

The BCEA

principles and practice

On 17 November 1997, the Basic Conditions of Employment Act (BCEA) was passed by parliament. A new set of basic conditions of employment was brought into being. Many more workers now enjoy protection. The Act has also revolutionised enforcement and created an environment for greater labour market efficiency.

Passing laws in parliament may be the end of one process, but it is only the beginning of another: putting the law into practice. Before the Act can take effect, a number of steps need to be taken by the government on the one hand, and the social partners on the other.

The Minister of Labour recently announced that the Act would be promulgated (brought into effect) in two phases. The first phase happened on 21 March and the second will take place between August and October.

In the first phase the chapters on child labour, the Employment Conditions Commission (ECC) and sectoral determinations, as well as the provision on the earnings threshold for working time will be promulgated. In the second phase the majority of the substantive changes in working conditions will be promulgated.

Child labour

While we know that child labour exists in South Africa, we do not have a good picture of how big the problem is. Official

The Basic Conditions of Employment Act (BCEA) has passed through parliament, but much work remains to be done before it is put into practice. Lisa Seftel outlines the steps that are being taken to implement the Act.

statistics estimate that there are at least 200 000 children working.

At least half of these are working on the farms. But children also sell goods on street corners, load bricks at brick yards, sell their bodies on the streets, and clean our homes and taxis.

Child labour is a complicated problem. Poverty, adult unemployment and poor schooling all contribute to the problem. These problems should not, however, be used as an excuse to allow child labour to continue. Some very poor countries have managed to prevent children from working in exploitative situations.

Child labour can be prevented if there is:

- free, quality education;
- support for families and parents, including job creation projects;
- sensitisation about the dangers of child labour;

- effective laws, with strong measures that can be taken against employers who exploit children.

Provisions

The chapter on child labour says that no child under the age of 15 may work. The age limit is based on the fact that, at present, children must attend school until they are 15 years old. If the minimum school leaving age increases, the limit in the Act will also increase.

The only exceptions are children who perform in adverts, sports and artistic or cultural activities. The Minister of Labour will issue regulations setting out conditions of employment for these children.

If an employer employs a child under the age of 15, he or she can be prosecuted. The maximum penalty is three years in jail.

It is also an offence to help an employer employ a child, or discriminate against somebody who refuses to allow a child to work.

Health and safety hazards at the workplace affect children more strongly than adults. Children suffer more from the effect of chemicals, radiation, heat and noise. The health effects can be devastating, creating irreversible damage to young bodies.

The Act protects those children who are allowed to work from dangerous working conditions. No child between the age of 15 and 18 may be employed in a job which is inappropriate for that child's age, or that places the child's well-being, education, physical or mental health or spiritual, moral and social development at risk. The Minister of Labour can issue regulations which prohibit or impose conditions on the employment of children between the age of 15 and 18. For example, the Minister can prohibit such

children from working underground in the mines, or from working in chemical factories.

ECC

The other chapters of the Act which were promulgated on 21 March are those relating to the establishment of the ECC (the body set up to advise the minister on basic conditions) and the chapter on sectoral determinations.

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 ECC.

Earnings threshold

Finally, the provision on the earnings threshold is to be promulgated. This will allow the minister to request the ECC to investigate what an appropriate earnings

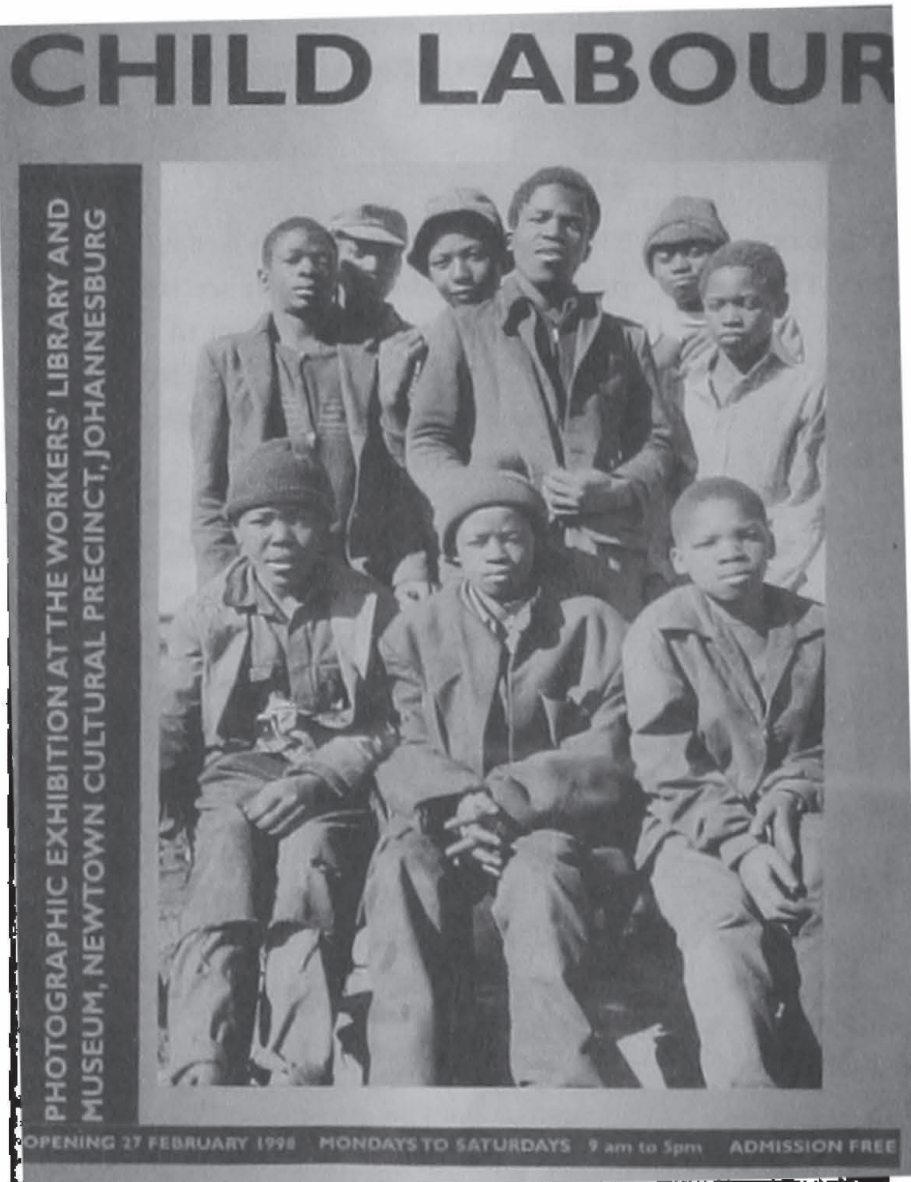
Why now?

The section of the BCEA on child labour is being brought into effect now for a number of reasons:

- Unlike the other chapters, it relies on the existing enforcement system of the criminal courts. To enforce the other chapters, a new enforcement system still needs to be put into place.
- Child labour involves glaring human rights abuses. Up until now, there has been no mechanism to prosecute employers employing children.
- The issue of child labour is gaining international prominence. 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.

One aspect of this international campaign is a Global March against Child Labour. The Africa leg of this march started in Cape Town on 21 March, Human Rights Day.

pic: poster for worker's museum



PHOTOGRAPHIC EXHIBITION AT THE WORKERS' LIBRARY AND MUSEUM, NEWTOWN CULTURAL PRECINCT, JOHANNESBURG

OPENING 27 FEBRUARY 1998 MONDAYS TO SATURDAYS 9 am to 5pm ADMISSION FREE

At least 200 000 children work in South Africa.

threshold for the chapter on working-time would be.

Those workers who earn above the amount set would be excluded from the provisions on the overtime rate, pay for work on Sundays and so on.

This determination needs to be made as soon as possible so that employers and employees can adjust their contracts of employment or agreements to be in line with the Act.

The second phase

The rest of the Act, including substantive conditions of employment, will be promulgated in the second half of the year.

Effective implementation will require a number of steps, including:

- **Changes to conditions of contracts and collective agreements**
Collective bargaining agreements and individual contracts of employment will have to be aligned with the Act. Most collective bargaining occurs between April and September (the 'bargaining season'). It would be undesirable to promulgate the remainder of the Act until after this period. Employers and workers are nevertheless urged to become familiar with the provisions of the Act and make any changes that are necessary.

It is anticipated that the major provisions that will need to be altered relate to the increase in the overtime rate (from time-and-a-third to time-and-a-half), the reduction in hours (from 46 to 45) in some sectors, the increase in maternity leave (from three to four months) and the notice period for termination of service. To assist the social partners, the Department will run an education and information campaign at national and local level.

- **Investigation into the possible impact of the BCEA on small business**
During bilateral discussions with

business and in the Parliamentary Portfolio Committee the minister committed himself to an investigation into the possible impact of the Act on small business before it is promulgated. This investigation is now underway. It consists of two parts. Firstly, Ntsika, the small business promotion agency linked to the Department of Trade and Industry, will do a large number of consultations and interviews with small employers. These will be given to a ministerial task team which has been asked to make recommendations to the minister on the following:

- ☛ possible legislative amendments;
- ☛ guidelines for sectoral determinations;
- ☛ possible ministerial determinations or exemptions;
- ☛ ways in which small business can be assisted to comply with the provisions of the Act.

It is anticipated that this investigation will be completed by April.

□ *Establishment of new institutions and systems*

The new Labour Relations Act could not be fully operational until the CCMA and Labour Court were in place. The BCEA does not envisage such significant institution building.

However, the ECC needs to be put in place and a new enforcement system designed on the basis of the chapter on monitoring and legal proceedings. This will involve the development of an enforcement policy – for example, when are the maximum fines imposed, what level of inspectorate imposes the fines, and so on – as well as the drafting of regulations, forms and the training of all labour inspectors.

□ *Improvement to the maternity benefit*

The minister has also committed

himself to improving the maternity benefit offered by the UIF. This arises out of the work done by a Ministerial Task Team appointed by the minister last year to investigate the possibilities of payment for maternity leave. The UIF is presently finalising recommendations for the minister in this regard.

The public service

Although the Act will only apply to the public service 18 months after the promulgation date, the public service needs to begin to study the Act, establish where collective agreements do not comply, and renegotiate these provisions.

The key area where public service collective agreements are less favourable than the Act is the remuneration of overtime and Sunday work. Other areas that may require adjustment are annual, maternity and family responsibility leave. ★

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Clarification

I would like to correct the impression that was created in my article: "Cutting standards" (*South African Labour Bulletin*, Vol 22 No 1, 1998) that the GDE is already embarking on a process of restructuring non-CS educator posts.

This is not the case. No decisions on the restructuring proposals have been made. The article reports on research that was undertaken for the GDE on both the possible advantages and disadvantages of restructuring.

We regret if the article gave the impression that the GDE is proceeding in bad faith on this issue.

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