Labour Relations Act Its contract was based on international concepts and had been approved in the Labour Appeal Court and the Industrial Court, he said

The bargaining council represents employers and labour

EMPLOYMENT EQUITY BILL

Brandishing the big stick

Affirmative action targets raise practical posers

FM 13/2/98

"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 "reracialisation" 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 representivity 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 R500 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 reintroduction of race classification in the Bill's quest to make designated companies mirror the national or regional population mix.

There are an 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."

Amarnath Singh

THE PRESIDENCY

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 statement in Mafikeng in December that "the bulk of the mass media in our country has set itself up as a force opposed to the ANC" and "exploits the dominant positions it achieved as a result of the apartheid system, to campaign against both real change and the agents of change, as represented by our movement"

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 wider 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 of 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 Graça Machel Neither 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 diffidently 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 Masakhane 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 prefigured by events in the mid-Eighties when Mandela met P W Botha, and rejected what would have been a form of parole had he forsworn violence against an unjust State Mandela, too, insisted that release should be a component of a wider-ranging process of negotiation That stand took Botha to the horizon of his capacity for reform, where he remained until the intervention of a stroke of fate

Having initiated 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 obeisance 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 *cri de coeur* from the dock "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"

President Mandela opening parliament
does he believe everything he says?

Having said that, the requirement was for him to endure so he became the most famous vacancy in the world Into the space he had occupied flowed innumerable "translations' of him — revolutionary, liberal, oppressive It should have been self-evident that on release he could never fulfil 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 — preferring 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 — embodying the principles he articulated at the end of the Rivonia trial — is probably his most important, shared victory, even though it still appears fragile

Peter Wilhelm

Parliament faces the big divide

(166) M+G 13-19/2/98

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 elections 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 Cheadle 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 oblige companies to work 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 shortage in South Africa" This means an engineering firm which employs a team of 75 engineers cannot be expected to fulfil a quota of 50 black engineers because of the shortage of black engineers in South Africa

Bhoola says it is unlikely, as the business lobby suggests, that the government will impose heavy fines on companies if they fail to show a workforce that is "broadly representative of the demographics of South Africa" within five years of the Act being passed She says the Bill will rather oblige companies to show that they have a reasonable plan in place to make the staff as racially balanced as possible, as quickly as possible

The Bill "requires employers to make sure they have diverse workforces that broadly represent the population However, other factors are also relevant, such as the skills pool. This takes into account the enormous challenges of development and training which face employers The aim of the Bill is not simply to force employers to crunch numbers"

Tony Twine, an economist at the Johannesburg-based Econometrix, feels the Bill does not promote economic growth He says it is the latest "cog in a sequence of labour legislation" that puts "a heavy onus on businesses and protects various workers' rights without leaving business much flexibility to decide its own future"

Twine says the Bill, by implication, imposes quotas on companies "You end up in the position that every market researcher [is] looking for a one-legged black female You end up in stupid situations"

He says the government has not explained what rights white people have if they are forced out of jobs to make way for black people who are needed in order to meet company targets

The government made it clear this week that its desire to engineer racial equality goes beyond the workplace Minister of Sport and Recreation Steve Tshwete said he is seriously considering plans, possibly even legislation, to take race-based recruitment policies on to the sportsfield

Playing the game PAGE 30

Bill 'will do more damage than good'

(166) (57)

Paul Vecchiatto

THE Institute of Directors has criticised the proposed Employment Equity Bill, saying that it could do more harm than good.

It said yesterday in response to the labour department's call for submissions: "The draconian measures contemplated in this legislation would hurt the capabilities of companies to work for the common good."

The proposed bill is aimed at placing legislation to eliminate workplace discrimination and accelerate training and promotion of previously disadvantaged groups.

The government has made it clear it wanted the bill to be placed before and passed by Parliament this year.

Institute chairman Solly Tucker said directors were alarmed by, and objected to, the extent of the prescription envisaged in the bill.

"It would make for bloated bureaucracy giving officials power to finger the records, plans and structure of businesses and meddle with the running of companies.

"Such outside interference would multiply business risks and inhibit growth.

"The effect would be to shrink employment, stifle opportunity and damage the prospects of the a company and its people at all levels," Tucker said.

The institute represents directors as individuals and focuses on corporate governance and director development. — I-Net.

Equity Bill will give unnecessary power to bureaucrats

(166) (126) CT(BR)17/2/98

FRANK NXUMALO

Johannesburg — The Employment Equity Bill would make for a bloated bureaucracy, giving officials "sweeping powers to finger records, plans and structures of business and meddle with the everyday running of companies", Solly Tucker, the chairman of the Institute of Directors, said yesterday.

He said such outside interference would multiply business risks and inhibit growth, which would shrink employment, stifle opportunity and damage the prospects of a company and its people at all levels.

Tucker said that although the institute supported the eradication of discrimination and recognised the need to tackle racial and other disparities in the distribution of jobs, occupations and incomes, the institute had "major problems with the manner in which the bill was seeking to remedy the imbalances of the past".

Tucker said: "We cannot beat unfairness with unfairness. The presumption of innocence is a bedrock tenet of our sense of justice.

"The bill would make an employer guilty unless he or she proves to be innocent.

"Whenever the burden of proof has been reversed here in our country or elsewhere, unmistakably it has been a repressive law.

"Equality, opportunity and fair play go together," he said.

"The bill, as overseas experience has shown, offends these values because it creates a capricious quota system, establishes preferences for unqualified individuals, makes for reverse discrimination and would inevitably continue even after its equal opportunity purpose has been achieved."

Tucker said that the directors were alarmed by and objected to "the extent of prescription envisaged in the bill"

"We thought that with democratisation we would be rid of the heavy hand of big brother.

"This law would favour strong-arm authoritarianism," he said.

Jobs equity bill is here to stay, business told

(166)(57)

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

18/9/98

ARG

Govt urged to strike a balance

(166) Sowetan 18/2/98

Business South Africa wants more consultation in labour laws process

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

BD 18/2/98 (166) (168)

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, picketing 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

CT (BDR) 19/8/98

'Equity bill won't lower standards'

(66)

VERA VON LIERES

Cape Town — The proposed Employment Equity Bill would not reduce workplace standards but improve efficiencies, Sipho Pityana, the director-general of the labour department, said yesterday

"This bill is about promoting efficiencies in allocating people It's about redetermining and elevating standards in the workplace," Pityana told a workshop to the portfolio committee on labour

The details of the bill, which was on its way for discussions in Nedlac, were first published last December and stirred up heated debate in business, labour and employer organisation circles

The bill is expected to be in parliament by July but the date could be shifted to September

The two central aims of the bill are the elumination of discrumination in the workplace and the implementation of employment equity It targets previously disadvantaged individuals, including women and people with disabilities, and will use affirmative action measures to correct the wrongs of the past.

"This is quite distinct from apartheid Apartheid intended to elevate one race group in a calculated way to marginalise and put down other race groups," Pityana said. He said the starting point of the bill was an acknowledgement of South Africa's diversity

Loyiso Mbabane, who steers the equity bill within the labour department, said workplace equity needed to be urgently addressed in South Africa

"There's more to worry about than high unemployment Even within existing employment, skill levels still depend very much on race and gender," Mbabane said, adding that countries like Canada and Australia were streets ahead in implementing equity laws

Mbabane also quashed talk of lower standards. "The bill is not about grabbing hobos and making them managers We are saying affirmative action should be used to appoint and promote suitably qualified (people) If anything, the bill is expected to lift standards"

☐ Business Watch, Page 18

Land and labour laws under spotlight in urgent application

By Cathy Powers

Labour relations and land claims were at loggerheads in the Randburg Land Claims Court yesterday as lawyers argued over how the new Extension of Security of Land Tenure Act should be interpreted and how it would impinge on the Labour Relations Act.

This urgent application is from 64 labourers who were evicted in January from their hostel on a Krugersdorp farm after what they claim was a labour dispute.

Landowner George Kok fired the labourers, employed in his Consteen brick manufacturing firm, in December after they embarked on a strike, which he said was illegal.

On January 19 Kok obtained an eviction notice from a Krugersdorp magistrate to remove the workers from his property.

The workers hope the hearing, which is the first test for the newly promulgated Extension of Security of Tenure Act, will result in the reinstatement of their tenure of the farm dwellings.

Advocate Gys Rautenbach, representing factory owner Kok, argued yesterday that people who embarked on an unprotected strike and were therefore not protected under the LRA won an advantage under the new land act because employers could not evict them.

In effect, Rautenbach said this would mean that pending a labour dispute, the employer was obliged to house the workers until the dispute was resolved. The outcome of the case could set a precedent and have huge consequences for industries who housed workers on rural land.

Mr Justice Anthony Gildenhuis ruled this week that the act, which protects farmworkers from being unfairly evicted from their homes if they have labour and personal differences with employers, also extended to land which in this case is used for industrial purposes

Rautenbach said the act should be interpreted to read that landowners have the right to evict workers who are sacked.

There was no pending labour dispute, he said, as it was unresolved at the Commission for Conciliation Mediation and Arbitration and has not been referred to the labour court.

The labourers' representative, Allan van der Merwe, said it was quite evident that the respondents wanted to evict the workers by any means, initially by using force, then through a provisional order from a Krugersdorp magistrate.

■ Also at stake are the rights of the current hostel dwellers versus the rights of those evicted.

Judgment is expected tomorrow

(4) (166) Star 19/2/98

Bill's reverse racism label denied

Vuyo Mvoko

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 Pityana and equal opportunities 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", Pityana 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

Pityana 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," Pityana said, referring to experience drawn from countries like the US, UK, Canada, Zimbabwe and Namibia

'Equity bill could increase joblessness'

Reneé Grawitzky

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.

BD 20/2/98

Big penalties possible for failing to reach goals

(166) Star 23/2/98

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 R500 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 workpla

Employment 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 burnt 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 businesses

Professor Linda Human, who has researched and developed equity programmes in South Africa since 1982 – long before they became fashionable – says: "The basic principles of AA as a means of creating greater equality of opportunity are tacit 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 been 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 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."

Is the legislation really as draconian as the SAIRR's Anthea Jeffreys claims? Is it really, as the Democratic Party says, "a step towards re-racialisation"?

It depends whose interests you are defending (or advancing) And, regrettably, there's been very little comment on the legislation from organisations which represent those targeted by the new legislation

Hopefully, these organisations will have beaten the February 16 deadline for comment on the draft legislation and have made their views clear.

Otherwise, it will only be those who traditionally have access to the mass media conference podiums who dominate the debate around this legislation, and around the broader equity process.

Should also benefit some of the white workforce

An objective look at the draft legislation shows that it's not about establishing an "affirmative action police force" It's not about "lowering standards" (even though "standards" may have been used in a subjective and conservative way) Nor is it about "reverse discrimination"

workplace apartheid

(166) Star 23/2/98

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An objective look at the draft legislation shows that it's not about establishing an "affirmative action police force" It's not about "lowering standards" (even though those "standards" may have been set in a subjective and exclusive way) Nor is it about "reverse discrimination"

Employers won't be forced to hire unqualified people. There is insistence 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 gymslip, 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, additional external issues for employers 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 organisations 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

■ *Chris Vick was recently appointed director of transformation & training for the Independent Newspaper Group*

ILLUSTRATION JIGNASA DIAR

Entrenchment of employees' rights may be hard Act to follow

CT 24/2/98 (166)

YAZEED FAKIER

IS a priest an employee of the church or of God? If he's 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 Chennels 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 labour 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

Chennels 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 newly-established technical committee to examine the Act's effect, 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

Chennels 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 business?'

"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

ON THE BALL: Labour law expert Jeremy Chennels.

"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 rumour 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 wishing to circumvent the possible labour hassle and giving the problem over to a broker"

According to Chennels, 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, Chennels 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"

● Chennels, 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@iafrica com A selection of questions and answers is to be published on a date to be announced

Immigrants hounded 'for taking SA jobs'

'20 killed in city in 1997'

BLACKMAN NGORO

About 20 African immigrants have been killed in Cape Town this year as a result of xenophobia, according to an organisation looking after their interests.

The scope of attacks on asylum-seekers from other African countries was described this week by Brian Redelinghuys, co-ordinator of the

The Inkatha Freedom Party has taken a position against illegal immigrants, saying they absorb jobs and resources intended for South Africans, while influential African National Congress members on the parliamentary Home Affairs committee have also taken a strong anti-immigrant stance.

Yusuf Hassan, spokesman for the United Nations High Commission for Refugees in Pretoria, said the Government could not benefit from the permission of Home Affairs and, therefore, we can't comment on what they are doing."

The Catholic Commission's complaint was handled by the Independent Complaints Directorate (ICD), which monitors the police.

Burundian refugee, Jean-Pierre Kanyangwa, died on his way to hospital shortly after police had brought him to the offices of the Department of Home Affairs in Cape Town earlier this year.

'JOBS MAY BE LOST, INSTEAD OF CREATED'

Labour law 'may backfire'

CT 24/2/98 (166)

THOUGH THEY SUPPORT better treatment of workers, small businesses worry about the new labour laws. **YAZEED FAKIER** reports

EMPLOYERS in small business 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 bosses in small businesses worried that they will have higher wage bills and less to keep their businesses going, are.

● 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

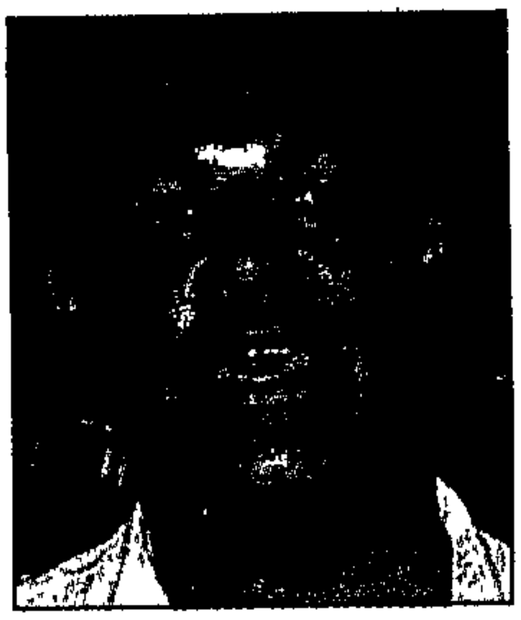
● Payment, which increases from one-and-a-third of the wage to one-and-a-half for overtime worked

● 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, the effect of it, once 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 Buitenkant 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 out 13 years ago, he says with no small measure of pride



WORRIED: Alex Anderson

He learnt the trade quickly and well and when his boss skipped 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 2 000 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 retrenchment 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 man in the street is the one who in 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 Ms 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 *PICTURES: YAZEED FAKIER*

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 "

In a jobless crisis, make it easier to hire people

Star 25/2/98 (166)

Employment Equity Bill punishes the unemployed despite its good intentions, writes John Kane-Berman

Following the lead of the private sector, the Government is getting into the business of downsizing (or is it rightsizing?) the public sector At the end of the day, however, the euphemisms fail to hide the truth. "Workforces" may merely get "downsized", but it is really people who get sacked, fired, dismissed

The gingerly way in which the Government has handled teacher layoffs shows how unpleasant it is to retrench people. This is why euphemisms are in vogue. It seems less cruel to "downsize" a "workforce" than to tell a person he or she is redundant.

For governments the sacking of people is doubly unpleasant Unlike employers in the private sector, they risk paying a political price

With a general election little more than a year away, it was laudable of President Mandela to warn that massive public-service job cuts lie ahead in 1998. On the assumption that most black public servants are ANC supporters, there is bound to be some sort of political price.

Likely retrenchments in the mining industry will push the numbers of jobless people even higher Unemployment in South Africa is in fact growing at both ends, as it were Around 400 000 youngsters are joining the pile of jobless from the bottom each year, while the people who lose their jobs are joining it from all directions – at a current rate of 114 000 a year And that excludes farmworkers who might be losing jobs.

Unlike some of the public servants and a handful of people in the private sector, most ordinary workers do not get generous severance packages when they are laid off. They (and their families) face the prospect of going from poor to very poor And the longer they stay out of work, the dimmer their prospects are of finding it. Understandably, there are demands for such things as "social pacts" and for Government to oversee retrenchments

Such intervention would be disastrous Even without external factors such as the gold price, retrenchments are inevitable in economic life Governments should not try to stop them. What they can, and should, do, is make it easier for businesses of all shapes and sizes to hire people People who lose their jobs with one employer should be able to find jobs with another one

...

How easy this will be depends on a host of factors One is the rate of growth of the economy. Another is education and skills levels A third is the regulatory environment – the rules governing employment The more intrusive the rules, the fewer jobs there are likely to be to go around

And this is precisely where South Africa is marching off in the wrong direction We have got rid of rigidities in the labour market such as the pass laws only to have them replaced by measures which risk introducing new ones, notably the Employment Equity Bill

The bill seeks to undo what it describes as unfair discrimination But the worst form of unfairness in South Africa is the unfairness to jobless people which results from legislation, the effect of which may well be to attach new complications to the hiring of workers

■ *John Kane-Berman is the chief executive officer of the SA Institute of Race Relations This article will appear in the March edition of the institute's publication, Fast Facts*

NE

Codes on picketing and dismissals to aid in interpreting new labour act

Nedlac strikes labour practice deal

CT(BR) 26/2/98 (166) (

FRANK NXUMALO
LABOUR EDITOR

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 1998 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, that "picketers 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

Muzi 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'

BD 26/2/98 (16b)

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 rightsizing. "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

(166) BD 26/2/98

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 nondiscrimination and equality of opportunity, but questioned the bill's effect on small and medium-sized business.

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".

Labour Minister Tito Mboweni, left, and Chamber of Mines president Bobby Godsell at the opening of a two-day gold summit at the Parktonian Hotel in Johannesburg yesterday The conference was organised by the National Union of Mineworkers to resolve problems in the gold mining industry and to halt job losses. Pictures TYRONE ARTHUR

Employment act to lift wage bill

BD 27/2/98 (16)

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 of 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 Sipho 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

Employment bill fails to reduce apartheid wage gap, say unions

BD 5/3/98 (166

Reneé Grawitzky

THE Employment Equity Bill had failed to include a strategy to bring about the reduction of the apartheid wage gap, labour said yesterday in its response to the bill ahead of the resumption of negotiations today

Labour — in what was supposed to be a joint Congress of SA Trade Unions (Cosatu), Federation of Unions of SA (Fedusa), National Council of Trade Unions (Nactu) position — said it supported the underlying philosophy and, in most instances, the bill's broad strategy.

However, areas of concern related to the definition of designated employer; the failure of the bill to give legislative effect to facilitate the closure of the wage gap and the lack of an effective mechanism to compel employers to implement measures

Labour said the bill and the original green paper laid great stress on the high levels of wage and income inequality as a central legacy of the apartheid labour market. The documents implied that addressing these disparities was an important element of the employment equity strategy. Labour, however, believed the bill failed to give effect to this concern.

The bill could not only be confined to a degree of horizontal equity, "where there is racial and gender representivity within a particular strata of the labour market, while there continues to be huge vertical inequality — between those at the bottom and those at the top"

Fedusa general secretary Chez Milani said it appeared that Fedusa's position had not been adequately captured in the joint position on this issue

Wage differentials as a central theme was not the focal point of employment equity legislation, he said. Proposed legislation should deal with horizontal equity.

Labour said it welcomed the bill's underlying philosophy which sought to advance the need for a comprehensive approach to the redressing of the legacy of discrimination and inequality in the labour market, in order to achieve the goal of employment equity. This was opposed to adopting a narrow focus aimed at promoting a small number of individuals into senior positions.

Labour went on to say that "a narrow, state-driven strategy, relying exclusively on the imposition of affirmative action quotas, would have had serious drawbacks". Such an approach would have resulted in the promotion of a few individuals and would not have advanced empowerment.

Employment Bill divides business

(166)

Sowetan 6/3/98

By Abdul Milazi

THE passing of the Employment Equity Bill by Cabinet last month has polarised black and white business – they do not agree on how it will affect small business

In one corner is the South African Chamber of Business (Sacob), which argues that the Bill will be "a crippling burden for many small-and medium-sized businesses"

In the other corner is the Black Management Forum (BMF), which argues that "the journey towards true non-racialism will not even start until there is sufficient embracing of human resource transformation and affirmative action as the key means for the normalisation of the workplace"

These two views sum up the feelings of the communities represented by the business groups

Sacob spokeswoman Janet Dickman said her organisation believes "the Bill, with its overemphasis on numerical targets, would raise expectations unrealistically and eventually lead to serious problems for business and Government"

She further argued that the Bill would erode investor confidence, particularly if foreign companies found their ability to transfer highly skilled personnel to South Africa was severely restricted

BMF president Lot Ndlovu, on the other hand, said the Bill needed to be strengthened and refined before becoming law "It must define 'affirmative action properly and position it unambiguously as the chief instrument for creating diversity and equity"

Ndlovu argued that those who opposed the Bill were ironically those whites who claimed to espouse democratic values He said the one value they lacked was the willingness to submit to black leadership

"They simply cannot deal with the fact that the initiative or stage no longer belongs to them only Their loss of influence over blacks has resulted in anger and panic

"They feel personally excluded. They are unfortunately aided by a few black apologists"

Dickman countered "We support the need to redress the under-representation of blacks, women and disabled in South Africa and to counteract the historical patterns of disadvantage This has been our emphatic position since the formation of Sacob in 1990

Undermine productivity

"But we sincerely believe the Bill will undermine productivity, efficiency and morale and strengthen the reluctance of companies to employ precisely in those sectors that afford the greatest opportunities of creating new job opportunities"

Sacob has called for all labour legislation, including the Employment Equity Bill, to be held back pending the proposed presidential job summit later this year

The BMF and trade union federations such as the Congress of South African Trade Unions and National Council of Trade Unions, are pushing for the speedy passage of the Bill

Black Management Forum president Lot Ndlovu.

Ndlovu said "The political and racial structuring of business has not only resulted in the physical exclusion of blacks from meaningful roles, but also in engendering a sense of alienation

"The inability of blacks to identify with companies they worked for manifested itself in inefficiency, under-performance and destructive tendencies"

He argued that the appointment of "unsuitable" whites to key positions simply on the basis of their skin colour also contributed to the negative attitude of blacks towards the companies they worked for and their jobs

Ndlovu said opponents of the Bill failed to come up with alternatives to affirmative action He said white business saw the Government as "shy on business transformation and for nearly four years marked time and continued virtually with business as usual"

However, Sacob feels the punitive measures in the Bill were deeply worrying and should be reconsidered "The trend is to decriminalise labour, yet the proposed level of fines virtually equates a transgression in employment practice with major criminal activity," said Dickman

She said several terms used in the parts of the Bill dealing with the regulation of affirmative action were vague and ill-defined, and would lead to uncertainty and a proliferation of disputes

"The Bill gives ample scope to just about any action in the realm of employment to be judged unacceptable by a Government official and thereafter subject to punitive penalties"

The BMF, however, feels the punitive measures should be stricter and that the proposed Employment Equity Commission should have statutory powers instead of the advisory powers proposed in the Bill

Must have teeth

"The commission itself must be statutory and independent. It must have teeth Its composition should not be confined to National Economic Development and Labour Council participants only

"The Black Business Council and the Human Rights and Gender Commissions should also be represented on the commission," said Ndlovu

He said the Bill should require industries to set benchmark affirmative action targets and the commission should ensure those targets were met

"The penalties provided in the Bill for companies failing to implement affirmative action should focus on non-administrative aspects of the Bill's provision such as the corporate culture change interventions and feedback from black managers, women and the disabled on their progress in the company," Ndlovu explained

He said affirmative action should be defined as a means of changing the culture, policies and practices of business

Meiring faces the axe

Sowetan 30/3/98

In hot water ... SANDF chief George Meiring.
PIC. COURTESY OF

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 said Meiring had given Mandela a one-source intelligence report last month that indicated that a disparate group of ANC people, ranging from Mrs 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

Implicated ... General Bantu Holomisa.

Implicated ... Mrs Winnie Madikizela-Mandela.

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 unverified report was rushed to the President, implicating among others the man who is tipped to succeed him (Meiring)

"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 Mufamadi 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 This meant 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 Mufamadi, blaming elements of the old order for a campaign to destabilise the country

Mandela finally agreed ... two will have to go and the ... sion is the mechanism to do this licly so that people can see ... generals have been behaving

Speaking in a British ... casting Corporation (BBC) inte... in Durban yesterday, Mandela the investigation would not ... the actual allegations made ... report but rather its compiler.

"Is it true that the source was ed on a polygraph as we were was the report verified, why ... not shown to the Defence ... before it was brought to me," he

Mandela said there were ... "of the old order trying to ... the country We cannot be ... cent but we are in supreme ... mand If we find any ... destabilise the country, we will ... out quickly and efficiently," he ...

The commission started ... evidence on Saturday and ... said he will cooperate.

He, however, defended the ... lation of the report, saying it have been dereliction of duty have done so

It has been confirmed that ... will also appear before the ...

Cosatu supports labour Bill

Sowetan 6/3/98 (Ed) (16)

By Abdul Milazi

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 Mpati 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

Mpati 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

Mpati 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," Mpati said

Labour has, 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

ST 8/3/98

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 Sarmcol 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 Sarmcol'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, Mpophomeni, 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

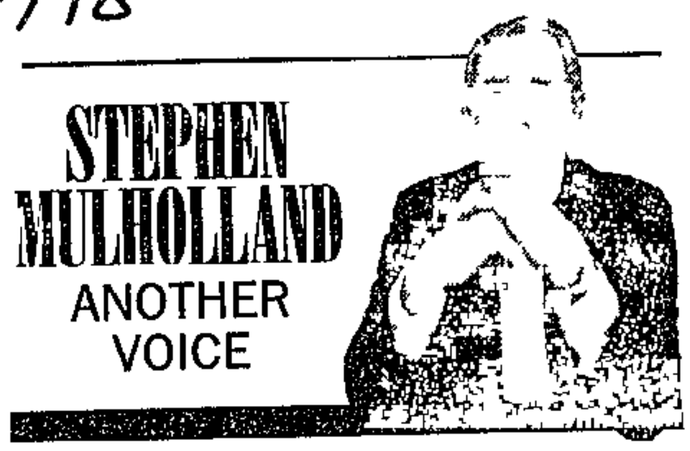
Former Sarmcol workers who learnt about the decision on Friday said they were jubilant they had eventually managed to persuade a court to give them "real justice".

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

(166) ST (BT) 8/3/98



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, rational approaches It will not be the first time that people have chosen to ignore the lessons 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

CT (BR) 13/3/98 (16b) (RSA)

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

CT 12/3/98. (166)

JOVIAL RANTAO

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 deracialise its workforce

Addressing a press conference in Parliament yesterday, Mboweni said the deracialisation of opportunities and practices — as envisaged in the Employment Equity Bill — was the essence of transformation in South Africa.

TITO MBOWENI

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 re-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.

"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 livelyhoods," he said.

Mboweni said the continued denial of opportunities to women, blacks and people with disabilities in the work place 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 work place 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 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.

Minister dismisses affirmative-action controversy as 'storm in teacup'

Star 13/3/98 (166)

By Jovial Rantao
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 reracialisation.

"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 this, 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 R65-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

Star 13/3/98 (R888) (166)

Anyone found employing a youngster under 15 faces three-year jail sentence

By Jovial Rantao
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 Minister 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 services," 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

CP 15/3/98 (166)

By MAPULA SIBANDA

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.

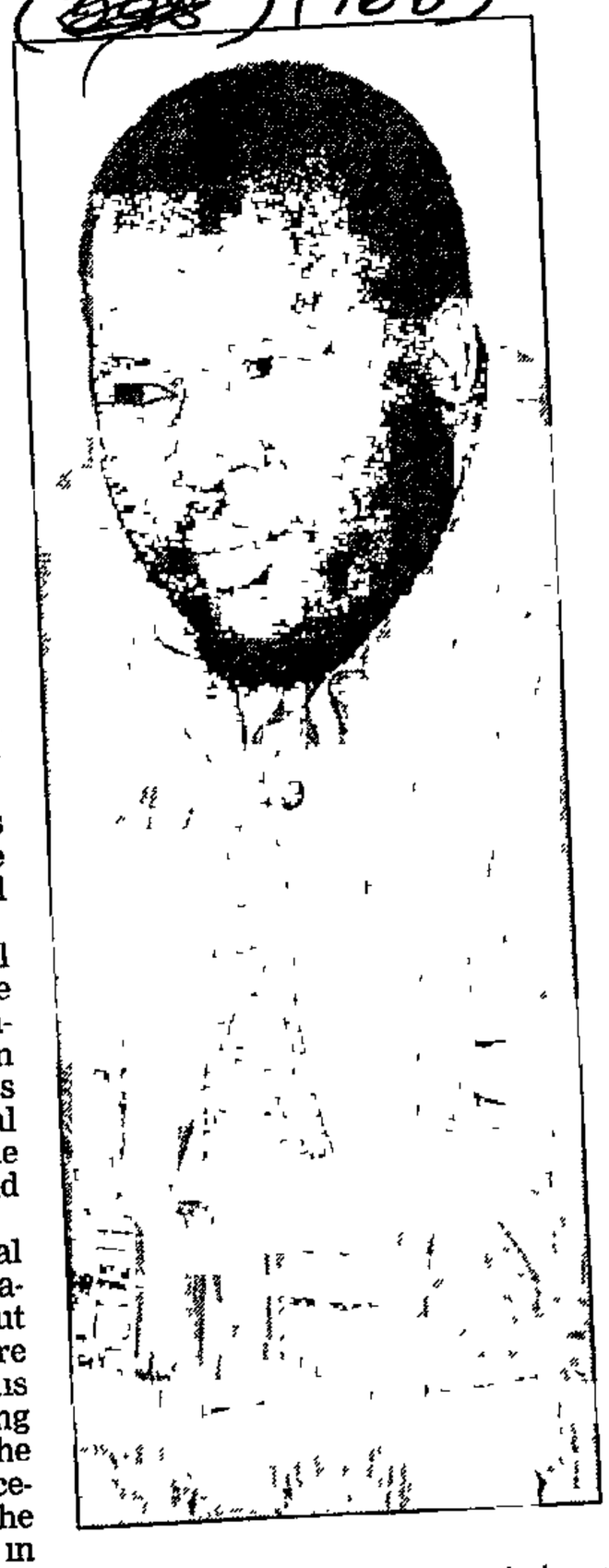
The section of the act prohibits the employment of children under the age of 15 or employing children under 18 in hazardous working conditions.

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 unorganised 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 adress working conditions, will be implemented later this year



LEGAL PROTECTION ... *Labour Minister Tito Mboweni says the first phase of the new bill will be implemented on Human Rights Day*

Trade unions to welcome new law

(16b) Sowetan 16/3/98

By Abdul Milazi

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 baited 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

(166)(98) PDO 18/3/98

Reneé Grawitzky

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 demographics; 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

ANALYSIS

It is naive to believe the labour market can correct itself

Debate on the Employment Equity Bill rages on but is the public well informed? Labour reporter **Renée Grawitzky** takes a look at the legislation

(166) BD 20/3/98

IN THE old days the Institute for Race Relations was hammered for daring to challenge apartheid It seems ironic that it is now seen to be taking a very conservative stand on the Employment Equity Bill and is being targeted for its harsh criticism of the proposed legislation.

Labour, government and business representatives involved in negotiations on the bill have acknowledged and accepted the need to implement, for a limited period, measures such as affirmative action

The institute achieved its objective of raising both its own profile and that of the bill However, in presenting a worst-case scenario — in line with the US experience — it has misinterpreted certain sections

Its actions have contributed to the rising perception that white South Africans do not want to "deracialise" society White business hence tried to distance itself from the institute's position and toned down its response considerably

The manner in which the institute promoted its views, which were adopted by the Democratic Party, the Inkatha Freedom Party and others, gave government and the Black Management Forum the opening to label all critics of the bill as being "antitransformation"

All this has made impossible an open debate on the legal implications of the bill and whether it can achieve its lofty goals of equity coupled with economic growth.

Redressing the legacy of inequality "reflected in disparities in the distribution of jobs, occupations and income" and developing a culture of nondiscrimination and diversity in the workplace are the bill's main aims This is to be done by introducing procedures to eliminate discrimination in decisions about careers, pay and benefits, restructuring work organisation to promote diversity; reducing barriers to historically disadvantaged groups, and changing workplace culture and procedures to train and promote such employees

The bill prohibits unfair discrimination, but, in line with the constitution, says it is not unfair to introduce positive measures or "distinguish, exclude or prefer any person on the basis of the inherent requirements of a job" The definition also covers racial and sexual harassment.

Allegations of unfair discrimination must be referred to the Commission for Conciliation, Mediation and Arbitration, and if not settled would go to the Labour Court which could decide to award compensation, punitive damages or a fine

The bill cannot be read in isolation from the Labour Relations Act, Basic Conditions of Employment Act, the Skills Development Bill, which is still under discussion, and the constitution which guarantees the right to both equality and fair labour practices

There are instances were the bill goes beyond what was agreed to in the Labour Relations Act

That act, for example, limits compensation for unfair dismissal linked to discrimination to 24 months' remuneration, but the bill merely says that such compensation must be just and equitable

To achieve equitable representation and diversity in the workforce, the bill requires employers with 50 or more employees to draft and implement a plan in consultation with unions or employee representatives Employers would not, however, be required to appoint or promote "fixed numbers" of people (quotas), or appoint or promote those not suitably qualified, or create new positions.

An employer must analyse his workforce according to race, gender and disability If this shows that there is "underrepresentation" within any job category, a plan must be drawn up incorporating numerical goals and a timetable for ensuring reasonable progress

Plans will be assessed on whether they reflect the national and regional demographics of the country; the pool of suitably qualified people from designated groups, economic and financial factors in the sector in which the employer operates and present and anticipated financial circumstances of the employer

A failure to consult, draft and implement a plan, submit a report yearly to the labour department director-general, publish this report in company annual reports and within the company and employ a manager to monitor the implementation of the plan could result in fines of up to R900 000

Contrary to the institute's claims, employers will not be fined if they do not achieve the plan's goals, or if progress is insufficient because natural attrition is limited or they cannot afford to take on new staff.

The bill grants the director-general powers to assess efforts to comply with the proposed legislation He can evaluate whether progress is reasonable

Noncompliance with a recommendation made by the director-general after the assessment can be referred to the Labour Court. Whether an employer faces fines, damages or orders will ultimately depend on the courts' interpretation of the proposed legislation — which does take into account the company's financial and other needs

The bill also calls for the establishment of a commission for employment equity to advise the minister on issues, and contains provisions relating to state contracts and powers of the labour court.

The bill has been criticised by business for introducing punitive as well as compensatory damages in excess of the provisions in the Labour Relations Act, and for requiring employers to ensure that their workforce mirrors national or regional demographics which could amount to quotas and force employers to hire people where jobs do not exist

Other concerns relate to the practicalities of obtaining certificates of compliance from the labour department to be eligible for state contracts, and how this clause could be used by companies competing for contracts

Business is also concerned about the uncertainty over the intention of some of the clauses Will the bill view dismissals to comply with equity plans as fair? How should "suitably qualified" be interpreted — does it mean someone who has the abilities, or formal qualifications, or relevant experience, or an evaluation of all these components?

A business source says that at the heart of differences is how parties define what is equitable, and especially what is meant by "equitable representation"

Labour wants the section relating to the appointment of suitably qualified people scrapped, and criticises the failure of the bill to address the reduction in the "apartheid wage gap" sufficiently

Durban-based consultant Pat Stone says the bill's emphasis is on consultation and participative decision making and is not prescriptive

"The only way people will buy into an equity programme is for all interest groups in the workplace to come together to agree on programmes"

Industrial relations consultant Joe Campanella says that, under the circumstances, the bill is reasonable practical and allows a long period for implementation.

One concern, however, is the administrative and bureaucratic component of the bill.

"It is hoped that correct attention will be given to this so delays do not occur as well as arbitrary enforcement of legislation," he says.

The institute, Stone says, has created the impression that the labour department will monitor every move of employers However, government has acknowledged it does not have enough inspectors, and the success or failure of the proposed legislation will depend on the employees to ensure compliance

From a theoretical perspective the Employment Equity Bill, together with the Skills Development Bill should upgrade skills and improve access to jobs, training and promotional opportunities to remove disparities in jobs and occupation.

Practically, it remains to be seen whether legislation of this kind can remove disparities in income between racial groups without job creation.

Employment equity deal 'within reach'

BD 24/3/98 (166) (~~175~~)

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 derailed 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 this 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'

CT (BR) 25/3/98 (166) (160)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — The cost impediments 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 46 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 Ntsika Enterprises to conduct the inquiry

Herrmann said Ntsika had already begun its work and would be working with a Dutch group

He said Tito 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 department 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 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 (166) (496)

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." CT 26/3/98

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 action Those are the people who were privileged in the past You think you can invite black people and insult them by opposing affirmative action 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 in the work place and introduce equal opportunities will face heavy fines and will be denied access to the lucrative state contracts

Nedlac meets tomorrow about tough issues in work equity bill

(166)

Reneé Grawitzky

BD 30/3/98

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 to 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

The Star ... Monday March 30 1998

KNOW YOUR LEGAL RI

LABOUR LAW

Firms obliged to redress discrimination

Star 30/3/98 (166)

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.

KIGHTS

Progress in addressing unfair discrimination

Star 30/3/98 (166)

South Africa was world-renowned for discrimination and gross inequality among its citizens before its first democratic elections in 1994 and the passing into law of a new constitution.

"Unfair discrimination is an issue that the constitution specifically addresses," says Urmila Bhoola, partner at Cheadle, Thompson & Haysom.

The constitution states that a person may not be unfairly discriminated against on the grounds of race, gender, disability, marital status, pregnancy, age, religion, conscience, belief, birth, culture or language.

Bhoola says these provisions are translated into practice in various ways. For all laws passed by Parliament must be in line with the constitution's principles and may be actively designed to promote such.

She cites the Labour Relations Act as an example. "The Labour Relations Act takes the constitutional protection of equality and affirmative action and translates them into specific protection for workers against unfair discrimination in the workplace."

On the question of affirmative action, Bhoola says: "The constitution regards measures designed to advance people who have been unfairly discriminated against as not being unfair discrimination because it guarantees equality and declares that affirmative action is a fundamental part of equality."

This provision is to be taken forward by the Employment Equity Bill (see story to left).

Another aspect of the implementation of the anti discrimination provisions of the constitution is action via the country's courts.

Any existing law, and actions of the State or another person can be challenged as being discriminatory.

The recent Langemaat case is an example. a lesbian police officer successfully challenged the SA Police Services benefit scheme, which did not recognise her partner as a dependent.

The court declared this aspect of the scheme to be discriminatory and, therefore, unconstitutional. The court ordered that her partner be included as a dependent.

Bhoola says although South Africa has made remarkable strides in dealing with unfair discrimination in society, the country still has a fair way to go.

between employer and

State ponders labour law rethink

(166) ST (PT) 1/11/98

JOBS SUMMIT

By THABO KOBOKOANE and CAROL PATON

GOVERNMENT is to revisit key aspects of labour legislation in the aftermath of the Presidential Jobs Summit held on Friday

Labour Minister Shepherd Mdladlana said a committee — comprising members of the Cabinet as well as representatives of business and labour, under the leadership of Deputy President Thabo Mbeki — would be established to examine labour market flexibility

Mdladlana said that committee would look into the Labour Relations Act in particular

Both Mbeki and Minister of Trade and Industry Alec Erwin hinted at the initiative but did not give details

Mbeki said a body would be established, among other things, to implement and monitor agreements reached at the summit and to take forward "the new consensus on complex matters in the labour market"

Erwin said there had been intense discussions on many aspects of the labour market leading up to the summit

"We seem to have made some progress in understanding the labour market Everyone is prepared to look at it," he said

However, labour warned that the question of structures or committees to take forward initiatives from the Jobs Summit still needed discussion and said it would not agree to renegotiate the whole Act

Picture ELIZABETH SEJAKE

PUTTING THEIR HEADS TOGETHER . . . John Gomomo, Cosatu president; and Thabo Mbeki at the jobs summit

Dorian Wharton-Hood, chairman of Business South Africa, welcomed the move

"We see it as a very positive development because there are obvious problems with our labour laws For instance, there is a problem over the right to strike for long periods and over certain issues On other hand, labour has a problem with the right of employers to retrench So we are poles apart — and we need to get closer," he said

The summit agreed on a range of comprehensive projects which combine existing initiatives into an integrated package. It identified housing, tourism and small business as the key generators of employment

One of the proposals is the creation of a national presidential housing project aimed at providing 150 000 houses for low earners by end-2001

The project, which is expected to start in the first half of 1999, aims to provide at least 75% of the houses as rented stock In the first phase of the project 50 000 houses costing R2 5-billion will be built

Government has pledged R750-million from its 1998/1999 and 1999/2000 Budget allocation while business will make available funding of R1 8-billion

There are also plans to spend up to R270-million in a tourism marketing drive over the next three years Between 20 and 40 towns with tourism potential will be identified as pilot development areas to promote SMME participation in the industry

Initiatives include a mentorship scheme and several new lending programmes by Khula

Also detailed in the declaration are a Buy SA campaign, tightening of customs and excise and setting up sectoral summits aimed at avoiding job losses and improving productivity

The summit agreed to set a social plan to stem job losses and a social security system for the poor and unemployed A task force to investigate how to shift from the current system in a way that would ensure a stable pension fund without absorbing unnecessary resources from the fiscus is envisaged A Cabinet committee will be established to monitor implementation of the agreements

Violent strikes in the spotlight

(166) BD 11/11/98

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 nonparties, 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.

Outsourcing firm told to employ sacked workers

(166)

ET (IOR) 11/11/98

RONNIE MORRIS

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

(166) Sowetan 12/11/98

By Mzwakhe Hlangani
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 Membathisi 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 incidences 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 bonafide 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 decisive 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 and 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

Govt policies harmful, say engineers

Sibonelo Radebe

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 600 professional black engineers in the country and the entire private and public sectors were competing for them Black engineers were difficult to get hold of, 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

(166) ef(BR)13/11/98

FRANK NXUMALO
LABOUR EDITOR

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 1995 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

(166)

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 Membathisi 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 CP 15/11/98

"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 463) and employers' organisations (from 191 to 241) also pointed 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

Labour department to monitor legislation

(166)

Structured approach to assess the effect of new laws

BD 17/11/98

Reneé Grawitzky

THE labour department was in the process of putting in place a research facility to monitor, on an ongoing basis, the impact of all labour legislation on the labour market, the department said yesterday

Guy Mohane, labour market policy chief director, said discussions in this regard began last year It was agreed that a more structured approach was needed to review all legislation and its impact on the labour market in terms of "efficiency, security and welfare"

This project is separate from the call made by Deputy President Thabo Mbeki at the presidential job summit last month for the establishment of a body to follow up on a number of labour market issues not addressed during the pre-summit process

Mbeki said the body would monitor and implement agreements reached at the summit and also deal with two demands raised by the Congress of SA Trade Unions (Cosatu) in relation to job security and a national productivity accord

He stressed that this process was not an attempt to lower standards and challenged the notion that the labour market required greater flexibility

Such comments were made amid rising tension between government and Cosatu over the failure to reach final agreement on the wording of a declaration relating to the growth, employment and redistribution strategy on the eve of the summit

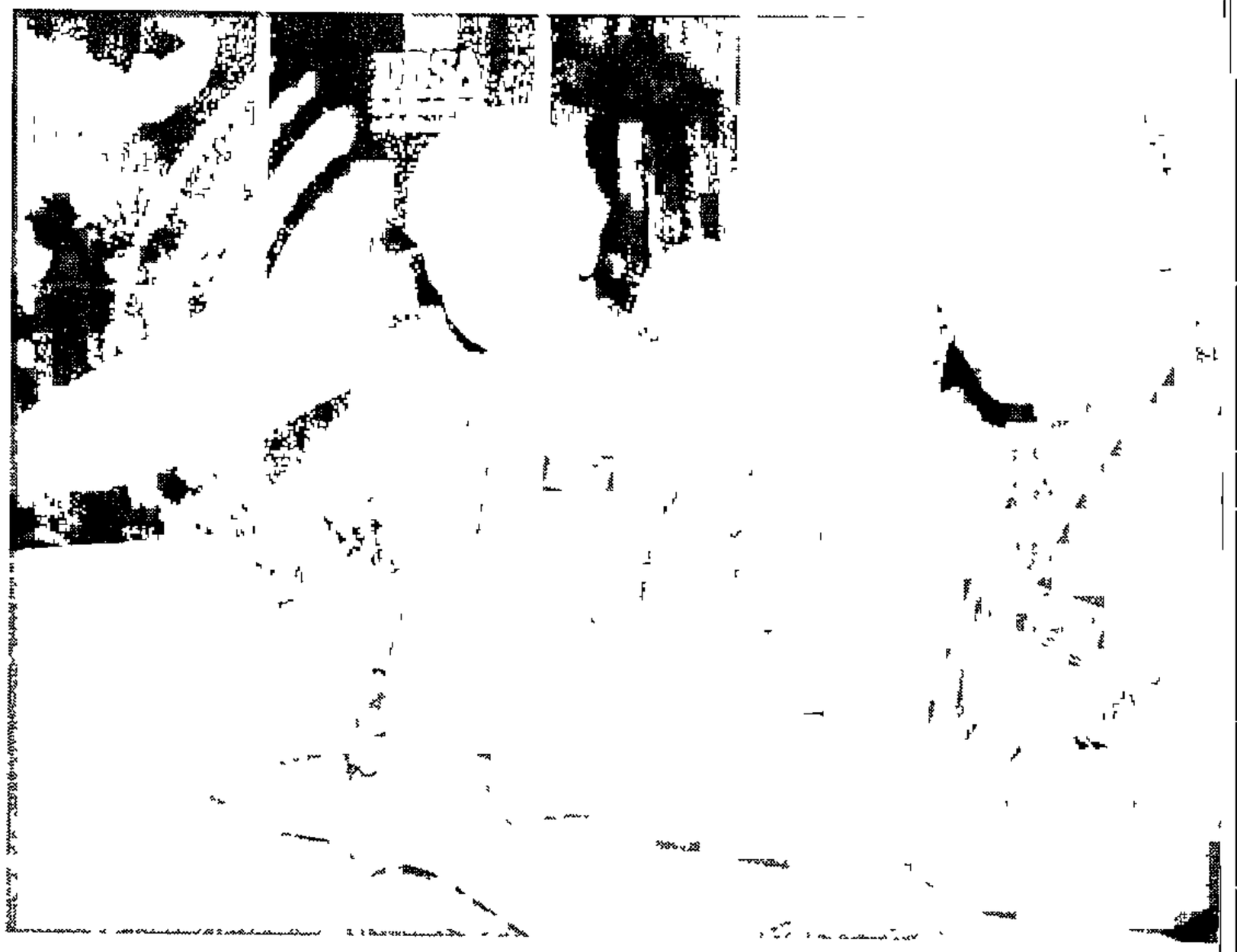
The labour department said the establishment of such a body had as yet not been the subject of discussion and no finality had been reached within government as to the parameters in which such a body would operate

There appears to be some hesitancy by government to be seen to be taking a stand on reviewing labour legislation

To commemorate the second anniversary of the implementation of the Labour Relations Act, Labour Minister Shepherd Mdladlana said "we need to continue to be open to legislative review, in respect of job creation" but at the same time said it would be premature

He went on to say that in terms of the Act, more time was needed to make "decisive conclusions about its impact on job creation or job retention"

However, he did indicate that the department was planning an impact assessment of the possible impact of the act on job creation and retention in the new year.



The Development Bank of Southern Africa has provided the Springs Town Council on Gauteng's far Ea of R28m for infrastructure projects in the township of Kwa-Thema The projects include electricit sanitation, water supplies and stormwater drainage The loan agreement was signed in Springs yeste mayor Vuyisile Rarane, right, and the bank's executive manager De Villiers Botha, left.

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 monitor 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 4,6% 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

Star 23/11/98

Nafcoc, AHI to review 'rigid' laws

ROY COKAYNE

Pretoria — The National African Federated Chamber of Commerce (Nafcoc) and the Afrikaanse Handelsinstituut (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".

Judgment may reduce reviews of arbitration awards

Robert Lagrange examines how the Labour Relations Act is being interpreted by the courts

(166) BD 24/11/98

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 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 confirms 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 values 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 inordinately 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 fairness.

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 date 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 following his dismissal to qualify for the compensation

Nor, presumably, is he under a legal duty to minimise such losses by seeking alternative employment

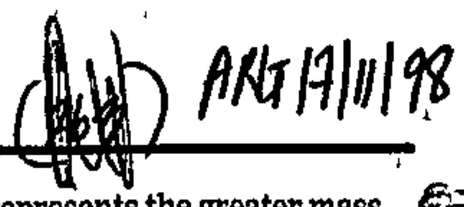
□ *Robert Lagrange is a member of the SA Association of Labour Lawyers He writes in his personal capacity*

CAPE ARGUS ISS

Warts and all, we are

A tearful princess can tell us about

Attempting to make Cape Town less reminiscent of itself risks being self-deceiving or, worse, merely vain. Special Writer MICHAEL MORRIS argues against proposals to tamper with the historical record



As Spaanschemat River Road curves into the bend at the Constantia Reformatory, where the shaded pine forest ends and the raked landscape of the vineyards begins, there is an inconspicuous bridge that bears the name of the Prinskasteel 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 Khoekhoe princess.

The cave, in fact, used to be called Prinseskasteel.

The princess was reputedly held captive in the cave by Portuguese sailors, and her tears formed a stream which created the river, now called Prinskasteel, and dammed up on the flats to form Princess Vlei

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 matriarch being bullied into submission

Or merely ignored, left to watch from her mountain the gradual usurpation of her realm under the steady attrition of civilisation, 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 phoney inclinations of politicians or toadying officials of the past might well have led to the erasure of this story in favour 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 "reshape" the past to its liking, especially a past filled with the suffering and pain that characterised the apartheid years.

Recognising this, 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 the residents themselves to decide And some way should be found, symbolically, to remember that 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 not.

On the face of it, this appears to be a puzzling, self-contradictory nonsense, an illogical notion.

YES OR NO?

Should the names of places, streets, 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 arglet@ctn.independent.co.za

Of course Cape Town can, will – and should – become something other, but it's being, the place it is, is an accretion of histories no 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 flawed 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 amnesia 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 party that represents 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 Plein Street because, 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 I still think 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 barely 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

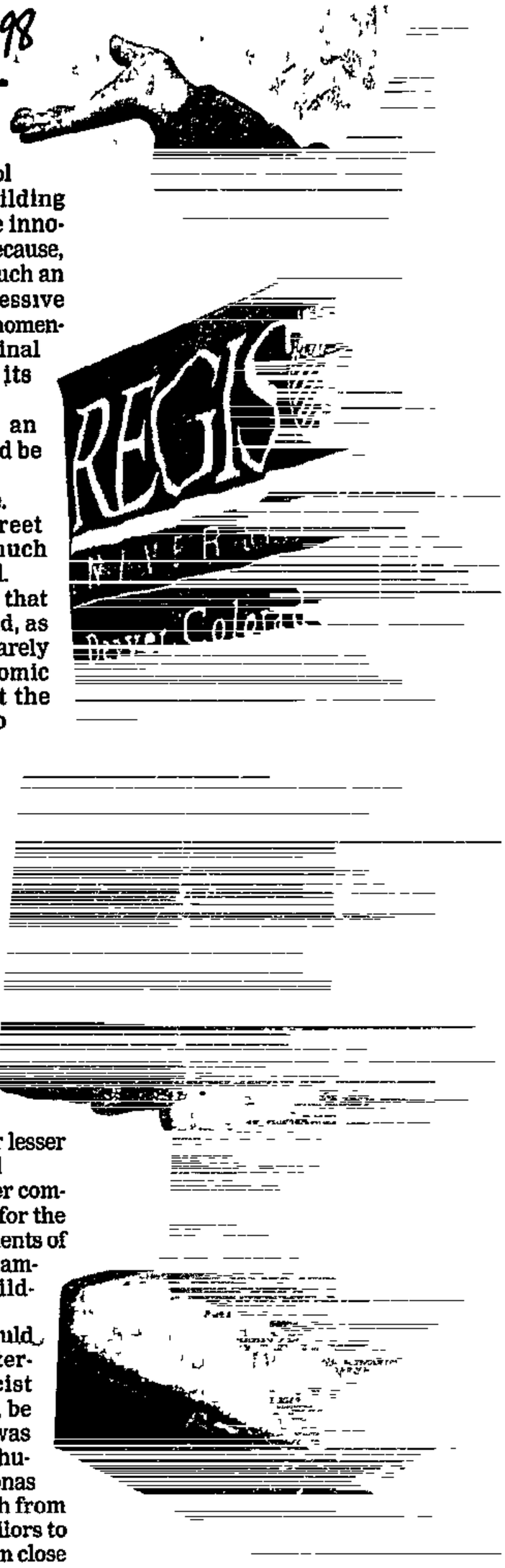
The city might also consider commissioning public sculptures for the purpose, and drawing on elements of unacknowledged history in naming new streets and new buildings

Among the figures who could provide a provocative counterpoint to the colonial or racist imprint might, for instance, be Harry the Strandloper, who was also known as Herry, or Autshumao, chief of the Goringkhaikonas

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.

His niece, Eva, who grew up in



Very Cape Town: Archbishop Desmond Tutu is synonymous with many Cape Town signal events, and should be an obvious choice, says Morris

SOWETAN Wednesday November 25 1998

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 legislations' 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

Reneé 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 455 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

Workers' Union and chairman of ... Lara appealed ...

Act will be focus of negotiations

(166)

SA needs to balance wage equity with economic performance, writes **Reneé Grawitzky**

THE cost of implementing the Basic Conditions of Employment Act and agreement on exemptions could become the central issues during annual wage negotiations next year, labour analysts warned yesterday.

At the same time, analysts said foreign investors remained sceptical over the coming into operation of the act — the second major piece of labour legislation to be implemented since the 1994 elections

Labour analysts said the act was not "all bad by any means" and encouraged flexible work arrangements, if parties could agree.

The crucial factor remained whether the act achieved a proper balance between equity and economic performance

International Labour Organisation representative in Harare, Peter Peek; said yesterday countries concerned about addressing equity and increasing the income of the poorest of the poor faced two policy options.

Under the first option, economies could implement macroeconomic policies to stimulate growth and thereby promote job creation The other approach was to use labour market policies that were equity-oriented to raise the bottom income groups. Ideally, he said, these options should be used in conjunction

Peek said, however, an investigation revealed that some countries found it difficult to implement the correct mix of these options This did not have the desired effect of either promoting growth or raising levels of income and employment

Major opposition to the act has centred on the fact that some improvements to benefits would raise labour costs and discourage labour-intensive investment and job creation.

Consultants, including Ivan Israelstam of the Labour Law Group, claimed that the cost of changes to employment conditions could average about 20%, although it was unclear how this figure was calculated

Other consultants and employers said it might prove extremely difficult to estimate total cost implications in the short-term.

At the same time, many sectors would not immediately be obliged to comply with the act as they were either covered by wage determinations, bargaining councils or had exemptions in place.

Labour analyst Gavin Brown said employers would attempt to discount additional costs during wage negotiations next year, especially those who faced significant increases to their labour costs as a result of complying with the act

Durban-based consultant Pat Stone concurred and said negotiations next year would be dominated by employers' attempts to offset additional costs and reach agreements on different work arrangements.

A failure to reach agreement on different work arrangements, which might require various trade-offs, could lead to several forms of industrial action Employers could consider the lock-out route to force employees to accept new work arrangements or, in extreme cases, dismissal for operational requirements might be an option.

Labour consultant Gavin Weiner said wage negotiations in the past had invariably focused on the old Basic Conditions of Employment Act. Employers argued that they complied with the basic minimums and would not improve on them, while unions said they were only minimums and demanded improvements Unions attacked the old act as being part of apartheid legislation

This argument held some credibility, Weiner said. Employers would now use the new act's legitimacy in negotiations to prevent unions from pushing for additional improvements to benefits.

TODAY's WEATH

Rainfall

Employers brace for onset of new labour law

Star 27/11/98 (166)

Domestic and farm workers, security personnel set to gain most

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 Stapelberg said the new overtime-earnings and working-hours salary threshold in the act concerned him most.

Professor Loet 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 Seftel, 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

JONATHAN ROSENTHAL

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 250c 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 R1,25 billion for the six months ended December 25.

Earnings a share rose 29 percent to 208c, 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 R3,66 the previous year

COST CUTTING *Pieter Cox, Sasol's managing director*
PHOTO JOHN WOODROOF

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

Pieter 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 a
will have to spell out terms of employment, working hours, annual leave and ov

New era for maids an

Star 30/11/98 (166)

Domestic worker Monica Mathibe (31) has two children to support in the Eastern Cape on a salary of R672 a month Each month, she sends home R300.

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

But her quality of life was much improved when her 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 new 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 even over time.

Hare is 86 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 South ern Africa, and a consultant came to see her and her staff

Much to the surprise of Mathibe and the other staff, their pay was actually increased after it was discov ered 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

Patience Ravuma, 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 saddened

But then a letter arrived from the Department of Labour, claiming that she had unfairly dismissed the cook and now owed her money

Hare said she was deeply hurt and upset.

For the past 15 years she had paid the cook a pension and had also paid for an expensive eye operation

"It was the biggest shock We had her for 15 years and she was part of the family

"We had never had such unpleasantness before."

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 Theys

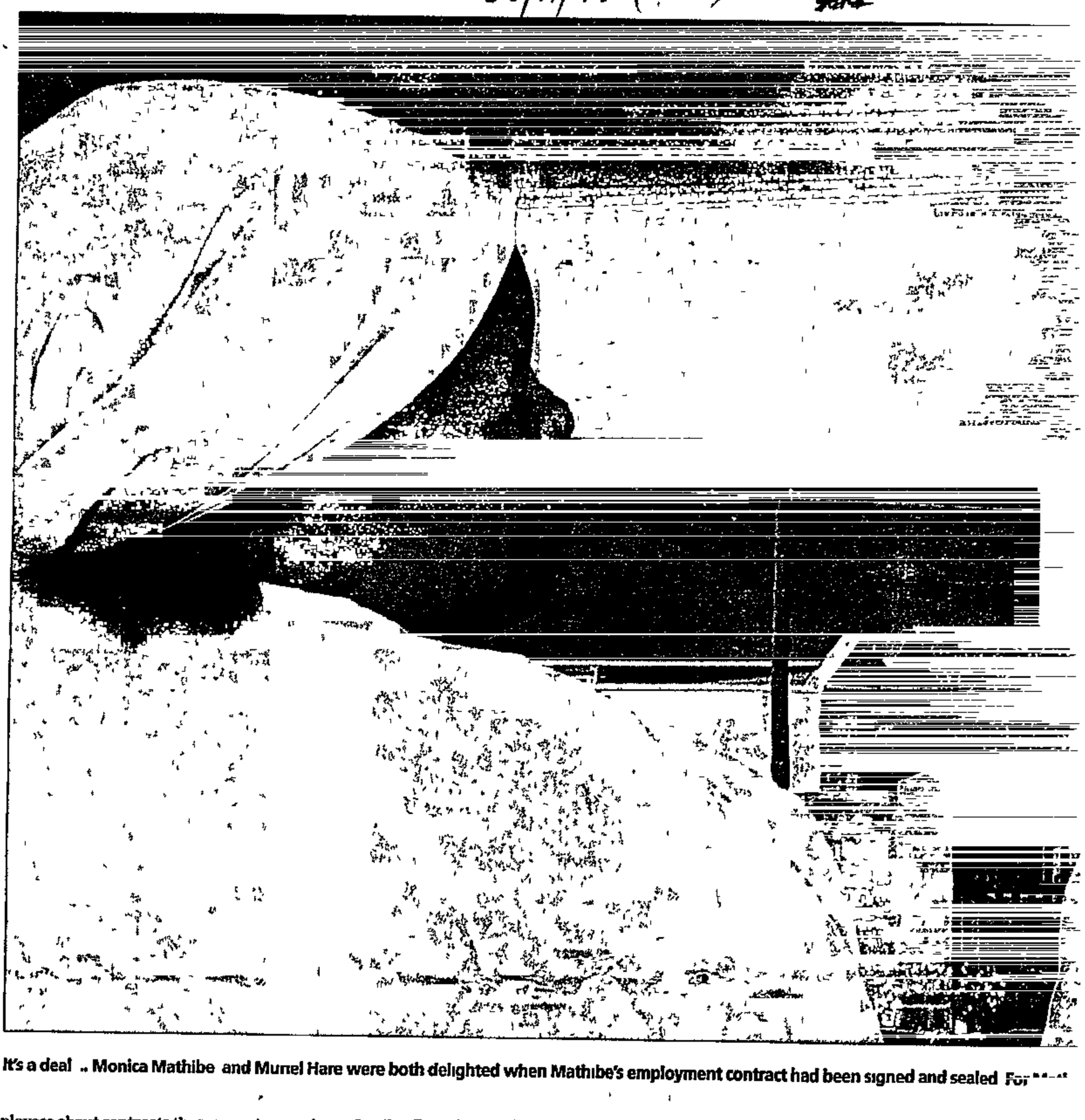
The most significant addition to the act is the need for a formal contract between the employer and employee, which lays down the exact terms of employment.

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 [illegible] a formal contract.

The new Basic Conditions of ployment Act sets a minimum but states that domestic [illegible] should not work more than [illegible] a week

Three hours of overtime is lowed per day, but no more 10 hours overtime should be in a week



It's a deal .. Monica Mathibe and Muriel Hare were both delighted when Mathibe's employment contract had been signed and sealed [illegible]

:ill protect all domestic workers and their employers,
orking hours, annual leave and overtime hours, writes ***Andrea Botha***

naids and madams

LEON LESTRADE

Mathibe's employment contract had been signed and sealed. For Mathibe it will result in more money at the end of each month.

ployee, 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 em ployer and employee, the basic job description, hours to be worked, overtime details and leave condi tions.

The contract does not have to be signed but if it is, it will regarded as a formal contract.

The new Basic Conditions of Employment Act sets a minimum wage but states that domestic workers should not work more than 45 hours a week

Three hours of overtime is allowed per day, but no more than 10 hours overtime should be worked in a week

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

If an employer refuses to draw up a contract or to follow the terms of the contract, the domestic worker can contact the Department of Labour who will investigate

An employer could be fined if 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.

Theys said the new act would curtail abuse of domestic workers and empower them, and lay the foundation for discussion of a minimum wage.

NATIONAL

Business criticises govt for oversight in calling for comment

Commission has not heard submissions

Reneé Grawitzky

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 business compiled by the Ntsika 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 Molahlehi said that in view of the publication of the gazette, it was agreed to await public comment and then take a decision. Molahlehi 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 (166)

Jonny Steinberg BD 30/11/98

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 Zakeria 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.

65741

'EQUAL SPEAK': Speaking at the BMF Western Cape employment equity conference on Saturday were (from left) Nolitha Fakude president of the BMF in the Western Cape, Meko Magida, of the Department of Labour and Johann Baard, president of the Cape Chamber of Commerce and Industry. *PICTURE: DENZIL MAREGELE*

Poor support for Equity Act

(19) (166) ET 5/10/98

A SURVEY shows companies have little commitment to the EEA, a factor the state calls "worrying" But the response of business is that equity requires more than writing statutes **YAZEED FAKIER** 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 regards to this legislation

"It's a worrying factor if we want this legislation to succeed, it is legislation that is waiting to be promulgated at any time and to have that low level of commitment is very frightening," the department's labour relations deputy director Meko 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 Fines for non-compliance range from R500 000 to R900 000

Magida told the conference on Saturday morning that the department had 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 monitor and enforce the EEA

He said that though only 450 of more than 800 companies contacted had responded to the survey It was nonetheless by far the "most comprehensive survey" of its kind in South Africa to date

The survey revealed that, with regard to commitment and accountability to issues involving affirmative action, only 33% of companies were committed to the EEA legislation

The survey had shown only 13% of companies had allocated funds to make resources available to facilitate the implementation of the EEA stipulations and that 77% of companies were not consulting, communicating or discussing questions concerning equal opportunity with their employees

Management's reluctance to address the issue was due to the sensitive nature of the topic On the one hand there were employees who had fears about it and employees on the other those who had great expectations of it.

"It has been left specifically to human resources management to deal with We are saying this (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 lambaste companies

The department was not being arrogant 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 value being attached to individuals' contribu tions to the organisations they work for, he was certain that no one seriously believed the yawning skills gap in society could be solved by "bureaucratic intervention and tampering 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 reinventing the mistakes made by others"

While much debate had been generated by the EEA, he had yet to see the issue of training and development as identified in the act featuring in 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 prioritising 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 judged 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 unskilled and semi-skilled labour on the one hand, and a critical shortage of skilled, technical, professional and senior 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 outcome of more value being attached to scarcity than abundance; and that in this context "we need to realise that labour is just like capital — it gravitates to the most lucrative markets"

Employment equity now in the lawbooks

ET(Mpk) 19/10/98 (166)

THABO LESHILO
BUSINESS EDITOR

Mafikeng — The hotly contested Employment Equity Act became law on Friday morning when it was signed by President Nelson Mandela

Shepherd Mdladlana, the labour minister, told delegates at the Black Management Forum annual conference that the act was pivotal to addressing "the disturbing lack of progress by the majority of companies of the implementation of employment equity" He referred to a recent survey by the department of labour that showed African and black employees made up very small percentages of the management, professional and technical occupational categories

Instead, African men and women made up 87 percent of all employees in the labour occupational category African employees together made up close to 6 percent of senior management and just under 13 percent of junior and middle management. Black employees comprise 11 percent of senior management and 25 percent of junior to medium management positions

"The picture is particularly bleak when we look at their representation of African women in management positions," said Mdladlana.

"A mere 1 percent of senior managers and 2,36 percent of those in junior to middle management positions are African women "

More worrying was the fact that large corporate employers, many of whom had been involved in employment equity initiatives for some time, appeared to have made little more progress than smaller enterprises with respect to their representation of their black women and people with disabilities in the managerial professional and skilled occupational categories.

Mdladlana said that, looking across Africa, it was clear that although the new constitutions that emerged after colonialism outlawed unfair discrimination, like the South African constitution, they were not enough to eradicate disparities created over decades of colonialism. It was, therefore, imperative that the government intervened to push through and employment equity

"Numerous tasks need to be undertaken before the law can come fully into effect more department officials need to be recruited, staff need to be trained, the commission for employment equity needs to be established, a public education campaign needs to be undertaken and computer systems have to be set up," he said.

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South Africans' right to privacy

MG 9-15/10/98

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 Levy says employee privacy is "an absolutely unpioneered 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 staff 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?

MTG 9-15/10/98 (166)

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 bias, 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 conscience, belief, political opinion, culture, language or birth

Next on the deck is the Skills Development Bill, punted by labour to give effect to the National Qualifications Framework — the government's new education and training framework — in the workplace.

It is also aimed at making employment equity possible by advancing the skills base of disadvantaged workers

Together these laws promise workers shorter working hours, reduced health risks, better quality of life, and an opportunity to overcome historical obstacles to their 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 Tshehla puts it: "These three laws are interwined 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 protections impotent for the vulnerable workers who need them most

According to *South African Labour Bulletin* editor Deanne Collins, the legislation will be "virtually 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 night travel, and aggravates the burden of domestic responsibilities

The gender victory 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 proposes using the Unemployment Insurance Fund for the purpose, but Collins argues that this "lets business completely off the hook"

Business 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 this mechanism to fund the Skills Development Bill's objectives has shrunk from labour's asking price of a compulsory levy on employers of 4% of the wage bill to a mere 1%

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said Collins "There is a major contradiction in the business position on these issues In terms of Gear and privatisation, business is demanding less government and more free market, but when it comes to business putting their hands in their pockets, they say government must pay," she adds

Other concessions included the voluntary basis of the Employment Equity Bill provisions, which essentially seek to encourage employers to transform their workplaces by requiring them to draft employment equity plans, instead of imposing legislated quotas

While non-compliant businesses can be fined or lose access to government tenders, Collins warns that this would be difficult for overstretched Department of Labour inspectors to police

The Bill also excludes smaller businesses, determined by annual turnover thresholds, from its affirmative action requirements These are often the very places where workers are most vulnerable

Similarly, the Basic Conditions of Employment Act provides mechanisms for employers and employees to form agreements outside the basic conditions set down by the law It is unlikely that desperate workseekers will demand compliance in the face of an opt-out offer of employment, even if the employer demands a 60-hour work week

"The Act assumes a balance of power between employers and employees, when job-seekers are desperate and that balance doesn't exist," argued Collins

Critics of the Skills Development Bill warn that similar imbalances are likely to affect its outcomes Tagging skills development to Gear's macro-economic objectives could end up doing more to provide employers with a skilled labour force than to secure employment for trained workers In short, the programme could simply train workers for unemployment, said Collins

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In the Act is a new column in Monitor, aimed at keeping track of

Employment equity will forc

(166)

***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 FAKIER** reports.*

WE 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 month and out the next

When companies open their doors to accommodate affirmative action and employment equity policies, they usher in people whose language, religion, gender or sexual preference often differs from standard company culture But often that is where the accommodation ends — and the conflict begins

"You know as well as I do that conflict could be overt as well as covert and that the most dangerous one is the one that never rises to the surface," said Ron September, of the Development Dynamics human resources consultancy

Speaking at a conference early last week organised by the Herr Organisation on the "racism bug" in Cape Town and its implications for business, he said "If conflict 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

Racism remains a major obstacle to corporate transformation, he said

The Employment Equity Act compels companies to diversify their workforces and imposes fines of R500 000 to R900 000 for businesses that do not comply with the legislation

Bernie September, a senior consultant for Development Dynamics who is married to Ron, told the meeting that if companies do not at a strategic level deal with and discuss such questions, managers — and certainly employees at the coalface — will not be drawn 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 company managements 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 — so at that point already they feel conned because they felt the company had been dishonest"

Corporate culture games are played that black candidates do not know how to deal with, such as being taken to expensive restaurants and served oysters

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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 great 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 resented for 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 was with a company for 18 months and told she would be doing rotating duties but in that time found that she had learnt very little on the job

Yet younger, white employees who had joined the company at the same time would by then have received actual, on-the-job training, "and I was still being rotated and here I am sitting in front of you with an exit interview"

September said when she interviews white managers about these anomalies, she is told that black employees "are just not ready", yet the managers themselves aren't quite clear about the scope of the responsibilities of those 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

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If companies profess to be caring towards their black employees, this must be demonstrated in action, September said

"And if racism 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 not be colour blind, please let's not be colour blind — 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 white 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 heed the spirit of the law and not to stick rigidly to the letter of the law Some companies, she said, are even going as far as budgeting for the fines stipulated in the Employment Equity Act

"Let's get top management to start committing (to change) 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 then really change

"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 it is stressful to work in the constantly changing South African environment and that company bosses "should make it easy on your people by helping to manage diversity in a positive way"

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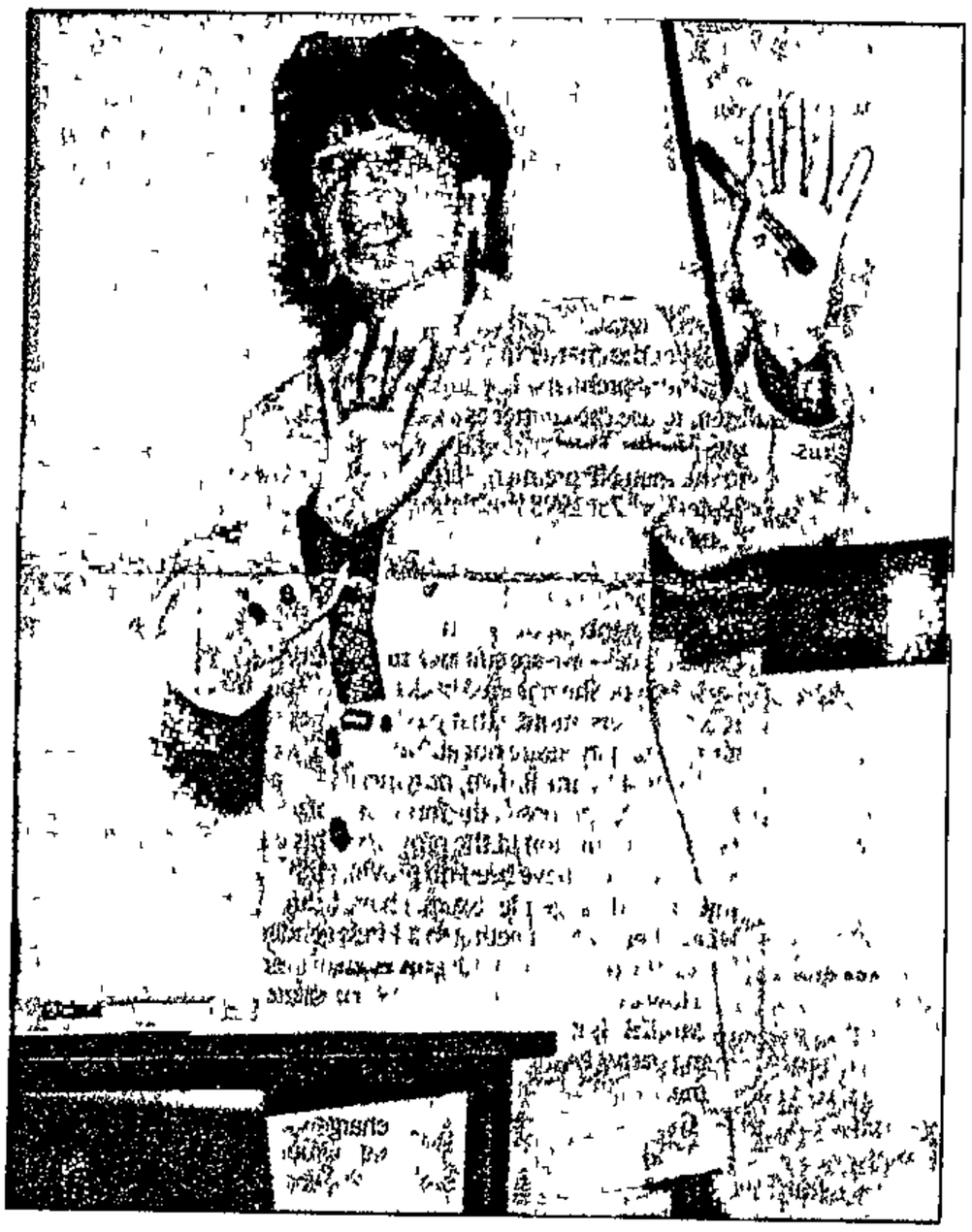

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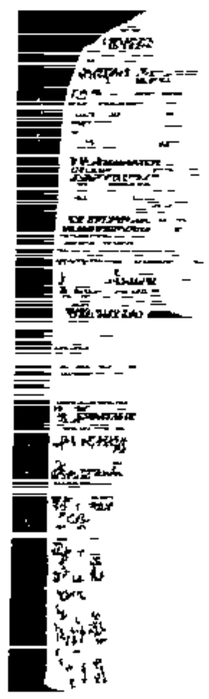

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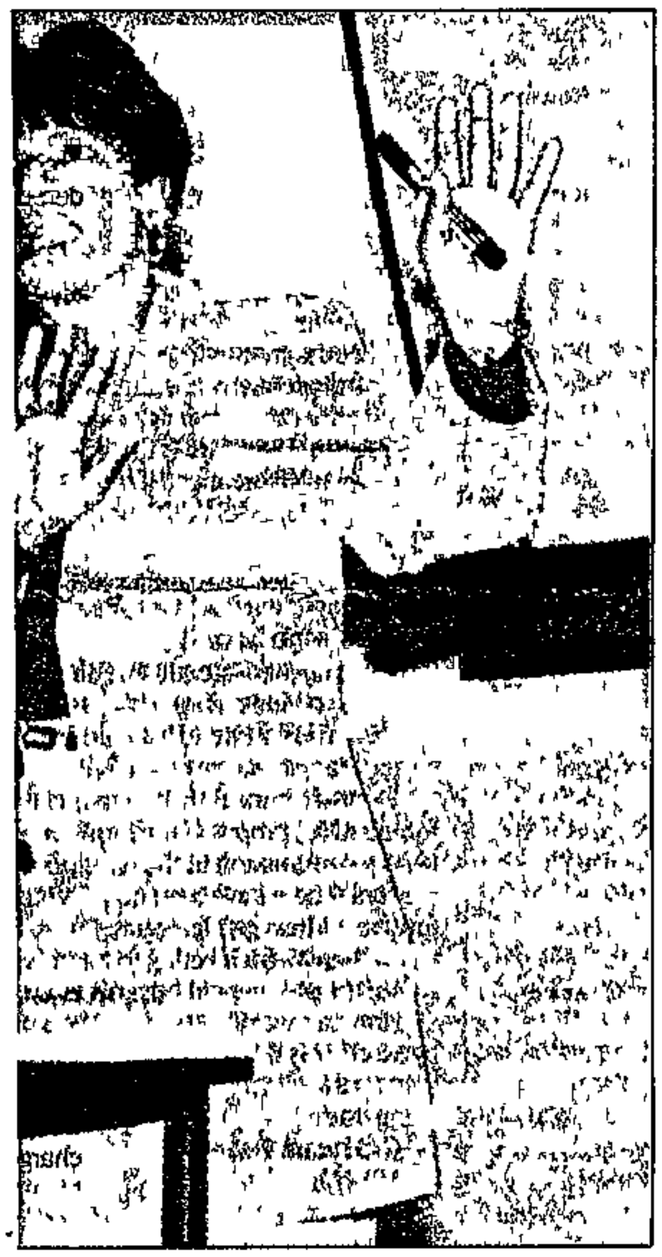

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She says companies are increasingly coming to the realisation that their chances of succeeding are minimised with an absence of black talent

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 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

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Employment equity will force c

(166)

***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 FAKIER** reports.*

WE 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 month and out the next

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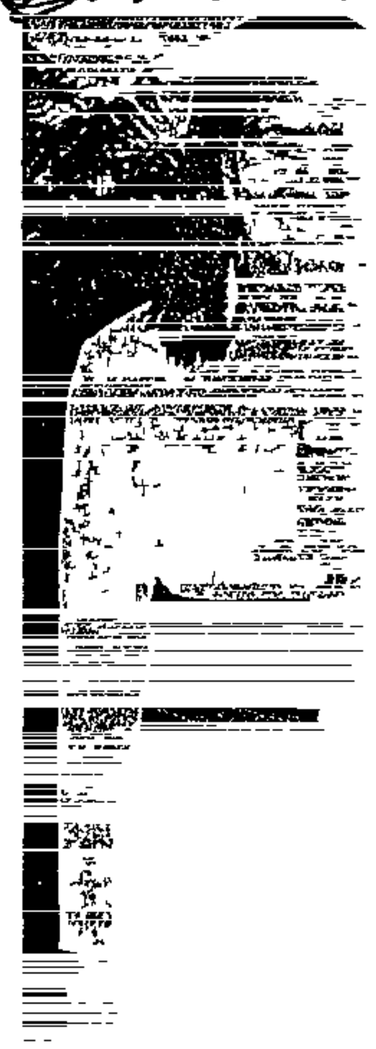

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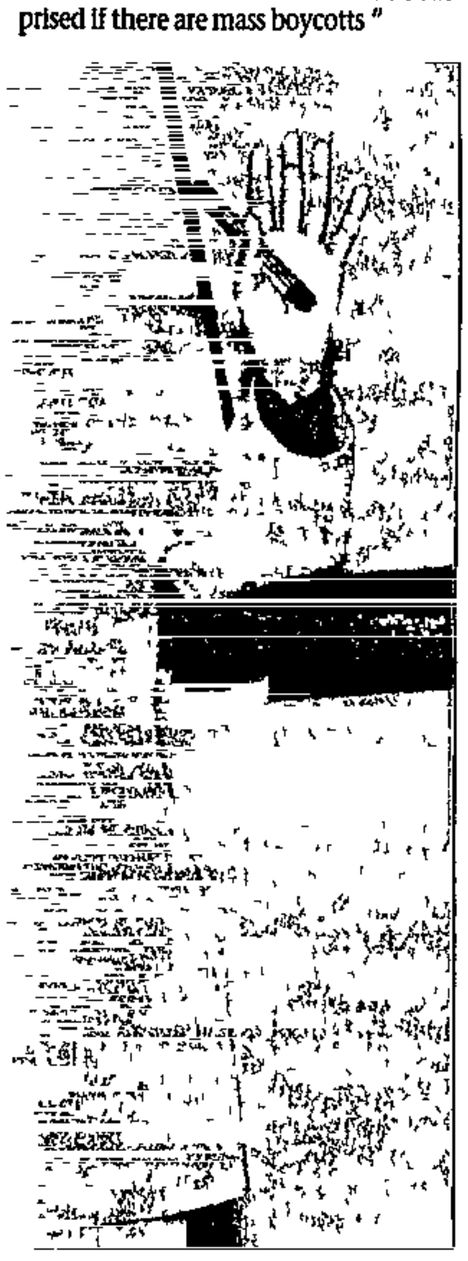

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Bill will outlaw discrimination

ARG 15/10/98 (16b) (16c)

ARGUS CORRESPONDENT

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 Ntutela, 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 Ntutela said the shortened parliamentary calender 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 Dt Ntutela "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 Ntutela said that while the legislation would be educative rather than punitive, the final draft would probably contain elements of criminalisation

's all systems go to stop farm killings

ARGT 12/10/98

;ricultural union hails Government's commitment

ESPONDENT

- Far-reaching proposals
lth farm killings were
usly adopted at a summit
the Government,
l agriculture and various
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e-day summit accepted the existing rural protection) which operates under the ivisional Commissioner ıis to put the 10-point plan ı

step would be to report the of the summit to President or his directions

sk team, made up of repre- s from all parties, would nthly statements on its

nent was reached that con- factors to the killings a culture of violence, con- the law, availability of and socio economic problems such as unemployment and poverty

An appeal for money to address these problems enjoyed overall support.

Also noted was that there was more to rural safety and security than mere crimes on farms

Many of the policy questions that related to rural safety could not be resolved now as they required in-depth research and extensive debates

Commenting on the outcome, Freedom Front leader General Constand Viljoen said he was at first reluctant to attend the summit, "as I thought it would turn out to be another talk-shop".

"But now I must confess that the summit achieved much in a short space of time, and was solution-oriented The Government must now be seen to be putting these decisions into effect We will hammer them if they don't achieve progress "

Regarding across-the-board remuneration and benefits for farmworkers, General Viljoen said that if a solution to the killings could be found, playing fields for the establishment of forums to deal with such issues would be levelled.

Chris du Toit, of the SA Agricultural Union said he was happy that the summit achieved concrete results "This could definitely lead to something positive. The Government demonstrated real concern and committed itself to doing something."

He said the SAAU viewed the summit's unconditional condemnation of farm killings as significant. "We have never heard that before In the past, we heard a lot of excuses."

The summit found several shortcomings in the existing RPP, which it said should be urgently addressed.

This would include the restructuring of commandos and reservist units to include all members of rural communities and others and a scientific investigation into the causes of such murders, beefing up security plans, the condemnation of hate speech, and the upliftng of farm workers

Resolutions put to the conference were outlined in a 10-point declaration that was unanimously adopted.

Resolutions taken at the summit included.

■ Accountability and funding of rural policing structures various stakeholders

■ The commitment, support and collaboration with the Department of Safety and Security in the development of a broader policy framework for rural safety and security

■ To encourage other stakeholders and roleplayers to contribute to this crucial policy formulation process.

The National Party said its delegation was heartened by the Government's acknowledgement that crime levels and police working conditions were unacceptable.

This stance represented a major deviation from earlier statements that crime was not such a serious problem, said a Nat statement.

The party said it trusted that the backlog of R2-million in equipment for the SAPS, which the Government had allowed to build up, and the underfunding by at least R635-million of the police service in this financial year now would be addressed without further delay

Justice Minister Dullah Omar welcomed a summit decision that the issue of farm attacks should be depoliticised.

He said. "Whites and blacks, farmers and farm workers demonising each other must stop "

He said said the call for more funding was not out of place.

"Resources and funding is a crucial issue and we need to take it to the Government, which has committed itself to improving the criminal justice system, rooting out corruption, and providing adequate funding for crime prevention."

Mr Omar said the summit recognised the need for a full and proper probe to determine the causes of farm attacks

This would be a scientific and academic investigation, he said.

Land Affairs and Agriculture Minister Derek Hanekom encouraged business organisations to also contribute money in whatever manner they could.

Mr Hanekom said that until crime was under control, any endeavours in fields such as tourism would fail. "I hope business will take note of that."

He also said if it emerged that some of the attacks were politically motivated, such attacks should not be swept under the carpet.

"We will need to deal with the real situation."

The summit decided a comprehensive policy framework on rural safety would be compiled to determine capacity and resource needs

Quarterly reports on the findings would be produced, the first of which would be issued within three months after the summit.

Sunday Times Business Times
October 18 1998

HARD AT WORK . . . Shepherd Mdladlana is making sure the new Act will be implemented

Employment equity on track despite criticism

EMPLOYMENT EQUITY

By THABO KOBOKOANE

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

TOP BRASS: Colonel Robbie Hartslief, Lieutenant Colonel Jorrie Jordaan, and SANDF chief Siphiwe Nyanda meet in Lesotho after the three-day conflict

Say 'hoozit' to the army's new spirit

Operation Boleas has forged a unified SANDF, reports MICHAEL SCHMIDT

ST (BT) 11/10/98

SLOW drums underscored the scorching Ramakguri heat as the gun carriage rolled with its burden towards the weed-ridden township graveyard A river of people in their Sunday best spilled over the rocky hillside to get a better view of the sombre military procession below

At any other time it would have been an image heavy with the freight of the past an uneasy collage of our deeply divided lives white soldiers tramping the dust of the former Bophuthatswana.

But the atmosphere at last Saturday's funeral of Rifleman Albert Tlale Mangoegape, 23 of Ramakguri, Thaba N'chu — killed in a skirmish for a Lesotho base guard post — was palpably different.

A new sense of purpose added fire to the eyes of his comrades, survivors of the brief but intense intervention in Lesotho the previous week — the blooding had played midwife to the birth of a truly integrated defence force

The men who swooped out of the sky on Maseru on September 22 for democratic South Africa's first exercise in "gunboat diplomacy" easily dismissed the political storm over whether or not Operation Boleas was properly mandated

Not so easily dismissed, however, was the charge of rape laid by a woman against a rifleman last Saturday, the murder of an Awol soldier during a fight in a shebeen the same night, Amnesty International s description of their roughing up of looters as "cruel, inhuman and degrading" and the tongue-lashing they received this week from the Chief of the Army, Lieutenant General Gilbert Ramano, over fraternisation with Basotho women

Nevertheless, these reports have angered the men "We did our duty We damn-well bled here Now people are talking all sorts of crap about us," one soldier patrolling Maseru grumbled But at Ramakguri, soldiers and civilians black and white, stood shoulder to shoulder, united by a comradeship forged in grief.

Sure, there were the curious who gaped at the antique honours being heaped on the fallen man And there were startled giggles at the fervour of a moustachioed sergeant-major's farewell salute.

But it was more like a solemn family occasion, unobtrusively presided over by Defence Minister Joe Modise At the service, Modise told the young soldier s parents that "a hero has disappeared amongst us" and a preacher recalled the military exploits of ancient Israel

But the speaker who had everyone nodding their heads was Captain Meyer Jooste, 26, the young Afrikaner who had trained the dead man and who in the early light of September 22 had led the first armed foray at the head of 85 parabats

Jooste, commander of 1 Parachute Battalion s support company, was shot through the neck at 6 20am, barely 35 minutes into the action, but he refused to leave his men through almost 12 hours of running combat with heavily armed rebel soldiers of the Lesotho Defence Force.

"He was so pumped up and so worried about his guys that he just wouldn't go," said the spokesman for Free State Command, Lieutenant Colonel Margaret Neethling

"Eventually, the medics had to force him to get out of there." He reluctantly left the field by helicopter at 5.30pm

"If you don t feel pain and you're still able, why leave the battle?" Jooste said this week as he arranged the funerals of three more of his men, men whose names will soon appear on the brigade's parade-ground monument alongside those of 43 other paratroopers who have fallen in combat since 1961

South Africans first saw service as paratroopers in World War Two, mostly with 2 Independent Parachute Brigade Group in Italy, France and Greece. One Parachute Battalion was established at Tempe, Bloemfontein, in 1961 with 15 British-trained soldiers

The addition of extra airborne units led to the 1978 formation of 44 Parachute Brigade, which now comprises paratroopers from the former Transkei, Ciskei and Bophuthatswana.

The parabats' reputation for being the "first in and last out" stems from more than 20 years of border operations in South West Africa/Namibia, Angola and Rhodesia/Zimbabwe.

The maroon berets led the opening battle of the campaign against Swapo and the MPLA with a heli-borne assault on an insurgent base on August 26 1966, and closed the war with the last skirmish in the Kaokoveld in April 1989 — the last time the old SADF saw action on foreign soil

The Lesotho conflict was no less fierce than anything the parabats had encountered in the past. Jooste said that as soon as the parabats arrived in Lesotho "all hell broke loose as we came under anti-aircraft machine gun fire from the front, the rear and the sides"

And so the battle raged on against fierce resistance. When the Ratels arrived at the base, they gave covering fire and ferried the wounded to safety

"It was normal mechanised infantry working with us The camaraderie built up as we fought together," Jooste said.

Although clearly upset at the loss of his protégés, he said that his men's baptism of fire had forged an unprecedented *esprit de corps* among the troops.

"You cannot believe what this thing has done to the forces on the ground," he said

"It was a very expensive but valuable lesson. It's sorted out the differences among the company

"There is no longer any talk about Transkei, Bophuthatswana and Ciskei," he said, referring to the former homeland armies which were already technically integrated but not yet one in spirit.

Jooste said that although the army had been highly motivated before Lesotho "each unit did its own thing; now they realise they need each other"

From infantry to armour, from medics to military police, all were united in the SANDF's first test of courage under fire.

Neethling agreed "There has been a change, not only among the fighting soldiers, but among the support troops too "

Lieutenant Colonel John Brooks, chief of staff for 44 Parachute Brigade and former officer commanding the subsidiary 1 Parachute Battalion, confirmed there was a new upbeat mood among the troops, whom, he said, had gone through their battle-drill correctly, even heroically

"The guys are a helluva lot more closely bonded than was the case before," he said, adding that combat had knitted them together as they relied on each other for survival

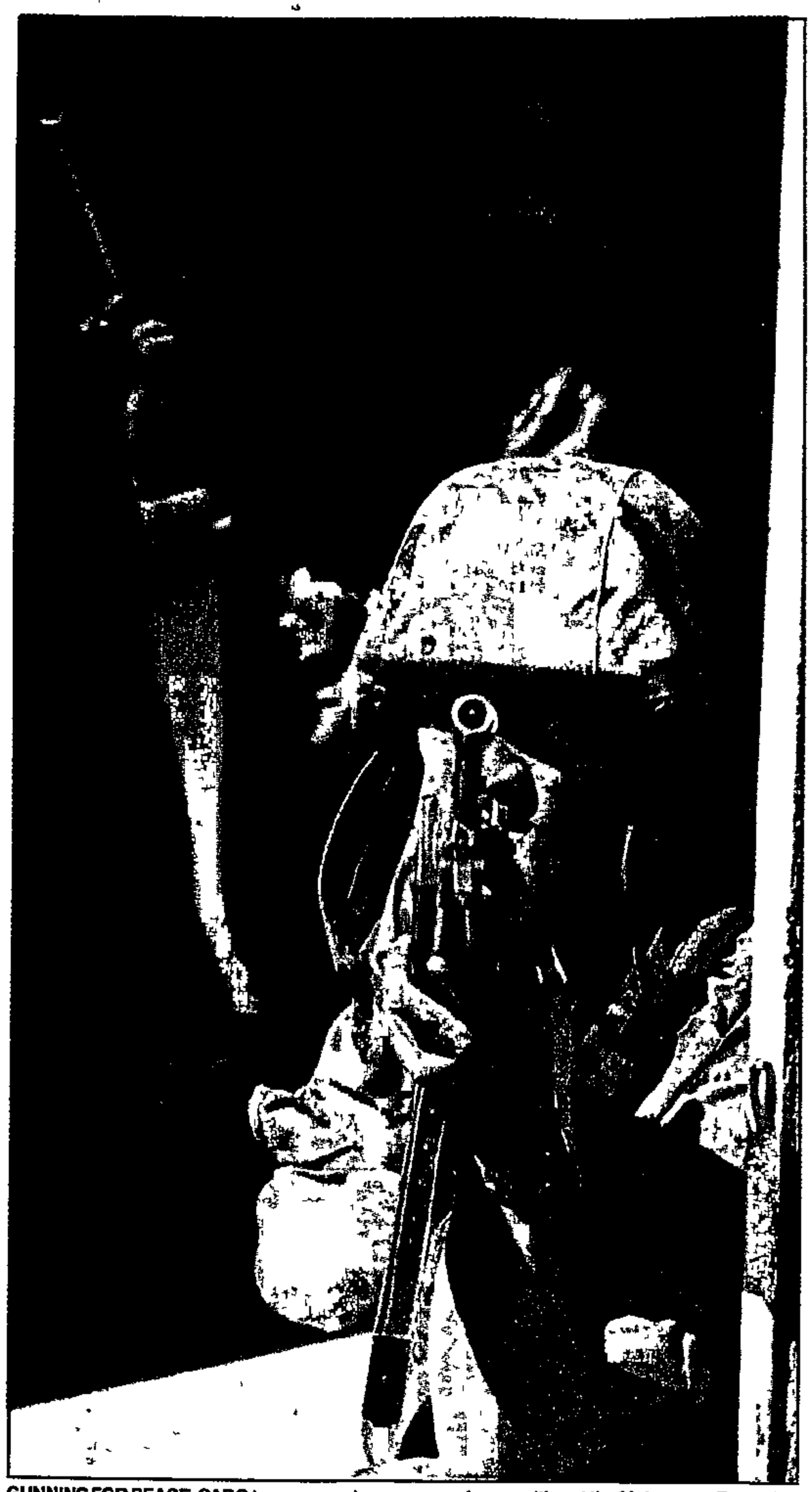
"They set the standard for the way paratroopers should operate in the future."

Richard Cornwell, "point-man on Lesotho" for the Johannesburg-based think tank the Institute for Security Studies, said criticism of Operation Boleas from deputy army chief Major General Roland de Vries and high-ranking infantry officers "could have driven a wedge in the command structure"

But on the ground, troops revelled in their camaraderie

Their bullishness has also expressed itself in surprising ways When SANDF chief Siphiwe Nyanda visited Firefly, as the new command sector of Maseru is code-named, Ratel crews lounging against their vehicles reportedly greeted him with surfer gestures in lieu of salutes and cries of "Hoozit, general"

But then combat-zone casualness is another, less widely acknowledged, military tradition And the men believed they had earned the right to stand easy



GUNNING FOR PEACE. SADC troops guard weapons and ammunition at the Makanyane Base after it was captured from rebel Lesotho Defence Force soldiers Pictures NICKY DE BLOIS

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 Mdladlana 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.

Mdladlana 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 and women 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

(166) ARG 23/10/98

HENRI DU PLESSIS
SHIPPING REPORTER

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

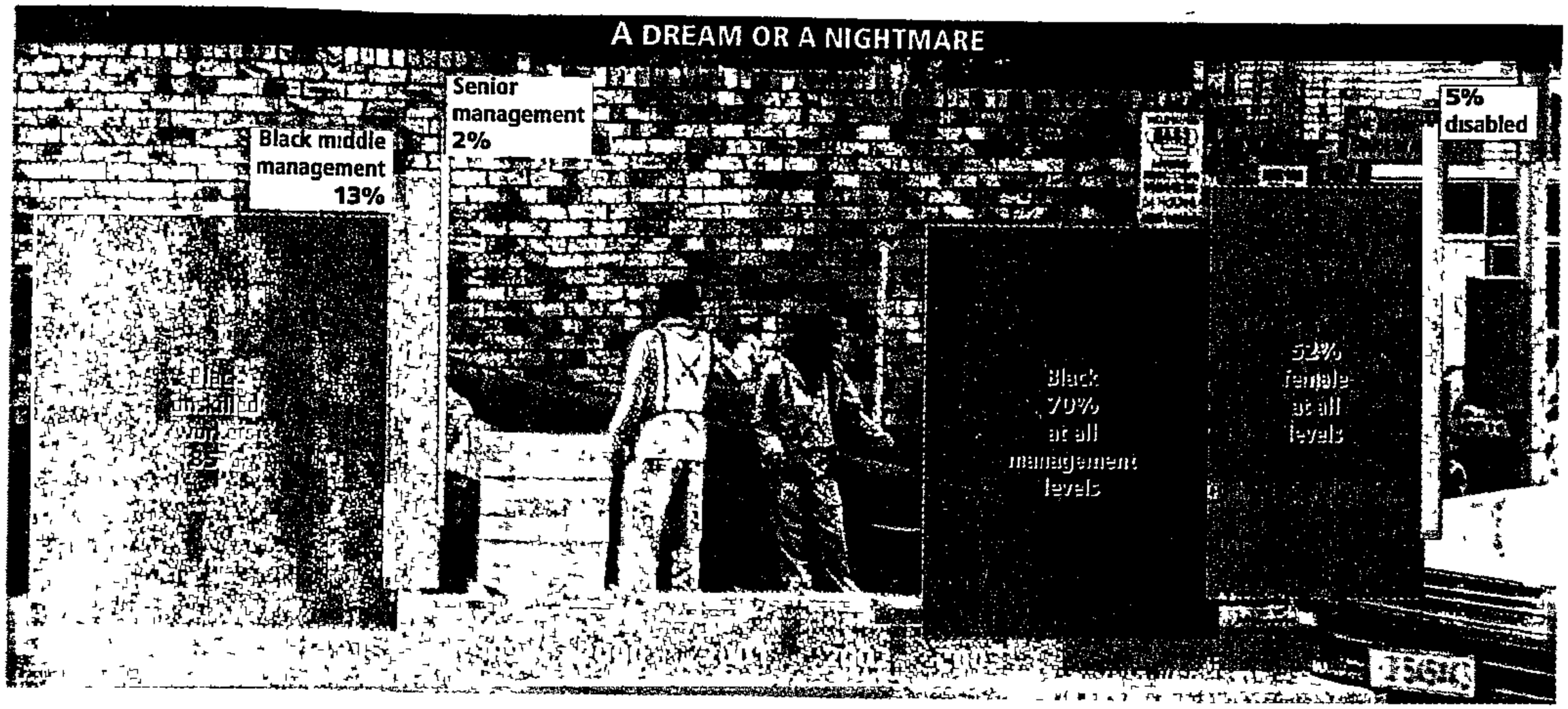
The conflict arises from the frequently lower standards of certain countries which issue flags of convenience that allow shipping companies to flout standards

At the same time, in both the shipping and fishing industries, labour is in over-supply 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 new world

ST(BT) 25/10/98 (166)

The Employment Equity Act is now a reality and businesses must adapt, writes RAEL SOLOMON

WHEN President Nelson Mandela signed the Employment Equity Act into law on October 16, he dramatically changed the way companies will have to think and act

The Act's stated intent is to eliminate unfair discrimination, ensure employment equity and achieve a diverse workplace broadly representative of the country's demographic realities.

To achieve these ideals, a fine line has been drawn between fair and unfair discrimination, and one of the challenges will be to distinguish between the clauses of The Labour Relations Act, which specifically prohibit discrimination on any grounds, and those of the Employment Equity Act, which require fair discrimination to achieve employment equity

Labour Minister Shepherd Mdladlana was quick to point out that while the Employment Equity Act had been pushed through parliament, the infrastructure to put it into effect was almost non-existent It is estimated that some 10 000 inspectors will have to be employed and trained to monitor the implementation of the Act

If the implementation of the Labour Relations Act and the resulting administrative chaos at the Commission for Conciliation, Mediation and Arbitration is anything to go by, the Labour Department and business are in for a rough time indeed.

The Employment Equity Act will heighten worker expectations to unachievable levels, in much the same way as the unfulfilled pre-election promises of 1994 are now coming home to roost. So why the rush to put a statute on the books with no means to monitor and implement it, or the opportunity to educate employers and employees alike as to its implications?

Politics is the name of the game. With education, health and security promises largely unfulfilled, unemployment at an all-time high, the rand collapsing and crime rampant, employment equity is seen by many politicians as the panacea for the masses

But make no mistake, the Employment Equity Act, if carefully and properly implemented, has the potential to help improve productivity, educate a largely functionally illiterate workforce and meet worker aspirations.

Employers' equity plans are to be drawn up and registered with the Labour Department within six months for employers with more than 150 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 R900 000 for infringements, and companies not registered for equity will not be eligible to supply goods and services to the government, provinces, parastatals and many companies.

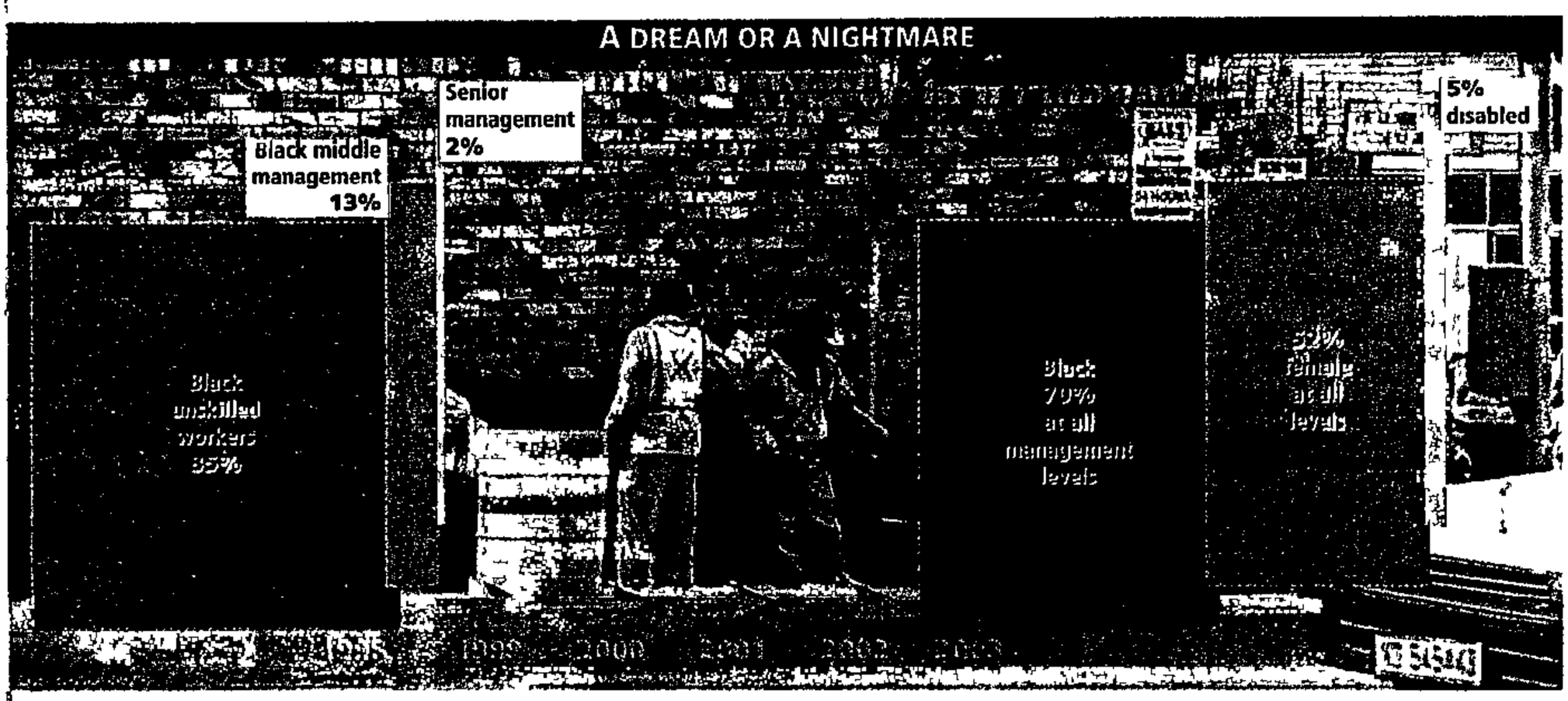
All designated employers will have to spend 1% of their wage bill on the education and training of their employees, but 80% of this levy may be claimed back if the training is performed by suitably registered trainers

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 employees 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 incensed 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 Empowerment International on their equity seminars. He also prepares the Labour Guides column for Business Times on the Internet (www btimes.co.za)*



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ST(BT) 25/10/98 (Page) (166)

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Business pessimistic over new laws

(166)

A JOHANNESBURG Chamber of Commerce and Industry snap survey of chamber member companies has disclosed that more than 60% believe the new labour laws will shrink the labour market, reduce productivity and retard new investment.

CEO 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 jobs summit to take notice," he said

The survey asked members for their opinion of the effects on their businesses of the Labour Relations Act, the Basic Conditions of Employment Act and the Employment Equity Bill

On the Labour Relations Act, 60% expected negative effects on employment, 53% were negative on productivity; 55% on profitability; and 65% on investment

Similar negative responses were received on the implications of the other two acts. —Sapa

BD 27/10/98

Employee benefits 2

New laws place accent on rights of the individual

(166) BD 27/10/98

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

This 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 interim bonus rates and the possibility that invested bonuses could be reduced Funds should therefore limit the withdrawal benefits to the member's share of the fund, he says.

While previous biennial 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.

As 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 appointment 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 indirect discrimination, since the survey shows that most retirement funds have far 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 1996 to 22% in 1998

Worker's rights in the workplace

(166)

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 their rights The following guide has been prepared by Joy-Marie Lawrence of Webber Wentzel Bowens 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 fair 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, 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 contract 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 the

- Right of access to the employer's premises for union-related purposes,
- Right to stop-order 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 unfairly rejects an offer of another job, which is a reasonable alternative to the present job
- The employer has a 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"

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On the Labour Relations Act, negative effects were expected on employment by 60 percent, on productivity by 53 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, 59 and 60

And on the Employment Equity Bill – negative again – percentages were 66, 59, 64 and 66 – *Sapa*

Saweran 27/10/98

EMPLOYMENT EQUITY BILL

AFTER ALL THE DEBATE, IT'S STILL ABOUT RACE

Poles draw apart over affirmative action

Of all the laws passed in the current parliamentary session, none casts a longer shadow than the Employment Equity Bill Designed to give substance to a constitutional requirement to uproot workplace discrimination, it seeks to quantify this through a criminalisation of certain practices and of those employers who appear impervious to the new political order

Whether the process of "consultation" — in parliamentary committees and the National Economic Development and Labour Council — was too narrow has become moot, judging by the tenor of the debate on employment equity in the Assembly. The issue of the Bill's constitutionality is also surprisingly peripheral The parties have treated the legislation less as a technical mechanism for alleviating an agreed wrong than as an issue at the heart of our reluctantly transforming society race

>>Just as in the apartheid era, skin colour will now determine, once again, a person's success in life and not merit, skill or ability . . . This is the ANC's version of job reservation<<
Marthinus van Schalkwyk

The official, if unrevised, transcript of the August debate on the Bill brings this ugly fact to the fore In particular, the bitter grievances aired in the Assembly predict an election marred by racist rhetoric

The fact that Constand Viljoen led the Freedom Front out of the chamber in protest indicates that conservative Afrikaners feel themselves steamrollered by the ANC majority, and fear social and economic marginalisation

As new Labour Minister, Shepherd Mdladlana — paying due thanks to his predecessor Tito Mboweni — initially placed the emphasis on the Bill's technical capacity to address the "specific steps to be taken to eliminate the legacy of unfair discrimination The groups that suffered the full brunt of discrimination and its effects are clearly identified" These are blacks, women and the disabled — a controversial ranking

Soon, however, Mdladlana sounded a running theme that eventually led to extreme acrimony in the House He asked MPs to "remember the evolution of political parties in SA, from the United Party of the segregationist era to the Progressive Party and the Democratic Party (DP) This is why the DP finds itself in agreement with the National Party (NP) and Freedom Front in opposing this Bill"

Thus Mdladlana merged the DP and the NP into a perceived bloc of opposition, not just to the practicalities of the Bill — but to its *principle* of nonracialism While DP leader Tony Leon seethed and waited his turn, the NP's Marthinus van Schalkwyk took the bait — and floundered

He did not merely point to the real problems companies and corporations will encounter in drawing up employment equity plans He argued that, "just as in the apartheid era, skin colour will now determine, once again, a person's success in life and not merit, skill or ability This is the ANC's version of job reservation"

>>Remember the evolution of political parties in SA from the United Party of the segregationist era to the Progressive Party and the DP. This is why the DP finds itself in agreement with the NP and Freedom Front in opposing this bill<<
Shepherd Mdladlana

For the NP to raise such an argument is, of course, absurd, its supporters have not verifiably made the leap towards the acceptance of nondiscrimination that Van Schalkwyk may have achieved Further, he was made to look deeply unsure when sarcastically asked by Mluleki George (ANC) whether he believed in "the deracialisation of this country, the problem which they (the NP) created over 48 years" Van Schalkwyk weakly responded "We are committed to that principle"

Parliamentary labour committee chairman Godfrey Oliphant (ANC) sneered "He has a short memory (If he) goes to the shopfloor today, the shopfloor is black and the boardrooms are white That is the reality of SA The shacks are black and Sandton is white"

Prince Elijah Zulu (Inkatha Freedom Party) echoed this vision of a continuing racial divide "During the public hearings there were calls for a sunset clause to be put in this Bill, and I think those calls were unfortunate to the millions of black people who have suffered employment discrimination for about 350 years A call for a sunset clause is implicitly a call to prolong the suffering"

What was now under debate was not the strengths or weaknesses of a particular law, but on which side one stood in the great historical-racial divide By the time the DP's Leon attempted to make substantive points about the problems of structuring racial quotas and audits — saying they ignored "economic reality" — the ANC was in no mood to listen

He quoted President Nelson Mandela (from a 1991 speech) as saying "we are not asking for handouts for anyone, nor are we saying that just as a white skin was a passport to privilege in the past, so a black skin should be the basis of privilege in the future" But this appeal to the ANC tradition of nonracialism was futile

Thus, Phillip Dexter (ANC) again lumped the NP and DP together, saying that their "vision of heaven is one where everyone except the racistocracy keep their mouths shut and do as they are told Well, it is not going to be like that anymore, and they had better get used to it This Bill is going to change that"

P.T.O.

All you ever wanted to know about the Employment Equity Bill and how it works

Star 7/9/98 (166)

By ESTELLE RANDALL

The Employment Equity Bill will be written into law this year, bringing to a conclusion almost three years of discussions 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 This 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 455 companies shows white men and women still account for 73% of all professional workers and occupy most management positions In contrast, black (African, coloured and Indian) men and women, who make up 82% of the economically active population, occupy 84% of all temporary and casual positions They comprise only 11% of senior management and 25% of junior and middle management

Women comprise 10% of senior management and 25% of junior and middle management but black women (African, coloured and Indian) comprise only 5,7% of junior and middle management

2 What does the new law aim to do?

The new law seeks 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, culture, language, religion or belief.

Employers will also have to justify why employees should undergo medical tests, including tests for HIV, or psychometric tests

3. Which companies are affected?

Companies with 50 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 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 companies, enabling employers and employees to take their specific circumstances into account. They must give details on how the company will correct imbalances and over what period

4. What 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, coloureds 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 unnaturally 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 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 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 not publicise individual companies' pay structures, only trends

Estimates say that, in general, SA's income distribution is among the most unequal in the world Here 20% of low income earners capture only 1,5% of national income while the wealthiest 10% capture 50%

Results of a recent study by international consultants Towers Perrin found that SA executives take home 19 times as much as shopfloor workers. In South Korea 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 able to tender for government contracts

8 What happens to those who do not comply?

Those guilty of contraventions face fines up to a maximum of R900 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 difference in terms of representation of black people, women and the disabled in managerial and professional categories Companies with between 100 and 499 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 economic 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 or whose annual turnover is $50 000 or more Those that want to secure contracts to supply goods and services to the federal government must commit themselves to a five-year employment equity plan 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 in each occupational category, as part of their employment equity plans

SA's Employment Equity Bill has limited individual company information about salaries to the Employment Conditions Commission

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BD 7/9/98

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 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 Mdladlana 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

(166)( ) CT 9/9/98

Mdladlana urged to soften Employment Bill

ST (BT) 13/9/98

(166)

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 business 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

☐ 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-third, 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, Ntsika.

Ntsika'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 Ntsika, 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

(166) BD 15/9/98

Reneé Grawitzky

THE Basic Conditions of Employment Act's effect on the SA economy will be marginal, but it will significantly affect sectors that work extended hours and are more susceptible to rising labour costs, a report commissioned by the labour department says

The report by the Ntsika Enterprise Promotion Agency, which examines the effect of the act on small business, did not consider any legislative changes, but proposed a process to get businesses' support for its implementation It argued against making too many exclusions or exemptions for different subsectors

The report and the recommendations of a ministerial task team have been presented to Labour Minister Shepherd Mdladlana.

The implementation of the act — scheduled for next month — could be delayed if Mdladlana endorses a task team recommendation to legislate a special determination for companies employing fewer than 10 people, sources said

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-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

Provision should also be made for parties to enter agreements over averaging of hours, in which a minimum number of hours may be worked in over a period of more than four months as stipulated in the act.

The report found that most small businesses surveyed were complying with the current act or would find it relatively easy to comply with improved standards However, it found that companies employing fewer than 10 people had a low degree of compliance and those with fewer than five employees would find it even more difficult to comply with certain provisions of the act

The report concluded that sectors including security services, transport, service stations, catering and accommodation, general dealers, cleaning and personal services, would have difficulty in complying with provisions relating to the regulation of working hours, overtime rates, payment for Sunday work, night work, maternity and family responsibility leave

The report also found that non-compliance was more often due to a low level of awareness than to wilful defiance.

Jobs bill shock for small business

CT (BR) 18/9/98 (166)

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

UNWAVERING *Shepherd Mdladlana says small firms will get some leeway*

"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

BD 18/9/98

(166)

Vuyo Mvoko

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"

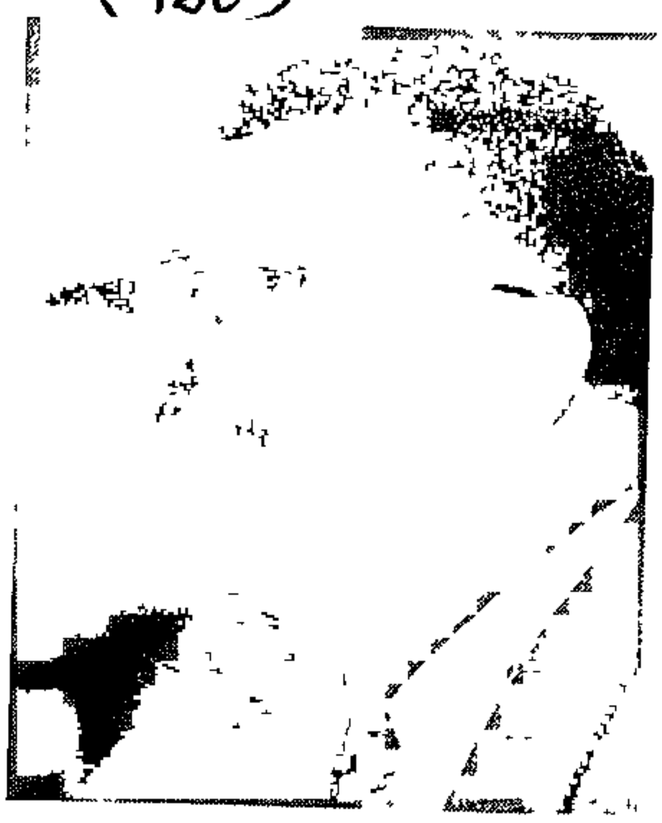
Leon said there were some "glaring facts which the minister prefers to ignore" He said the report stated that certain sectors would experience a significant adverse impact due to increases in labour costs as a result of the act.

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



MDLADLANA

and members of the intelligence services.

Labour director-general Sipho Pityana 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

(166)

SAPA 18/9/98

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 net 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 Mohlalehi, 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'

(166)

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 Ntsika Enterprises Promotion Agency on the emerging industry yesterday, Labour Minister Shepherd Mdladlana said it appeared that "certain provisions of the Act would affect only certain sectors"

Ntsika (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 unit 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"

Mdladlana said a ministerial task team was set up to review the results of the Ntsika survey The team recommended no amendments be made to the Act and this 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

NATIONAL

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 Membathisi 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 Sipho 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

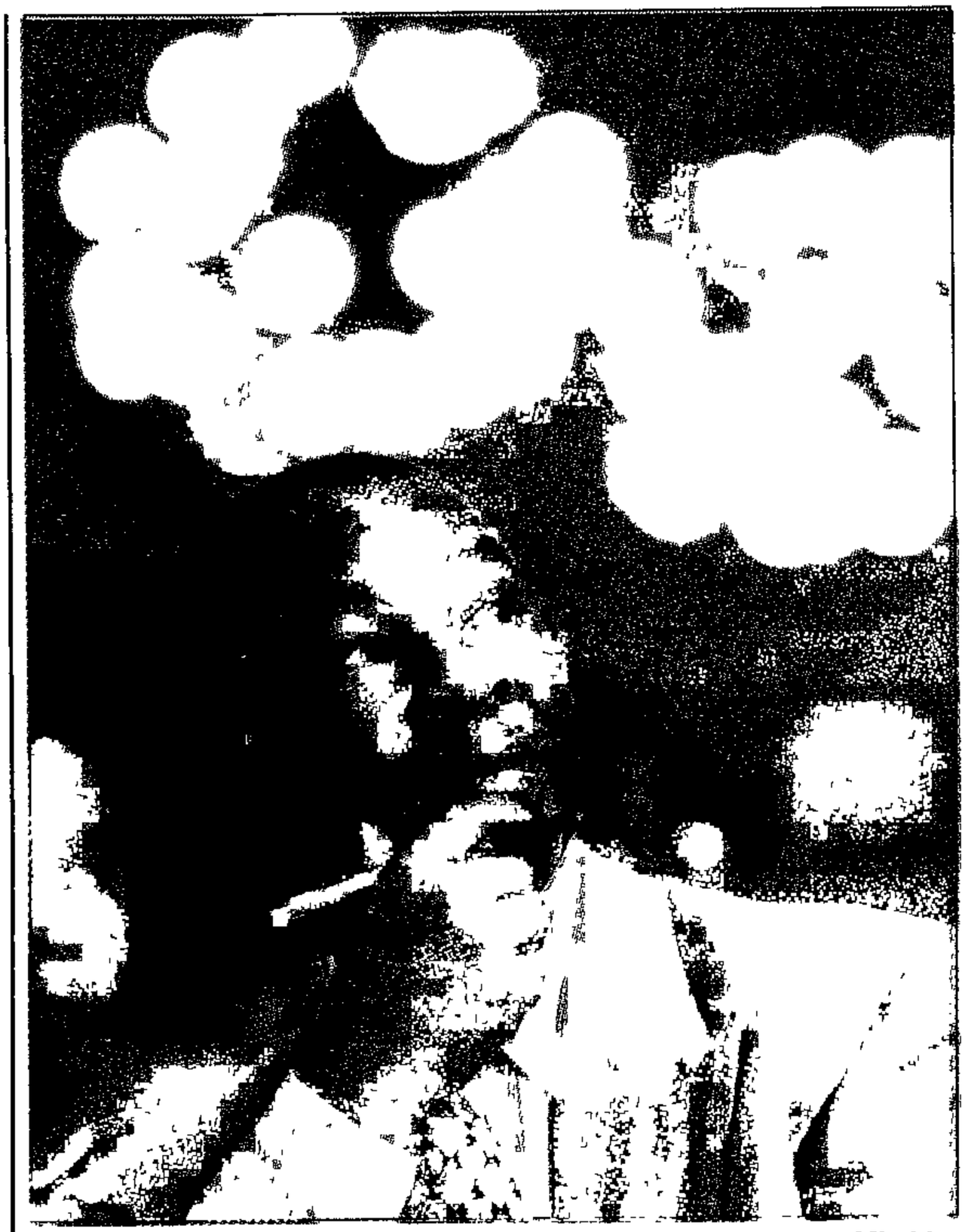
The Democratic Party attacked Mdladlana's comments and his proposals to introduce a minimum wage for agricultural workers

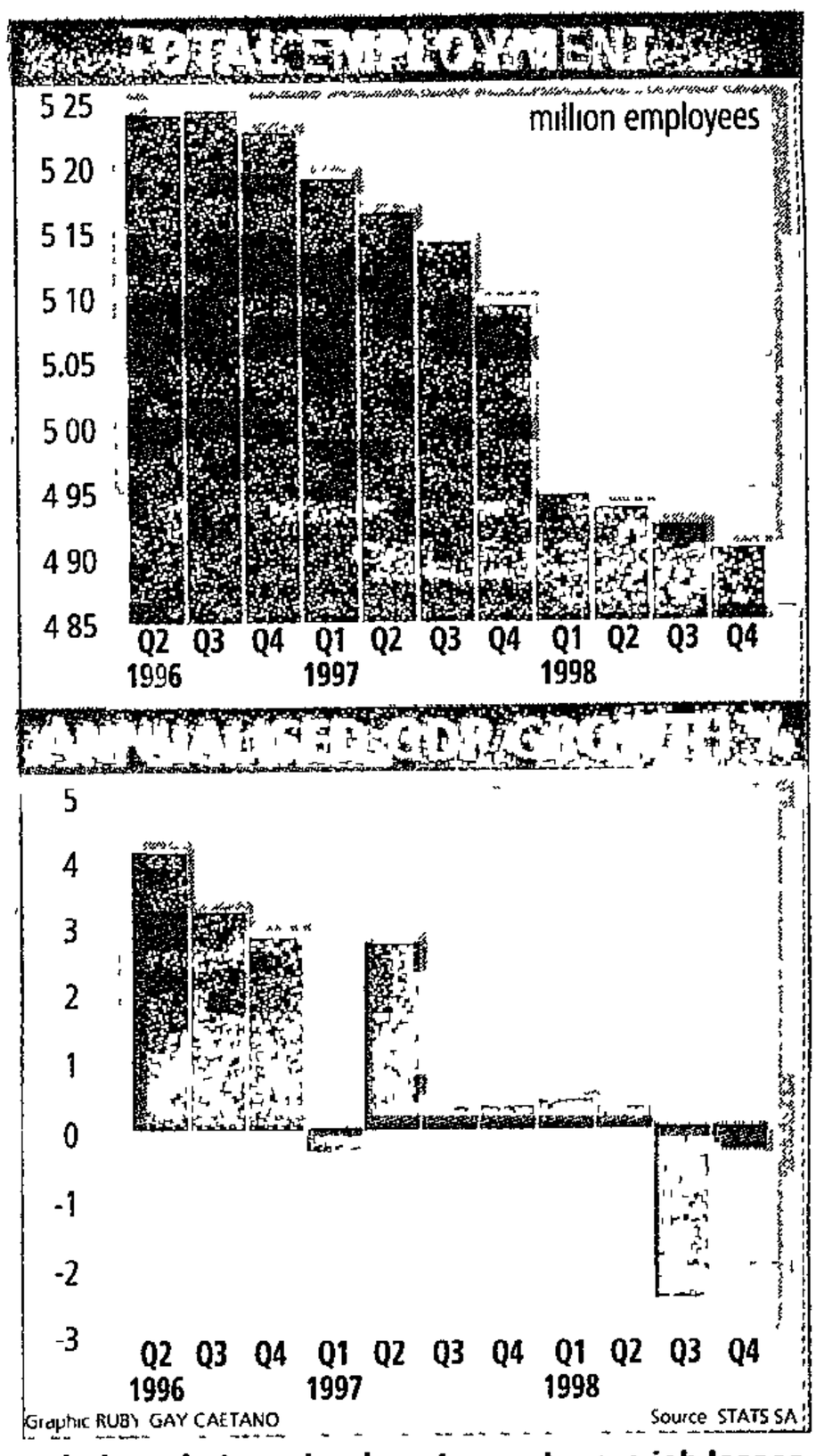
DP agriculture spokesman Errol Moorcroft said a minimum wage would cause more unemployment in the agricultural sector, where low profitability and employer-unfriendly labour laws had already led to a reduction in the labour force by about 50% over the past five years

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.

(166) BD 17/3/99





FOOD FOR THOUGHT ... with 37% unemployment in SA, Thabo Mbeki is wondering what can be done to avert more job losses

Mbeki to review labour law

(166) ST(BT) 4/4/99

EMPLOYMENT

By CAROL PATON

DEPUTY President Thabo Mbeki's office is to undertake research on labour market flexibility to investigate possible changes to legislation

Moss Ngoasheng, Mbeki's economic adviser, said the research would probably explore as a central issue the costs of employment Another possible area for investigation would be non-wage costs such as the absence of a cheap and efficient public transport system, which has the effect of pushing up wages

"Any government when faced with a situation like ours of high unemployment would have to question if it has the appropriate regulation We've been dealing with issues of the labour market but if these have introduced problems then we need to deal with them," said Ngoasheng

The undertaking by Mbeki to look into the labour market was made in negotiations prior to the jobs summit last October

However, statements by Mbeki and Minister of Labour Membathisi Mdladlana since the summit have been ambiguous, with promises to review legislation without compromising workers' rights

Ngoasheng indicated this week that the review could be quite wide-ranging

"What Thabo Mbeki has been saying is that whatever policies are in place will be reviewed to make sure they are not compounding the problem," he said

This week, Mdladlana also promised a labour market review, which he said would be headed by Department of Labour director general, Sipho Pityana

"We are prepared to look at anything that hinders job creation," 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 Figures released this week by Statistics South Africa showed that job losses continued unabated 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 Relations Act to ensure greater ministerial discretion in extending bargaining council agreements, and less onerous basic conditions for enterprises employing less than 10 people The International Labour Organisation has also suggested that probationary periods be considered for inclusion into the Act

Mdladlana also made concessions 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 domestic and farm workers

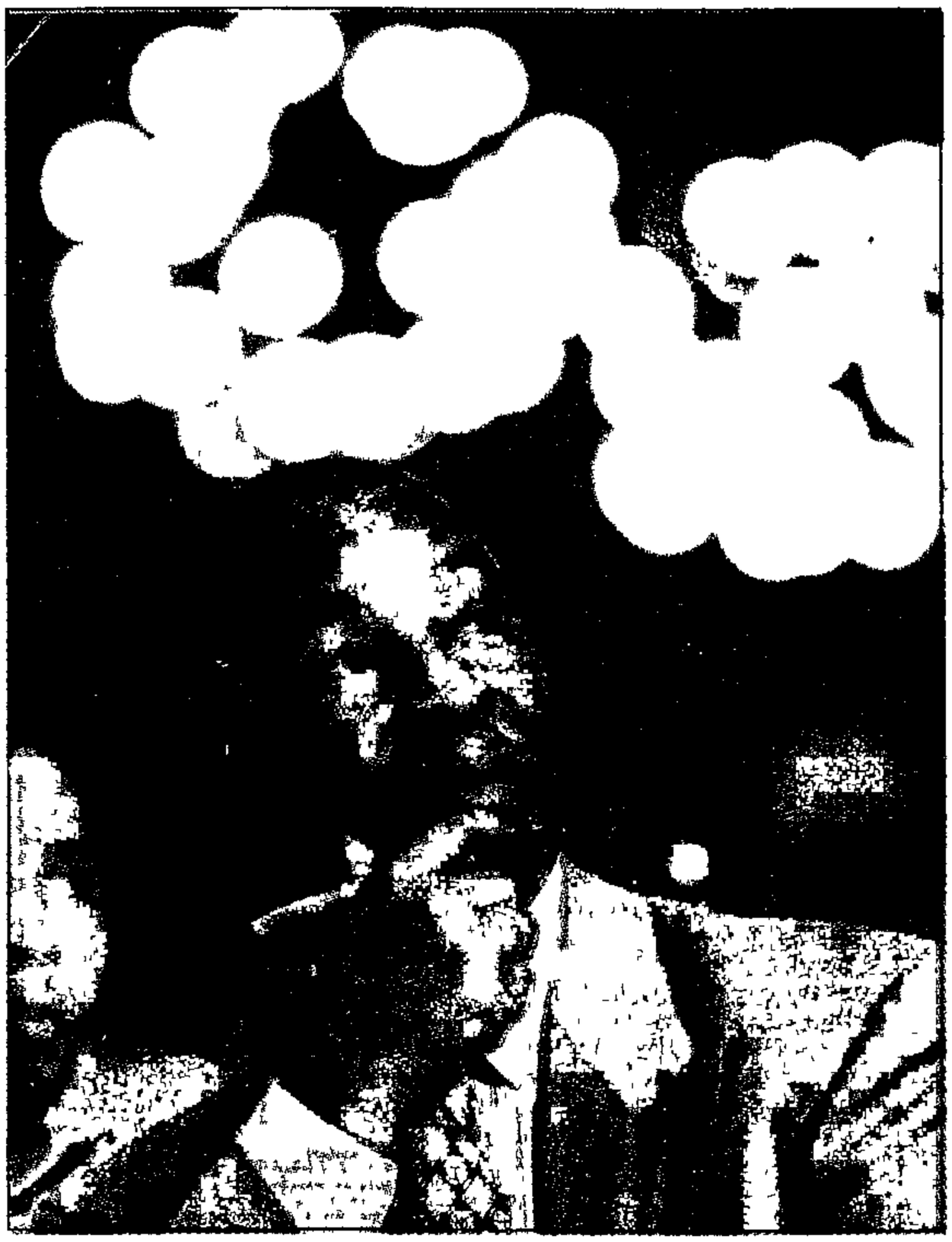
But labour law expert Professor Halton Cheadle, one of the drafters of the Act, cast doubt on the impact this would have

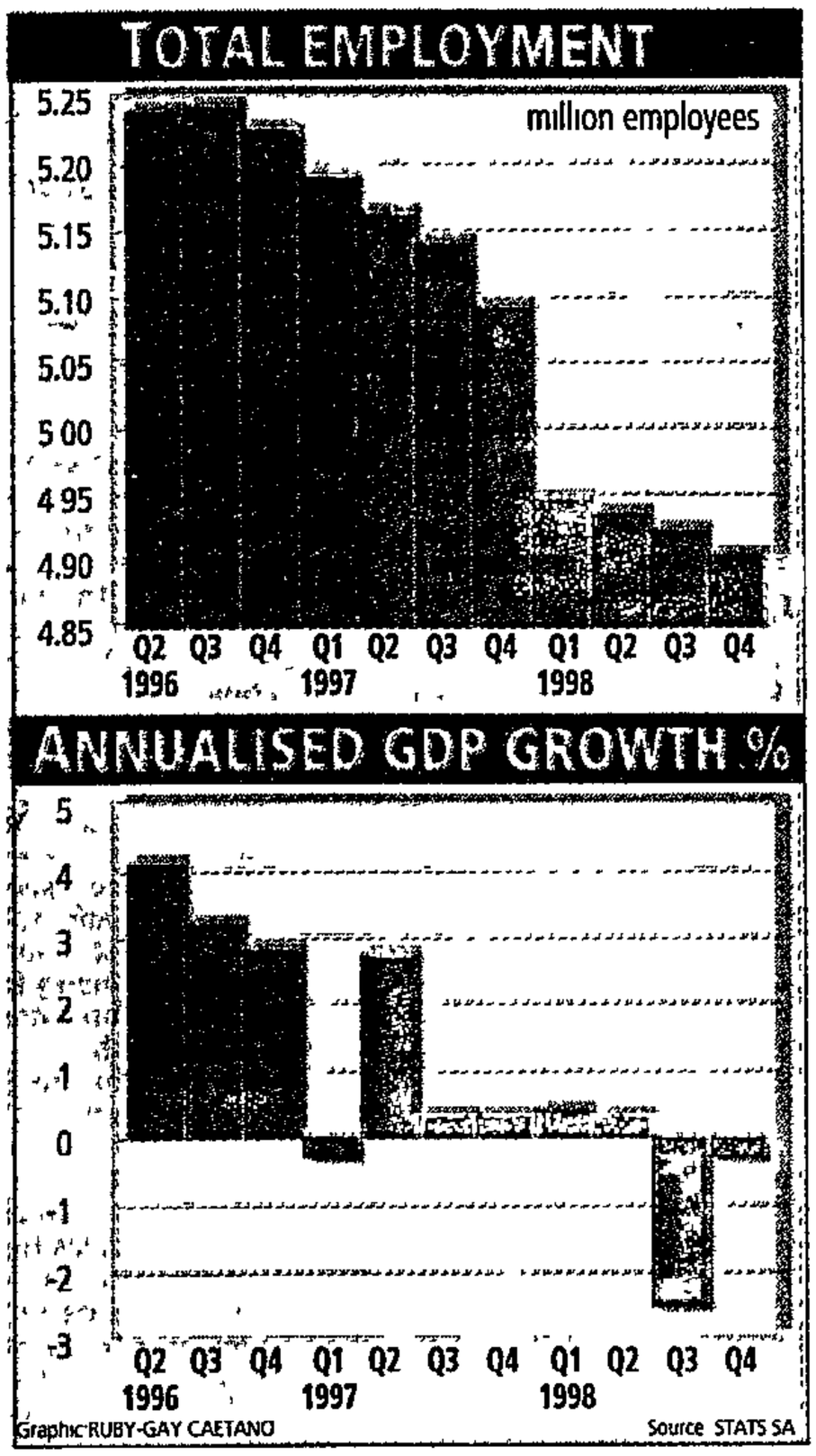
The Act already compels employers to "consult" over retrenchments Changing this to "negotiate" would make little difference, he said

Mdladlana said the minimum wage was designed to protect people in the category of "poverty in employment" who earned as little as R90 a month People who earned less than a government 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 undeniably sensitive to wage increases

Mdladlana described the minimum of R1 200 suggested by a spokesperson for the South African Domestic Workers' Union as "very high" This may have raised expectations unreasonably, he said





FOOD FOR THOUGHT ... with 37% unemployment in SA, Thabo Mbeki is wondering what can be done to avert more job losses

Mbeki to review labour law

(166) ST(BT) 4/4/99

EMPLOYMENT

By CAROL PATON

DEPUTY President Thabo Mbeki's office is to undertake research on labour market flexibility to investigate possible changes to legislation

Moss Ngoasheng, Mbeki's economic adviser, said the research would probably explore as a central issue the costs of employment Another possible area for investigation would be non-wage costs such as the absence of a cheap and efficient public transport system, which has the effect of pushing up wages

"Any government when faced with a situation like ours of high unemployment would have to question if it has the appropriate regulation. We've been dealing with issues of the labour market but if these have introduced problems then we need to deal with them," said Ngoasheng.

The undertaking by Mbeki to look into the labour market was made in negotiations prior to the jobs summit last October.

However, statements by Mbeki and Minister of Labour Membathisi Mdladlana since the summit have been ambiguous, with promises to review legislation without compromising workers' rights.

Ngoasheng indicated this week that the review could be quite wide-ranging

"What Thabo Mbeki has been saying is that whatever policies are in place will be reviewed to make sure they are not compounding the problem," he said.

This week, Mdladlana also promised a labour market review, which he said would be headed by Department of Labour director general, Sipho Pityana

"We are prepared to look at anything that hinders job creation," 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 Figures released this week by Statistics South Africa showed that job losses continued unabated through last year, since the last quarter of 1996. It is estimated that about 500 000 jobs have been lost since 1994.

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But labour law expert Professor Halton Cheadle, one of the drafters of the Act, cast doubt on the impact this would have.

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Mdladlana said the minimum wage was designed to protect people in the category of "poverty in employment" who earned as little as R90 a month. People who earned less than a government 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 undeniably sensitive to wage increases

Mdladlana described the minimum of R1 200 suggested by a spokesperson for the South African Domestic Workers' Union as "very high". This may have raised expectations unreasonably, he said

Workplace forums by-passed

(168) CT(BR) 19/4/99

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? and 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 50 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 discarding 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'

(166)

Reneé 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 20/4/99

SA NEWS DIGEST

LABOUR

Department spent R4m on awareness campaign for new laws, says Mdladlana

(166)

The labour department had spent nearly R4 million publicising the details of its raft of new labour legislation, Membathisi Mdladlana, the labour minister, said yesterday In a written reply to a question from the national assembly, Mdladlana said more than R3 million had been spent on publicising the Labour Relations Act and R674 187 on the Basic Conditions of Employment Act Nothing had yet been spent on the Employment Equity Act Mdladlana said about R1,9 million had been earmarked to publicise the three bills over the next three years CT(BR) 20/4/99

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 Mdladlana said R277,4 million had been spent on the commission so far. - *Lynda Loxton, Cape Town*

Positive aspects of the new labour laws

BD 29/4/99 (166)

Those who think the new legislation is destined to swamp employers 'could not be more wrong'

Gary van den Berg, MD of visAbility, sees a positive side to SA's new labour laws

Esther Limbani

PROPHETS of doom who predict that SA labour laws and planned legislation on issues such as employment equity, affirmative action and skills development will swamp employers and cause companies to go out of business, could not be more wrong

This is the view of Gary van den Berg, MD of visAbility, part of the technology group UCS specialising in information technology-enabled human resource management systems

Hitting out at what he described as "stereotypical negativism", Van den Berg says all current and proposed legislation affecting the SA HR (human resources) and labour markets is just what is needed to help progressive employers to achieve world-class status in the global economy

"Political grandstanding in an election year, repressive human resources practices inherited from the apartheid era and a history of confrontation between organised labour and management is fuelling this stereotypical negativism. It is this negativism that will swamp companies and cause businesses to go under — not the legislation," he says

While conceding that all current and proposed legislation poses a daunting challenge for companies, van den Berg says it is a challenge that should be welcomed

"For the first time in the country's history, employers are being asked to examine and report in great detail on how they are developing and managing their human resources

"While organisations throughout SA continue to claim that their people are their most valuable asset, many employers are paying lip service to this adage and invest very little time or effort in growing this asset base

"A typical example is the universal excuse that SA is desperately short of trained manpower and that the so-called brain drain continues to rob the country of critical skills," he says

"This situation cannot be entirely attributed to crime and emigration It is partly due to decades of neglect, with companies failing to identify and invest in meeting their needs through structured training and development programmes"

He says the prophets of doom appear to have overlooked the fundamental business issues that recent and proposed legislation addresses

"Too many so-called experts are concentrating their criticism on the moral and social aspects of SA's progressive labour laws

"An extreme view is that government is in collusion with its political allies in the organised labour movement and that this alliance is trying to impose socialist ideals on the free market system

"In an economy without the legacy of apartheid to deal with, some aspects of this argument may have been justified In the context of the new SA it fails miserably and does nothing more than fuel conflict and generate negativism," van den Berg says

"If companies in SA are to deal successfully with the Basic Conditions of Employment Act, the Labour Relations Act, the Employment Equity Act, the Skills Training and Development Bill and pressures to step up the pace of affirmative action, they need to regard reporting and conformance requirements as a part of their core business

"Employers can no longer regard HR as a pure administrative function to be consigned to the back office and categorised as a cost centre," he says

"To face up to the demands of legislation and an extremely volatile economic and trading environment companies need to implement information technology-enabled systems — solutions that can be integrated into an organisation's total business process

"All aspects of HR and personnel management, including basic issues such as payroll, time and attendance and employment policies, have to be integrated into the business and geared for the new environment," van den Berg says

Getting rid of discrimination

(Eng) (166) Sowetan 30/4/99

By Membathisi Mdladlana

SINCE the Employment Equity Act was passed in September 1998, my department has been hard at work preparing for its implementation We are now in a position to announce the dates on which it will come into effect

We are pleased to make this announcement on the eve of Workers Day since the promulgation of this Act reflects another important gain for worker rights in South Africa.

It seeks to put an end to decades of inequalities that are a result of both apartheid policies and societal prejudices and stereotypes

The Act seeks to give effect to our Constitution by prohibiting discrimination on the one hand and entrenching equity in the workplace through the use of affirmative action on the other

These twin objectives are designed to complement one another The reality is that removing discrimination on its own will not ensure equality in employment opportunities for those who have been denied access to jobs education and skills in the past.

The Act therefore has to go further and place an obligation on employers to introduce affirmative action steps to redress these imbalances

Furthermore the Act seeks to bring our labour law and practices in this area on a par with those in the rest of the world. We are now able to meet our obligations in regard to one of the core conventions of the International Labour Organisation, Convention 111 which deals with discrimination in employment and occupation

This is the first time that such equality legislation has been passed in South Africa. We are determined to make sure that its implementation is successful.

What is necessary to ensure the successful implementation of the Act? Firstly, employers and employees must be informed about the provisions of the law and how to apply it.

Secondly, the law must be easy to apply and employers should not bear undue costs to implement the law

Thirdly, employers and workers should be able to implement the laws in ways that will enhance productivity, efficiency and good employment practices.

Fourthly employees who feel that they have been unfairly discriminated against should be able to have their disputes effectively dealt with

With this in mind, the Department of Labour and the Commission for Conciliation Mediation and Arbitration (CCMA) have been putting in place the following

● The development of codes, guidelines and regulations to assist employers and employees to draft equity plans do workplace analyses and report to the department

● Training of staff at the department and the CCMA to handle inquiries cases and disputes relating to employment equity

● An information and publicity campaign

● The development of systems, procedures and information technology to ensure that employers can submit reports with a minimum of bureaucratic inconvenience and that the reports can be effectively analysed and feedback given

The Employment Equity Act seeks to bring an end to decades of inequalities in the workplace that are a result of both apartheid and societal prejudices PIC PAUL VELASCO

The preparations have taken us to a stage where we are now in a position to announce a staggered set of implementation dates for the Act.

The Act enables the President to promulgate different parts of the Act at different times We will be promulgating the Act in four different phases Some of the key dates are the following

● On May 14, the Commission for Employment Equity will come into effect. This commission needs to begin operating so that it can advise the minister of labour on the various codes and regulations that are required for the implementation of the rest of Act.

Regulations that are planned include a summary of the Act for display at workplaces, procedures for the conduct of an analysis and preparation of the workforce profile, and simpler forms for smaller employers

A number of Codes of Good Practice will be produced in the next few years Priority is being given to codes in the following areas contents of an employment equity plan, disability; and HIV-Aids in the workplace

● On August 9, National Women's Day the provisions of Chapter 2 of the Act, which prohibit discrimination, either directly or indirectly on a wide range of grounds, will come into effect.

The grounds are the following race, gender, sex, pregnancy, marital status, family responsibility ethnic or social origin, colour, sexual orientation, age, disability, religion HIV status, conscience, belief, political opinion, culture language and birth.

All employers will have to ensure that their practices and policies are free of unfair discrimination

Sexual harassment is prohibited and medical testing is not allowed unless it is an inherent requirement of the job.

No psychological testing or other assessments can be done unless such tests are validated and not biased. In addition, HIV testing can only be carried out if authorised by the Labour Court.

Any employee who feels that he or she has been discriminated against or that an employer has contravened this section of the Act can declare a dispute and refer it to the CCMA.

If the CCMA is not able to solve the problem through conciliation, the matter can either go to arbitration (if both parties agree) or to the Labour Court for adjudication.

● Chapter 3 of the Act requires employers to take a number of steps to promote affirmative action. It applies primarily to employers who employ over 50 people or who have an annual turnover of more than a certain amount.

Such employers are required to report on their plans to the department as well as submit a statement on the remuneration and benefits received in each occupational category of their workforce

Employers who employ over 150 employees are expected to report six months after the Act has come into effect, while other employers have a year before they have to report

The December date will not only allow sufficient time for parties to familiarise themselves with the Act, it is also appropriate in that December 1 is International Aids Day and December 3 is International Day for People with Disabilities.

Promulgation at this time will give us an opportunity to highlight discrimination against people with disabilities and HIV/Aids, as well as the need to accommodate differentially abled people in employment equity plans

● Section 53 of the Act requires that employers who want to tender for state contracts have to comply with the Act. It is however not realistic to expect employers to comply with this section before they are required by the same law to submit reports.

It is thus proposed that this section of the Act be promulgated in respect of employers who employ over 150 employees, three months after they are expected to submit their first reports This will be in September 2000

In respect of other designated employers, it should similarly be three months after they are expected to submit their first reports, which will be April 2001

I would like to call on employers and workers alike, let us work together to build a better workplace. The Act can help us to do this by ridding our workplaces of discrimination and encouraging the development of equitable employment practices.

Let us work together to overcome our apartheid legacy and build a better life for all.

(The author is the Minister of Labour.)

Investors wanting cheap labour 'should stay away'

BD 30/4/99 (166)

Reneé Grawitzky

LABOUR Minister Membathisi 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 Vic 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 comes 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

New legislation seeks better workplace

(166) BD 30/4/99

Labour Minister **Membathisi Mdladlana** spells out his timetable for the implementation of the Employment Equity Act

SINCE the passage of the Employment Equity Act in Parliament in September last year, my department has been preparing for its implementation We are now in a position to announce the dates on which it will come into effect

The legacy of apartheid continues in our workplaces The Employment Equity Act seeks to bring an end to decades of inequalities that are a result of 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 denied to them for so many decades

The act seeks to give effect to our constitution by prohibiting discrimination on the one hand and entrenching equity in the workplace through the use of affirmative action on the other

The reality is that removing discrimination on its own will not ensure equality in employment opportunities for those who have been denied access to jobs education and skills in the past The act therefore has to go further and place an obligation on employers to introduce affirmative action steps to redress these imbalances

Furthermore the act seeks to put our labour law and practices in this area on a par with those in the rest of the world We are now able to meet our obligations in respect of one of the core conventions of the International Labour Organisation, convention 111, which deals with discrimination in respect of employment and occupation

What is necessary to ensure successful implementation of the Employment Equity Act?

Firstly, employers and employees must be informed about the law s provisions and how to apply them Secondly, the law must be easy to apply and employers should not bear undue costs in implementing it Thirdly, employers and workers should be able to implement the law in ways that can enhance productivity, efficiency and good employment practices

Fourthly, employees who feel that they have been unfairly discriminated against should be able to have their disputes speedily and effectively dealt with

With this in mind the labour department and the Commission for Conciliation, Mediation and Arbitration (CCMA) have been putting in place the following

- The development of codes, guidelines and regulations to assist employers and employees to draft equity plans, do workplace analyses and report to the department,
- Training of staff to handle inquiries, cases and disputes relating to employment equity,
- An information and publicity campaign and,
- The development of systems, procedures and information technology to ensure employers can submit reports with a minimum of bureaucratic inconvenience and that reports can be analysed and feedback given

We will be promulgating the act in four different phases Some of the key dates are

On August 9, National Women's Day, we will promulgate the parts of the act that prohibit unfair discrimination at work, and in December we will promulgate the parts of the act that relate to the preparation of employment equity plans and submission of reports to the department

On May 14, the Commission for Employment Equity will come into effect It will advise me, as labour minister, on the various codes and regulations required for the implementation of the rest of the act

Regulations that are planned include. reporting forms for employers, a summary of the act for display at workplaces, and procedures for the conduct of an analysis and preparation of the workforce profile.

A number of codes of good practice will be produced in the next few years Priority is being given to the following areas contents of an employment equity plan disability and HIV/AIDS in the workplace.

The act will ensure that the country's citizens enjoy the equality of employment opportunities they were denied for so long

On August 9, the provisions of chapter 2 of the act, which prohibit discrimination either directly or indirectly on a wide range of grounds, will come into effect

The grounds are race, gender, sex, pregnancy, marital status family responsibility, ethnic or social origin, colour, sexual orientation, age, disability religion, HIV status, conscience, belief, political opinion culture, language and birth

Any employee who feels he or she has been discriminated against or that an employer has contravened this section of the act can declare a dispute and refer it to the CCMA. If this fails, the matter can go to arbitration (if both parties agree) or to the Labour Court for adjudication

Implementation of the act will be accompanied by a high-profile publicity campaign

I note that our detractors consider expenditure of public money to promote awareness of labour laws a waste of resources I disagree as I believe it is only when people know about the rights enshrined in our laws that they can invoke them when their rights are undermined

At the beginning of December, affirmative action and employment equity plans will come into effect Chapter 3 of the act requires employers to take steps to promote affirmative action This chapter applies primarily to larger employers who employ more than 50 people or who have an annual turnover of more than a certain amount

Such employers are required to report on their plans to the department as well as to submit a statement on the remuneration and benefits received in each occupational category of their workforce

Employers who employ more than 150 employees are expected to report six months after the act has come into effect, while other employers have a year before they have to report

The December promulgation date will allow not only sufficient time for affected parties to familiarise themselves with the act, it is appropriate also in that December 1 is International AIDS Day and December 3 is International Day for People with Disabilities Promulgation at this time, therefore, will give us an opportunity to highlight discrimination against people with disabilities and HIV/AIDS

On the issue of links to the government's procurement system, section 53 of the Employment Equity Act requires that employers who want to tender for state contracts have to comply with the act It is not realistic, however to expect employers to comply with this section before they are required by the same law to submit reports

It is thus proposed that this section of the act be promulgated, in respect of employers with more than 150 employees three months after they are expected to submit their first reports This will be in September 2000 In respect of other designated employers it should similarly be three months after they are expected to submit their first reports, which will be April 2001

The three-month period will give the department adequate time to give such employers certificates (as the act requires) and for these to be submitted to the state and other tender boards

Last week Judge Edwin Cameron announced his HIV status in a statement to the Judicial Commission where he was being interviewed for a post as a Constitutional Court judge

I welcome his stand It is through acts like his that we will be able to bring home the message not only that HIV and AIDS must be prevented but also that people with such status should not be discriminated against.

From August 9, the Employment Equity Act makes it an offence to require people to be tested or to disclose their status as well as to be discriminated against if their status becomes known

I would like to make a call to employers and workers alike. let us work together to build a better workplace. The act can help us to do this by ridding our workplaces of discrimination and encouraging the development of fair and equitable employment policies and practices

New employment act to be phased in gradually

ET (BR) 20/4/99 (16b)

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 Mdladlana, the labour minister, said yesterday during the promulgation of the EEA

Mdladlana 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," Mdladlana said

"This act seeks to bring an end to decades of inequalities that are the result of both 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 wanting 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

THAT'S AFFIRMATIVE *Membathisi Mdladlana* PHOTO JOHN WOODPOOF

Labour task team welcomed

(166) CT(PR) 11/a/99

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — Business yesterday welcomed the announcement by Membathisi Mdladlana, 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 Mdladlana 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 our 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

'We need to hear business's concerns that our policies undermine job creation'

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 for operational reasons, then 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 Bezuidenout, 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

NEWS

BUSINESS *Sacob has several serious concerns*

New labour laws 'overly prescriptive'

CT(BR) 26/2/99 (166)

FRANK NXUMALO
LABOUR EDITOR

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 organisation has 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

By MAX MARX

LABOUR Minister Membathisi Mdladlana has praised Judge Edwin Cameron for the recent disclosure of his HIV status

Speaking at a press conference to announce the dates when the various sections of the Employment Equity Act will be promulgated, Mdladlana said it would be through such acts that the message would be brought home that not only must HIV/AIDS be prevented, but also that people with such status should not be discriminated against

"From August 9, 1999 the Employment Equity Act makes it an offence to require people to be tested or to disclose their status as well as to be discriminated against if their status becomes known People like Judge Cameron will thus be able to disclose their status without fear of discrimination," he said

He added the act was an important gain for workers' rights in that it would eradicate all forms of discrimination in the workplace

The department of labour's chief director of labour relations, Lisa Seftel, said, the need for employment equity in South Africa was self-evident: "We are faced with a number of disparities in the labour

RESPONSIBLE .. *Meko Magida will be administering the Act*

market in relation to employment, occupation and income "

A survey of 455 companies last year revealed that 89 percent of senior management is still white, six percent is African of which one percent is female, two percent is coloured, three percent Indian and eight percent of white senior management is female

The act, which seeks to bring an end to inequality in the workplace by prohibiting discrimination and entrenching equity through the use of affirmative action, will be promulgated in phases

On May 14, 1999, the Commission for Employment Equity (CEE) will be created to advise on the various codes of good practice and regulations required for the implementation of the rest of the act

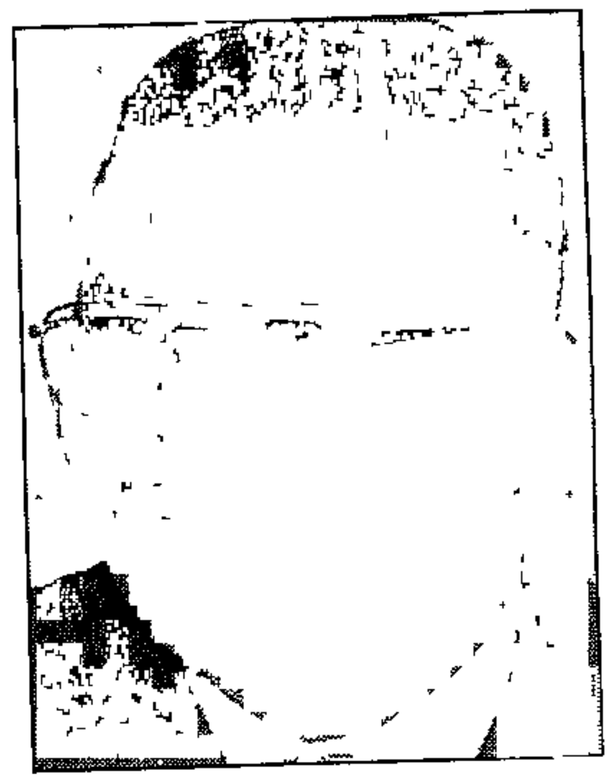
On August 9, 1999, National Women's Day, the labour department will promulgate parts of the act that prohit unfair discrimination at work

In December, parts of the act that relate to the preparation of employment equity plans and submission of reports to the department will be promulgated

Section 2 of the act, which launches on August 9, prohibits discrimination on the basis of race, culture, gender, sex, pregnancy, sexual orientation, disability, HIV status, religion, conscience or language.

Sexual harassment is prohibited and medical testing is not allowed unless it is an inherent requirement of the job while no psychological testing or other assessment can be done unless such tests are validated and not biased

HIV testing can only be carried



PROMOTING EQUITY ... *Minister of labour Membathisi Mdladlana*

out if authorised by the Labour Court

An employee who feels discriminated against or that an employer has contravened section 2 of the Act can declare a dispute and refer it to the CCMA

If the CCMA cannot solve the problem through conciliation, the matter can either go to arbitration or to the Labour Court for adjudication

Mdladlana said one of the act's key objectives was to prohibit discrimination on the basis of gender and to ensure employment equity in respect of women

In December, when section of the act is promulgated, designated employers will be required to promote affirmative action for designated groups including black people (African, coloured and Indian), women, and people with disability

Designated employers are companies who employ 50 or more employees or companies with a turnover equal to or above the annual turnover of small businesses in the Small Business Act

Labour inspectors will check that companies comply with the procedures required by the Act If inspectors find evidence of non-compliance, they can go to the Labour Court and get a court order issued

Mdladlana said the new law would bring peace and stability to the workplace thereby creating an environment that appealed to investors

Democratic Party leader Tony Leon said the Act was a bad piece of legislation because it would lead to skills emigration and bring back apartheid by racially classifying the workforce.

Labour laws under microscope

CT(BR) 6/5/99 (166)

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 regu lations provide workers with job secu rity in an economically equitable manner, that they promote employ ment 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 flexibil ity Functional flexibility was the adaptability of workers to undertake a range of tasks, and included multi-skilling and job rotation

South African Labour Bulletin offers new analysis of market-related legislation

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 se curity 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

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

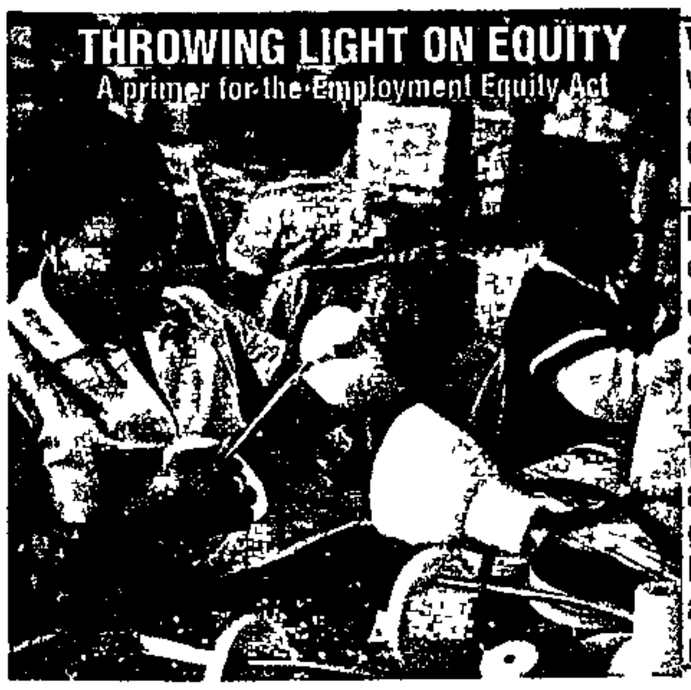
But the biggest challenge to companies under the Act may lie in the way they review their employment practices This is where companies evaluate their existing human resources policies, employment contracts and organisational culture, and decide how best to harmonise affirmative action with existing fair labour practices

Employment law specialist Mosh Thulare says' the Act is too inflexible and discourages internal hiring 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 made by their employers in breach of existing appointment procedures

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

Sello Mabotja



What's required. Companies with at least 150 workers must report compliance to the Department of Labour by December 1, thereafter annually. Companies with fewer than 150 workers must report by June 1, 2000, thereafter two-yearly

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 continuing training for employees and managers Step 4 — finalise and begin 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

New employment legislation gets into action

FRANK NXUMALO

Johannesburg – The first sectoral determination under the new Basic Conditions of Employment Act was published in the Government Gazette on Friday by Membathisi Mdladlana, the minister of labour

The sectoral determination 1 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 B 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

(166) CT(BR) 17/5/99

Moravians thank God for their return to District Six

Chapel they lost to apartheid reclaimed for worship

ARG 17/5/99

LYNNE RIPPENAAR
STAFF REPORTER

District Six's historic Moravian Hill Chapel, which fell victim to the Group Areas Act, is a place of worship once again after years of being used as a gymnasium for the Cape Technikon.

Yesterday, more than 800 Moravian worshippers marched down Searle Street from the Holy Cross Catholic Church to the Moravian chapel to attend their first service at the church since the Group Areas Act forced its closure in 1980

A small token of appreciation was handed over to Father Isaia Ribollo of the Holy Cross Catholic Church, where Moravians were allowed to hold their own services throughout the years

Moravian Church members returned to the chapel after the church and the District Six Beneficiary Trust reached an agreement with the technikon that the chapel could again be used for services

The chapel is shared with the District Six Museum, whose Buitenkant Street premises are being renovated The church is also awaiting a decision on a claim which is being considred by the Land Claims Court.

The Rev Karel 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 Emmanual Temmers said. "Like so 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 become part of your existence, is never a pleasant experience It is traumatic, it hurts deeply and it is sad "

Anwar Nagia of the District Six Beneficiary 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

He said if they did not reclaim their land, they would indirectly vindicate the actions of the previous government.

"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 (1980) we had the closing service," he said. "I was the last person to stay in the rectory until December 31 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 Abrahams, 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 retain our church, that same gentleman carried that Bible 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 "

Home at last: memorabilia from the District Six Museum, temporarily housed in the chapel, surrounds worshippers yesterday HANNES THART

Focus on workers' conditions

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.

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, Mr Membathisi Mdladlana, 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

Mdladlana 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," Mdladlana said

Seifsa warns new laws could kill jobs

BD 24/5/99 (1889) (166)

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

NEWS BRIEFING

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 9, 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 R192,7 million in its maiden results for the year to March 31, the company said yesterday **Page 3**

Trade and Industry punts for review of labour law

SMALL-BUSINESS INCENTIVES

By THABO KOBOKOANE

THE Department of Trade and Industry is to recommend to the next parliament that small business be excluded from certain provisions of labour law.

Deputy Minister Phumzile Mlambo-Ngcuka says the proposal will emanate from a departmental review of legislative and regulatory obstacles to the development of small business The report is to be made public soon

The proposal is in line with most analysts' expectations that government will amend labour law to enable the small business sector to hire labour cost-effectively ST(BT)30/5/99

This means that legislation such as the Basic Conditions of Employment Act and Labour Relations Act may be amended when the new parliament sits.

Sipho Pityana, Director-General of the Department of Labour, says his reading of the report's proposal is that it would not require major legislative amendments "It may require a change of certain regulations and a particular attitude to the extension of bargaining council agreements to non-parties, particularly as it relates to small business "

Pityana cites an earlier report looking at the Basic Conditions of Employment Act by small business promotions agency Ntsika, which concluded that small business would find it relatively easy to comply with the new Act.

However, a subsequent review by the Employment Conditions Commission, based on the Ntsika report, concluded that though small business should not be exempted from basic employment conditions, account should be taken of the "special problems and circumstances they face" and that "some provisions of the Act may in fact prove onerous for the sector"

The proposal by the legislative and regulatory review comes in the wake of new momentum in government to review labour laws which have been blamed by business and opposition parties for the lack of job creation.

Just last week Deputy President Thabo Mbeki told the business community that work had already started in the ministry of labour on a review of labour market policy

"I hope we can come to a common understanding between government, labour and business on job security and labour-market flexibility," he said

No changes in Employment Act

CT (BR) 31/5/99 (166)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg – The Employment Equity Act would be implement ed 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

DELIVERING EQUALITY
Labour's Sipho Pityana

"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 dates of implementation

Parson 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 as the legislation is steadily implemented important new insights will be gained by officialdom and employers alike, which could lead to adaptations in the future

"Experience with the employ ment legislation in the workplace will in itself yield useful feedback as to any problem areas."

A HELPING HAND: Christine Ndude is a voluntary worker and sangoma She works at Hout Bay clinic because she wants to help heal the sick

DEATHLY LINK: Nomfundo Memani is a social-worker who says that the link between TB and HIV is "a

'Then we will be able to speak openly of our situation'

Continued from Page 13

is no time to be moralistic about this one — we've got to do something to start saving lives "

(To be fair to Cape Town's politicians who have adopted an Aids pledge committing themselves to an active campaign against the disease, Grimwood's frustrated comments are aimed more specifically at the Department of Health Cape Town is the only city in the country to have signed a pledge.)

To Annamana, Ashraf Grimwood is an angel He helped her come to terms with the disease, he helps her now in the low times To Ashraf, Annamana's story is a cautionary tale, a grim reminder that this virus can go everywhere

It was on a Saturday morning at the end of summer that I met Annamaria A cloudy day after a hot week with a slight north-wester stirring at the curtains Her house was wide open A sliding door gave on to the

"I have decided that the best

then I look at my blood, my blood that used to be the stuff that kept me alive, and I think, inside that blood is a virus that I can't see but one day, probably within the next 12 years, it's going to kill me It's very difficult getting used to this It's very difficult knowing that if I nick myself my friends first have to rush for their gloves before they can help me put on a plaster "

Annamaria's story was an extraordinary tale of human travail and, as agreed, I sent her a copy of what I'd written and received the following e-mail (which has been edited and shortened)

"Dear Mike — Sorry I have taken so long to get this off to you but I have spent many hours and days trying to, firstly, sort out my feelings about it, and, secondly, trying to put it all into some form of coherence for you to work with

"I have many misgivings about what you wrote and feel that there seems to be a misunderstanding about the message I tried to con-

life as well. Having found him, I got married, but unfortunately after a very short period of bliss, I lost him I truly thought at the time that I was dealing with the loss and grief quite well — but in truth this was not the case

"His death left me very vulnerable to the advances of an unscrupulous fortune hunter who was HIV positive and fully aware of this fact. He found it unnecessary to inform me of this before sex and before marriage, as this would obviously not have been in his best interests What followed was a marriage of deceit, lies and hidden agendas, bringing me only misery and sadness.

"2. It did not take long for me to realise that I had made a terrible mistake by marrying him and very soon the abuse, violence and temper tantrums started After a few months it became unbearable to remain with him and I informed him that I intended to divorce him. Later, once he was out of [illegible] life out of

and what it was doing to my body

"I also went through a stage of seeking miracle cures and hoping that I would be the one that would find a way, that I would be the one who would experience the miracle of spontaneous remission — that I would wake up one morning and it would have disappeared But I knew that this was just fantasising

"I then went on a mission to find the right doctor, one who would not only have an indepth knowledge of the disease, but who could treat me in a way that I would have absolute faith in his advice This was not an easy task. Fortunately I found Ashraf Grimwood. To me he is an angel

"I am very grateful to my family — whose unconditional love and support have been incredible and wonderful and have helped me more than they can ever know — and to my close

"I hope that they

that I had not tapped before. Suddenly there was no time to sit around and bewail my lot

"6 My hopes are that people become more educated about this disease and learn to show more tolerance — then we will not have to feel like lepers I hope that they will realise that the disease can come their way as easily as it came mine That it is not a punishment for bad behaviour That it is not common to any one colour, creed, sexual orientation, or social status Then we will be able to speak openly of our situation, our fears and needs, and seek help and healing without fear and trepidation We will no longer have to walk in shame for something that is not in our power to change We will no longer have to feel ostracised from our own society and be outcasts and looked upon with mistrust and revulsion.

"7 If I am to be remembered when I am gone, I would like it to

ANC plays down labour law rethink

(166) CT (BR) 13/11/99

FRANK NXUMALO
LABOUR EDITOR

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 step 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 convener 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

Star 23/1/99 (166)

By FEMIDA CASSIM

Since the Basic Conditions of Employment Act of 1997 came into effect on December 1 last year, 729 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's notice.

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

'What domestics sh

(166) (Star) Should be paid 17/3/99

Union says a skilled worker who cooks and looks after children should be entitled to about R1 200 a month

By Vivian Warby

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 Mdladlana 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 Mdladlana, 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

Some get as little as R200 a month

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 R650 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 Mthembu of Household Services in Parkhurst, Johannesburg, said their 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 R650

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 There have been so many abuses of domestic workers in the past, not only in the wage area but also in the conditions of employment."

▶ Report and graphic Page 3

Star couple ... winners of The Star Couple of the Year, Lucia and It... at the glittering awards ceremony last night. Their prizes include a ...

Host of prizes for winners of 'I

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 showrooms yesterday

Social workers Lucia and Itumeleng Molefe took the title, receiving the first prize, a Hyundai Accent XS, as well as a trousseau of other fabulous gifts.

Valued at R48 390, with modifications worth R12 000, the Hyundai Accent XS is just the kind of luxury The Star Couple of the Year deserve.

A second honeymoon at Namibia's Protea Hotel Walvis Bay Lodge – with return flights to Windhoek courtesy of British Airways Comair, and car hire from Budget Rent-a-Car – also await the winners Other prizes include a Kelvinator fridge, automatic washing machine and freezer valued at R8

Get organised, minister tells domestic workers

ARG 17/3/99

Labour Minister Membathisi Mdladlana has met representatives of domestic workers and their employers to encourage them to organise themselves to negotiate a minimum wage

(166) (EH)

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 R500 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

BD 19/2/99 (166)

Act stipulates a lengthy process which will involve all interested parties, writes **Reneé Grawitzky**

LABOUR Minister Membathisi Mdladlana 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 Mohlalehi 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

Mohlalehi 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 Mdladlana'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 no election ploy"

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

Mohlalehi 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. Mohlalehi 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

Mohlalehi said the minister could either accept the advice or send the matter back to the commission with specific questions

The commission is now determining whether sectoral determinations should be legislated for small business, security and the hospitality industries. Last year organisations representing small employers expressed concern that government had not legislated a special dispensation — granting small business some concessions — before the act came into effect

A report by the Ntsika Enterprise Promotion Agency released in September found that some 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

A tripartite task team criticised the report, recommending that government legislate a special determination for companies employing less than 10 people before the act came into operation. This did not happen

The commission has yet to finalise its position and has called on labour and business to make final input later this month

We're on the right track, says cop boss

'I believe we can win this war'

ARG 13/1/98/12/97

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 ~~concede~~ 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"

Confident: police boss Meyer Khan

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 Fivaz, 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

(166) BD 24/3/99

Reneé Grawitzky

SA EMPLOYERS inadvertently falling foul of the constant stream of new labour legislation will now be able to insure themselves for up to R10m a year against litigation

Integrated Labour Solutions will provide employment liability insurance for companies facing claims for discrimination, 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 "hyper-regulated" The rise in legislation inadvertently led to an increase in employment risks, he said

Integrated Labour Solutions — a joint venture between commercial law practice Edward Nathan & Friedland Inc, financial services group Glenrand MIB and labour consultants SMC Consulting — aims to help companies 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 action 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 employment risks in organisations by identifying areas of noncompliance with labour legislation

The final component of the system will be the provision of insurance covering "employment risks and legal costs arising from claims by employees"

Labour ruling could save millions of rands

BD 26/3/99

(166)

Reneé Grawitzky

NORTHERN Cape government could save millions of rands following a Labour Court ruling that the failure to grant public servants an allowance for acting in a senior position was not an unfair labour practice.

The court ruled this week that a dispute relating to the payment of acting allowances in the public service was a matter of mutual interest and should be a subject of collective bargaining rather than an unfair labour practice claim. The Commission for Conciliation Mediation and Arbitration (CCMA) had no jurisdiction to hear the matter, which it had done.

The court said it "certainly seems fair" that a person should be paid for acting in a higher position or one carrying more responsibility, but it should be a subject for negotiation as it was a wage-related issue.

The dispute arose when a nursing sister was asked to act as a matron for nearly two years. During this time she was not paid an allowance. She challenged this only after she had applied for the post and was turned down

The Hospital Personnel Trade Union of SA (Hospersa) referred the dispute to the CCMA which found that the employer had committed an unfair labour practice, despite the fact that the public service regulations did not provide for such payment.

Sources close to the process said there had been no consistency in terms of decisions emerging from the CCMA in this regard. Some decisions found the public service was not obliged to pay an acting allowance because it was an "honour" to act in a senior position while other decisions found it was an unfair labour practice.

The court ruled the CCMA did not have jurisdiction to hear the matter. The payment of acting allowances had been placed on the agenda of the public service co-ordinating bargaining council and had become a collective bargaining issue

Hospersa said it was considering taking the decision on review to the Labour Appeal Court.

Northern Cape deputy director-general Elias Selemela said the implications of the decision were far reaching If the court had gone the other way, it would have cost government and the provincial government millions of rands.

MARCH 28, 1999 ★★★★

Know your rights at the workplace – it pays off

cl 28/3/99

(1bb)

Employment is no longer a master-servant relationship

By MAX MARX

KNOWING your rights as an em ployee can go a long way towards fighting exploitation in the workplace

The three most important pieces of legislation which govern the em ployee/employer relationship are the Labour Relations Act (LRA) of 1995, the Employment Equity Act (EEA) of 1998 and the Basic Condi tions of Employment Act (BCEA) of 1997

The LRA provides for, among other things, fair labour practices, discipline in the workplace, the sub stantive and procedural fairness of dismissals, the rights of trade unions – like collective bargaining and col lective agreements – and the settle ment of disputes at, for example, the Commission for Conciliation, Medi ation and Arbitration, the Labour Court, and the Labour Appeals Court

The Employment Equity Act provides for equal opportunity for employees and affirma tive action

The Act requires that every employer takes steps to promote equal opportunity in the work place

In terms of the LRA and EEA, no employer may discriminate on the grounds of race, gender, sexual orientation, preg nancy, disability or HIV status, among others

An employer can, however, discriminate on the basis of affirmative action and inherent job requirements

Contravening the EEA can lead to fines ranging from R500 000 for a first contravention to R900 000 for four previous contraventions within three years

The BCEA provides for the mini mum 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 45 hours a week, which may be extended by up to 15 minutes a day but not more than 60 minutes in a week,

☐ Overtime – An employee may not work more than three hours over time 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 em ployee 30 minutes time off on full pay for every hour of overtime worked or 90 minutes paid time off for each hour of overtime worked,

WORKERS' MAN . Labour Minister Membathisi Mdladlana

☐ Sundays and public holidays – An employee who works on a Sunday must be remunerated double his/her normal wage. If the employee ordi narily works on a Sunday, she must be paid at least one and one-half times her normal wage

If a public holiday falls on a nor mal work day and the employee is required to work, the employee should receive double pay

If the employee does not work on that day, she should receive her nor mal daily wage,

☐ Annual leave – An employee is allowed 21 consecutive work days paid leave a year;

☐ Maternity leave – An employee is entitled to four consecutive months' 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 cer tified by a medical practitioner or midwife to do so

An employee who has a miscarriage in the third trimester is entitl ed to six weeks' leave,

☐ Family responsibility leave – An employee must get three days' paid leave if the employee's child is born or is sick or a family member dies An employee must, how ever, have been employ ed for at least four months to qualify for it,

☐ Termination of em ployment – An employee is required to give one week's notice if she has been employed for four weeks or less, two weeks' notice if employed for more than four weeks but less than a year, and four weeks' notice if employed for more than a year

Domestic workers and farm la bourers must give four weeks' notice if employed for more than four weeks

A collective agreement may, how ever, stipulate a shorter period,

☐ Severance pay – An employee dis missed for operational requirements (economic, technological, structural needs) must be paid at least one week's remuneration for each com pleted year of continuous service An employee who unreasonably ref uses to accept an employer's offer of alternative employment is not entitl ed to severance pay,

☐ Child labour No child under 15 years old may be employed

Contravention of the Act can re sult in fines from R100 per employee for a first offence to R500 for four previous offences or imprisonment for a maximum of three years

NEWS

LABOUR *It will act for domestic and farm workers*

CT(BR) 30/3/99

Government firm about new minimum wage act

(166)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — The government could and would set down minimum wages for domestic and farm workers, Membathisi Mdladlana, 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"

Mdladlana said farm and domestic workers had been denied basic rights under apartheid but baasskap 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 the one hand while setting a framework for collective bargaining to vary and improve basic conditions on the other

NO QUICK FIX *Membathisi Mdladlana, the labour minister, says the issue of minimum wages will be looked at carefully to ensure workers do not lose their jobs* PHOTO SELWYN TAIT

"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 in all of the country's larger newspapers, calling on the public to give their views on the topic

Labour laws 'not used properly'

CT(BR) 30/3/99 (166)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg — The government had no intention of forcing companies to negotiate with labour when they needed to retrench for operational reasons, Membathisi Mdladlana, 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 on 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

Mdladlana 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

(1998) (166)

FRANK NXUMALO LABOUR EDITOR

ET (BR) 31/3/99

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 Membathisi Mdladlana, the labour minister, told the congress that a code on retrenchments, which would read together with section 189, would soon be promulgated

Chez Milani, 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."

Milani said Fedusa would participate in the national programme against child labour to protect the right 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, Milani said "The preferred method of delivery (should be) through the public service before any private and public sector partnership is considered "

ARGUS 2

'A losing soccer, cricket or rugby side does not bring peace ... it leads to anger'

- Cape Points, page 17

CAPE ARGUS
WEDNESDAY
MARCH 31
1999

Pulling the wool over workers' eyes

Small business owners 'deprive staff of union rights and other labour benefits'

ARG 31/3/99 (Key) (Key) (166)

Entrepreneurs are abusing their status as small businessmen and women to deprive thousands of clothing and textile workers in the Western Cape of basic workplace rights and legally stipulated wages

TYRONE SEALE

SPECIAL WRITER

Under cover of doing their bit for the economy, company owners who refuse to join employer associations and follow the Labour Relations Act (LRA), are operating sweatshops where written contracts are non-existent and where workers are threatened with their jobs when they cite their rights under the LRA.

Where workers insist on their rights, owners frequently shut their businesses at short notice, only to reappear several weeks later using different company names and employing newly recruited and intimidated staff to continue supplying textiles and garments to retailers

Between them, the South African Clothing and Textile Workers' Union (Sactwu) and the bargaining council for the industry – comprising 50 50 employer and union representation – believe there are hundreds of unscrupulous operators of small factories

Sactwu estimates that some 5 000 workers are playing Russian roulette with their rights every day in these factories

In separate interviews, Sactwu's media officer, Rachel Visser and Ronald Bernickow, labour affairs manager for the bargaining council, said this situation reflected an abuse of the government's largely uncritical drive to promote small and medium enterprises

"This is what you get when you have unfettered deregulation," said Mr Bernickow He said the challenge facing the bargaining council's inspectorate was to strike a balance between enforcing the law and protecting jobs

He cited a case where a company that had come under pressure to join the council and to entertain workers' rightful demand to join a trade union, had refused to accede Instead, it put 200 people out of work, sacrificing a lucrative contract with a national fashion retailer

He said the owner was sure to resurrect the business under another guise

Mr Bernickow was also reacting to a complaint to the Cape Argus by Washiela Esburgh, of Steenberg, who until Monday was a supervisor at New Concepts, a Diep River clothing factory that employed 42 people Mrs Esburgh has 15 years' experience

According to Mrs Esburgh, factory owner Kevin Arendse owed the New Concepts staff three weeks' wages.

Mrs Esburgh said Mr Arendse told staff that the factory was not making money and that he was closing it down.

She and her colleagues found this strange, as they consistently recorded good production which sustained the company's contracts with major national retailers

Mrs Esburgh said Mr Arendse had on several occasions threatened to close the business when staff had indicated their interest in joining unions

Mr Arendse runs three other factories, but he is not part of the bargaining council, which confirmed that Mr Arendse had previously been the subject of complaints about ignorance of labour law

On Monday afternoon, as staff waited outside the factory to eventually receive a week's pay, Mr Arendse told the Cape Argus that he was on the verge of renting the factory to two businessmen who would take over the staff.

He said he was waiting on "the money to get here" so he could pay workers all the money they were owed.

But Mrs Esburgh said later that the staff had only received a week's pay

At the bargaining council, Mr Bernickow said the Basic Conditions of Employment Act, coupled with the Labour Relations Act, provided protection for workers, unionised or not, and imposed severe penalties on employers.

In some cases, the Labour Court could impose a fine of double the value of the employer's debt to staff, on top of ordering such an employer to compensate affected workers to include interest that accrued during the dispute

Mr Bernickow said he regretted the Labour Relations Act's decriminalisation of such transgressions Abusive employers now faced penalties without the added threat of having their abuses reflected on their personal criminal records, he said.

Rachel Visser of Sactwu said: "There are hundreds of them (abusive employers) who you could call small businesses There are more than 5 000 people employed by companies like this."

She said workers had to demand from employers contracts setting out the conditions under which they would be working.

She advised prospective employees to check with trade unions, the bargaining council and the Department of Labour whether specific companies were known to them or registered with statutory bodies

She said some of the worst employers made no deductions for workers' unemployment insurance, health benefits or other essentials, and desperate workers were only too pleased to end up with more cash at the end of each week.

"And when the company closes, they've got nothing This is the gamble everyone takes when they join a company where there is no rights culture "It's a tough thing to do, but our advice is when you come across someone like this, just don't take the job"

Ms Visser said employers stood to gain significantly from having unions on the shopfloor

Unions could help to develop productivity, analyse problems and improve owners' own skills and understanding of their businesses

Labour law will lead Ninian to reduce jobs

(166) BD 17/3/99

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 a 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 R345m 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 "somewhat better" results

members help co-worker Bathandwa Sipakisi, with wheelbarrow, collect refuse in Khayelitsha to highlight a campaign against privatisation of municipal services

HANNES THIART

st spells big clean-up for Khayelitsha

ARG 30/10/97

cipal workers an the streets of fiance of moves ıipal services.

al Workers Union th spades, wheel- s and black bags, ıds yesterday at the area and col- urs

argeted because the poorest ked on a nation-

al campaign to oppose privatisation of municipal services on the grounds that the quality of services delivered to communities will suffer

The union also fears that many of its members could lose their jobs

Yesterday's action was intended to demonstrate Samwu's contribution to the Masakhane campaign, and to show the Tygerberg council that with the "political will and the re-organis ing of the workforce, local govern ment workers are able to provide an effective and efficient service"

Mark Tinkler, chairman of the Cape Metropolitan Samwu branch, 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 just have to be re-organised and redeployed in order to have efficient service within the City of Tygerberg," Mr Tinkler said

Samwu felt that privatisation would widen the gap between councils and communities, and has suggested alternatives to privatisation such as re organising municipal structures and giving communities greater control over the allocation of resources

The union had suggested a pilot project for delivery of services focused on re-organising the workplace by improving relationships between municipal management, municipal employees and councils

Tygerberg officials say the jobs of Samwu members have not been jeopardised, and that the substructure 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

CT(BR)17/3/99 (166) 2911

FRANK NXUMALO
LABOUR EDITOR

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 the so-called homelands to work on the mines under extremely inhumane conditions and discarded or returned when either sick or too old to work

PROTECTED *Workers gather yesterday at Library Gardens in Johannesburg to hear the labour department's Sipho Pityana speak at the launch of human rights week* PHOTO: JOHN

"A company that seeks to underpay 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 Moledi

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 retaining employees with disabilities in order to meet Employment Equity targets

The Act also assist 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 circumstance 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

Sacob says government takes labour laws too far

ET (DR) 9/6/99 (166)

BONTLE HEADBUSH

Johannesburg – The South African Chamber of Business (Sacob) yesterday criticised the government's labour regulations for favouring social equity at the expense of employers.

Sacob 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 Bezuidenhout, the director of labour affairs at Sacob

Sacob said the business confidence index for May had decreased by 0,8 points, largely because of pre-election caution of many businesses The index decreased to 84,4 in May after increasing 0,7 point in April

Kevin Wakeford, the new Sacob 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

Other factors that hurt the May confidence index included a weaker rand against the dollar, the continuing high level of insolvencies and a deterioration in merchandise export volumes

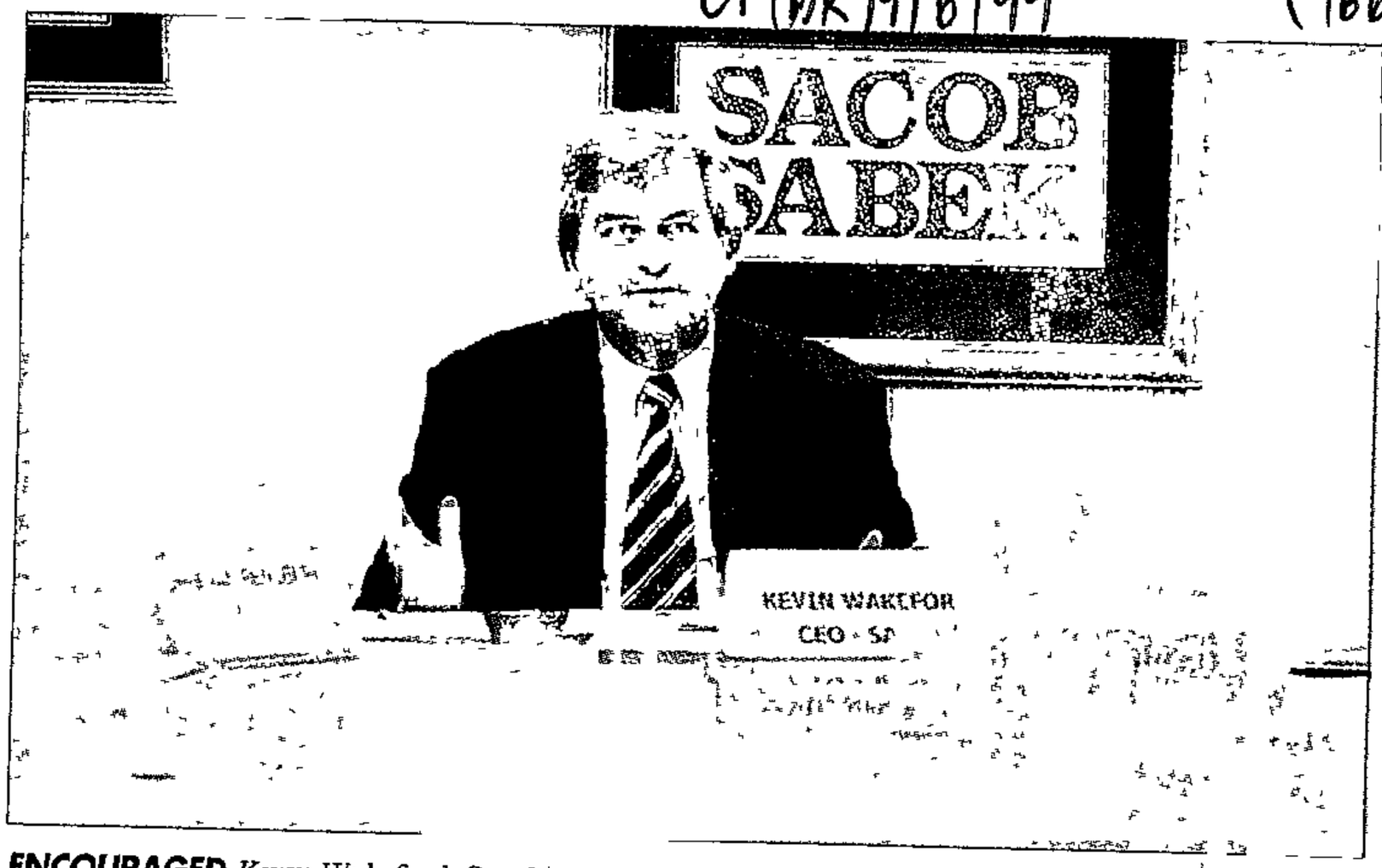
Wakeford said the index had had some positive influences, which showed that the business cycle was "bottoming out"

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 Sacob 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"



ENCOURAGED *Kevin Wakeford, Sacob's new chief executive, believes president elect Thabo Mbeki's focus on implementing policies will play a role in business confidence in June* PHOTO JOHN WOODROOF

Sacob calls for new look at labour law

(166)

Sowetan 9/6/99

By Shadrack Mashalaba

THE South African Chamber of Business (Sacob) has reiterated 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 unions," 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 African economy is bottoming out"

Chief executive Kevin Wakeford said the evident decrease in the index could be attributed to pre-election uncertainties and international development, 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 commitments to Gear 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

Sacob director of economic policy Dr Ban van Rensburg said the economy has 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 Sacob," he added

Sacob's manufacturing survey indicates differing moods with 50 percent respondents expecting an improvement in short-term activity while the other half expects the worst Long-term expectation 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 will 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

~~(All)~~ ~~(169)~~ (166)

FRANK NXUMALO

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, Numsa'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. Numsa 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 circumvent regulations

CT(BR) 10/6/99

LABOUR MARKET FLEXIBILITY

(166) (172)

REVISITING THE 'F' WORD

Labour Minister confirms there'll be a review of aspects of labour law

FM Cover Story

President Thabo Mbeki s government appears certain to renew the quest for an Accord on Employment & Growth — and a review of labour laws will be the first item on the agenda

This is bound to reignite tensions with its alliance partners the Congress of SA Trade Unions (Cosatu) and the SA Communist Party

The idea has been trounced before because Cosatu links any talk of an accord with demands to change Gear, government's macro-economic policy It did so again earlier this month

However a pact between government labour and business fits in with Mbeki's aim of a national consensus on economic growth and job creation And he is more likely to achieve it than former Labour Minister Tito Mboweni ever was

Mbeki first pressed for such consensus last year when he suggested changes to the labour laws The accord is mooted again in a recent Labour Department document on restructuring the labour market

The Presidential push places Labour Minister Membathisi Shepherd Mdladlana in a difficult position The former teachers union leader will lead negotiations for an accord and head the charge to amend various labour laws as demanded by all businesses from *uber*-executives in Germany to spaza shop owners in Soweto

By tampering with the labour laws Mdladlana risks what one Cosatu stalwart calls blood on the floor But hesitating to liberate the labour market is risking investment dollars and incurring the wrath of small businesses and the growing ranks of the organised unemployed There are four known organisations of jobless people One of them Malamulela consists of more than 50 000 matriculants who cannot find jobs Rightly or wrongly these organisations blame their travails on the labour legislation passed in the past four years

The labour review process is guaranteed to rekindle the fight over government's macro-economic policy as it implies changing the laws to bring the labour market in line with Gear, which calls for flexibility Cosatu wants Gear attuned to the more radical labour laws

The labour federation has repeatedly voiced its opposition to an accord Earlier this month it signalled its intention to oppose Gear if an accord is pushed.

In every corner, fighters are squaring up for battle Political stability and industrial peace may then rest with Mdladlana as the labour review process gets under way

At last year s job summit Mbeki chose not to bite the labour flexibility bullet he packed it off to be dealt with at a less sensitive time With a huge election victory at his back that time has now arrived The reappointment of Mdladlana a former Cosatu man as Labour Minister suggests Mbeki will pursue his goal with stealth, rather than take on the unions directly

Cosatu was pleased by Mdladlana s appointment but he isn t a soft touch

A review of labour legislation is strongly backed by the President s Office and Mdladlana s colleagues at Trade & Industry and Finance who face the flak from domestic and foreign business

Mdladlana confirmed in an interview with the *FM* last week that he will put forward several areas of labour law to be renegotiated at the National Economic Development & Labour Council (Nedlac) Both the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA) will be reviewed, he says The LRA's probationary retrenchment and dismissal procedures are up for inspection The BCEA s Sunday work variation and exemption clauses will receive attention to address the concerns of the small business sector Businesses employing fewer than 10 people may be exempted

Government will not review the Employment Equity and Skills Development legislation, because it has not yet been implemented, but a proposed skills levy may be examined and reformulated

The quest by small business to be exempted from certain labour provisions pits black business against black unions

Cosatu acting general secretary Zwelinzima Vavi says SA needs to redefine black empowerment "Is it only about creating capacity and institutions for small sections of blacks in business? Workers in small and medium enterprises particularly those owned by blacks are the most exploited What does an exemption say to those workers? Does it mean that the freedoms and rights we ve won have not been for them? Vavi asks

Cosatu will also resist attempts to vary labour standards in different parts of the country or in targeted sectors "There is a real danger that variation intended to benefit a particular segment of the economy is likely in practice to exert downward pressure on labour markets in the economy as a whole

The new Cosatu leader is a different kettle of fish from Mbhazima Shilowa (now Gauteng premier) who was always part of Mbeki s inner circle Vavi intends to fight hard against flexibility" For now though his door is open to Mdladlana We are willing to engage we will not close our minds" Vavi says

The Labour Minister must also show his mettle to business where different forces are aligning for the battle on labour flexibility The Afrikaanse Handelsinstituut (AHI) has teamed up with the National African Federated Chambers of Commerce (Nafcoc) to jointly lobby government The SA Chamber of Business (Sacob) will throw its weight behind the small business lobby to force changes to the laws they are expensive and a huge "hassle factor", and encourage rigidities, says business

So Mdladlana is in a balancing act that pitches job security against job creation

"In general we believe that our approach to labour-market policy is the correct one but that in the coming era we have to address the negative perceptions of our labour laws We will continue to engage with our law We will continue in the next five years to find the appropriate balance between security and flexibility he says

Labour market flexibility is a highly contentious issue Organised labour argues that the SA labour market is flexible while government says the LRA and the BCEA are not rigid statutes

The facts bear out some of their claims Four in 10 employees now do "atypical" or flexible work as casual contract or short-term workers A study of the wholesale retail and motor trade by Bridget Kenny of Wits University has shown that labour patterns are changing as traditional full-time work is rapidly giving way to casualisation The growth of shift work job sharing and pay scales linked to performance and productivity points to greater flexibility in the labour market

Both the LRA and the BCEA have exemption clauses — and a recent study by the International Labour Organisation found that eight in 10 exemptions applied for are granted Mdladlana says his department will market these clauses so that business makes more use of them

Vavi in turn, pledges "If there's a company that says we need this exemption because we have a plan to create this many jobs there's no union that will oppose it "

So where's the problem? Perception is a big part of it, and SA is perceived to have an over-regulated labour market But "perception is reality", contends a member of Mbeki s kitchen Cabinet who observes that the labour system acts as a disincentive for investment

After 1994 the Labour Department raced ahead of most other bureaucracies to overhaul the system it inherited It crafted world-class legislation that was the pride of the ILO which funded much of the research behind the four key laws the LRA BCEA Employment Equity Act and Skills Development Act

While each is a laudable and arguably necessary piece of legislation in a country with a history like SA s the total package is deemed to be cumbersome expensive and difficult to administer Scant attention was paid to implementation and to how the new laws would fit in with government s broader objectives

Government now needs to be seen to be dealing with a perception that has become a hurdle The proposed accord and the labour law review are the tools it has chosen to illustrate to business its commitment to liberating the labour market Mdladlana must do some fancy political footwork to display to the world a labour makeover — and ensure that the ANC s union allies do not see the changes as a "roll-back" of the gains they've made

"The political and social costs of such an eventuality would be unacceptably high" says the Labour Department in its restructuring document

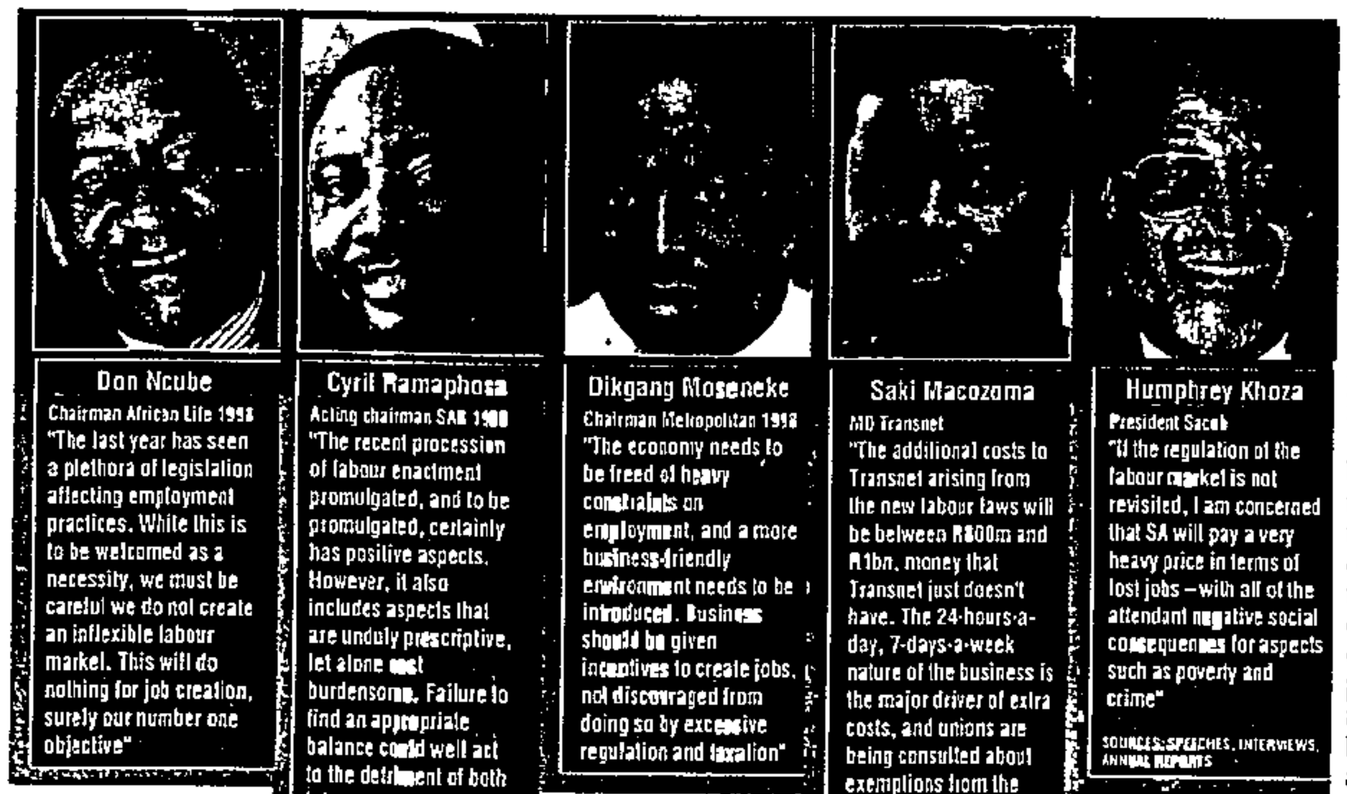
The workplace has been a site of political achievement for the ANC's (employed) members Their government has made it more difficult for employers to fire them, it has increased leave and other benefits The party's election manifesto highlighted these gains and promised more

Five days after the election Cosatu reminded government that worker support comes with a price Its response to government s labour market document highlights ANC promises to tighten up retrenchment law, review Gear and to align all government policies and programmes to achieve the objective of sustainable jobs for all at a living wage"

The party on the hustings and the party in government speak different languages Read this from the Labour Department "These structural (economic) changes will require an appropriate balance between relatively capital intensive internationally competitive sectors and more domestically oriented activities that can absorb labour *albeit at lower pay*

Mdladlana is the man who must find the lingua franca for competing interests and perceptions It will be a long walk to greater labour market freedom and the man once known as Shepherd must corral a flock that displays no herding instinct

Ferial Haffajee and Sello Hatang



Don Ncube
Chairman African Life 1998
"The last year has seen a plethora of legislation affecting employment practices. While this is to be welcomed as a necessity, we must be careful we do not create an inflexible labour market. This will do nothing for job creation, surely our number one objective"

Cyril Ramaphosa
Acting chairman SAB 1998
"The recent procession of labour enactment promulgated, and to be promulgated, certainly has positive aspects. However, it also includes aspects that are unduly prescriptive, let alone cost burdensome. Failure to find an appropriate balance could well act to the detriment of both job preservation and job creation, right across the business spectrum"

Dikgang Moseneke
Chairman Metropolitan 1998
"The economy needs to be freed of heavy constraints on employment, and a more business-friendly environment needs to be introduced. Business should be given incentives to create jobs, not discouraged from doing so by excessive regulation and taxation"

Saki Macozoma
MD Transnet
"The additional costs to Transnet arising from the new labour laws will be between R800m and R1bn, money that Transnet just doesn't have. The 24-hours-a-day, 7-days-a-week nature of the business is the major driver of extra costs, and unions are being consulted about exemptions from the legislation"

Humphrey Khoza
President Sacob
"If the regulation of the labour market is not revisited, I am concerned that SA will pay a very heavy price in terms of lost jobs — with all of the attendant negative social consequences for aspects such as poverty and crime"

SOURCES: SPEECHES, INTERVIEWS, ANNUAL REPORTS

Labour Minister Membathisi Mdladlana

Cosatu acting chief Zwelinzima Vavi

Govt to revue labour legislation

Mdladlana says the emphasis will be placed on issues that have a negative effect on job-creation

(166) BD 30/6/99

Linda Ensor

CAPE TOWN — Labour Minister Membathisi Mdladlana committed government yesterday to re-evaluating key aspects of labour legislation which could have a negative effect on job-creation

Mdladlana 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

Mdladlana 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 probationary 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

Mdladlana 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 Attention will 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 promoted job-creation, economic growth and efficiency, equity and the alleviation of poverty

The task now was to implement systematically the legislation already on 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," Mdladlana said

Meanwhile, **Reneé Grawitzky** reports that Business SA has welcomed Mdladlana'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 Mdladlana's statement followed the direction given by President Thabo Mbeki during his opening address in Parliament and further squashed 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 reviewed, for what reasons and to achieve which benefits "

Labour law divides lawyers

Employers, rather than legislation, are at fault for market inflexibility, says planner

Reneé Grawitzky (166) (173) BD 2/7/99

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 "fiddling" 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

5/7/99 (166)

Conference debates labour flexibility, writes **Renèé 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 about 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 review labour legislation **Haroon Bhorat** *discusses how he should protect the most vulnerable workers*

MTG 2-8/6/99 (355) (166) (173)

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 1970 while mining s contribution declined by 3%

The decline of these two primary sectors though, has been matched by a significant growth in the service sectors most predominantly 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 6% between 1970 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 this 25-year period

In the primary sectors, capital labour ratios increased by more than 150% since 1970 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 toward 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 purely of quantity, there were huge employment losses in agriculture and mining, amounting to 1 5-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 out? Statistics indicate skilled workers made substantial gains since 1970, while the proportion of workers in unskilled occupations was steadily eroded

Unskilled workers' share of employment fell by between 4% and 54% since 1970, while the share of skilled occupations has grown, in some cases, by as much as 250%

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 intensify.

In the process of long run economic growth employment will benefit skilled and semi skilled workers to 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 invariably those at the bottom end

In an environment 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 targeted essentially at unskilled workers

The proponents of labour market flexibility argue that the wages of those at the bottom end are too high Given the large pool of unemployed it is argued a manner in which 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 quantity of unskilled workers hired as the demand for these skills simply does not exist Firms will not simply hire more unskilled workers if they become cheaper as their preferences are primarily for skilled workers

The arguments for the job-creating possibilities of a wage restraint 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 The unemployed are unlikely to see their job prospects improved by such a wage restraint policy

The wage flexibility debate in South Africa thus far has not taken cognisance of this and has effectively rested on the assumption that all workers in the economy possess the same quantum of skills and are all in equal demand by employers As soon as this assumption is broken and one introduces the notion of differentially skilled workers, the argument that lowering the price of labour will create more employment for lower-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 unduly high baselines, 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 swayed by the wage restraint argument, as no new jobs will be created for these workers. However, the commission would need to ensure it does not generate unduly high minimum wages for firms to adhere to as 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 its wage determinations are not too high as these 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 then, it will be the ability of the commission to effectively balance these two countervailing forces that may determine its success or failure

Shrinking employment The share of mining in the GDP has fallen by 3% since 1970, and this is reflected in widespread job losses in the sector PHOTO NADINE HUTTON

Haroon Bhorat is a senior researcher with the development policy research unit in the School of Economics at the University of Cape Town

LABOUR LEGISLATION (166)

BEND AND STRETCH

State to reveal plans in August

Government, employers and their employees will soon begin to learn the labour flexibility dance, if recent limbering 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 Pityana

In the past year, the department has met most business organisations and trade unions to determine what must go Pityana's lieutenants are now studying whether to change the laws, or their procedures and institutions such as the Commission for Conciliation, Mediation & Arbitration (CCMA) and the Labour Court

"There will be no overhaul," Pityana 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 prescriptions 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 Membathisi 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 Fatima Bhyat, 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

Pityana calls 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 enshrine 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

"Inflexibility flows from contractual failing rather than legislative failing," Cheadle concluded

Ferial Haffajee

FLEXILABOUR

To change labour law, government plans to

* Introduce a period of employment probation
* Reduce compensation for dismissal.
* Make retrenchments subject to negotiation, not only consultation
* Normalise Sunday work, now permitted only under special dispensation.
* Introduce flexible working hours, now rigidly prescribed
* Exempt small businesses from the Basic Conditions of Employment Act.
* Extend tenure of Labour Court judges, who have been moving to other courts for more security
* Strengthen employee rights in cases where business ownership is transferred

Labour row rocks Ceres

Mayor faces court action in dispute over workers' rights

ARG 15/7/99 (166)

THABO MABASO
STAFF REPORTER

A labour dispute between a group of employees and their boss is threatening to tear the scenic Boland town of Ceres apart, after moves to sue the mayor for siding 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

Franchisee 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 conducts 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 employers 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 its 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 where 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

BD 20/7/99 (165) (166)

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 staff 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

Many cash in on equity law

Some fly-by-night consultants use scare tactics to sell their training material, writes **Reneé Grawitzky**

(179) (166) BD 28/7/99

THE new Employment Equity Act has unleashed a wide 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

Pockets 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 implementing 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 .

Dhaya Pillay, 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 Seftel, said it was disturbing to see that some consultants were misrepresenting 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 some 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 a 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'

(166)

Nomavenda Mathiane

LAWS are useless if not implemented and the coming months would see the labour department educate South Africans about their labour rights, Gauteng labour director Jesse Maluleke said yesterday

Presenting chapter two of the Employment Equity Act at a seminar attended by community organisations and the business community in Johannesburg, Maluleke said the provinces would address their labour constituencies to enable the law to be enforced

This chapter of the act was launched nationally on Women's Day last month The other chapters will be launched in December

Maluleke said the public education drive would target both employers and employees about their rights. People ought to know what was and what not applicable, and what was seen as an unfair labour practice and what was not

He said government would target not only big companies but organised and unorganised workers and small employers The next step would entail employers submitting employment equity plans

The chapter deals with the elimination of unfair discrimination, its prohibition, medical testing, psychometric testing, disputes and burden of proof

BD 15/9/99

Labour rights intact, BSA told

CT(DR) 6/8/99 (166)

FRANK NXUMALO
LABOUR EDITOR

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 enshrined 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 moderated business demands on labour market policy review

ALL'S RIGHT *Membathisi Mdladlana stands by workers*

The minister's sentiments were corroborated by BSA, which said it respected the fact that South Africa's labour market was based on proper compliance with international acceptable labour rights and conventions

"We have absolutely no desire of seeing a labour regime that undermines labour rights," said Andre Lamprecht, the BSA's vice-chairman He 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

(166) Sowetan 10/8/99

By Mzwakhe Hlangani
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 Membathisi 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

> **"It will depend on employers and workers to get equity"**

Global competition necessitated optimal productivity, which is 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

Labour issues tackled

(166) Sowetan 11/8/99

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 Membathisi Mdladlana 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

Mdladlana 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 Lamprecht 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

CT (BR) 11/8/99 (166) (176)

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 Dickman, 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

Dickman 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 small to medium companies are going to find this an administrative hassle"

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

(173) (166)

EMMA THOMASSON

Cape Town – Membathisi Mdladlana, 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

Mdladlana 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 extreme regulation "

Mdladlana originally had planned to conclude the talks this month, but the sensitive discussion over labour policy comes against the backdrop of mounting union tension 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 30 percent of the work force is currently without employment and a recent survey by the Human Sciences Research Council showed that only one in 30 new entrants to the labour market would find a job in the formal sector of the economy

Business argues that the raft 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 redundancies in the gold mining sector

Mdladlana said his department had studied the effect of labour legislation on job security, job creation, productivity, efficiency 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 dismissal procedures, operational retrenchments, provisions on Sunday work and strengthening bodies which regulate the labour market.

"The negative and unintended consequences of legislation will be addressed through amendments," Mdladlana said

But both Mdladlana 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

ARG 14/8/99

Govt faces workplace challenges

(166) Sowetan 18/8/99

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 Kettledas 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

(166) BD 20/8/99

Reneé Grawitzky

LABOUR Minister Membathisi 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 SA Trade Union's (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 faced 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

BD 20/8/99

(166)

An effort is to be made to find alternatives to lay-offs, but managements' assessments are not questioned, writes **Robert Lagrange**

UNIONS have taken to the streets recently to express their anger over job losses Part of the Congress of SA Trade Unions (Cosatu s) publicly reported response has been to demand that the issue of retrenchments be negotiated

What does the present law do if anything to minimise job losses'

The operational requirements which the Labour Relations Act recognises as justifying retrenchment are "based on the economic technological structural or similar needs of an employer " Section 189 of the act says unequivocally that when an employer contemplates" dismissals for operational reasons a process of consultation with a suitably representative employee body is required

Most importantly the act requires that the consulting parties "must attempt to reach consensus" on appropriate measures to avoid dismissals to minimise numbers change the timing and mitigate the adverse affects of dismissals

If dismissals will take place the parties are expected to try and reach agreement on the selection and severance pay due

To try to make the process a substantial one the act places extensive disclosure duties on employers

Section 189 of the act drew heavily on the principles enunciated in the Appellate Division decision on Atlantis Diesel Engines versus the National Union of Metalworkers of SA. That judgment emphasised that the purpose of the consultation process was to make a thorough and genuine attempt to achieve an agreement or to minimise the harmful effects to the employees which may be retrenched In summary first no final decision to retrench employees may be taken until the prescribed consultation process has been completed Moreover attempts to consult after a final decision has been taken cannot remedy the fundamental unfairness of the retrenchment 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 party often a union also has a corresponding duty to pursue the consultations with sufficient enthusiasm and diligence

A failure by the employer to complete the process because it is thwarted by the representative of the affected employees can therefore excuse 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 on the need for retrenchment Some judges have gone as far as saying that even retrenchments which might have arisen because of acts of management incompetence or which are motivated simply by higher profit, can be justified The employer must still demonstrate that operational "need" motivated its actions and not some ulterior motive such as "union bashing"

In a few instances judges 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 employers to negotiate over a retrenchment, on its own would change little in the existing law, bar giving employees the right to strike over a retrenchment — usually futile under 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 would

What robs 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 private economic goals with social responsibility, the courts effectively allow an employer to define the scope for viable alternatives.

It is often the case that the economic forces impelling the destruction of jobs lie beyond the control of the employer alone

However whether the retrenchment is caused by external forces or internal choices the law, as currently applied lets the employer decide how the burden of those adjustments will 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 packages

In Germany a unique attempt has been made to compel the employer to assume a greater degree of responsibility for the social fallout of economic adjustment Employers in most enterprises are required to conclude a social plan with their in-house works council The plan must deal with the economic hardship the retrenchment imposes on 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, often a judge.

Awards are seldom made in practice, because the unappealing prospect of abdicating a final decision to a third party and the attendant process costs encourage employers to seek a settlement

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.

ST(IDT) 22/8/99

New equity labour laws a taxing affair

(166)

HUMAN RESOURCES

By DON ROBERTSON

THE spate of new labour legislation introduced in the past months six 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 Dawid 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

BD 25/8/99 (166)

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 nongovernmental 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 nontariff 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 nontariff 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

Dropping barriers: Page 8

Cosatu to strike if LRA not amended

CT(BR) 20/9/99 (166)

ZINTLE FILTANE

Johannesburg – Zwelinzima Vavi, Cosatu's general secretary, yesterday reiterated a call to the government for an urgent amendment of the Labour Relations Act (LRA) and promised a general strike if that and other demands were not met by May 10 next year

Vavi told a PWV National Union of Mineworkers (NUM) conference that in view of the wave of retrenchments countrywide, it was crucial that the LRA, which allows employers to retrench workers after consultation, be amended to "make retrenchments a subject of negotiations, instead of a mere consultation issue"

This was the central theme in all three conferences of the PWV, Natal and Carletonville regions held at the weekend in preparation for next year's NUM congress

The NUM's PWV region resolved to demonstrate on 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

WAR TALK *Zwelinzima Vavi, Cosatu's general secretary, says South African companies are not ready for intense competition and workers are losing their jobs as a result* PHOTO JOHN WOODROOF

Labour laws 'not likely to be changed'

ET(BR)28/9/99(166)

JAMES LAMONT

Cape Town – Little could be expected from the labour legislation review requested earlier this year by President Thabo Mbeki to investigate the freeing of certain job creation initiatives from provisions in new labour legislation, Vic van Vuuren, the business convenor of the Nedlac labour market chamber, said last week

The government was considering changing labour legislation to accommodate small enterprises, labour intensive industries and unemployed youth.

Membathisi Mdladlana, the minister of labour, was expected to make an announcement indicating the likelihood of possible amendments to labour legislation in mid-August after an investigation 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 BD 1/10/99

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 Penuell 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

DD 21/10/99 (166)

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 fulfil numerous duties, among them, the advancement of "suitably qualified" people from previously disadvantaged groups Thus, qualifications no longer refers 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, 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 beturned into a win-win situation

☐ *Sher is a director of The Focus Group, a business solutions company*

LABOUR LAW (166) FM22/10/99

SNOWBALL'S CHANCE IN HELL?

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 one 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 at 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 trounce the measure, given 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"

Ferial Haffajee

Mdladlana to relax labour law

BD 28/10/99 (166)

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 bargaining 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 Pityana, suggesting that proposed legislation from the Democratic Party should not proceed as an announcement regarding the act was imminent

He said also 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.

Pityana 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," Pityana said

This made the DP's suggestion of adding job creation as a criterion for exemptions unnecessary, Pityana said, and that the DP private bills not therefore not be taken further

DP labour spokesman Rudi Heine said he had withdrawn his private members proposals and welcomed the indication from government that it was poised to exclude small business from the "onerous provisions" of the three labour acts

He said he was convinced that once government had done this, small business 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"

SEP

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 business 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 on 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-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

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 Molahlehi, 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 further than 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 business while the employment consequences should be seriously considered when setting minimum wages

It is understood that 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

(166) BD 29/10/99

LABOUR

FM 5/3/99

LITTLE SIGN OF LOOSENING UP THE NEW LEGISLATION

(166)

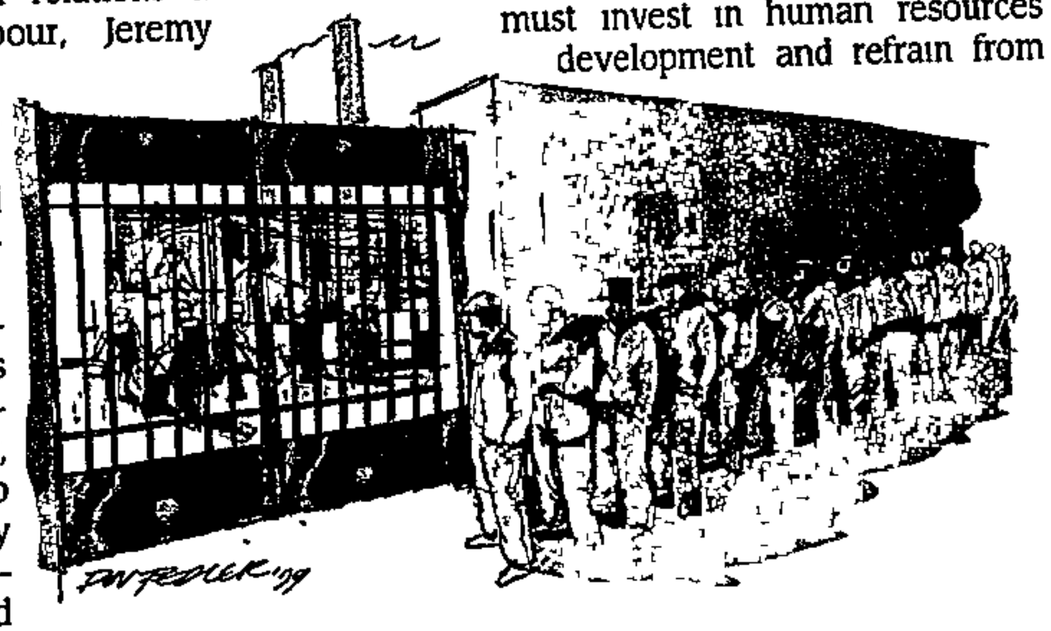
Business complaints noted by Mbeki, but it's up to parliament

Government, business and labour could, in the run-up to elections, be locked in fierce debate over labour market policy

Business insists the new labour law framework — the Labour Relations Act (LRA), the Basic Conditions of Employment Act, the Employment Equity Act and the Skills Development 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 labour law Is a review on the cards? Mbeki's legal adviser, Mojanku Gumbi, says some business people have expressed concern about the "onerous, costly and restrictive" nature of the new laws However, "there has been no decision, no thought about a review in the legal sense In view of the general complaints received from business, we can look at that It does not mean we will review the laws It is also not within our powers It is for parliament to decide"

But it is not without reason that the ANC government sought to introduce a new body of laws that breaks with the past and brings industrial relations in line with First-World norms (see *Economic Viewpoint* January 23) As the former chief director of industrial relations in the Department of Labour, Jeremy Baskin, has said "The old law was widely seen as archaic, ineffective and biased against organised labour"



But it's the unintended consequences — inimical to investment, productivity, profitability and job creation, particularly in small business — that have caused controversy and contention

Prof Eddie Webster, director of the Sociology of Work Unit at the University of the Witwatersrand, says the legislation seeks to redress previous imbalances in an equitable manner "If the economy enters a cycle of growth, the laws will not harm business at all," Webster predicts He criticises the view that investors will be scared off by the obligations contained in the legislation He also questions the validity of the accusation that a "labour aristocracy" exists in SA "Workers, especially Africans, have extended families, therefore the concept of a labour elite is misplaced and flawed"

National Institute of Economic Policy director Ashgar Adelzadeh says business must invest in human resources development and refrain from paying low wages as this is detrimental to the economy "Growth and employment would increase if redistribution took place and the working class were able to consume more Neither business nor labour will in the long term benefit from a review (of the laws) because if there is no development the workers will be less productive," Adelzadeh says

Prof Jamie Peck, director of the International Centre for Labour Studies at Manchester University, says it would be unfortunate if such progressive laws were reversed because of short-term economic conditions "These laws are a foundation for economic growth, the objectives of sustainable and equitable economic development can be attained There is little that the low road to flexibility produces" According to Peck, SA should adopt a neo-Keynesian strategy that raises public expenditure and expands the economy

SA Chemical Workers Union (Sacwu) general secretary Manene Samela says business and labour in each industry should attempt to design models suitable to their circumstances when dealing with industrial relations

For its part the SA Chamber of Business (Sacob) says the new regulatory framework creates obstacles for the development of small business, which it sees as fundamental to job creation "It imposes significant additional direct costs on businesses, there is a hassle factor associated with compliance, and the legislation 'robs' owners and managers of some of the control and flexibility they perceive as both desirable and necessary"

Labour lawyers Mosh Thulare and Rod Harper of Webber Wentzel Bowens say some of the provisions in the legislation pose serious problems for business

"For instance Section 194 of the LRA stresses that, though there may be good grounds for an employee's dismissal, if the procedure is found to be defective, the employee is entitled to be compensated the amount he or she would have earned," says Thulare He says Section 194 (1) has created a serious problem for employers as a minor infraction may result in 12 months' wages being awarded to the employee "Procedure should not be elevated over substance, though fair procedure is equally important"

The lawyers also raise Section 197, which deals with the sale of businesses or outsourcing of noncore activities In such situations the employment contract is still valid Thus the new owners may be burdened with existing wage and benefit costs They say this has a negative impact on small and emerging businesses

Sello Mabotja

Courts define work relations more clearly

P10 8/3/99 (166)

When is an employee not an employee? The Labour Appeal Court recently tackled the question. **Robert Lagrange** looks at its findings

TWO recent Labour Court cases dealt with the interpretation of terms of consequence for the rights of employers and employees under the Labour Relations Act

The first — a judgment of the Labour Appeal Court (SABC v McKenzie, CA8/98) — concerned the legal status of two parties in a working relationship The court held the relationship was not one of employment consequently, no claim for unfair dismissal could arise

For the first time, the Labour Appeal Court was required to address the test to be used to distinguish employees from independent contractors Although the case arose under the previous act, courts have continued to apply the common law test of employment under the new one, the so-called "dominant impression" test

As its vague-sounding name suggests, the test amounted to little more than a subjective weighing of the multifaceted rights and obligations of the two parties to the relationship. More recent judgments, including that in the McKenzie case, have provided a slightly sharper focus for evaluating these factors

McKenzie was engaged by the SABC to produce two regular radio programmes. He was paid only for the programmes he presented and received a set fee for each The programmes had to comply with the broadcaster's standards, but McKenzie was not subject to the broadcaster's disciplinary code or personnel regulations.

The contracts under which McKenzie worked were separate and distinct for each programme, and any additional work he took on was subject to separate contracts He had no leave entitlements, except by arrangement, and was not a member of the standard employee benefit schemes. He was free to take on other work for the SABC but not for a competitor

Although McKenzie was provided with offices and became "part of the furniture" at the station where he predominantly worked, he was not obliged to participate in normal staff meetings

The factors mentioned led the court to conclude that McKenzie had not traded "his capacity to work" to the SABC, but rather "the product thereof" The fact that McKenzie had actually entered into a freelance contract was also a factor, but not a decisive one, said the court, thus re-emphasising judicial reluctance to accept the views of the parties as conclusive of the legal nature of the relationship.

Importantly, the decision supports an approach which places the emphasis of the dominant impression test on evaluating how far the alleged employee is genuinely a free agent in being able to provide his services to others, and to what extent his services are characterised by delivery of a product for which payment is made.

In Schutte and others v Powerplus Performance (Pty) Ltd & Ano, J2715/98, the Labour Court broke fresh ground in fleshing out what is meant by the "transfer of a business, trade or undertaking as a going concern", in section 197 of the act

When such a transfer takes place, unless a collective agreement states differently, employment contracts of employees of the previous employer are transferred to the employer who takes over the going concern. In giving meaning to the term, Acting Judge Seady favoured yet another multifaceted test which lawyers will chew over for some time

The judge found that it was necessary to examine the substance rather than the form of the transaction The factors indicating a transfer must be weighed with those against, with no particular one being conclusive.

However, lending some focus to this broad test and drawing heavily on European jurisprudence, the court held that it was crucial to determine if the business in question had retained its identity in the sense that the new employer continued or resumed the operation that existed before.

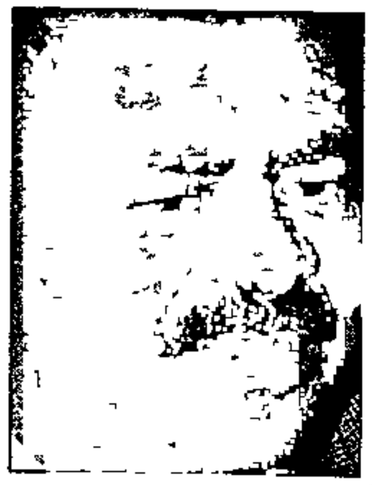
In the case at hand, the former employer, a vehicle rental firm, handed over its maintenance and repair division to a newly formed company, which it half owned The step was taken as part of a broader restructuring of the first employer's primary business, in which vehicle maintenance was outsourced to the second employer On the facts, there was an unequivocal intention of the parties to transfer the business and to recruit the former employees of the maintenance workshop, the service operation was intended to continue operating, and stock and equipment were "taken over" by the new employer

The court held that a transfer of the business, despite there being no sale of the business as such. The court ordered the employment of the applicants by the new employer on their previous terms and conditions

An important result of adopting the substantive test is that it might occur that what appears to be simply a transfer of assets could be found to entail a transfer of an undertaking and hence of the associated employment contracts too An incidental but noteworthy feature of the judgment is that the court seemed to accept foreign authority which recognises that a transfer of a municipal undertaking to a privatised entity can result in continuity of employment for employees in that undertaking

□ Lagrange wrote this article for the SA Society for Labour Law, but it does not necessarily express the society's views

SA Constitution caters for all



With Human Rights Day less than a week away, Minister of Labour Membathisi Mdladlana says worker rights are part of human rights. (166)

Beeld 15/3/99

The rights of workers are contained in the Bill of Rights of the Constitution. All workers are entitled to a set of conditions of employment

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 form and join a trade union, to organise 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 ethnic or social origin, colour sexual orientation and age at the workplace

In addition the Equity Act prohibits 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 prevent the spread of this disease but we can't stigmatise 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 promulgation of these laws has laid 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 devoted 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 organisations 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 grants exemptions or variations if there are good reasons why a certain aspect of a law can't be followed.

Workers who believe that one of the new labour laws are not being complied with can go to the Department of Labour to lodge a complaint

The department can assist in addressing the problem and ensuring that employers comply with the law In the last instance they can get a Labour Court order that will force the employer to obey the law

Workers who believe that they are discriminated against or unfairly dismissed can also go to the CCMA The CCMA can assist in resolving a dispute 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 enterprise and the employment relationship Workers who feel secure at their workplaces and are covered by a basic set of rights are far more likely to contribute meaningfully to the success of the enterprise

Therefore, I urge employers also to understand and implement our laws They will create certainty for you and your employees and can lay a stronger foundation for labour peace and stability

Govt seeks negotiated retrenchment

BD 16/3/99 (166)

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 Membathisi 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 Deputy President Thabo Mbeki would convene a meeting

Labour Minister Membathisi Mdladlana proposed amendments to the Labour Relations Act yesterday that would stop unilateral retrenchments Picture TYRONE ARTHUR

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 rose 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

DP challenges Minister on review of labour laws

(166)

LABOUR Minister Membathisi Mdladlana 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 Pityana's statements last Wednesday

Heine said Pityana 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

"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"

After proposing certain amendments to existing legislation in three private members' Bills, the DP withdrew the Bills 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 Mdladlana and his department to get cracking on effecting the amendments, we will not hesitate to push ahead with our private member's Bills"

Heine said that swift and decisive action was long overdue

Mdladlana 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 – *Sapa*

Sowetan 1/11/99

Equality bill is no Orwellian script

BD 3/11/99 (166)

Alarmists ignore key facts, but draft still includes clauses that will keep lawyers busy at Constitutional Court, writes Cape editor **Alan Fine**

TWENTY years ago, when the concept of an unfair labour practice was first introduced into SA law, it caused some bemusement. Employers and lawyers asked 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 adjudged by the court to be unfair (Workers did not initially ask any such questions, assuming the whole thing to be yet another apartheid trick.)

A similar uncertainty may lie behind some of the more alarmist interpretations 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, conscience, belief culture, language and birth "or any other recognised ground"

This ban on unfair discrimination applies to the fields of employment, education, health care, accommodation, land and property insurance, pensions, goods, services and facilities, associations and partnerships, clubs and sports, and professions

In cases where the law is found to have been contravened, equality courts (which are the magistrates' and high courts in a slightly different guise) would be able to order payments for damages for financial loss, impairment of dignity or emotional suffering They would also make declaratory orders, issue interdicts order apologies or suspend licences

Everything about the bill rests on the definition of what is to be considered "unfair" discrimination So the bill sets out to define the term 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 tautological definition — shades of the 1979 labour law — effectively leaves it to the courts to develop the entire field of antidiscrimination jurisprudence Not unlike the way it took the Industrial Court 10 to 15 years to develop anything approaching a coherent body of unfair labour practice law, it would take the "equality courts" an equivalent period to do the same in their field.

It may be the uncertainty this bill heralds that groups like the SA Institute of Race Relations (SAIRR) seem to find so unsettling This has seemingly led them to the alarmist conclusion that, in essence, no discrimination at all will be permissible and that the bill puts SA on a path to some irrational Orwellian destination

They seem to fear that magistrates and judges will be incapable of distinguishing between acts of discrimination that should be considered unfair and those that should not

This is most unlikely Especially because the bill specifies that it would not constitute unfair discrimination to "distinguish exclude or prefer any person on the basis of an inherent requirement of a job or situation" — a clause that the alarmists have chosen to ignore in their critiques

Some may see the bill's intention to outlaw "unfair" discrimination as a bit nanny state-ish But it is not unprecedented The UK has antiracism law Countries like Germany teach us that states with a particularly racist history are known to implement far-reaching countermeasures once democracy has returned

Which is not to say that the bill — even the new version — is without faults.

Partly due to pressure from the SAIRR and the Freedom of Expression Institute (FXI), some of the more bothersome features of the previous draft were excised from the new bill published last week.

One change is the removal of "social and economic status" as one of the "prohibited grounds" for discrimination. This had introduced an ambiguity that, the SAIRR suggested would have had the effect of forcing vendors to sell goods or services to those lacking the ability to pay

Another clause dropped included the media among the list of fields where the antidiscrimination precepts should be applied, raising objections from the FXI that this would limit press freedom

Some of those clauses have been quietly relocated elsewhere in the bill — by sleight of hand some may suggest.

It would still be an offence to disseminate "any idea suggesting the racial superiority or inferiority of any person or group"

If this is interpreted to mean raising such ideas even for the purpose of criticising them, one possible effect would be to make it unlawful to discuss our apartheid history — which would not be helpful for the African National Congress at election time, though it would be good for the New National Party

There are other clauses that cause one to raise an eyebrow Part of the definition of gender discrimination is "any practice, including traditional customary or religious practice, which unfairly violates the dignity of women and undermines equality between women and men"

At face value, that would seem to outlaw broad aspects of Christian Jewish and Muslim religious practice Many who find patriarchal religious practices offensive may welcome the sentiment but it is going to take more than this law to overturn 5 000 years of religious orthodoxy

Another area where the bill may be overextending itself is the proposed ban on discrimination in membership of and recruitment to associations and clubs It may go beyond dealing with, for example the Rand Club or the Johannesburg Country Club before they reached their age of enlightenment

It is a moot point whether the bill will affect — or seeks to affect — the existence of, say, the Jewish Board of Deputies, Muslims Against Global Oppression or the Association of Black Accountants of SA. Each of these institutions — and there are many others — exist explicitly to advance the interests of particular religious or racial groups

A legal defence would be that the unfair "act or omission is reasonable and justifiable under the circumstances"

Whether it applies to these types of association remains to be seen Unless the bill is changed, this is going to be another lucrative aspect of the new law for lawyers.

Finally, the feature of the proposed law likely to be at the head of the queue at the Constitutional Court door is the clause reversing the onus of proof This requires the respondent, once a prima facie case of unfair discrimination has been made against him or her, to prove that the alleged unfair discrimination was not based on one or more of the prohibited grounds or, if it was that it was reasonable and justifiable.

Like the Open Democracy Bill, the equality bill faces much tinkering before it is ready to become law

With a February 4 deadline, time is short

Government grants small business greater flexibility

(30) (166) BD 4/11/99

Reneé 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 Membathisi Mdladlana 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

Mdladlana's objective is to strike an appropriate balance between his 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 Mdladlana on the results of an investigation conducted by the Ntsika 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 Mdladlana to announce anything beyond the brief provided by the Employment Conditions Commission.

The commissions 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?

BD 7/11/99 (166)

By ZOLILE NQAYI

THE CONSTTITUTIONAL Court is to rule on whether a law can require the accused to prove innocence, rather than the accuser prove guilt.

The law in question deals with people found in possession of stolen goods, but a similar burden of proof exists in the Promotion of Equality and Prevention of Unfair Discrimination Bill which is presently before Parliament.

Experts think this aspect of the bill is likely to be tested for constitutionality sooner rather than later

The provision for someone accused of discrimination to prove the claim untrue is simi lar to provisions in compar able equity laws operating in the United Kingdom, for example.

This is not the only controversial aspect of the bill, which aims to make institu tionalised inequality illegal and to outlaw discrimination on the basis of race, gender or disability

Critics say the bill represents a calculated assault on individual freedoms by a government that is pursuing an Orwellian state

They say the definition of discrimination is vague and "unworkable"

The bill does not entirely prohibit discrimination, but instead outlaws only unfair discrimination

Critics say this assumes there is such a thing as fair discrimination which is allow ed.

A special joint committee is looking at the bill, which was tabled in Parliament last week.

"We are mindful of the im mense public interest in this bill and of its controversial na ture

"Our committee will try to produce a balanced law on equality and unfair discrimination," said Mohseen Moosa, the committee's chairman.

According to the depart ment of justice, the bill aims to transform a society where social structures set up under the legislated discrimination of apartheid still exist and continue to exclude the majority

Public hearings on the bill will take place this month in Cape Town.

Govt bows to pressure and relaxes labour regulations

BD 7/11/99 (166)

By GAONGALELWE TIRO

THE government has finally succumbed to pressure to relax labour regulations – after years of insisting that it was not necesary – but the initiative has been received with widespread cynicism.

"Labour legislation is open to continuous review if there is proof that it is adversely af fecting business," Membathisi Mdladlana, minister of labour, said this week. He released a ministerial determination on small business which states that some of the provisions of the Basic Conditions of Em ployment Act (BCEA) will be varied for businesses with less than 10 employees

The Congress of South Afri can Trade Unions (Cosatu) said it was shocked and dismayed by the minister's announcement. "The determination effectively takes away the fruits of many years of struggle by all workers for decent working conditions The most painful part is that the ministerial determination will not even take into account the turnover of companies, nor will it be limited to certain sectors," Zwelinzima Vavi, Cosatu gen eral secretary, said in a statement.

South African Chamber of Business (Sacob) welcomed the ministerial determination, with reservations "This shows that the government is taking into account the importance of small businesses," says Janet Dickman, Sacob spokesperson. "But we are disappointed that the changes only apply to micro-enterprises"

She says they would have preferred the changes to apply to businesses with less than 50 employees The ministerial determination on small business regulates overtime work, aver aging of hours and family responsibility leave in the sector

The ministerial determination increases the number of overtime hours per employee in a week to 15 from 10 and also reduces the rate of payment for overtime

An employer is now required to pay an employee at a rate of a time and a third for the first ten hours of overtime worked in a week and a time and a half after these hours

Mdladlana said an employ ee's working hours could be averaged for up to four months by a written individual agreement. "In the BCEA, averaging is only permitted by collective agreement."

Family responsibility leave regulations were also amended. "Employee's entitlement to three days family responsibil ity leave will be included in their 21 days annual leave" Mdladlana said.

"Under the BCEA, employees are entitled to three days fam ily responsibility leave in addi tion to 21 days annual leave."

Vavi said the new family responsibility leave regulations "means that the right of workers to bury their dead, register their children at schools and look after their children when they fell ill has been taken away"

Cosatu to fight 'two-tier' system

(166) (30)

LABOUR REGULATIONS

By S'THEMBISO MSOMI

THE government's labour-law concessions to small businesses announced by Labour Minister Membathisi Mdladlana are likely to be at the centre of a heated debate when he meets Cosatu tomorrow to discuss possible amendments to legislation.

The meeting is part of Mdladlana's consultative process with labour, business and political parties aimed at reforming labour laws widely criticised as "inflexible"

But Cosatu, which has expressed shock and dismay at the labour law exemptions for small businesses, says a "war" has been declared and will insist that the issue becomes part of tomorrow's discussions.

The concession, which exempts businesses employing less than 10 workers from certain stipulations of the Basic Conditions of Employment Act, is perceived by Cosatu as a first sign that government is willing to give in to foreign and local business demand for the liberalisation of the labour market.

The South African Chamber of Business (Sacob) has welcomed the move as a step towards improved flexibility in SA's labour regime that would put the country in good standing as it enters an increasingly competitive global market.

Cosatu general secretary Zwelinzima Vavi has accused Mdladlana of effectively introducing a two-tier labour market and says it condones the exploitation of workers by farm owners and black business.

The small business determination will extend maximum number of overtime hours in a week from 10 to 15 hours

It will also reduce the rate of payment for overtime work from "time and a half" to "time and a third" and allows for the averaging of working hours up to four months.

Vavi warned that if tomorrow's meeting did not reach a satisfactory conclusion, Cosatu's central executive committee would decide on action to be taken.

ST (BT) 7/11/99

Govt, Cosatu 'agree broadly' on labour laws

BD 9/11/99 (166)

Renee Grawitzky

LABOUR Minister Membathisi Mdladlana and the Congress of SA Trade Unions (Cosatu) leadership emerged from a meeting last night claiming that areas of agreement over labour legislation by far outweighed the areas of disagreement

The meeting formed part of a process embarked upon by government to consult business and labour on their concerns about current labour legislation

This review process formed part of President Thabo Mbeki s commitment made at last year s presidential jobs summit, further endorsed during the opening of Parliament to look at concerns about labour legislation

Government has held a number of meetings with business and trade union federations including the SA Federation of Unions (Fedusa) and the National Council of Trade Unions A meeting with Cosatu eluded the labour minister for some time until the federation eventually agreed to yesterday's meeting

The meeting coincided with Cosatu s seemingly strong opposition to Mdladlana s announcement of a ministerial determination for small business in terms of the Basic Conditions of Employment Act

Cosatu claimed the determination would introduce a two-tier labour market and would encourage large firms to unbundle and form smaller units, so as to benefit from the determination which will apply to companies employing 10 or fewer people.

Mdladlana said it was not the intention of the determination to form a dual labour market The parties agreed to have further talks to monitor the determination s effect to ensure there were no unintended consequences

A task team was set up to discuss this matter, and to examine other Cosatu concerns

The parties said in a joint statement last night they were "strongly of the view that government s programme of transforming the apartheid labour market needed to be consolidated and taken forward"

Cosatu raised a number of concerns about current labour legislation, especially in the areas relating to job security, retrenchment provisions and the Insolvency Act Cosatu and Fedusa have demanded that employers should be required to negotiate rather than consult over retrenchments

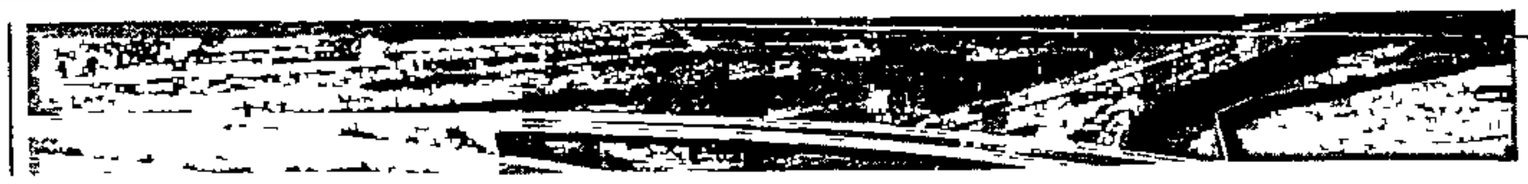
There appears to be some reluctance on the part of government to make this change

At last night's meeting Cosatu also raised concerns about the casualisation of the labour market and information disclosure.

Discussion with business and other trade union federations to date have focused on the need to reinforce probationary periods, with business calling for reduced worker protection from dismissal during this period.

Business has also proposed changes to the Basic Conditions of Employment Act could relate to premiums for Sunday work. Labour and business have queried regulation of working hours

Senior SABC staff



Small businesses under the eye of Cosatu and Pretoria

(166) (30) ET 9/11/99

FRANK NXUMALO
LABOUR EDITOR

Johannesburg – A bilateral task team from the department of labour and Cosatu was set up yesterday to address the labour federation s arguments that the ministerial determinations on small businesses employing less than 10 people announced on Thursday threatened to introduce a two-tier labour market and a "declaration of war against organised labour"

The Membathisi Mdladlana, the labour minister had announced the relaxation of some the kev provisions of the Basic Conditions of Employment Act (BCEA) for such businesses including an increase in maximum overtime from 10 to 15 hours a week a reduction in minimum overtime pay from time and a half to time and a third, and inclusion of the three-day family responsibility leave in the 21 days of annual leave.

"The minister noted Cosatu's concerns and stated that this was not the intention of the determination said the department.

"It was agreed to have further discussions to monitor the impact of the determination to ensure that there are no unintended consequences. Should the determination not meet its objectives, steps will be taken to correct this.

A spokesman for the department said both parties agreed on the need for active participation by trade unions in the process leading to the finalisation of other sectoral determinations.

The discussion was an extremely constructive one in which the areas of agreement far outweighed the areas of disagreement. Both parties were strongly of the view that the government's programme of transforming the apartheid labour market needed to be consolidated and taken forward."

Cosatu raised a number of concerns and made detailed proposals on areas in which it wished to consolidate and strengthen current labour legislation where the union believed it was deficient.

These proposals dealt especially with the issues of employment security retrenchments and insolvencies casualisation, information disclosure issues concerning the Labour Relations Act, and taking forward unfinished processes on legislation, including the BCEA adjustments currently under way

The minister had already met with Business South Africa, the Federation of Unions of South Africa and the National Council of Trade Unions.

However the minister has repeatedly warned that while the department had always been ready to listen to stakeholders concern about the impact of the country s labour laws, they would be no dilution of basic worker rights.

Trade unions challenge leaders

(134) (166)

Sowetan 11/11/99

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 Zwelinzima Vavi and National Council of Trade Unions (Nactu) secretary Mr Cunningham Ngcukana led the delegation of the Commonwealth Trade Union Council to lobby heads of governments on contentious labour rights issues in developing countries

Cosatu spokesman Mr Mukoni Ratshitanga 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 Vavi and British member of parliment, Mr George Foulkes, 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 Annie 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

BD 12/11/99 (166)

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 hired in 1990 Yet Beneke's salary has consistently been 60%-65% higher than his

Cheadle said yesterday a lighter 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

NEWS

Cosatu agrees to review relaxed BCEA in early 2000

CT(BR) 17/11/99 (166)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town – The national assembly's portfolio committee on labour yesterday tried to defuse the vociferous objections by Cosatu to recent steps by the government to relax labour legislation covering small business.

Cosatu representatives agreed to allow the monitoring process set in motion recently by Membathisi Mdladlana the labour minister to work its way through the system until at least early next year, but reserved their right to take legal opinion on whether the new ministerial determination was constitutional or not. It went into effect on November 15

Neil Coleman Cosatu's parliamentary officer, said it was "very unfortunate" that Mdladlana had gazetted the determination, which relaxes major aspects of the Basic Conditions of Employment Act (BCEA) for businesses employing less than 10 people, without asking for public comment.

Les Kettledas, 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 denied 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 affects being felt by the most vulnerable workers.

He was particularly scathing about attempts by some to justify the determination by saying that greater flexibility was needed to promote black economic empowerment. "Cosatu cannot accept a situation in which these workers effectively subsidise the accumulation of wealth by an emerging middle and upper class," he said.

Opposition members of the committee generally welcomed the determination, saying that it could, in fact, have gone further, and that Cosatu was "sending the wrong message to investors"

Salie Manie, the committee chairman, did not believe the determination was the kind of issue that should be tested 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 hear a reportback by the special task team early in the new year.

Equality bill and equity act may overlap

(166) BD 19/11/99

Renee Grawitzky

BUSINESS groups and labour lawyers warned yesterday that the Promotion of Equality and Prevention of Unfair Dis crimination Bill overlapped with the Employment Equity Act and could lead to competing legal jurisdiction

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 willing to insure themselves

The bill aims to outlaw unfair discrimination by giving effect to the constitution Three labour lawyers who declined to be named, expressed con cern yesterday that it included a section on employment already covered in the equity act Sources close to the process said the bill had the potential to lead to a turf battle between the labour and justice departments

Despite endorsement of the spirit and intent of the bill labour and business expressed concern that it had not been tabled for consultation by the National Economic Development and Labour Council (Nedlac) as required by law Nedlac parties said there had been no consultation on a piece of legislation that would affect the employer-employ ee relationship

A Nedlac spokesman said yesterday that a meeting on the bill would be held next week The meeting will however be superseded by the parliamentary process, which also starts next week

Business SA representative Frans Barker said business supported measures to remove discrimination However, the bill treated discrimination and the failure to implement affirmative action or the elimination of inequalities in the same way These were different concepts and were treated differently in the Employment Equity Act

Of overriding concern was the introduction of different definitions of em ployee and discrimination in the bill as opposed to the Employment Equity Act The definition of an employee in the bill includes an independent contractor, this is contrary to the definition in labour legislation

The LOA said the bill would negatively affect the insurance industry as it sought to promote equality by prohibiting differentiation This approach was impractical and not in accordance with the constitution

Equality bill is 'a threat to every individual in SA'

(166) CT(MR) 19/11/99

LYNDA LOXTON

Cape Town – The Promotion of Equality and Prevention of Unfair Discrimination Bill could have a severe effect on most aspects of business and on virtually every individual in the country, Gerhard Joubert, the executive director of the Life Offices' Association (LOA) of South Africa said yesterday

Joubert said the bill which was being processed by a parliamentary ad hoc committee, would hurt not only the insurance industry but economic and social struc tures as well

Differentiation the inevitable result of proper underwriting, says life offices representative

The LOA and its mem bers fully support the letter and spirit of the constitu tion regarding the prohibition of unfair di. crimination " he said

"The bill, however seeks to promote equality by prohibiting differen tiation which is not based on arbitrary grounds

"This approach is impractical and not in accordance with the con stitution, as interpreted by the Constitut onal Court "

The prov sions of the bill that would most affect the long term insurance industry were "those that manifest an intention on the part of the drafters to promote equality by prohibiting differentia tion, even where the differentiation does not amount to discrimination

"Differentiation, first of all, is inherent to a free, open and democratic soci ety Our Constitutional Court indeed stated that it must be accepted that, to govern a modern country efficiently and to harmon ise the interest of all its people for the common good, it is essential to regulate the affairs of its inhabitants extensively

The court further ruled that it was impos sible to do so without differentiation and with out classifications which treat people differently and which impact on people differently

"Proper underwriting is a prerequisite for the financial soundness of any insurance industry Differentiation is the inevitable result of proper under writing "

Similar legislation in Canada and New Zealand provided that similar meth ods of differ entiation on reasonable and bona fide grounds supported by for example actuarial and statistical data or medical opinion, did not constitute unfair discrimination said Joubert.

The LOA has recom mended that sections in the bill that were covered, or could be included in existing legislation, be excluded from the bill

"In line with interna tional practice, the bill should furthermore be amended so as to clearly stipulate that its provisions are not infringed where a contract of insurance differentiates or makes a distinction, exclusion or preference on bona fide and reasonable grounds, founded on actuarially and statistical ly based considerations," Joubert said

Equality bill hysteria hard to take seriously

(171) (166)

Drew Forrest questions the SA Institute of Race Relations' intellectual leadership

TD 22/11/99

THE Promotion of Equality and Prevention of Unfair Discrimination Bill is flawed legislation — even though the SA Institute of Race Relations says it is

Lawyers agree the bill is a drafting mess which undermines itself by trying to do too much Its various definitions of unfair discrimination are vague and overlapping

Some provisions do not strictly belong in equality law, such as a prohibition on hate speech It encroaches on existing labour legislation, carrying a risk of confused jurisprudence

But it is hard to take seriously the institute's near hysteria over the bill, which it apparently views as an assault on fundamental liberties and the free market

An example of such hyperbole is director John Kane-Berman s claim that a ban on discrimination on the grounds of socioeconomic status dropped from the bill without clear reason, "struck at the heart of the free enterprise system (and) eroded prospects of rapid economic growth"

The clause, found in the equality law of free-market Canada sought to prevent *irrational* discrimination against those at the bottom of the economic pile, based on prejudice An example would be a bank redlining all poor rural people, when research shows that many are good credit risks

The bill does not automatically prohibit discrimination on race, gender and other grounds There are defences, among them that discrimination was reasonable in the circumstances, taking account of whether the discriminator would suffer unjustifiable hardship by not discriminating

Magistrates' and high courts, acting as equality courts, would thus have to examine context While big business might have to provide ramps for the disabled, it is extremely unlikely that this would extend to spaza shops

Much of the institute's agitation around the bill rests on the unargued assumption that SA's judicial officers are entirely lacking in good sense The Constitutional Court has underlined the need to examine context in discrimination cases, and this would bind equality courts

It is also suggested that lay assessors might subvert justice by overruling judicial officers on questions of fact In a context where foreign jurisdictions have dedicated equality courts, assessors are intended to give judicial officers specialist perspective and would be appointed at their discretion

There is nothing sinister about majority decisions on fact, the assessor system works like this British juries, which assessors have partly replaced in SA, decide on factual matters

The institute makes much of the shift in the burden of proof when prima-facie discrimination is shown, but there is nothing unusual about this allocation of onus in civil disputes It would be different if criminal sanctions were at stake but this is not the bill's main thrust

Kane-Berman's quarrel with the bill is ultimately with the constitution He jibs at provisions on indirect discrimination the constitution outlaws It He says treating some as more equal than others is Orwellian, the constitution allows it for purposes of historical redress

SA's real problem is that because of its past, some are more *unequal* than others That is why the constitution mandated the equality law

Kane-Berman has a rooted objection to horizontal rights, enforceable between private persons, which he unavailingly fought during constitutional talks In this, he was to the right of the Democratic Party

> Constitutional liberalism is already being undermined

The attack on horizontality is an interesting case of overstatement Horizontal rights, the institute warned, would allow the courts to rewrite the common law, the terrain of the legislature Not so, the Constitutional Court replied, courts have a role in developing the common law as social mores shift

The price of liberty for the institute, it seems, is eternal scaremongering. It seems more worried by the implications of the Employment Equity Act for business than business itself It sees SA sliding inexorably towards totalitarianism

"Constitutional liberalism is already being undermined," anguishes Kane-Berman "Political loyalties seem to influence judicial appointments A politically unpopular attorney-general was axed The presumption of innocence in legal proceedings is being eroded " What a terrifying country he lives in!

The incessant wails about the impact of legislation on economic growth reflect in part the institute's lack of influence on an African National Congress government which considers it beyond the pale Knowing the ANC's vulnerability on jobs, it lobbies by proxy, whipping business and potential investors into a lather

But the taproot is an extremely narrow and conservative definition of liberalism, a concept it and its allies like the Helen Suzman Foundation have tried to corner

Once concerned about race relations — which, among other things, the equality law tries to address — the institute has evolved under Kane-Berman into a doctrinaire proponent of the free market and minimal state intervention He has, for example, urged the scrapping of almost all labour law He believes the market, not law, will make us equal

The real enemy of liberalism is the closed society and authoritarian rule, not regulation and active government

US liberals have been interventionist since the New Deal European social democracy is essentially liberalism with a strong economic conscience

Because of its revolutionary roots, the US liberal tradition also accepts that violence may be needed to defend or win liberty

The underlying aim of the attack on the truth commission by the institute's Anthea Jeffery is to rehabilitate the idea that an ANC "people s war" was the prime source of political violence in SA, and Inkatha and the security forces mere reagents

There is no evidence that the ANC directed the insurrection of the 1980s which seems to have begun by spontaneous combustion and latched on to ANC symbols But if it had, so what? Was a "people's war" not justified in the circumstances?

The institute's take on this is legalistic and ahistorical The violence of the oppressor and the oppressed are seen as morally equiva lent. There is little understanding of the rage and terror, born of powerlessness which lay behind the worst township excesses

In his book Silent Revolution, Kane-Berman contrasts the Industrial Revolution, which "ushered in democracy", with the French Revolution, which brought dictatorship He omits to mention the American Revolution, and overlooks the fact that the foundations of English democracy were laid a century earlier in a bloody civil war

Economic gradualism is similarly hard to argue in SA's case, where the National Party government showed no sign of surrendering state power before the uprisings of the mid-1980s

Kane-Berman s drawn-out attempt to show that the market destroyed apartheid, as blacks driven by economic necessity eroded discriminatory laws, founders on the rock of full political rights for blacks In securing these, he admits with much hedging, violence was central

The question is whether Kane-Berman's intellectual leadership has been good for the once widely respected institute

He conducted a long romance with Inkatha, apparently classing it a liberal movement on the strength of its anti-ANC stance and free-market rhetoric How could a professed liberal embrace a party that was indistinguishable from the state in the KwaZulu homeland and rested foursquare on a deeply illiberal ethnic aristocracy?

In the broad sense, there are many more liberals in the ANC than Inkatha, but the institute, styling itself a "Daniel that dares to stand alone", would not contaminate itself by engaging them Immune to doubt — hardly a liberal habit of mind — it is intolerant of rival views, which it brands as "politically correct"

The danger is that the ANC will dig in against much-needed change in the equality bill and, for example, labour market policy, because people like Kane-Berman are shrieking for it Through its narrow ideology and stridently self-righteous style the institute may be weakening the influence of independent watchdogs and the cause of broad liberal humanism in SA.

Changes urged to equity bill

(176) (173) (166)

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 virginity testing.

The bill already covers female genital mutilation or circumcision

However, ANC MP Makhosázána Njobe, from the Eastern Cape, said some cultures believed virginity testing was a good practice

With the emphasis on the fight against HIV and Aids, virginity testing had a new "interpretation altogether", she said.

The Gender Project's Loretta Feris 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.

Idasa 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

CT 23/11/99

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'One-stop service' for workers

By Lisa Seftel

The Department of Labour has introduced several new labour laws during the last three years to improve the working environment.
PHOTO PAUL VELASCO

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 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 distinct, this is not the case with many of the people that come to our offices They may seek assistance in securing a job and 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 service
- Labour market and information service
- Employment and skills development service
- Beneficiary service and
- Management support services.

The inspection and enforcement service is tasked to ensure there is compliance with the Basic Conditions of Employment Act (BCEA), the Occupational Health and Safety Act and the Employment Equity Act.

It also has to ensure that employers pay their contributions for unemployment insurance and compensation funds

Their activities include inspections, offering information, advice and even training to workers and employers, and granting variations and other similar statutory functions

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 service is also heavily involved in administering the social plan agreement that provides support in the event of large-scale retrenchments

The beneficiary service is responsible for the provision of benefits to unemployed people and provision of compensation to workers who have been injured or fallen sick as a result of workplace injuries

The labour market information service is a new service. The department views it as increasingly critical to gather information about the labour market and plan and act on the basis of good information

In this way one is able to maximise minimal resources This service will gather information on strikes, statistics on the unemployed, help in the analysis of employment equity plans, ensure the collation of information on workplace accidents and so on.

The management support service is a support service to other business units that ensures that the provincial and local offices function effectively and efficiently Functions and delegations of powers have been decentralised to provincial offices to ensure efficiency

At present, Department of Labour officials are redeployed into these different services When the restructuring is complete, people who come to our offices will be able to go to one person who can assist them on all their problems

There should only be one form that employers will have to complete to meet all their labour law obligations And there should be a single inspection service that will visit workplaces to establish compliance with all our labour laws

The department is also in the early stages of establishing a Public Private 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 retrieve their unemployment insurance or compensation benefit payments from an ATM terminal with a smart card

People could also electronically access standard information such as how many days annual leave the BCEA provides for. They could also use the telephone or the internet to get the 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 prioritise capacity-building, trainings information sharing, advocacy and the building of partnerships as opposed to inspections and enforcement.

For instance, in respect of the BCEA, the department produced pamphlets, a booklet and a video as well as training trainers who can reach out to our stakeholders

Department of Labour inspectors are as busy participating in radio talk shows and meetings with stakeholders as they are inspecting workplaces.

To ensure the effective implementation of the chapter prohibiting child labour, we have been instrumental in establishing a forum bringing together the Government and non-government stakeholders to draw up and implement a programme of action to eradicate child labour

From May to July we ran workshops in 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 sensitise relevant officials to the dangers of child labour and train 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 to ensure we are able to maximise delivery on limited resources Key aspects of the restructuring have involved.

- Introducing integrated services and the most modern information technology,
- Embarking on a change management process and
- Capacity-building of staff in the department.

The second pillar underlying our strategy is that of social partnership Our laws were created in social partnership and need to be implemented in the same manner.

The 15-point programme of the Minister of Labour makes a commitment to enhance social partnership The challenge, it reads, is to build on this culture of dialogue and nurture the opportunities for deepened social partnership

In respect of the enforcement of labour laws, the department would like to see:

- Unions and inspectors working side by side to address non-compliance with the BCEA,
- Workers reporting incidents of possible fraud to the unemployment insurance fund and
- Workplace forums monitoring the implementation of employment equity plans.

(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

CT (BR) 24/11/99 (176) (166)

LYNDA LOXTON
PARLIAMENTARY CORRESPONDENT

Cape Town – The insurance industry this week continued to build up its offensive against certain provisions in the Promotion of Equality and Prevention of Unfair Discrimination Bill.

Due to appear tomorrow before the special ad hoc parliamentary committee considering the bill, the industry has been sending out a steady stream of press releases about the potential dangers posed by the bill.

Last week the Life Offices' Association (LOA) warned of the possible effects on the insurance industry.

Yesterday Barry Scott, the chief executive of the South African Insurance Association (SAIA), said the bill exceeded "international standards applied in this type of legislation and will make short term insurance very much less accessible to many people. The bill will also cause permanent damage to the industry."

> *'This type of legislation will make short-term insurance less accessible'*

Like the LOA, SAIA said it strongly supported the principle of preventing unfair discrimination. But, it said, the bill would add unnecessarily to the cost of insurance by not allowing companies to practise proper underwriting principles, or by forcing them to spend time and money justifying their actions.

"The industry will essentially be undermined, resulting in withdrawal of investors and a shrinkage in the number of companies willing to operate in the market," Scott said.

A review of international experience with this kind of legislation had shown that exception clauses could allow for "proper insurance principles to be practised, since these principles are regarded as reasonable and necessary."

The industry's objections could be met by adopting a sectoral approach, as suggested yesterday by Idasa, the Western Cape-based thinktank.

Idasa said the elimination of unfair discrimination and the promotion of equality should not be left to the government alone. But the bill could prompt each sector in society to re-evaluate its programmes to ensure they were not discriminatory or offensive in any way. "That should not be a duty left to the discretion of the sectors, but must be incorporated into the bill," Idasa said in its written submission.

Equity act sets firms a deadline

Stephané Bothma

PRETORIA — No SA company employing more than 50 people will "escape" the requirements of the Employment Equity Act, Labour Minister Membathisi Mdladlana warned yesterday.

However, imposition of penalties on noncompliant employers would be a last resort.

Launching chapter three of the act — which requires employers to take certain affirmative action measures in respect of black people, women and the disabled to achieve equity in the workplace — Mdladlana said that if, after implementation and compliance any unintended negative consequences emerged he was prepared to review the legislation.

The chapter of the act becomes law on December 1 and requires organisations employing more than 150 people to conduct interviews with employees, prepare an analysis of employment equity policies, prepare and implement an employment equity plan and report to the labour department on progress in implementing the plan by June 1 next year.

Companies employing 50 to 149 people will have to report by December next year.

Employers who have fewer than 50 employees, but who wish to become eligible to secure government contracts, must also report by that time.

Mdladlana also launched an employment equity website yesterday, which will enable employers to access reporting forms electronically and submit them electronically to the department.

According to a labour department baseline survey, black managers only represent 14,9% of the economically active population.

"The reality is that racism and sexism continue to pervade our workplaces and indeed our society," Mdladlana said.

"There is no escape." Mdladlana said. The new legislation did not mean "no more jobs for whites". All we want to do is prohibit unfair discrimination in the workplace."

More than 100 inspectors will be employed by the department to monitor compliance with the law, but employees were urged to invoke the law themselves when transgressions occurred.

Although the penalties for noncompliance could be as high as R900 000, depending on the frequency of infringements by the employer, labour director-general Sipho Pityana said imposing them would be a "last resort".

Employers will be granted at least two opportunities to comply before the matter was taken to the labour court.

First, an inspector will attempt to obtain a written undertaking that reports will be submitted by a specific date and, failing that, a compliance order will be served on the guilty employer.

"However we do not envisage any problems with the majority of companies," Pityana said.

The SA National Defence Force, National Intelligence Agency and SA Secret Service are the only institutions excluded from the act.

(166) (179) BD 24/11/99

THURSDAY, NOVEMBER 25, 1999

Equality bill gets flak from top advocates

ART 25/11/99

Top advocates have torn into 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 Minyuku, said although the legislation was complicated 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 relating 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. – Sapa

'Hasty' equality bill to be re-drafted

ET 25/11/99 (166) (173)

ROBERT BRAND
PARLIAMENTARY BUREAU

PARLIAMENT has instructed the Department of Justice to re draft controversial sections of proposed equality legislation, which has drawn criticism from a wide range of organisations in public hearings this week

Yesterday, the Promotion of Equality and Prevention of Unfair Discrimination Bill came under fire from South Africa s top advocates, who urged Parliament to scrap it and to amend the Constitution to extend the deadline for the law to be enacted

At the close of the hearing the ad hoc committee dealing with the bill instructed drafters from the Department of Justice to simplify certain aspects and investigate new ways of dealing with discrimination in specified sectors of society

Committee chairperson Mohseen Moosa said there appeared to be consensus that the multiple definitions of "unfair discrimination" contained in the bill should be replaced by a single definition

The bill outlaws unfair discrimination on a number of grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age or disability It specifically outlaws race and gender discrimination, and has separate chapters on discrimination in various sectors of society, including employment, health care, insurance and education

'Unfair discrimination" is defined differently at least four times in various chapters of the bill Several organisations pointed out that this could cause legal uncertainty and confusion, and called for a single, inclusive definition

Moosa instructed drafters to have another look at the chapters addressing discrimination in various sectors of society This could be done by way of a schedule to the bill or an annex containing codes of practice for each sector, he said

Earlier South Africa s top advocates urged the committee to withdraw the bill and amend the Constitution to extend the deadline for the controversial measure to be enacted

The bill was so convoluted, complicated repetitive and inconsistent with he Constitution that it would be impossible to redraft it ahead of the constitutional deadline of February 4 the General Council of the Bar (GCB) said in a written submission

The GCB the federation of South Africa s nine constituent bars, which represents about 1 700 advocates said many provisions "simply did not make any sense at all"

The National association of Democratic lawyers (Nadel) however, welcomed the introduction of the bill and supported its aims

"Whilst we are mindful of the problems in the present draft of the bill we have no doubt that the parliamentary process with the consultation of civil society will offer solutions " Nadel said

Business South Africa (BSA) said the bill if enacted would seriously damage the economy and investor confidence This would slow down economic growth and SA s ability to address the problems of poverty unemployment crime and inequality BSA said

BSA also complained there was no consultation with business organisations and with the National Economic Development and Labour Council (Nedlac) in spite of the significant impact the bill would have on how business operated

BSA called it an over hasty and un transparent process which is not conducive to the passing of good legislation

The hearings continued

Unions and management are wary of workplace forums

CT (BR) 25/11/99 (166) (132)

FRANK NXUMALO
LABOUR EDITOR

Johannesburg - Neither company management nor organised labour was comfortable with setting up workplace forums as provided for in the new Labour Relations Act, a Unisa study showed yesterday

The study, presented at the National Productivity Institute s annual conference on economics, business and human resources management research discovered that only 17 workplace forums had been established nationally since the promulgation of the act three years ago

Monica Kirsten, a Unisa researcher, said management was not keen on workplace forums because of concerns about divulging strategic information to labour and the hobbling of the decision making process.

Labour was uncomfortable with forums because it feared they would reduce the unions' power base or replace them as legitimate representatives of workers in the company

Kirsten said workplace forums divided the collective bargaining and productivity aspects of industrial relations into two separate issues

"Trade unions feel the separation of collective bargaining and production (co-operation) is a management ploy to undermine trade union involvement in production This is one of the main reasons why trade unions oppose workplace forums.

"Management sees workplace forums as a threat to their managerial prerogative. The question which now arises is whether employers will be proactive in respect of joint decision making or whether they will wait until employees exert pressure."

She said company management at all levels should buy into the idea of participatory management. The forums could become effective only when the workforce was enlightened about the firm's strategic direction

Bar council lashes out at equality bill

BD 25/11/99 (166) (176)

Farouk Chothia

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 most damning attacks on the Promotion of Equality and Unfair Discrimination Bill, the general council of the Bar said many provisions 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

The council said that it had wanted to furnish detailed commentary on the bill, but that it soon became clear that this would take a long time.

"The current bill is so convoluted, complicated, repetitive and inconsistent with the constitution and Constitutional Court pronouncements that it seems impossible to redraft it or to draft a completely new bill in time (for the February deadline)," the council said

Business SA (BSA) also asked Parliament to consider amending the constitution because the bill had not been tabled at the National Economic Development Council (Nedlac), as required by the law

But committee chairman Mohseen Moosa said Nedlac could still discuss the bill and that Parliament would not extend its December deadline

BSA said "The dual jurisdiction created by the bill, when read with the Employment Equity Act, will cause confusion and uncertainty, forum shopping, unnecessary duplication of resources and a potentially contradictory jurisprudence "

The bill and the act used different definitions for an employee and an independent contractor, and definitions of discrimination also differed

BSA also voiced concern that the appointment of judges for the equality courts would be a political decision, as they would "be designated by the minister after consultation with the judicial services commission"

Labour groups hail new Act for workers

(176) (166)

By Mzwakhe Mbanjani
Labour Reporter

TWO major labour federations welcomed the unveiling yesterday of Chapter Three of the Employment Equity Act by Labour Minister Membathisi Mdladlana as a fundamental cornerstone 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 inhibitory though constructive.

The Congress of South African Trade Unions (Cosatu) congratulated Mdladlana for his move to ameliorate historical imbalances on the basis of race, sex and disability

This is a remarkable departure from the secretive workplace culture inherited from apartheid, Cosatu spokesman Mr Mukoni Ratshitang said.

"To redress these imbalances requires not only outlawing discrimination but also the implementation of conscious programmes designated to achieve broader representivity in 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 Mr Cunningham Ngcukana said the implementation of the Act had serious implications for the designated blacks, women and people with disabilities whose development at the workplace was impeded by racism.

"Instead of paying lip service, companies should invest in the training of the designated groups since the education barrier has always been a serious barrier for blacks," Ngcukana said.

The South African Chamber of Business (Sacob) reportedly said although it supported the intention and spirit behind the Employment Equity Act, it felt the application of the act was punitive

Sacob spokesman Mr Kevin Wakeford said although the chamber felt that the Act was inhibitory it would be constructive

Swedish Prime Minister Goran Persson shares a joke with a member of a women's soccer team from Soweto during the opening of the Trade and Investment exhibition at Gallagher Estate in Midrand yesterday. The exhibition is part of the Sweden-South Africa partnership week which ends at the weekend. PHOTO CLEMENT LEKANYANE

School to hold memorial services

By Victor Mecoamere

TEACHERS and pupils at Molgome Senior Secondary School will hold two special services today and tomorrow in memory of two pupils who died at the Meadowlands, Soweto, school on Monday

The school was the scene of a tragic double death which involved an enraged Grade 12 pupil Tebogo Moremong, who shot dead his Grade 9 schoolmate George Molot and then turned the gun on himself

Moremong was threatening to kill his former girlfriend Ellen Mbele when Molot intervened, intending to disarm him, but was killed after a shot went off

A member of the school's condolence committee, Ms Irene Shoba, said yesterday "We will hold a special service on Thursday at 7.50am which will be led by a pastor and speakers from the Gauteng department of education, as well as the department s psychological services

"The service on Friday will be a conventional memorial service which will feature the participation of groups such as the students' representative council and the Congress of South African Students.

Shoba said the committee was liaising with the dead pupils families about funeral arrangements.

"We will also be donating money to the two families Pupils are donating R3 each and teachers R4 each," Shoba said.

Thursday November 25 1999 **SOWETAN**

Forums are vital to the workplace

(166) Sowetan 25/11/99

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 new LRA was introduced in 1995 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 works committees and liaison committees established during the previous labour dispensation

That resentment and rejection was based on the fact that these forms 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 recognises 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 unionism."

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

(176) (166) CT(BR) 26/11/99

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 criticised in parliamentary hearings this week for inconsistencies and vagueness

ANC deputy chief whip Geoff Doidge 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 a freedom of information act and a law to ensure fair administrative procedures

The chairperson of the parliamentary committee dealing with the bill, Mohseen 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 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

Alan Fine

CAPE TOWN — Labour Court Judge Adolph Landman has dismissed an application for thousands of rands 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 Cheadle, Louw's legal counsel, that courts should adopt less onerous standards of proof in unfair discrimination cases Cheadle 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 However, that was what would have to be done

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

Cheadle 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 Peromnes 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 Beneke

This was accepted as indicating that the company did not have a pattern of racially determined salaries

(166) BD 29/11/99

Wednesday November 24 1999 **SOWETAN**

Workplace racism sure to get the boot

(166) (176)

By Mzwakhe Hlangani
Labour Reporter

DECEMBER 1 will see the promulgation of "Chapter Three", the major pillar of the Employment Equity Act that seeks to ensure affirmative action and equity for blacks, women and people with disabilities who are being discriminated against in the workplace.

Labour Minister Membathisi Mdladlana told business, labour and government representatives at the launch of "Chapter Three" of the Act yesterday that the Government was obliged to hasten the change as racism and sexism continued to pervade the workplace and society.

He said "Chapter Three" was "an enabling tool and a victory in entrenching the right to equality" in a move to build a non-racial and non-sexist democracy.

"In reality, millions of Africans, coloureds and Indians continue to suffer the aftermath of apartheid discrimination which denied blacks, women and those with disabilities access to education, employment opportunities, promotion and wealth creation."

In terms of the Act, employers will be required to take steps to ensure a more representative staff complement.

Blacks, women and those with disabilities should be able to go beyond the ceiling of senior management and contribute effectively to the culture of business enterprises, the minister said.

The Act requires employers who employ more than 50 workers and those tendering for state contracts to prepare equity plans and report to the Department of Labour before December 1 2000.

Mdladlana also launched a website for interested parties to get guidance on the implementation of the equity plan. Website users will be able to communicate with the minister and ask questions.

Director-General of Labour Mr Sipho Pityana said "Chapter Three" would be promulgated into law on December 1 to deliberately coincide with World Aids Day to intensify the challenge against employers who discriminated against workers infected with HIV and Aids.

He urged employers and workers to participate in the equity plan process to ensure the success of the transformation of companies.

"We appeal for the cooperation of all social partners to get the business sense of the importance of implementing equity for it to achieve economic benefits. Penalties and Labour Court orders would be the last resort," he said.

The Act is the culmination of negotiations at the National Economic Development and Labour Council by the Government, business and labour.

Workplace equality

(166) (176)

Chapter Three of the Employment Equity Act will help workers who still suffer the aftermath of apartheid discrimination, says **Membathisi Mdladlana**

ON December 1 Chapter Three of the Employment Equity Act will be promulgated into law. This chapter requires employers to take certain affirmative action measures for black people, women and people with disabilities to achieve equity in the workplace.

It is the second major pillar of the Act to come into effect. The first was Chapter Two, which was launched on National Women's Day on August 9 and which prohibits unfair discrimination in the workplace.

The Act is groundbreaking. It is a victory in entrenching the right to equality enshrined in our Constitution. It is a critical tool in our efforts to build a nonracial, nonsexist and prosperous democracy.

The reality is that millions of our people continue to suffer the aftermath of apartheid discrimination which denied black people, women and people with disabilities access to opportunities for education, employment, promotion and wealth creation.

The figures speak for themselves. Of the Economically Active Population (EAP) in employment, 78.73 percent are black people. In management only 43.63 percent are black people according to the 1996 census.

The Department of Labour's own baseline survey shows an even worse representation of black managers (14.9 percent). Women comprise 39,85 percent of the employed EAP and only 27.45 percent of management.

The department's baseline survey showed that only 16 companies out of almost 600 respondents could report any statistics on people with disabilities.

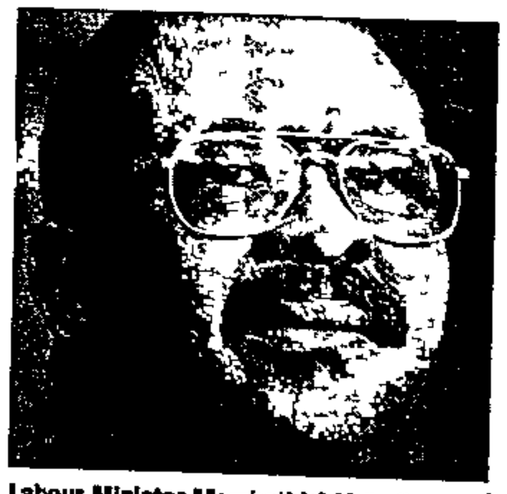
We know that in many workplaces these designated groups, as they are referred to in the Act, still face perhaps invisible but nevertheless very real barriers to advancement and opportunity.

As Government, we have an obligation and a mandate to change this situation and indeed to hasten the pace of this change to entrench equality in our workplaces.

This is where Chapter Three of the Act comes in. It is premised on the understanding that prohibiting unfair discrimination alone will not level the playing field in respect of race, gender or disability in the labour market.

In terms of Chapter Three employers will have to take special steps to ensure that their workforces are more representative of all our people and that black people, women and people with disabilities are able to penetrate the glass ceiling of senior management and are able to contribute to and feel comfortable with the culture in our enterprises.

With this in mind the Act requires that certain designated employers do the following:



Labour Minister Membathisi Mdladlana

- Consult with their employees,
- Conduct an analysis of employment equity policies and practices as well as do a profile of the company's workforce,
- Prepare and implement an employment equity plan, and
- Report to the department on progress made in implementing its employment equity plan.

Designated employers include the public service, municipalities, employers who employ 50 or more employees and have a turnover above a certain threshold and who want to tender for government contracts.

In terms of the Act, employers who employ 150 or more employees will have to report for the first time by June 1 2000.

Employers who employ less than 150 employees or who want to volunteer to report for purposes, among others, to become eligible to secure government contracts, will have to report by December 1 2000.

The department, assisted by the Commission for Employment Equity (CEE), has done its utmost to ensure that employers and employees will be enabled and supported in implementing this chapter.

We have striven hard over the past year to create an environment in which employers can implement the legislation in an efficient and effective manner which does not place an undue burden on them.

As I have said on numerous occasions, I am convinced the implementation of the Act and the tapping of all our human potential makes good business sense and I am encouraged by reports that many in business have already embraced the Act.

The department will provide employers with the necessary support and tools to facilitate its implementation. We have released a number of key regulations to facilitate this:

- An official summary of the Act which employers are required to display in their work places;
- A Code of Good Practice on the Preparation, Implementation and Monitoring of Employment Equity Plans. This will significantly assist employers and employees in how to apply the Act;
- General Administrative Regulations which cover the practical and logistical matters that employers need to know to implement the Act,
- A set of prescribed forms including the Employment Equity Report and the Income Differential Statement for the Employment Conditions Commission, and
- A set of three annexures to the regulations which provide guidelines on the demographics of the EAP and on how to identify occupational categories and levels.

All these documents have been the subject of intense debate and scrutiny by the CEE, which includes two representatives each from organised labour, business, the community constituency at the National Education Development and Labour Council and the state.

To ensure that the information is accessible and user-friendly, the department has also produced a User's Guide on Preparing an Employment Equity Plan, an educational video and an Employment Equity Website.

The responsibility now shifts to employers and workers. It is up to them now to take this key we have given them and open doors in their workplaces. I challenge employers and workers to formulate effective strategies together towards employment equity in our workplaces.

The Act is a result of social partnership. Let us now move that social partnership to company and workplace level and develop our plans in a participatory process.

Let us break away from some of our adversarial modes to implement this critical statute.

(This article is based on an address by Labour Minister Membathisi Mdladlana yesterday at the launch of Chapter Three of the Employment Equity Act.)

(176)(166)

Affirmative action now written in the law

ST(BT)28/11/99

EMPLOYERS must take steps to ensure workplaces are more representative while government has a responsibility to hasten the pace of change at work.

Labour Minister Membathisi Mdladlana this week launched chapter three of the Employment Equity Act, effective from December 1 It requires employers to implement affirmative action measures for black people, women and the disabled And unlike other recent labour laws, this Act appears to have forged common ground for business and government who agree there is a need to address the issues

But the SA Chamber of Business' Janet Dickman says the same results could have been achieved without government as it is a business prerogative to address imbalances

A government survey shows 78 73% of economically active South Africans are black, but blacks occupy only 14 9% of management positions

The Act requires employers to prepare and implement an equity plan report to the department on progress and displav a summary of its provisions in relevant languages

Mboniso Sigonyela

Workplace forums struggle to take off

(132)(166)

Both workers and management are sceptical, writes S'THEMBISO MSOMI

ST(BT)28/11/99

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 to a more co-operative one

But four years down the line only 18 forums have been set up and in many sectors relations between workers and their employers are far from satisfactory

Sithembele Tshwete, communications co-ordinator at the Commission for Conciliation, Mediation and Arbitration (CCMA), says such forums are important as they provide employees with a voice on their daily work activities

"Participation of labour on issues of production as well as joint problem solving on issues affecting the workplace gives employees a sense of responsibility and enhances the well-being of the enterprise

"Successful implementation of worker participation systems in countries like Germany and the Netherlands, has proven fruitful" says Tshwete.

Tshwete believes that in SA, where there are still millions of unorganised workers such forums could act as important vehicles to employee participation in the workplace

But organised labour has always been sceptical of such institutions During negotiations for a new LRA, organised labour accepted 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 Brian Greenstein says unionists are still reluctant as they fear such institutions could undermine 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 outvoted on certain issues" he says

However Cosatu spokesman Mukoni Ratshitanga denies 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 a paper delivered during the annual conference of the National Productivity Institute in Port Elizabeth on Wednesday, Unisa researcher Monica Kirsten said employers seemed concerned about possible delays in decision making that could result from having to consult labour She urged managers to "buy into" participatory management and not to view workplace forums as a threat to their managerial prerogative.

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 informal discussions with some key unionists he found most were not in favour of these forums because they fear being "co-opted" by management when unpopular decisions have to be taken

The fear is not unfounded It was institutions like Works and Liaison Committees, set up in terms of the Bantu Labour Act of 1953 and the Industrial Conciliation Act of 1956 which were used by employers to render black trade unions irrelevant.

"This could form the basis for the trade unions not to immediately engage in these forums However the new LRA ensures that independent unions and traditional collective bargaining are not undermined. Its intention is to shift labour relations from its adversarial form," he says

Workplace forums allow employees — unionised or not — the right to be consulted and to participate on issues not regulated into a collective bargaining agreement. "An employer is supposed to consult over envisaged changes in the organisation of work, partial or total plant closure, transfer of business ownership and health and safety issues," Tshwete explains.

With government spearheading a labour legislation review process that could result in radical changes before the end of next year, Cosatu has demanded the LRA be amended to force employers to negotiate, instead of merely consulting with workers when decisions are to be taken on these issues

PROBLEM SOLVING: Forums give employees a sense of responsibility

Perception, reality of employment equity

(166)(176) bo 2/12/99

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" Both of us have listened to countless discussions where it is implied that "white males 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 better qualified, the line manager asked the panel to "think it over on the weekend"

Prejudice has not yet been eliminated. The dice, 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 in fact asks top management to set their own targets and measure themselves against this 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 outperforms itself Yet evidence shows that not having people issues driven 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 outsiders Clear, well-formulated policies help counter this Even in a homogeneous environment, top international companies have such procedures. This ensures people are promoted on talent and not internal politics.

Thirdly, the perception that there are no black managers, or that they are all outrageously expensive. This reminds us of the drunk, looking for his keys under the lamppost, instead of where he lost them. Managers are using the same recruitment strategies, and wondering why they get the same candidates

As the act reminds us, managers qualify in different ways, formal learning being but one. In a country, where good managerial talent is rare, it is instructive to find the legislature handing out good, common-sense.

Fourthly, the perception that telling managers who to recruit damages the dynamics of an organisation and disempowers middle managers In high-performing companies, managers are set 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 affirmative action. Managers under pressure take the safest, rather than the best, option Top performing companies in SA, such as SA Breweries and Tongaat-Hulett put diversity on their agenda long before it was fashionable. Such firms are reaping the benefit of such farsighted action over the past decade.

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 executives often have a clear understanding of issues as they really are. The successful organisations will be those where middle management, charged with making it happen, share top management's view of reality

□ *Gering is a director at Sediba Consulting and Mapetla is on the board of the Aspen Pharmacare group*

SOWETAN Monday December 6 1999

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 aim 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

(BR) 9/8/99 (166)

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

Employers must prove that wages are not based on racial or gender criteria

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 Peromnes job grading scale than that of the coloured employee"

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 perpetuate this discrimination today, anomalies remain," said Steer

He said companies should take immediate steps to eradicate any practice which might be construed as discrimination