

Labour standards versus job creation

the impact of the BCEA on small business

One of the key problems facing South Africa is how to address both rising unemployment and low levels of economic growth. One line of the debate on these issues sets job creation against employment standards. According to this argument, better labour standards will restrict job creation, particularly in small firms, which are seen by many as having great job creation potential. This tension was exposed during negotiations around the BCEA (75 of 1997). It resulted in the Minister of Labour delaying promulgation of the new Act until research could be conducted on its likely impact on small business.

This article is based on findings from research that assessed the likely impact of the new BCEA on small businesses. Drawing on findings from these research projects, we argue that the BCEA is unlikely to have a significant impact on small business.

Comparative survey

The comparative survey's aim was to investigate the impact that the new BCEA would have on existing employment regulations. We compared key conditions in the new BCEA with the 1983 BCEA and a selected sample of wage determinations, bargaining council agreements and labour

Shane Godfrey and Jan Theron present research findings that show the BCEA is unlikely to have a significant impact on small business.

orders. By doing so we sought to establish the likely impact of the new Act on businesses, especially small and/or new businesses, covered by these employment regulations. We identified 25 of the most important agreements, determinations and orders (which we refer to as 'employment regulations') for the research. We selected six key conditions in the 1997 Act for comparison thinking they would:

- deviate most from the conditions in many employment regulations; and/or
- have the greatest impact on businesses.

A summary of this comparative survey is presented in the table on page 24.

Survey findings

Parties will have to make substantial adjustments to certain regulations, unless these conditions are varied by a bargaining council or the minister. For example, firms covered by regulations in the catering and

	1983 Act	1997 Act	Variation	Issues / Impact
Maximum ordinary weekly hours of work	46 hours/week	45 hours/week	No variation permitted (either by bargaining council agreement, sectoral or ministerial determination)	13 of the 25 employment regulations had maximum ordinary weekly hours of work of 45 or less; 11 had ordinary weekly hours of 46. Impact will be limited as only two had ordinary weekly hours over 46
Overtime pay	1 1/3 times ordinary hourly rate	1 1/2 times ordinary hourly rate	Rate may be varied by a bargaining council agreement, sectoral determination, or by the minister	18 of the 25 employment regulations provide rates of overtime less than that in new Act
Sunday work	Double pay for Sunday work	Double pay if employee does not ordinarily work Sunday; or, 1 1/2 times if s/he ordinarily works on Sunday	Variation allowed by bargaining council agreement, sectoral determination, or ministerial determination	Four employment regulations had Sunday work provisions inferior to those in new Act. These (each in catering and accommodation sectors), made no provision for Sunday pay. New Act should have positive impact (for those who were complying with 1983 Act) on many employers as it reduces labour costs for Sunday
Night work	No provision regulating night work in BCEA	Work allowed between 6pm and 6am if employee agrees, receives night work allowance and if transportation is available	Can be varied by bargaining council agreement, sectoral determination, or by ministerial determination	10 regulations provided either allowance or transportation, not both 14 had no provisions for night work. Thus, overall, 24 of the 25 regulations had provisions inferior to the new Act. The impact is likely not severe: many (14 of the 25) are in sectors that do not often need night work
Annual leave	14 consecutive days' annual leave (excluding public holidays)	21 consecutive days' annual leave (excluding public holidays)	May be varied by sectoral determination or by the minister. Bargaining council agreement can vary leave, but not below 14 days	4 of 25 provided less than 21 consecutive days annual leave (either 17 or 18 consecutive days leave or 12 or 13 working days leave per year). New Act will have limited impact, as most regulations already comply
Maternity leave	No provisions, but prohibited employment for approximately three months	Female employees entitled to at least four months' unpaid maternity leave	Cannot be reduced by bargaining council agreement, but may be varied by ministerial determination or by sectoral determination	20 of the 25 regulations had maternity leave provisions inferior to new Act. In 16 of these, there was no provision for maternity leave



Firms covered by regulations in the catering sector will face increased payment for Sunday work.

accommodation sector will face major reductions to ordinary weekly hours of work and increased payment for Sunday work. Similarly, adjustments to night work and maternity leave provisions in regulations covering the cleaning sector (which has traditionally employed mainly female workers) could have a significant impact, either directly or indirectly, on labour costs of firms.

However, most parties will have to make only minor adjustments to comply with the new Act. For example, in most of the employment regulations surveyed employers were already organised to work a 45-hour week. In those that were not, most would need to reduce hours of work by only an hour. Adjusting to the new overtime rates and leave provisions should also not be too burdensome for most businesses. Where adjustments are necessary they will add to labour costs but the amounts should not be of a magnitude

to threaten the viability of small firms.

The above findings highlight two important points:

- Businesses that risk being negatively affected by compliance with the new Act are largely those that were not complying with the 1983 Act.
- Despite critiques of the Act for being too rigid and imposing standards that small businesses cannot afford, the possibilities for variation are fairly extensive. For example, variation is allowed in all of the three conditions (overtime pay, night work and maternity leave) which will impact on employment regulations the most. Rates of overtime and night work may be varied by a bargaining council agreement, sectoral determination, or by ministerial determination in terms of Section 50. Maternity leave may be varied by sectoral determination or by ministerial determination. Downward

variation has the potential to dilute the impact of the Act on small business in respect of these (and other) conditions. This survey allowed us to draw these preliminary conclusions about the impact of the new Act on small businesses by comparing existing employment regulations to the new Act. However, such a survey does not enable us to assess the actual impact such changes will have on small businesses because the employment regulations provide minimum conditions and the actual conditions in firms could be better (or worse) than those minimum conditions. To make such an assessment in-depth interviews were conducted.

In-depth interviews

Semi-structured interviews were conducted with owners/managers in 49 small businesses to assess the perceived and actual impact of the BCEA on small firms.

We drew the sample mainly from firms situated in Small Business Development Corporation (SBDC) business 'hives' in Johannesburg, Durban and Cape Town. Some small firms from outside the 'hives' were also included. The decision to primarily focus on businesses in the SBDC 'hives' was reached for both practical and methodological reasons. Practically, they provided a concentration of small firms that would be relatively accessible to researchers. Furthermore, in the past, the 'hives' had been exempted from employment regulations and we suspected that we would find many firms that were not complying with such regulations. We thought that these firms would both be opposed to the new Act and would probably have the worst employment conditions (because of their non-compliance with employment regulations), and would suffer most from the introduction of the new Act if they were to comply with it.

Interview findings

Most firms interviewed already met most of the standards introduced by the new Act and most did not perceive the new Act as having a major impact. In fact, 16 out of the 49 interviewed said that not even one of the conditions in the new Act will have a negative impact on their businesses. Less than half the firms listed more than one condition as having a severe impact on their business. The conditions that were *perceived* as impacting most on small businesses were: annual leave, overtime pay and family responsibility leave, with the latter perceived to have the most severe impact. Furthermore, while the interviews revealed that managers/owners or small firms have a fairly low level of awareness about basic employment standards, it was nevertheless interesting to note that most businesses showed a reasonably positive attitude towards the legislation. Of particular interest were responses to the maternity leave provision, probably the most controversial of all the provisions in the new Act. There was little opposition to the maternity leave provision and in some cases a positive response.

Overall summary

Based on the comparative survey and the in-depth interviews, standards in the new BCEA that are most likely to have a significant impact on enterprises are the increase in:

- annual leave
- family responsibility leave
- the overtime rate.

Firms regarded family responsibility as having the most severe impact. However, this provision highlighted the difficulty of generalising about the impact of new conditions as the impact varied greatly between different firms - a number of companies suggested that coverage would



Businesses not complying with the 1983 Act risk being negatively affected by the new Act.

not be a problem while others highlighted cost increases.

Despite increased costs in certain areas, overall our research suggests that the impact of the Act is unlikely to be significant. This limited impact is due to several factors:

- There are a variety of ways employers can re-arrange their businesses to reduce the added costs of new conditions. For example, employers can avoid the increased cost of overtime by reducing or eliminating overtime work.
- Some provisions that could add significant costs to some firms are not relevant to the small business sector. In comparison to large companies in the mining or industrial sector that have 24-hour operations, the night work provision will have very limited cost implications for small businesses as few operate during these hours. And, as highlighted in the survey, many

businesses that do rely on night work are already providing either a night work allowance or transport for night workers. Admittedly, the costs of providing both can be significant, but it appears that very few small firms will face the introduction of this double burden.

- Only employers with female workers of childbearing age will face the costs associated with maternity leave, and then only when such workers fall pregnant. Furthermore, the costs associated with this new provision are less direct as maternity leave is not paid by the employers. The costs will be incurred primarily to find and train a temporary replacement for a worker taking maternity leave, and could therefore vary considerably.
- The Act allows for flexibility in a variety of ways. For example, it introduces two ways in which the working week can

be adjusted to suit the working requirements of firms. These, the compressed working week and the averaging of hours of work over a period of up to four months, provide working time flexibility for employers. And, as noted, the impact of new employment conditions on labour costs can be lessened or negated entirely by downward variation in terms of the Act.

However, the issue of variation is likely to be the focus of ongoing struggles. It is unclear at this point what position the minister will take with regard to variation, and employers are probably going to struggle to get trade unions or bargaining councils to reduce conditions established by the new Act.

Threats to small firms

Labour market regulation has long been the scapegoat for the ills of the small business sector. The in-depth interviews revealed that much of the criticism is misplaced. It was clear from the research that firms viewed the lack of promotion of the small enterprise sector (particularly the issue of easier access to finance for small firms) as at least as serious a problem as labour market regulation. Further, it appears that labour market regulations have limited influence on the



Night work provision will have very limited cost implications for small business as few operate during these hours.

conditions prevailing in a lot of small firms. As noted above, in many cases firms that stated that they were not complying with any employment regulations were providing conditions equal to or better than firms complying with such regulations. It is therefore clear that social and market forces are as important as labour regulations in the establishment of employment conditions in firms.

This finding tends to undermine some of the criticism of labour market regulations and suggests alternative routes to improving employment conditions in small firms. It is evident that the close

proximity of firms in the 'hives' creates a social environment that is conducive to establishing certain norms. This is suggested by the similarity in standards between firms in different industrial sectors in the 'hives'.

The social construction of employment norms is supported by what appears to be an internal labour market in the 'hives' that has the effect of pushing up wages and employment conditions to a higher level. This points to the 'hive' concept as a useful way forward for trying to ensure more general compliance with labour legislation, particularly among newly-established enterprises or township-based enterprises.

The in-depth interviews revealed that the lack of management skills in small firms underlies some of the opposition to labour market regulation. A number of interviewees identified low labour productivity and/or poor attitudes amongst workers as a major difficulty faced by their firms. But it is generally accepted that productivity improvement is management's responsibility. It is certainly management's task to motivate workers. That the owners/managers of most small firms are unable to accomplish these objectives is not the fault of labour market regulations. Indeed, if anything,

appropriate labour market regulations should have the effect of pressurising managers to improve efficiency in their workplaces.

Conclusion

During negotiations over the new BCEA, business and other advocates of the employment-creating potential of the small firm sector often argued that the new Act would destroy many small businesses and have a significant impact on others, and therefore undermine job creation in the country.

Our research, despite its small sample size and focus on firms in the 'hives', raises serious questions about the strength of these claims. Certain provisions in the Act will have an impact on firms but generally this impact will be limited. Other provisions will have little or no impact on many firms. The research also points to other problems that are more significant than labour legislation for the growth of the small business sector. Most problematic is the lack of financing and poor management. Instead of lessening labour market regulation, government must introduce other policies must be introduced by government to solve these problems in the small business sector, and ultimately ensure improved economic growth. ★

This article is based on findings from research carried out by the Small Enterprise Project (a project based at the Institute of Development and Labour Law, University of Cape Town). A full report, 'Labour Standards versus Job Creation? An Investigation of the likely impact of the new Basic Conditions of Employment Act on small businesses' is available from the Institute of Development and Labour Law, UCT. Please contact the institute at (021) 650-3709, or e-mail devlab@law.uct.ac.za for copies of the full report.

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