THE IMPLICATIONS OF CURRENT LABOUR LEGISLATION FOR
SMALL, MEDIUM AND MICRO-ENTERPRISES WITH REGARD TO
PROCURING GOVERNMENT CONTRACTS

BY

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requirements of the degree

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PORT ELIZABETH
DECLARATION

I Hylton Ernest Long hereby declare that:

THE IMPLICATIONS OF CURRENT LABOUR LEGISLATION FOR SMALL, MEDIUM AND MICRO-ENTERPRISES WITH REGARD TO PROCURING GOVERNMENT CONTRACTS.

is my own work and all sources used or quoted have been indicated and acknowledged by means of complete references. I have not previously submitted this thesis for a degree at another university or technikon.

___________________________  ______________________
H.E.Long                              Date
ACKNOWLEDGEMENTS

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SMALL, MEDIUM AND MICRO-ENTERPRISES (SMME’s) WITH REGARD
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HYLTON ERNEST LONG

DEGREE : Magister Technologiae (Business Administration)
FACULTY : Management
PROMOTER : Mr T S Hutton

ABSTRACT

The research problem addressed in this study is to determine what affect current
labour legislation has on small, medium and micro-enterprises (SMME’s), in
particular with regard to the procuring of Government contracts. To achieve this
objective a literature study was undertaken to ascertain what knowledgeable people
believed was the affects of labour legislation on SMME’s. The literature study
included all relevant labour legislation promulgated by the Government since 1994.
The literature study was then used to develop a questionnaire to test the degree to which SMME’s, operating in the Municipal areas of East London and King Williams Town, abided by the relevant labour legislation.

The empirical results, in general, indicated a strong adherence to labour legislation. Those organisations that had not strictly adhered to labour legislation were, in most instances, not successful in securing contracts offered by Government or parastatals.

The results indicated that all the role-players, namely businesses, trade unions and knowledgeable people have valid arguments both for and against labour legislation. Each group, is however, still concerned and suspicious that in one way or another, they will be placed at a disadvantage with respect to the others positions, and this places a serious strain on the South African economy.
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CHAPTER 1

INTRODUCTION, PROBLEM STATEMENT AND DEFINITION OF KEY TERMS.

1.1 INTRODUCTION

Pons and Deale (1998: 1-19) state that South Africa’s labour legislation has, since its modernisation in 1979, seen rapid change and is often associated with turbulent labour relations. As a result of this, a wide range of labour relations norms and practices has been created through the interaction between employers, unions and other interest groups.
The new democratically elected Government has, since 1995, passed new labour legislation with the main emphasis being placed on addressing the socio-economic inequalities that have persisted in South Africa in the past. However, the new Government has committed itself to the reduction of the civil servants salary bill through the retrenchment of employees. The rationale behind this step was the Governments perception that the small, medium and micro-enterprises (SMME’s) would be in a position to employ the retrenched civil servants.

The Government also realised that SMME’s play an important role in the economy of South Africa and The National Small Business Act of 1996 was promulgated and passed accordingly. This Act also provided for the establishment of the National Small Business Council whose primary aim is to represent and promote the interests of small business. However, according to the South African Chamber of Commerce (1999: 5), many successful SMME’s are reluctant to allow their work forces to grow beyond those levels, which currently allow them exemption from certain provisions of the various sections of labour legislation. This has, in turn, resulted in an artificial restraint manifesting on the stunted growth and development of SMME’s.

1.2 MAIN PROBLEM

Many South African businesses have been affected by the legislation
introduced and in particular labour legislation, by the newly democratically elected government since 1994. The introduction of this legislation has led to frustrations, in particular with regard to the procuring of Government contracts.

This has led to the problem to be addressed in the research:

**What affect does current labour legislation have on Small, Medium and Micro-enterprises (SMME’s)?**

### 1.3 SUB PROBLEMS

In order to develop a research strategy to deal with and solve the main problem, the following sub-problems have been identified:

- What does a literature study reveal is the affect of current labour legislation on SMME’s?
- How has the legislation affected SMME’s both directly and indirectly?
- What do the various role players feel are the implications of the legislation on SMME’s?
- What problems are experienced by SMME’s in implementing the legislation?

### 1.4 DEMARCATING THE RESEARCH

Demarcating the research serves to render the research project manageable. In
doing so, however, it does not imply that research on the same topic is not needed in other areas.

1.4.1 SIZE OF ORGANISATIONS TO BE RESEARCHED

Organisations employing less than 75 people will be used in this study. Because of the number of organisations in the geographic area selected, organisations will be selected at random to ensure a truly representative cross section of the population is studied. This will ensure that the sample will be meaningful and applicable to the broader universe.

1.4.2 GEOGRAPHIC DEMARCATION

The empirical component of this study will be limited to organisations falling within the following geographical areas:

- The municipal area of East London;
- The municipal area of King Williams Town.

1.4.3 ORGANISATIONAL LEVEL

The research will be limited to examining the implications of labour legislation on SMME’s. The study will cover all facets of industry and will include sole proprietors/owners in the case of the smaller business (employing
less than 45 employees). With regard to businesses employing more than 45 employees, the Personnel Managers (if available within the organisation) or senior manager/s of the business will be canvassed for their input.

1.5 DEFINITION OF KEY TERMS

Before embarking on the main body of research, key terms to be used in the literature study need to be defined. The terms defined below are:

- Employment Equity;
- Basic Conditions of Employment;
- Empowerment;
- Skills Development;
- Dispute Resolution;
- Small, Medium and Micro-Enterprises.

Each of these will be fully defined to provide a clear insight into the meaning of the terms.

1.5.1 EMPLOYMENT EQUITY

Pons and Deale (1998: 18-3) state that policies and legislation aimed at employment equity are as a result of the economic social inequalities that persisted historically in South Africa. This economic inequality was attributed to factors such as discrimination (in relation to race, gender and disability), lack of parity in available education and training, disparities in the ownership
of productive assets, and the unequal division of household labour and geographic distribution of population groups.

Thomas (1996: 6) defines affirmative action as a means of correcting historical injustices and a levelling of the playing fields to enable all South Africans to gain equal access to education, training and other opportunities formerly restricted to whites. Mkhwanazi (1993: 17) defines affirmative action as a deliberate and sustainable interim strategy aimed at enhancing the abilities and capabilities of the previously disadvantaged groups in order to allow them to compete on equal footing with those who benefited from the apartheid system.

Thomas and Robertshaw (1999: 160) state that in order for an employer to make an offer or to conclude an agreement with any organ of the state for the furnishing of supplies and/or services, or for the hiring and/or letting thereof, the employer must comply with the provisions of the Employment Equity Act that address unfair discrimination and affirmative action measures. Failure to comply with this is deemed to be sufficient reason to reject any offer to conclude an agreement.

1.5.2 BASIC CONDITIONS OF EMPLOYMENT ACT

Pons and Deale (1998: 1-18) state that the purpose of the Basic Conditions of Employment Act (BCEA) is to establish the minimum conditions of employment for employees. These conditions include aspects such as hours of
work, leave pay, overtime rates, particulars of employment and employment conditions. In terms of the BCEA, it is compulsory for an employer to provide an employee with a letter of appointment, which clearly sets out the terms, and conditions of employment in writing (Pons and Deale, 1998: 11-3). The letter of employment should include, interalia, the following: the personal details of employee, date on which employment commences, remuneration, position, leave, notice period and hours of work. This, in effect, formalises the employment relationship for all parties concerned, resulting in the removal of any ambiguities or uncertainties as to the precise conditions under which the employee has accepted a position.

1.5.3 EMPOWERMENT

Johnson and Redmond (1998: 5) define empowerment as “part of the overall plan to achieve organisational improvements in areas such as operational effectiveness, quality management, customer care and continuous improvement.”

Empowerment occurs when everyone is involved in making a success of the business. Johnson and Redmond (1998: 41) continue and expound on this definition by stating that in order for empowerment to succeed, the following must be implemented and adopted by both management and employees:

- Management must be committed;
• Clear objectives must be set;
• Workforce must be made aware of the programme;
• People must be developed;
• The organisational structure must be altered if necessary;
• A review of the reward systems may need to take place.

Mbigi and Maree (1995: 62) state that it is imperative for South African companies to become world class if they are going to survive global competition. They further state that a world-class organisation must improve both its profitability and social relationships within the workplace in such a way that shop-floor workers can be motivated to produce quality products and services. In order to achieve this, there must be effective management systems in place with sound value systems that will facilitate shop-floor “grass roots” empowerment in order to canonise the values of respect and human dignity.

Madi (1997: 10) states that there are three levels of empowerment, being:

- **The Ownership Level:** The main premise is, that in the interests of nation building, every profit-making organisation, which previously had no black shareholders, should encourage said cultivation and shareholders.

- **The Corporate Advancement Level:** In this process organisations seek out, select, and recruit black employees with the view to training and developing them for promotion to senior positions within the organisation.

- **The SMME’s Outsourcement Level:** The idea is that well-established organisations need to seek out these small, usually black owned, fledgling
businesses and help them to develop and succeed by providing them with contracts.

1.5.4 SKILLS DEVELOPMENT

Pons and Deale (1998: 19-4) state that the overall objective of the Skills Development Act is to accomplish the following:

- Ensure that the country improves its competency levels thereby promoting economic and employment growth and social development;
- Ensure that people who are most vulnerable in the labour market can successfully enter into it and remain in employment, whilst enjoying a rising standard of living;
- Ensure that workers receive nationally recognised qualifications.

The basic aim of the Act is to encourage employers to use the workplace as a learning environment in order for employees to acquire new skills, particularly those employees from the previously disadvantaged groups. By acquiring these skills, said employees would then be in a position to compete on equal footing for vacancies that may occur in the market.

1.5.5 LABOUR DISPUTE RESOLUTION

Bendix (1996: 479) defines a labour dispute as “a continued disagreement between employers and employees or their unions as regards any matters of
common interest, any work-related factor affecting their relationship or any processes and structures established to maintain such relationship.”

Disputes may arise as result of the following stimuli:

- Failure to agree to the establishment of a relationship;
- Disagreement regarding procedures to be adopted;
- Failure to abide to terms and conditions of employment;
- Failure to abide by the terms of an agreement;
- Negation of rights of either side;
- Poor treatment of one party by the other;
- Any other action or occurrence which would negatively influence the relationship.

The Government established the Commission for Conciliation, Mediation and Arbitration (CCMA) as an independent body in terms of the Labour Relations Act. The functions of the CCMA are to accomplish the following:

- Conciliate workplace disputes;
- Arbitrate disputes that remain unresolved after conciliation;
- Facilitate the establishment of workplace forums and statutory councils;
- Consider applications for accreditation and subsidy by bargaining councils and private agencies.

1.5.6 SMALL, MEDIUM AND MICRO-ENTERPRISES (SMME’s)
In terms of the National Small Business Act, 1996, SMME’s are defined as follows:

- **Small Business**: Is defined as a small separate and distinct business entity which includes co-operative enterprises and non-governmental organisations, that are managed by one or more owners in any sector or subsector of the economy.

- **Small Business Organisation**: Is defined as any entity, whether or not incorporated or registered under any law, which consists mainly of persons carrying on small business concerns in any economic sector, or which has been established for the purpose of promoting the interests of, or representing, small business concerns.

### 1.6 SIGNIFICANCE OF RESEARCH

Miles and Van Rensburg (1997: 1) state that any businessperson who employs staff must have knowledge of labour relations in order to run the business effectively and to avoid, or effectively deal with, possible employment conflict situations that may arise. This situation seldom suits the small business that may employ any number from one to 100 employees, as in these instances cash flow and customer relations are generally more important considerations, and conditions of employment are generally stipulated by a tacit understanding. Where an employee is unhappy or dissatisfied and wants to strike, then the stance of the employer is often to divest himself of the employee(s) as soon as possible.
Horton and Honderich (2000: 6) state that high unemployment and the need to create a labour-absorbing economy have been widely researched. They continue by stating that Government’s response has been to investigate SMME’s as a prime mechanism for job creation. This response makes the assumption that small businesses are more effective at creating jobs than large firms. Horton and Honderich (2000: 6) add that the Minister of Labour, prior to the promulgation of the Basic Conditions of Employment Act (BCEA), appointed the Ntsika Enterprise Promotion Agency to conduct and analyse this legislation’s impact on small businesses. Their report concluded that the impact of this Act would be marginal compared to other economic phenomena.

The South African Chamber of Business (SACOB) in turn, in a response to the call for public comments by the Department of Labour on the BCEA (prior to promulgation) recorded their disappointment at the apparent insensitivity of the Government to the realities faced by small businesses, (http://www.sacob.co.za/html/labour_frame.htm).

SACOB felt that the Act was promulgated before the finalisation of an envisaged special dispensation for small businesses. They also stated that thousands of small businesses with little or no access to professional industrial relations expertise would be placed in a untenable situation when informing employees of a downward variation in respect of certain employment
Thomas and Robertshaw (1999: 160) state that in order for an employer to make an offer to conclude a agreement with any organ of the state for the furnishing of supplies and/or services, or hiring and/or letting, the employer must comply with the provisions of the Employment Equity Act (EEA).

From the above it would appear that conflict exists between SMME’s and Government with regard to the current labour legislation, and if SMME’s do not comply with, and adhere to this legislation, then they cannot conclude agreements with the Government for the procurement of goods or services.

The results of the research will therefore provide an insight into the actual problems currently experienced by SMME’s with regard to current labour legislation, and how it affects their ability to procure future business from Government. Furthermore, the study can be utilised by SMME’s, as it will give a clear indication as to how they can avoid potential problems, thereby ensuring that they meet all the requirements in order to procure future business with all Government institutions.

1.7 RESEARCH DESIGN

In this section the broad methodology to be followed in the research project is described.
1.7.1 RESEARCH METHODOLOGY

In conducting the research project, the following procedure will be adopted to address the main problem and the sub-problems. Resources utilised will include the libraries of the University of Port Elizabeth, Rhodes University, and PE Technikon as well as the Internet.

a) LITERATURE STUDY

A literature study will be conducted in order to identify the key elements of the labour legislation that concerns and affects SMME’s.

b) EMPIRICAL STUDY

The empirical study will consist of:

- A survey to be conducted in the delineated area to determine how current legislation impacts upon SMME’s directly and indirectly;

- An effective measurement instrument being applied. The measuring instrument to be used in the above survey will be a comprehensive questionnaire developed by the researcher. This questionnaire will be based on information gained from the literature study to determine areas of concern with regard to current labour legislation and how these areas affect SMME’s with regard to procuring future business from Government institutions;
• A relevant sample being drawn. The sample will comprise organisations with a staff complement of less than 75 and that fall within the demarcation of organisations.

1.8 PROPOSED PROGRAMME OF STUDY

The research has been planned to include the following chapters.

Chapter 1 Introduction, problem statement, demarcation of studies, definition of key terms, significance of the study, broad methodology and the programme to be followed in concluding the study.

Chapter 2 A discussion of labour legislation directly affecting SMME’s.

Chapter 3 The criticism levelled at labour legislation by businesses, trade unions and the response of the Government.

Chapter 4 The design of the empirical survey will be described. A integration of the findings from the literature study and the results of the survey to formulate what the affects of current labour legislation have been on SMME’s will follow, together with presentations of the findings in the
Chapter 2 follows, and represents a discussion of labour legislation that directly or indirectly impacts upon SMME’s.

CHAPTER 2

A DISCUSSION OF LABOUR LEGISLATION DIRECTLY IMPACTING UPON SMME’s

2.1 INTRODUCTION

In order to establish the affects of current labour legislation on SMME’s, it is necessary to analyse the purpose of each of the labour Acts as they directly or indirectly impact on SMME’s.

Miles and Van Rensburg (1997: 1) state that any businessperson who employs staff must have knowledge of labour relations in order to run the business
effectively and to prevent, or suitably cope with, possible employment conflict situations that can or may arise. In the past, the practice adopted has been that when an employee was dissatisfied or did not conform to the conditions of employment, then the employer would often terminate the employment arrangement and divest himself of the employee as soon as possible.

Miles and Van Rensburg (1997: 1) conclude that the following reasons have been proposed as to why South African business must move away from this approach:

- Business should have a dedicated, loyal and hardworking workforce in order to add value to that business.
- People generally have access to television, radio, technology and education. As a result of this, they become more informed of their rights, discriminatory practices in the world around them, and of better opportunities.
- In South Africa, industrial relations has a history of adverserialism and legalism. The introduction of the Labour Relations Act of 1995 now provides us with mechanisms and opportunities to move away from that, which occurred in the past. However, in order for this to take place the parties involved (employer/employee) must be aware of these processes, and how to adapt to their mutual advantage.
- It is often argued that the South African labour productivity is not the best in the world. Neither is our management style and normally poor labour productivity is an indictment of managerial capabilities. Therefore if we
want to blame labour it is important that management first ensure that there own house is in order.

The aim of this chapter is, therefore, to analyse labour legislation in order to ascertain how the legislation has changed with the election of a new democratic Government in 1994 and to establish what knowledgeable people believe to be the affect of current labour legislation on SMME’s.

2.2 HISTORY OF LABOUR RELATIONS IN SOUTH AFRICA

Pons and Deale (1998: 1-4) state that labour relations in South Africa has moved through a number of distinguishable phases as the State, business and labour sought to promote their interests.

Finnemore and van der Merwe (1996: 21) add that any attempt to outline the history of labour relations in South Africa is fraught with difficulty. The reason for this being that at the time, certain events may have been value-laden, contradictory and difficult to judge objectively.

Figure 2.1: Labour Relations Eras

<table>
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<tr>
<th>LABOUR RELATION ERAS</th>
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<tbody>
<tr>
<td>1870 – 1924</td>
</tr>
<tr>
<td>Exploitation</td>
</tr>
<tr>
<td>Era</td>
</tr>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>1925 – 1979</td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
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<tr>
<td>1980 – 1995</td>
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<td></td>
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<tr>
<td></td>
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<tr>
<td>1996 and beyond</td>
</tr>
<tr>
<td></td>
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</tbody>
</table>

Source: Adapted from Pons and Deale (1998: 1 – 4)

An analysis of Figure 2.1 reveals that South African labour relations have passed through four distinctive eras. In the era of exploitation, primarily immigrants who had privileged wage scales did skilled work. Blacks constituted the unskilled labour force. When mechanisation started to threaten the jobs of skilled workers they began to insist on white job security and this led to the development of a white labour elite, which fought to protect its exclusive skills. In the era of paternalism/colonialism the Industrial Conciliation Act was passed in 1924 and the first imbedded discriminatory practice based on racial lines was noted when employees were defined as any working person other than a non-pass carrying African. This Act went further, when in 1956, it introduced a system of job reservation where certain occupations were legally reserved for a particular race group.
Pons and Deale (1998: 1-7) state that the 1980’s were characterised by high adversarial relationships as both management and worker groupings assessed their relative power and positions respectively. It was also the period in which labour relations came of age and developed rapidly. It was, according to Pons and Deale (1998: 1-7), acknowledged by business as a key strategic issue, but the approach was largely defensive and mechanistic. After the 1994 elections, the newly elected democratic Government addressed the various labour legislation promulgated by the previous Government, resulting in that legislation being either withdrawn or amended.
Figure 2.2: Map of Labour Laws in South Africa

<table>
<thead>
<tr>
<th>TYPE OF LAW</th>
<th>ENABLING</th>
<th>PROTECTIVE</th>
<th>EQUITY</th>
<th>HEALTH &amp; SAFETY</th>
<th>SKILLS DEVELOPMENT</th>
<th>SOCIAL SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>POLICY THEMES</td>
<td>Economic development</td>
<td>Minimum standards</td>
<td>Redressing inequalities in society and the workplace</td>
<td>Regulation of workplace health and safety standards</td>
<td>Education and skills development</td>
<td>Provision of social support</td>
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<td></td>
<td>Bargaining Councils</td>
<td>Wage Act</td>
<td></td>
<td>Mines and Works Act</td>
<td>Skills Development Act</td>
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<td></td>
<td>Statutory Councils</td>
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<td>Compensation for Occupational Injuries and Diseases Act</td>
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<td>Collective Agreements</td>
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<tr>
<td>ENFORCEMENT</td>
<td>Labour Appeal Court</td>
<td>Civil Courts</td>
<td>Equity Commission</td>
<td>Safety Committees</td>
<td>National skills authority</td>
<td>Commissioner</td>
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<td>Labour Court</td>
<td>Criminal Courts</td>
<td>Labour Court</td>
<td>Civil Courts</td>
<td>Civil Courts</td>
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<td>CCMA</td>
<td>CCMA</td>
<td>Criminal Courts</td>
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</tbody>
</table>

Source: Adapted from Pons and Deale (1998: 1-17)
2.3 MAP OF LABOUR LAWS IN SOUTH AFRICA

Van Jaarsveld and Van Eck (1998: 482) state that the function of labour law has been described as “creating or attempting to create labour harmony and sound labour relations through different legal instruments, between employee groups on the one hand or employer bodies on the other hand.”

Pons and Deale (1998: 1-14) state that the employment relationship in South Africa is fashioned upon a complex framework of rights derived from law and agreements agreed to between employers and employees. The principal labour legislation which affects all employers and employees has been mapped out by Pons and Deale (1998: 1-17) and is shown in Figure 2.2. The three major types of labour legislation in South Africa, as per Pons and Deale (1998: 1-15) are:

- **Protective legislation:** Establishes minimum rights on conditions of employment to protect employees against exploitation. Legislation includes Basic Conditions of Employment Act and the Wage Act;

- **Enabling legislation:** Establishes a broad range of equity rights and obligations for employers and workers and a framework for the conduct of collective labour relationships. Legislation includes the Employment Equity Act;

- **Constitutional legislation:** Creates universal rights for individuals and interest groups, which are applicable both in the wider society and in the workplace. Legislation includes the Skills Development Act, Occupational Health and Safety Act, Unemployment Insurance Fund and the
Compensation for Occupational Injuries and Disease Act.

From Figure 2.2 it can be seen that to achieve this harmony, as indicated by Van Jaarsveld and Van Eck (1998: 482), different instruments have been implemented to attempt to achieve the ideal of labour harmony.

Pons and Deale (1998: 1-26) state that in terms of Chapter 3 of the South African Constitution, 25 fundamental rights, which have a significant impact with regard to the development of labour law and labour relations, were implemented. The most significant for the purpose of this study are:

- The right to use the Constitution to challenge existing labour legislation, decisions and Acts;
- The right to equality, and a prohibition on direct and indirect discrimination;
- The right to assemble and demonstrate peacefully;
- The right to fair labour practices;
- The right of workers to form and join trade unions and to organise and bargain collectively;
- The right of workers to strike for collective bargaining purposes;
- The right of employers to have recourse to lockouts for the purpose of collective bargaining shall not be impaired.

2.4 LABOUR LEGISLATION
In order to address the main problem identified in Chapter 1, it is important to have a basic knowledge of the various labour legislation, as indicated in Figure 2.2, that directly or indirectly impacts on SMME’s. Each is discussed in turn in the ensuing section of the literature study.

2.4.1 THE LABOUR RELATIONS ACT (ACT 66 OF 1995)

Finnemore and Van Der Merwe (1996: 144) state that the new Labour Relations Act was approved by the Government of National Unity in 1995, after protracted negotiations in the National Economic Development and Labour Council (NEDLAC) between employers and unions. The new Act was a significant departure from past legislation but was consistent with the fundamental rights of the interim constitution and International Labour Organisation conventions. Finnemore and Van Der Merwe (1996: 145) further state that the understanding of the building blocks of the new Act, as illustrated in Figure 2.3, is a prerequisite to the understanding the purpose and application of the Act.

Figure 2.3: The Labour Relations Act
Bendix (1996: 120) states that the overall purpose of the Act is the
advancement of “economic development, social justice, labour peace and the democratisation of the workplace”, and it intends to achieve this via the following objectives:

- To give effect to, and regulate the fundamental rights contained in Section 27 of the Constitution;
- To give effect to the duties of the Republic as a member state of the International Labour Organisation;
- To provide a framework in which employees and their unions, employers and an employer association can:
  - bargain collectively to determine wages, terms and conditions of employment and other matters of mutual interest, and formulate industry policy;
- To promote:
  - orderly collective bargaining;
  - collective bargaining at sectoral level;
  - workers participation and decision making at the workplace and the effective resolution of disputes.

Finnemore and Van Der Merwe (1996: 146) state that the primary objectives of the Act are to:

- Give effect to the rights and obligations of employees and their unions as well as employers and their organisations in accordance with the fundamental rights of the Constitution and International Labour Conventions;
• Promote collective bargaining at sectoral level and employee participation at the workplace;
• Promote dispute resolution and labour peace.

The Labour Relations Act (Act 66 of 1995), according to Finnemore and Van Der Merwe (1996: 146), and as indicated in Figure 2.3, not only provides for the registration and regulation of trade unions and employer organisations, but also addresses the following:

• **Freedom of Association**
  Every employee and job applicant seeking employment is protected from discrimination on the basis of union affiliation. Their rights to form, join and participate in union activities are also protected. The right of employers to join their organisations is also protected.

• **Organisational Rights**
  Allows or provides unions and their representatives with certain rights including:
  - access to workplace;
  - deduction of trade union subscriptions;
  - rights to elect their representatives;
  - rights relating to the exercise of representatives duties;
  - disclosure of information by employers.

• **Unfair Dismissal**
  Every employee has the right not to be unfairly dismissed.
• **Unfair Labour Practice**

An unfair labour practice means any unfair act or omission that arises between an employer and an employee, involving:

- the unfair discrimination, either directly or indirectly, against an employee on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;
- the unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits to an employee;
- the unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee;
- the failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement.

• ** Strikes and Lock-outs**

The right to strike is recognised by making provision for protected strikes. This means employees have the right to strike and may not be dismissed. The employers right of recourse to the lock-out is also recognised.

• **Collective Agreements**

A collective agreement means a written agreement concerning terms, conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions and one or more employers and/or registered organisations. Collective agreement refers to bargaining council
agreements and any workplace agreement between employers and employees that regulate terms and conditions of employment or their conduct.

- **Bargaining Councils**

  The Act makes provision for bargaining councils to promote bargaining at a sectoral level in a specific industry or service. Bargaining council agreements may cover aspects such as wages, benefits and working conditions specific to the sector. The agreement not only binds parties to the agreement but it may also be extended to non-parties under certain circumstances.

- **Statutory Councils**

  Where there is no bargaining council in a sector then a representative union or employer which meet requirements of representivity, may apply to the Minister to establish a statutory council in that sector. Agreements reached may not include wage agreements unless both the employer and union agree to include such issues.

- **Workplace Forums**

  Provision is also made for union-initiated workplace forums to promote employee participation at every workplace where there are more than 100 employees.

- **Commission for Conciliation, Mediation and Arbitration (CCMA)**

  Bendix (1996: 130) states that the function of the CCMA is:

  - To attempt to settle by conciliation, any dispute referred to it in terms of the Labour Relations Act;
- Where conciliation has not achieved the desired agreement, conduct arbitration should the Act require such or should any of the parties to a dispute within the jurisdiction of the Labour Court request that the Commission conduct such arbitration;
- To provide assistance with the establishment of workplace forums;
- Compile and publish information and statistics regarding its activities.

The CCMA may also:
- If so requested, advise a party to a dispute on the procedures to be followed in terms of the Act;
- If requested, assist a party to a dispute in obtaining legal advice and/or representation;
- Offer to settle a dispute which was not referred to it;
- Accredit councils or private agencies;
- Subsidise accredited councils and agencies;
- Conduct, oversee or scrutinise an election by ballot for a registered union or employers association, or supervise or check said ballot if requested to do so by the union or employers association.

The CCMA must also perform any other duties assigned to it, and may perform any other function assigned by any other law.

- The Labour Court and the Labour Appeal Court

These courts supersede the old industrial court system. The Labour Court
is a superior court, equal in status to that of a provincial division of the Supreme Court. Any decision, judgement or order of this court may be served and executed as if it were a decision, judgement or order of the Supreme Court.

- **The role of NEDLAC**

  NEDLAC has a direct role in terms of the Act in that it has responsibilities for aspects such as advising the President on the appointment of judges to the Labour Court, preparing codes of good practice relating to labour relations at the workplace and the demarcating of a appropriate sector and area in which a bargaining council should be registered.

According to Pons and Deale (1998: 14-19), in order for the new Labour Relations Act to be effective it would require an investment in faith, investment in time and money to acquire the right culture, structures and competencies amongst management, unions and employees respectively to achieve the desired result. In this sense labour relations will become a serious strategic consideration for corporate South Africa and will have far-reaching consequences for the way in which business will be conducted in the future.

**2.4.2 THE BASIC CONDITIONS OF EMPLOYMENT ACT (ACT 75 OF 1997)**
In terms of Section 2 of the Basic Conditions of Employment Act (BCEA) the main purpose of the Act is to advance economic development and social justice by fulfilling the primary objects of the Act, which are as follows:

- To give effect to, and regulate the right to fair labour practices conferred by Section 23(1) of the Constitution:
  - by establishing and enforcing basic conditions of employment;
  - by regulating the variation of basic conditions of employment.
- To give effect to obligations incurred by South Africa as a member state of the International Labour Organisation.

Section 4 of the Act states that a basic condition of employment constitutes a term of any contract of employment except to the extent that:

- Any other law provides a term that is more favourable to the employee;
- The basic condition of employment has been replaced, varied, or excluded in accordance with the provisions of the Act;
- A term of contract of employment is more favourable to the employee than the basic condition of employment.

Grogan (1999: 13) states that it is important to determine what rules apply in a given dispute. In any dispute, the starting point is the individual contract of service. However Chapter 2 of the South African Constitution must be kept in mind with regard to the following:

- Everyone has the right to fair labour practice;
• Every worker has the right:
  - to form and join a trade union;
  - to participate in activities and programmes of a trade union and to strike.

The Basic Conditions of Employment Act (BCEA) is designed to give affect to the right to enjoy the benefit of fair labour practices. Some of the more important aspects covered in this Act include amongst others, the following:
• Regulation of working time;
• Leave;
• Particulars of employment and remuneration;
• Termination of employment;
• Prohibition of employment of children and forced labour.

Pons and Deale (1998: 14-20) state that with the election of the new democratic Government of South Africa in 1994, the BCEA was hotly debated and negotiated between the state, labour and business in NEDLAC for nearly two years before being promulgated. One of the most serious disputes that arose between business and labour during negotiations was on the issue of working hours. Labour wanted to reduce the working week to 40 hours whilst business felt that a 45 hour week was already to short and expensive because employees would still be paid their current wages for less time worked. Employer and workers concerns are indicated in Figure 2.4.
As a result of the negotiations between the state, labour and business (as indicated above), the Basic Conditions of Employment Act of 1983 was amended in quite a number of areas. Changes included in the new Act and previously contained in the old Act include, amongst others, the following:

- Averaging of hours;
- Child labour;
- Codes of good practice;
- Particulars of employment.

Figure 2.5 summarises the main differences between the old Act (1983) and the new Act (1997).

### Figure 2.5: Summary of Main Differences between Old Act (1983) and New Act (1997)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>SCOPE</td>
<td>Private sector employees</td>
<td>Farm workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Domestic workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public sector workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Temporary workers</td>
</tr>
<tr>
<td>HOURS OF WORK</td>
<td>60 hours per week for security guards</td>
<td>45 hour week</td>
</tr>
<tr>
<td></td>
<td>46 hours per week for most employees</td>
<td></td>
</tr>
</tbody>
</table>
Figure 2.5 reveals that the changes between the old Act and new Act have a significant impact on businesses. What is of importance is that the basic rights of employees are now protected, and are indicated as such in the new Act. For example, child labour under the age of 15 is now prohibited and employers
must now also maintain and provide written particulars of employment. This was not compulsory in the old Act and therefore made matters very difficult for employees in disputes regarding their conditions of service. The Magistrates Court is also no longer used to handle labour disputes and disputes must now be referred to the CCMA. Failing resolution at the CCMA level, labour matters are then referred to the Labour Court. The decrease in working hours and increase in overtime remuneration places an additional burden on employers as they now have to incur additional costs for any time worked in excess of 45 hours per week.

2.4.3 EMPLOYMENT EQUITY ACT (ACT 55 OF 1998)

Agocs and Burr (1996: 30) state that employment equity and affirmative action represent responses to two enduring realities namely, diversity and inequality. In many organisations throughout the global market the traditionally white male working population was the dominant force. However this is slowly changing and organisations are now appointing women, members from the previously disadvantaged groups and disabled persons into senior positions.

Pons and Deale (1998: 18-3) state that one of the numerous factors which caused economic and social inequality in South Africa was discrimination, which occurred both from within and from outside the labour market. Apartheid laws reinforced equality through a history of unequal education and
training, disparities in the ownership of productive assets, the unequal division of household labour and the geographic distribution of population groups.

The newly elected democratic Government of South Africa, in 1994, realised that it faced a serious problem in addressing equal opportunity and unfair discrimination in the workplace that had existed for decades. This resulted in the promulgation of the Employment Equity Act (55 of 1998) in October 1998. The purpose of the Act was to achieve equity in the workplace by:

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination;
- Implementing affirmative action measures designed to redress the disadvantages in employment experienced by designated groups (black people, women and people with disabilities), in order to ensure their equitable representation in all occupational categories and levels in the workplace.

A designated employer refers to an employer who employs 50 or more employees, or an employer that employs fewer than 50 employees but has an annual turnover that is equal to, or above, the applicable annual turnover of a small business in terms of Schedule 4 of the Act.

Chapter 2 of the Act defines unfair discrimination as discrimination either directly or indirectly against an employee on grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, sexual orientation, age, disability, religion, HIV status, conscience, belief, political
opinion, culture, language and birth. Pons and Deale (1998: 18-7) state that this chapter also prohibits:

- Medical testing of an employee unless legislation permits such, or it is justifiable in the light of the following:
  - medical facts;
  - employment conditions;
  - social policy;
  - the fair distribution of employee benefits;
  - the inherent requirements of the job.

- Psychometric testing, unless under the following circumstances where it:
  - can be scientifically shown to be valid and reliable for intended purpose;
  - can be applied fairly to all employees;
  - is not biased against persons from designated groups.

Chapter 3 of the Act states that designated employers must implement affirmative action measures for designated groups to achieve employment equity. In order to achieve this the employer must:

- consult with employees;
- conduct an analysis;
- prepare an employment equity plan;
- report on the progress made in the implementation of the plan.

Thomas and Robertshaw (1999: 69) state that overt and covert barriers with
regard to the employment equity can exist within companies. Irrespective of
the fact that a company may set targets and strategies with regard to
affirmative action, discrimination has over the years, become embedded in
workplace structures, culture, policies and practices. These barriers can
undermine the achievement of the objectives of employment equity. Thomas
and Robertshaw (1999: 70) further state that when reviewing company policy
and practice, it is important that where unfair discrimination exists, it must be
addressed in the Equity Plan of the business.

2.4.4 SKILLS DEVELOPMENT ACT (ACT 97 OF 1998)

The short supply of skilled staff is considered a serious obstacle to the
competitiveness of industry in South Africa. Therefore, in order to achieve the
purposes of the Skills Development Act, 1998 the Skills Development Levies
Act, 1999 was passed. In terms of this Act, a payment towards a levy grant
system has been legislated. The intention is to stimulate skills development by
enabling employers to reclaim some expenditure on skills development
initiatives. Every employer in South Africa who is registered with the South
African Revenue Services for Pay As You Earn (PAYE), or has a annual
payroll in excess of two hundred and fifty thousand Rand, is liable to pay the
levy to the respective organisations Section Education and Training Authority
(SETA). The current amount payable for the period 1 April 2000 to 31 March
2001 is half a percent of the total remuneration paid to employees. This levy
will increase to one percent from the second year and onwards.
The primary purpose of this Act is:

- To develop the skills of the South African workforce in order to promote their quality of life and their prospects of work and labour mobility. By acquiring the necessary skills, productivity in the workplace as well as the competitiveness of employers will be increased and enhanced. This, in turn, should promote self-development and improve the overall delivery of social services.

- To increase the levels of investment in education and training in the labour market and to improve the return on investment.

- To encourage employers to use the workplace as a learning environment and provide their employees with the opportunities to acquire new skills. Employers should also be encouraged to provide opportunities for new entrants to the labour market in order for them to gain work experience and, where possible, employ persons who find it difficult to otherwise be employed.

- To encourage workers to participate in learnership and other training programmes.

- To improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress, and subsequently reverse, those disadvantages through training and education.

- To ensure the high quality of education and training in and for the workplace.

- To assist work-seekers to find work and retrenched workers to re-enter the
labour market.

- To provide and regulate employment services.

### 2.4.5 THE UNEMPLOYMENT INSURANCE ACT, 1966

Bendix (1996: 156) states that the aim of this Act is to:

“Provide for contributions by employers and employees to the Unemployment Insurance Fund and for payment of unemployment benefits to persons who become unemployed, ill for lengthy periods or, in the case of females give birth to or adopt a child”.

Contributions by both the employer and employee are calculated at one percent (each) of the employee’s real monthly earnings.

### 2.4.6 THE OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Bendix (1996: 150) states that the final responsibility for the health and safety of employees and other affected persons rests with the employer. It is therefore the employers duty to ensure that, as far as practicable, a working environment is safe and without health risks. The employees, in turn:

- Have to obey the safety regulations implemented and co-operate with their employees in this regard;

- Have to report any unsafe conditions or situations to the elected safety representative as well as any incident, which has caused injury to him or
herself.

The employer must appoint a safety committee to ensure that the requirements of the Act are adhered to.

2.4.7 THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

Bendix (1996: 154) states that this Act replaced the Workmen’s Compensation Act (30 of 1941). The primary aim of this Act is to allow for compensation to be paid to an employee who, during the course of his/her work duties, is partially or totally disabled or contracts an occupational disease. Should the employee die as a result of the accident, injury or disease, further steps can be taken in terms of this Act.

2.5 SUMMARY

In this chapter a brief outline has been given of the history and changes to labour legislation that directly or indirectly impacts on SMME’s. Perusal of this legislation will reveal that numerous amendments to labour legislation have been introduced since the election of the new democratic Government of South Africa in 1994. The primary aim of these amendments was to redress the disadvantages in employment experienced by the previously disadvantaged groups, and to improve their overall living conditions. This chapter has resolved sub-problem one, namely, what does a literature study reveal is the
affect of current labour legislation on SMME’s.

Chapter 3 will look at the criticism levelled at labour legislation by businesses and trade unions and Governments response related to these matters.

CHAPTER 3

THE CRITICISM LEVELED AT LABOUR LEGISLATION BY BUSINESSES, TRADE UNIONS AND THE RESPONSE OF GOVERNMENT.

3.1 INTRODUCTION
Finnemore and Van der Merwe (1996: 41) describe South Africa as a country of contrasts. In most instances major business is conducted from high rise office blocks, using state of the art technology whilst on the pavements below, hawkers living in informal settlements, sell their goods in order to make a survivalist subsistence level income. In the same context, labour relations will clearly differ considerably at different workplaces. An example of this is that labour relations in a large factory differ vastly from labour relations within small businesses, despite the fact that they are regulated through and by the same legislation.

It is therefore important that the viewpoint of key role-players, namely, businesses, knowledgeable people, and trade unions, also be analysed in order to determine whether all parties are satisfied with the various labour legislation during the promulgation process.

3.2 SOUTH AFRICAN CHAMBER OF BUSINESS (SACOB)

The Government also realised that SMME’s play an important role in the general economy of South Africa, and The National Small Business Act of 1996 was consequently promulgated and passed. This Act provided for the establishment of the National Small Business Council whose primary aim is to
represent and promote the interests of small business. However, according to
SMME’s are reluctant to allow their labour forces to grow beyond those levels
which currently allow them exemption from certain provisions of the various
pieces of labour legislation. This in turn has resulted in a somewhat artificial
constraint on the realistic growth and development of SMME’s.

SACOB, after interaction with its members, cited the following problems with
prevailing labour legislation.

3.2.1 DIRECT COST IMPACT

One of the fundamental problems with the current labour legislation is that it
is based on the premise that wage based competition should be eliminated
from the South African labour market. With South Africa becoming part of the
global market, and the integration of national economies, South Africa is
following the world-wide trend of downsizing and right sizing. This in turn
has led to small business having to compete with large companies without the
necessary loan capital and expertise. In order to gain the necessary expertise
will require small businesses to bring about a rapid increase of skills
development within their labour force through training and education at a cost,
which in turn will mean a substantial drop in expected profits.
3.2.2 THE COSTS OF COMPLIANCE

The South African Chamber of Commerce (1999: 5), states that small businesses are operated by a small number of managerial staff. In most instances, the owner is required to take responsibility for most of the management functions and to ensure compliance with legislative provisions and regulations. These regulations in turn impose an onerous administrative burden on the owners resulting in diminished focus on factors that are important to the long-term growth and development of the business.

3.2.3 CONTROL AND FLEXIBILITY

Many of the owners of small businesses were previously employed and acquired their skills in larger corporations. Due to retrenchments by Government and multinational corporations, prospective entrepreneurs believed they had the necessary skills to have more direct control over their enterprises, and therefore in turn, would have greater flexibility in adjusting quickly to the opportunities and threats contained in the market. Many owners now see the new labour legislation as reducing their control over the business and this in turn acts as a disincentive to both starting a new business as well as the expansion of existing businesses. A discussion of problems pertaining to labour legislation will follow.

3.2.4 CURRENT LABOUR LEGISLATION
SACOB (1999: 7) state that there are certain problem areas that have been identified which directly relate to current labour legislation. Each Act is discussed in detail below.

- **LABOUR RELATIONS ACT**
  
  - **Bargaining Councils:** These are regarded as “unrepresentative” institutions imposing “big business” conditions of service upon them. Small business owners have neither the time nor expertise to participate effectively in such bodies.
  
  - **Dismissal:** Owners of small businesses have neither the time nor expertise to deal with the complicated legal and procedural employment practices.
  
  - **CCMA Proceedings:** Owners of small businesses are intimidated by these proceedings and often lack the expertise to effectively represent themselves.

Brand (2000: 78) noted that the majority of parties that appeared before the Commission for Conciliation, Mediation and Arbitration (CCMA) were small employers and individual employees. Brand (2000: 81), in his analysis of CCMA Review Reports, established that mainly the small, unskilled and under-resourced employers felt the consequences of the unfair dismissal regime and the shortcomings of the CCMA.

The reason for this is cited as follows:

- Small businesses, not only because of their numbers, also lacked the
necessary skill and sophistication;

- They were not part of the National Economic Development and Labour Council (NEDLAC) processes and as a result are not represented on the governing body of the CCMA and therefore are not heard.

Brand (2000: 82) continues that the CCMA has failed to live up to expectations as a result of the following:

- Financial and human resource scarcity;
- Easy access and a very wide scope of jurisdiction;
- Case Load;
- Delays;
- Case management;
- Quality of reconciliation;
- Training and competence of commissioners.

As a result of the abovementioned, Brand (2000: 96) felt that in order for the CCMA to be an effective organ, Government had to recognise the fact that the Labour Relations Act is far to ambitious for the financial and human resources we can allocate to it.

- **BASIC CONDITIONS OF EMPLOYMENT ACT (BCEA)**

SACOB (1999: 9) raised the following regarding the BCEA:

- Overtime rate for small business be reduced from time-and-a-half to time-and-a-third in order to enhance the competitiveness of the sector;
- Small business be allowed to offset family responsibility leave against
annual leave;

- Averaging of working hours is permitted by the individual, as opposed to collective agreement, and small business be allowed to determine for themselves how the hours are to be averaged over a four month period thereby enhancing their flexibility and competitiveness;

- Double time premium for Sunday work is scrapped and a uniform time-and-a-half premium is adopted for all work on Sundays;

- Provision is made for an exemption of small business from the requirement to pay severance pay if good cause for said severance can be demonstrated;

**EMPLOYMENT EQUITY ACT**

This Act imposes onerous direct and compliance costs on businesses that simply do not have the capacity to fulfil them. SACOB (1999: 10) recommended that the definition of “designated employer” be amended to include businesses with 250 or more employees.

Madi (1997: 10) states that there are three levels of empowerment, being:

- The Ownership Level: The main premise is that, in the interests of nation building, every profit-making organisation, which previously had no black shareholders, should begin to acquire said shareholders.

- The Corporate Advancement Level: In this process organisations seek out, select and recruit black employees with the view to training and developing them for promotion to senior positions within the
organisation.

- The SMME’s Outsourcement Level: The idea is that well-established organisations need to seek out these small, usually black fledgling businesses and help them by providing them with contracts.

Madi (1997: 29) continues that “The culture of the new South Africa on the other hand is largely premised on the fact that the previously empowered are expected to empower the previously disempowered.” Today, empowerment is a criterion for eligibility for Government and parastatel contracts.

- **SKILLS DEVELOPMENT ACT**

  This Act, when viewed together with other cost implications of prevailing labour legislation, imposes a further heavy cost burden on small businesses and, in turn, can act as a disincentive to employment creation.

### 3.3 ELIGIBILITY FOR STATE CONTRACTS

In order for SMME’s to become eligible for state contracts, Mbigi and Maree (1995: 95) set out the following key issues to be addressed in dealing with empowerment:

- **The principle of transparency and accountability**: Businesses must ensure that they address the discriminations of the past by employing people from the previously disadvantaged groups. This is addressed through the Employment Equity Act where businesses with more than
50 employees must indicate in their Equity Plan how they will promote equal opportunity and fair treatment to redress the disadvantages experienced by designated groups (black people, women and people with disabilities).

- **The principle of partnership with black business and vendors:** Businesses must include black business and vendors in joint ventures for mutual participation. By doing this, a transfer of skills and knowledge can be passed on to black businesses and vendors.

- **The principle of inclusivity:** Businesses must ensure that employees from all designated groups are kept informed and aware of what is happening within the organisation.

- **Black Managers and Directors in decision-making structures:** Business must ensure that employees from the previously disadvantaged groups are promoted within the organisation and that they are allowed the same access to decision-making as their white colleagues. Organisations must not promote employees from the previous disadvantaged groups just for the sake of “window dressing.”

- **Worker empowerment:** Employees must be given the opportunity to be empowered within the organisation. If opportunity allows it, workers must be allowed to purchase shares in the business in order for them to have a say with regard to the day to day running of the organisation. With regard to larger companies, a representative at senior managerial meetings will also encourage the workers.

- **Accelerated development and mobility:** Training and development
programs must be implemented to allow for upward mobility of workers from the previously disadvantaged groups.

3.4 CONCERNS ABOUT CONCESSIONS TO MICRO BUSINESSES

Horton and Honderich (2000: 6) feel that the prime mechanism for job creation was small business promotion. The Government has made certain concessions to small business, and it is now expected of them to subsidise job creation. However the main concern is that the reducing of the status of workers will not solve the problems faced by small business and is also unlikely to lead to many new jobs. It is felt that the concessions will worsen the bad general conditions of the working poor.

Horton and Honderich (2000: 7) add that many of the workers in small business are not organised, or work in sectors where union organisation is difficult. In many instances, bargaining council agreements do not cover these workers and their only protection is labour legislation. This in turn can encourage subcontracting and casual work.

3.5 CONCERNS OF THE CONGRESS OF SOUTH AFRICAN TRADE UNIONS

The Congress of South African Trade Unions (COSATU) raised several concerns in its submission on the Ministerial Determination on Small
Business, submitted to the Portfolio Committee on Labour on the 16th November 1999, (http://www.cosatu.org.za/docs/1999/dolsmme.htm.#1). In this report, COSATU stated that they were opposed to the Determination in principle as it undermined the fundamental goal of extending rights to all workers. COSATU felt that the downward variation and the shifts towards employer-employee agreements, as provided for in the Determination, undermines the architecture of labour legislation. The biggest concern for COSATU was that its members employed in the micro-enterprises would not qualify for the full entitlements of the Basic Conditions of Employment Act (BCEA) whilst other workers doing the same job in slightly larger firms would qualify. COSATU also felt that the downward variation contained in the Determination would apply to sectors where workers are extremely vulnerable to exploitation. These sectors include general dealers and small shop owners in townships where workers are not organised, or where union organisation is very difficult. As these workers are not covered by union agreements their only protection is the current labour legislation.

The definition of a small enterprise as an enterprise that has less than 10 employees came under sharp criticism by COSATU. In terms of the Employment Equity Act, 1998 the threshold for employers is not only the number of workers in the business, but also the turnover of the enterprise. The Small Business Act, 1996, also defines small, medium and micro enterprises in terms of annual turnover, total assets as well as the number of employees. COSATU’s concern was the question as to why these other criteria were ignored when it came to employment conditions? As a result of this COSATU
is of the opinion that medium size enterprises can restructure themselves into a myriad of smaller commercial legal entities in order to gain the advantage of the downward variation. This can be done through the creation of several companies or close corporations. As a business grows and requires more employees, the business will develop new close corporations and companies in order to ensure that each legal employer has less than 10 employees. Furthermore these business can opt to invest in new machinery and shift to a more capital intensive production process in order to avoid crossing the 10-employee threshold and further defeating the objective of job creation.

In a press statement issued on the 27th July 2000, (http://www.cosatu.org/press/2000/labour_law_amendments-31192.html), COSATU stated that the labour market review process had gone horribly wrong. They felt that instead of minor technical adjustments to fine tune labour legislation, as had been suggested, many of the proposed amendments had upset the delicate balance achieved through years of negotiations. This in turn threatened to destabilise the degree of labour stability, which had been achieved by the new dispensation. COSATU felt that the amendments to labour legislation were the opposite as to what was promised. Instead of addressing the concerns of workers around job loss, and improving the protection afforded to workers, it would rather facilitate and continue to promote the ongoing mass destruction of jobs and undermine the protection which vulnerable workers have under current legislation. This in turn will destabilise the current system of collective bargaining.
Further concerns raised by COSATU in the press statement of the 27th July 2000, include the following:

3.5.1 PROBATIONARY PERIOD

COSATU raised their concerns that an employee on probation can be dismissed when it comes to poor work performance without fair and substantive grounds, to be extreme and unnecessary. It was also felt that the existing probationary period of six months was excessive for many categories of workers.

3.5.2 VARIATION OF THE BCEA CORE RIGHTS

Government’s new proposals to change certain aspects of this Act are currently unacceptable to COSATU. This in affect means that the existing floor of basic rights, even core rights, can be varied downwards leaving most vulnerable workers unprotected. The major concerns were that the proposal can allow workers to be forced to work sixty hour weeks without overtime pay, remove protections against excessive night work and even prohibition of child and forced labour.
3.5.3 **SUNDAY WORK**

COSATU found the proposal to completely get rid of the premium for a Sunday as unacceptable. They felt that Sunday work was protected under the existing BCEA as a preferred day of rest and family day and not necessary a religious day. Sundays was also identified as being the day that unions used for meetings and feedback with their members.

3.5.4 **COLLECTIVE BARGAINING**

COSATU found the proposal to require bargaining councils to consult every employer in an industry before the Minister would extend the agreement to non-parties as unacceptable. They felt that it would undermine their collective bargaining system and would threaten to unravel carefully negotiated compromises between the parties.

3.5.5 **RETRENCHMENTS**

COSATU expressed the belief that retrenchments should be a mandatory negotiation matter, incorporating the right to strike. Proposed amendments would thus affect the current arrangement whereby employers could retrench workers only after consultation. This they found to be unacceptable.

3.6 **GOVERNMENTS PROPOSED AMENDMENTS TO CERTAIN**
LABOUR LEGISLATION

The Minister of Labour, according to Paton (2000: 23), stated that: “There are certain things we are going to do to make life easy for small entrepreneurs…but our vision remains the same.” The issues of the various labour laws affecting small businesses, which needed to be addressed, included amongst others the following:

- **Working Time:** In December 1998 The Basic Conditions of Employment Act increased the premium on Sunday work from time-and-a-half to double pay. This in turn caused hardship to small entrepreneurs as many are, due to the nature of their business, compelled to work on Sundays (for example Tourism). Due to the increased rates, the small entrepreneur found that they could not afford to pay these higher rates and as a result businesses could not operate on these days due to the high costs.

- **Working Week of 45 Hours:** In this regard the Minister proposed removing this as a core right and giving employers the right to negotiate with their workers about the duration of the week.

- **Rules around Hiring and Firing:** In this regard the Minister would like to see a complete overhaul of the Commission for Conciliation, Mediation and Arbitration (CCMA) which has damaged employers by dragging out disputes for months. This seriously affects the small business where it sometimes becomes necessary for the owner to close
his shop in order to attend a CCMA hearing. The CCMA is also being abused by employees as being their first approach before they have exhausted company procedures.

In a media statement issued by the Department of Labour on the 17th October 2000, (http://www.labour.gov.za/docs/pr/2000/pr1017.htm), the Minister of Labour issued a report on the outcome of an investigation into how the reduction of weekly working hours to a 40 hour week may be achieved. In this report, the Minister conceded that a 40 hour working week could only be achieved to the benefit of employees and the economy under certain conditions. The most important of these include the following:

- **A reduction in income inequality and poverty:** Because of the fact that in South Africa there are significant inequalities in earnings, large numbers of poorly paid workers, and widespread poverty workers would seek to increase their pay through working more overtime hours if ordinary hours were reduced. As a result, these workers would not benefit from the reduction in hours, nor would more jobs be created.

- **Increased skills level:** Actual working time can only be reduced if an adequate supply of skilled labour existed in the labour market.

- **Overtime implication:** If skilled labour were in short supply then the reduction of working hours would only lead to increased overtime for skilled workers.

- **Improved job security for all workers:** Reviews revealed that reduced working time had been accompanied by the increased use of
casual workers.

- Reduced crime and an improved public transport: Current transport systems were inadequate and workers would not able to travel outside of normal working hours because of problems experienced through the high rate of crime.

In order to implement a 40 hour week, certain conditions would need to prevail. These conditions would need the co-operation of both employers and employees in the respect that they would have to make the recommendation through collective bargaining rather than Government regulation. It would also require organisations to take into consideration their rather rigid and long individual working times and the fact that these times can only be reduced if the preferences of individual workers are taken into consideration. This in turn would require employers to rethink work re-organisation and seek more innovative approaches.

3.7 SUMMARY

From the above it is evident that businesses, trade unions and Government have as yet not reached mutual agreement with regard to labour legislation that is acceptable to all. Each group is still concerned that, in one way or another, they will be placed at a disadvantage to the others.

Furthermore, given South Africa’s history of oppression, it is obvious that the
trade unions will remain highly suspicious and will always resist certain amendments to labour legislation that directly or indirectly appear to be to the detriment of their members. Businesses, on the other hand, have the ultimate aim of making a profit and any amendments to labour legislation will directly or indirectly lead to increase costs. This in turn will decrease the expected profits and they in turn will then be forced to reduce expenses. In most instances, labour is the first victim and is then decreased through retrenchments, which in turn leads to added union intervention. The Government, which has been democratically elected, has made certain promises to its allies in return for their support in the elections, in this case the trade unions. Changes to legislation can lead to their allies opposing them, which in turn would lead to mass action through strikes, and massive losses in terms of credibility to investors and the economy in general.

This chapter has resolved sub-problems two and three, namely, how legislation has affected SMME’s both directly and directly and what do the various role players feel are the implications of the legislation on SMME’s. In this chapter, representation from all of the role players, namely Government, trade unions and SMME’s has been given and their concerns as to how labour legislation has affected them both directly and indirectly. In the next chapter the research methodology used in this study will be discussed.
CHAPTER 4

THE EMPIRICAL STUDY, METHODS USED AND ANALYSIS OF DATA

4.1 INTRODUCTION

In Chapter 2 and 3, an outline was given of the applicable labour legislation that directly affects SMME’s. Furthermore, the concerns of business and Governments response thereto, were also outlined.
The literature study was used to establish the answer to the first three sub-problems, namely:

- What does a literature study reveal is the affect of current legislation on SMME’s?
- What do the various role players feel are the implications of the legislation on SMME’?
- How has the legislation affected SMME’s both directly and indirectly?

The empirical study will help resolve the fourth sub-problem: What problems are experienced by SMME’s in implementing the legislation? The manner in which this sub-problem will be addressed is explained in this chapter.

4.2 RESEARCH DESIGN

Allison, O’Sullivan, Owen, Rice, Rothwell and Saunders (1996: 4) define research as a systematic enquiry that is reported in a form that allows the research methods and outcomes to be accessible to others. They further state that research is concerned with seeking solutions to problems or answers to questions. With this in mind, the research design for this study was broken down into a main problem, with three sub-problems. The main problem is:

What affect does current labour legislation have on Small, Medium and Micro-enterprises (SMME’s)?
Following on from the main problem, four sub-problems were identified to assist with the solution to the main problem, namely:

- What does a literature study reveal is the affect of current labour legislation on SMME’s?
- How has the legislation affected SMME’s both directly and indirectly?
- What do the various role players feel are the implications of the legislation on SMME’s?
- What problems are experienced by SMME’s in implementing the legislation?

The procedure used to solve the main problem and the sub-problems was as follows:

- In Chapter 2 a literature study was conducted to ascertain what labour legislation directly affected SMME’s. All the relevant Acts, as well as the concerns of knowledgeable people, were studied and reported to ascertain what the affect of current labour legislation was on SMME’s. This answered sub-problem one.

- Chapter 3 dealt with the concerns raised by small business and trade unions with regard to existing labour legislation as well as the proposed amendments thereof by Government and their response to the concerns raised. This answered sub-problems two and three.

- In order to resolve sub-problem four, namely – what problems are experienced by SMME’s in implementing the legislation – a questionnaire
was developed and circulated to SMME’s, with a staff compliment of 75 or less, in the municipal areas of East London and King Williams Town.

- Results gained from the survey were then analysed to ascertain as to whether the problems raised by small business were in fact because of current legislation or whether SMME’s were responsible for not implementing the legislation.

### 4.3 PLANNING THE EMPIRICAL STUDY

The empirical study was conducted by means of a mail survey, with the use of a questionnaire. The questionnaire was developed from labour legislation that directly affects SMME’s and that was highlighted by both business and trade unions as contentious issues. The results of the questionnaire were then statistically analysed. The process followed during the empirical study is set out below.

#### 4.3.1 THE QUESTIONNAIRE

According to Leedy (1997: 191) the common instrument used for observing data beyond the physical reach of the observer, is the questionnaire. As stated above, the questionnaire (see Annexure 4.1) was developed from labour legislation that directly affects SMME’s, and highlighted as such by businesses and trade unions. The questions were selected to address each concern and whether or not business actually applied the relevant legislation
correctly. The questionnaire was developed as follows:

**Types of questions used:** Allison et al (1996: 82) state that there may be open and closed questions. A closed question is only possible where responses are predetermined, typically the kind that requires the respondent to tick boxes. This is the method that was predominately used in the questionnaire developed for the empirical study.

The questionnaire was divided into two parts. Section A was made up of biographical questions that offered choices for the respondent to tick. Questions in this section surveyed the number of employees, geographical location, race and sector of the respondent. Section B was made up of both open and closed questions. This option was elected as it was felt that certain questions would require more of a response, and not only to offer a limited choice to the respondents, but also to elicit a reason as to why this choice was selected.

**Wording of questions:** Thomas (1996: 121) states that questions should not lead respondents who do not have clear views of their own on a particular issue. Grammar should be simple and the matters that the respondents need to keep in mind in order to understand the question should be limited. Specific terms should be used in preference to abstract ones, ensuring a clear understanding of the question by the respondent. Finally, the questions should be easy for the respondent to answer. For example “tick one box only”.
Length of questionnaire: Thomas (1996: 121) feels that a questionnaire should not be long and complicated. More pages with a clear and user-friendly layout are better than a few pages with a cramped and forbidding layout.

The above principles were followed when drawing up the questionnaire. In addition to this, the draft questionnaire was tested in a pilot study.

4.3.2 PILOT STUDY

Prior to conducting the pilot study, the questionnaire was checked by a senior lecturer of the Faculty of Business Management at the Port Elizabeth Technikon, and the necessary adjustments were made. Once these changes had been effected, the questionnaire was presented to the members of the Labour Sub-Committee of the Border-Kei Chamber of Commerce. This population closely represents the population to be used in the empirical study.

According to Thomas (1996: 122), a pilot study has two main functions. The first is the development of instruments and procedures where the pilot is a step on the way towards the final design. The developmental pilot study may include features that may not be part of the main survey, such as asking respondents if they understand the questions in the way intended.

The second function is a rehearsal of instruments and procedures, where the
aim is to fine-tune the design of the questionnaire. The results of the pilot survey were not included in the survey results.

4.3.3 MAIL SURVEY

For the purposes of the study, a mail survey was selected. This was done for a variety of reasons. They are:

- A mail survey is relatively economical;
- One person can handle the administration;
- There is more anonymity with other forms of communication;
- A mailed questionnaire may be easily standardised.

4.3.4 ADMINISTERING THE QUESTIONNAIRE

The address of SMME’s in the East London/ King Williams Town Municipal area was obtained from the member list of the Border-Kei Chamber of Commerce. In the case of non-members of the Border-Kei Chamber of Commerce a local financial institution was approached for a list of their clients who operated as SMME’s. The questionnaire was posted with a covering letter (see Annexure 4.2) on the 20th November 2000. The aim of the covering letter was to provide the following information:

- The aim of the research;
- The fact that the questionnaire would take less than 20 minutes to
complete;

- An offer to make a summary of the study available, if so desired.

A cut-off date of the 27th November 2000 was set for the return of the completed questionnaires. Thereafter the researcher telephonically contacted the companies who had not responded, in order to elicit a response.

### 4.3.5 THE POPULATION

A member list of organisations belonging to the Border-Kei Chamber of Commerce and a local financial institution was used to gain the contact names and addresses of the population to be studied. Because of the size of the population it was decided to use only SMME’s that employ 75 or less employees. A sample was taken of these firms whereby every fourth firm was selected. The population numbered 50 organisations in the East London/King Williams Town Municipal areas. The sample used in the study may be seen in Table 4.1.

Table 4.1: Size of sample

<table>
<thead>
<tr>
<th>AREA</th>
<th>SIZE OF POPULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>East London</td>
<td>40</td>
</tr>
<tr>
<td>King Williams Town</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
</tr>
</tbody>
</table>
Source: Member list of the Border-Kei Chamber of Commerce and SMME clients of a leading financial institution.

4.3.6 THE RESEARCH RESPONSE

The survey was posted on the 20th November 2000 and a response rate of 32.00 percent was attained by the due date, which was the 27th November 2000. Because of time constraints, a follow-up of all recipients was conducted on the 27th November with a request to complete the questionnaire by the 30th November 2000. A further five questionnaires were received and this gave a total response of 42.00 percent. Table 4.2 shows the data collection procedure.

Table 4.2: Summary of data collection procedure

<table>
<thead>
<tr>
<th>Date received</th>
<th>Number of questionnaires posted</th>
<th>Number of questionnaires returned</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>20th November 2000</td>
<td>50</td>
<td>16</td>
<td>32.00</td>
</tr>
<tr>
<td>27th November 2000</td>
<td></td>
<td>5</td>
<td>10.00</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>21</td>
<td>42.00</td>
</tr>
</tbody>
</table>

Source: Results of data collection procedure
Emory and Cooper (1991: 333) state that 30 percent is an acceptable response for postal surveys whilst Welman and Kruger (1999: 152) state that responses to postal surveys frequently fall below 50 percent. The final response rate was 42.00 percent, which may be accepted as a satisfactory and representative response.

The results of Section A of the questionnaire follow in paragraph 4.4 below.

4.4 RESULTS OF BIOGRAPHICAL DATA IN SECTION A OF THE QUESTIONNAIRE

Section A of the questionnaire enquired general information regarding the respondents and the industries in which they operate. This information is classified as being the independent variables or biographical details, and is used to facilitate comparisons with the dependant variables. The dependent variables are the questions in Section B of the questionnaire.

The results of Section A of the questionnaire are provided in Tables 4.3 to 4.8. A brief discussion of the data is provided following each Table.

Table 4.3: Respondents per size of organisation

<table>
<thead>
<tr>
<th>Size of organisation</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 10 employees</td>
<td>5</td>
<td>23.81</td>
</tr>
<tr>
<td>11 to 20 employees</td>
<td>5</td>
<td>23.81</td>
</tr>
<tr>
<td>21 to 30 employees</td>
<td>4</td>
<td>19.05</td>
</tr>
<tr>
<td>31 to 40 employees</td>
<td>2</td>
<td>9.52</td>
</tr>
</tbody>
</table>
Table 4.3 shows that most organisations that responded (23.81 percent) fall into the groups 1 to 10 employees and 11 to 20 employees respectively. The group with between 71 to 75 employees represented 19.05 percent as well as the group with 21 to 30 employees. Organisations with 41 to 50 employees represented 9.52 percent and those with 51 to 60 employees represented 4.76 percent of the respondents.

Table 4.4: Respondents by municipal area

<table>
<thead>
<tr>
<th>Municipal Area</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>East London</td>
<td>18</td>
<td>85.71</td>
</tr>
<tr>
<td>King Williams Town</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of analysis of organisation size.
Source: Results of analysis of response rate by municipal area

The two municipal areas studied were East London and King Williams Town. Table 4.4 shows that 85.71 and 14.29 percent represented each municipal area respectively. It is of interest to note that 10 questionnaires were sent to King Williams Town and only 3 were returned. Table 4.5 shows an analysis of the positions of respondents.

Table 4.5: Position of respondent

<table>
<thead>
<tr>
<th>Position of respondents</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>10</td>
<td>47.62</td>
</tr>
<tr>
<td>Manager</td>
<td>8</td>
<td>38.10</td>
</tr>
<tr>
<td>Human resources/Personnel Manager</td>
<td>2</td>
<td>9.52</td>
</tr>
<tr>
<td>Administration/Financial Manager</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Production Manager</td>
<td>1</td>
<td>4.76</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Source: Results obtained from analysis of position of respondent

From Table 4.5 it can be seen that the Owner accounted for 47.62 percent of respondents. This is understandable as the organisations fall within the category SMME’s and, in most instances, the Owner is accountable and responsible for all decisions. Managers accounted for 38.10 percent, Human Resource Managers 9.52 percent and Production Manager 4.76 percent. In Table 4.6 the race of respondents is shown.

Table 4.6: Respondents by race

<table>
<thead>
<tr>
<th>Race</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>1</td>
<td>4.76</td>
</tr>
<tr>
<td>Black</td>
<td>2</td>
<td>9.52</td>
</tr>
<tr>
<td>Coloured</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>White</td>
<td>15</td>
<td>71.43</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results obtained from analysis of response rate by race
The largest group of respondents was white (71.43 percent) followed by coloured (14.29 percent), black (9.52 percent) and asian (4.76 percent). Table 4.7 shows whether the employer and employees are members of any labour or business organisations.

Table 4.7: Member of labour and business organisations

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chamber of Commerce</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Trade Union</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Bargaining Council</td>
<td>2</td>
<td>9.53</td>
</tr>
<tr>
<td>None of the above</td>
<td>7</td>
<td>33.33</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results obtained from analysis of member of labour and business organisations
From Table 4.7 it can be seen that 33.33 percent of the respondents and their employees did not belong to some form of labour or business organisation. Those respondents that did belong to a labour or business organisation were Chamber of Commerce (28.57 percent), Trade Union (28.57 percent) and Bargaining Council (9.53 percent). In Table 4.8 the sector or industry in which the organisation operates is shown.

<table>
<thead>
<tr>
<th>Sector or industry</th>
<th>Response frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>1</td>
<td>4.76</td>
</tr>
<tr>
<td>Food and beverage</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>Agriculture</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>Retail and services</td>
<td>5</td>
<td>23.81</td>
</tr>
<tr>
<td>Transport</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>Tourism and hospitality</td>
<td>1</td>
<td>4.76</td>
</tr>
<tr>
<td>Motor industry</td>
<td>2</td>
<td>9.52</td>
</tr>
<tr>
<td>Stationary and printing</td>
<td>2</td>
<td>9.52</td>
</tr>
<tr>
<td>Building industry</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
<td>33.34</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Source: Results obtained from analysis of response to sector or industry in which organisation operates.

The largest group of respondents came from the retail and services industry (23.81 percent), building industry (14.29 percent), motor industry (9.52 percent), stationary and printing industry (9.52 percent), tourism and hospitality (4.76 percent) and the manufacturing industry (4.76 percent). A large group of respondents (33.34 percent) represented other industries not listed in the questionnaire.

4.5 THE VALIDITY AND RELIABILITY OF THE QUESTIONNAIRE USED IN THE STUDY

Leedy (1997: 32) states that validity and reliability are terms used in connection with measuring instruments. The integrity of the research is based on the validity and reliability of that piece of work and, as such, it is important that the study should meet the demands of validity and reliability. A brief discussion of the concepts will follow with an explanation of their relationship to the study conducted.

4.5.1 VALIDITY
Leedy (1997: 32) states that validity is concerned with the soundness and effectiveness of the measuring instrument. Does it measure what is intended or not, and how accurate is the measure? In the case of this study, does the questionnaire measure what it was intended to measure?

Leedy (1997: 33) further states that there are several types of validity. These are:

- **Face validity**: This refers to a subjective validity where the questions are scrutinised to establish their relation to the subject under discussion. Face validity refers to whether the questions seem appropriate;

- **Criterion validity**: This is where validity is determined by relating a performance measure to another measure that may be set as a standard against which to measure results;

- **Content validity**: This is related to face validity and is where the accuracy of the instrument in measuring the factors of concern to the study is gauged;

- **Construct validity**: This is the degree to which the content of the study is measured by the questionnaire. In this case “What affect does current labour legislation have on SMME’s”;

- **Internal validity**: This is the freedom from bias in formulating conclusions based on the data received;

- **External validity**: This is the degree to which the conclusions reached in the study may be generalised.
In this study, face validity, content validity and construct validity was applied. In using the afore-mentioned validation methods, the opinions of knowledgeable people were considered in the form of a pilot study. The pilot study was conducted among members of the labour sub-committee of the Border-Kei Chamber of Business who are knowledgeable on the subject. In addition, the guidance of a senior lecturer of the MBA Unit in the Faculty of Management, PE Technikon was also sought.

4.5.2 RELIABILITY

According to Leedy (1997: 35) reliability is seen as the consistency with which the measuring instrument performs. This means that apart from delivering accurate results, the measuring instrument must deliver similar results consistently. Singleton, Straits and Straits (1993: 121) state that reliability may be improved by conducting exploratory studies in the area of interest or by conducting pre-tests on a small sample of persons similar in characteristics to the target group. In the study under consideration, both were conducted by the researcher, in the form of a comprehensive literature study set out in Chapters 2 and 3 of the study and a pilot study conducted amongst colleagues of similar profile to the recipients of the questionnaire. The aim of the pilot study was to ensure that all questions were understandable and
relevant.

4.6 QUANTITATIVE ANALYSIS OF RESULTS OF SECTION B OF THE QUESTIONNAIRE

The questions in Section B were designed to measure whether organisations complied with relevant labour legislation as discussed in detail in Chapter 3.

The study was designed to determine whether organisations had implemented the relevant labour legislation and if non-compliance of this labour legislation affected their ability to secure Government contracts. Set out below is a discussion of each of the most important aspects of labour legislation as applied to the results of the study.

4.6.1 WRITTEN LETTERS/ CONTRACTS OF EMPLOYMENT

In terms of the Basic Conditions of Employment Act (BCEA) all employees must have a letter or contract of employment. Table 4.9 shows the percentage response for each statement.

Table 4.9: Descriptive statistics for: Letter or contract of employment

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>17</td>
<td>80.95</td>
</tr>
<tr>
<td>2. No</td>
<td>4</td>
<td>19.05</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
From Table 4.9 it can be seen that the majority of the respondents (80.95 percent) have abided with the BCEA with regard to employees having letters or contracts of employment. Those respondents who indicated “No” (19.05 percent) stated that they are currently in the process of implementing letters or contracts of employment.

4.6.2 METHOD IN WHICH EMPLOYEES ARE APPOINTED

In terms of the BCEA employees may either be appointed permanently, temporally or on a casual basis. Table 4.10 shows the percentage response with regard to how employees are employed.

Table 4.10: Descriptive statistics for: Method in which employees are appointed.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanently</td>
<td>21</td>
<td>100.00</td>
</tr>
<tr>
<td>Temporally</td>
<td>8</td>
<td>40.00</td>
</tr>
<tr>
<td>Casual</td>
<td>6</td>
<td>30.00</td>
</tr>
</tbody>
</table>
Source: Results of Section B, Question 2

From Table 4.10 it can be seen that all the respondents appoint employees on a permanent basis. In addition to this, some respondents indicated that they also employ employees on a temporally basis (40.00 percent) or casual basis (30.00 percent).

### 4.6.3 MAXIMUM HOURS WORKED PER WEEK BY EMPLOYEES

In terms of the BCEA all employees are required to work a maximum number of hours per week, depending on the industry in which they operate. Table 4.11 shows the percentage response to the number of hours worked per week.

Table 4.11: Descriptive statistics for: Number of hours worked per week

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 hours per week</td>
<td>12</td>
<td>57.14</td>
</tr>
<tr>
<td>45 hours per week</td>
<td>7</td>
<td>33.33</td>
</tr>
<tr>
<td>More than 45 hours per week</td>
<td>2</td>
<td>9.53</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
From Table 4.11 it can be seen that employees work different hours per week. The reason for this is that respondents operate in different industries which all have different needs in terms of hours worked.

4.6.4 OVERTIME PAID IN TERMS OF THE ACT

In terms of the BCEA all employees must be paid an additional amount in respect of the hours worked after the maximum hours per day. Table 4.12 shows the percentage response as to whether or not overtime is paid by respondents.

Table 4.12: Descriptive statistics for: Overtime paid in terms of Act

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>17</td>
<td>80.95</td>
</tr>
<tr>
<td>2. No</td>
<td>4</td>
<td>19.05</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Table 4.12 indicates that the majority of the respondents (80.95 percent) pay
their employees overtime for additional hours worked over and above the stipulated hours. The respondents who indicated that no overtime is paid (19.05 percent) are those who operate in a industry that does not require them to work additional time over and above the stipulated hours in terms of the BCEA.

4.6.5 WORKING ON A SUNDAY

In terms of the BCEA, no employee may perform work connected with a factory or office on a Sunday unless written permission has been obtained from an inspector. Payment for work on a Sunday is usually calculated in the following way:

- if an employee works for less than four hours then he/she is paid at normal rate;
- If he/she has worked for longer than four hours, then payment will be at double the daily rate or double the hourly rate for the time he/she has worked.

Table 4.13 shows the percentage response as to whether respondents work on a Sunday and at what rate payment is effected.

Table 4.13: Descriptive statistics for: Work on Sundays

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>7</td>
<td>33.33</td>
</tr>
<tr>
<td>2. No</td>
<td>14</td>
<td>66.67</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Most of the respondents who answered “Yes” indicated that employees are remunerated at double pay (71.43 percent). The balance (28.57 percent) remunerates their staff at normal rates as they allow their staff to take time off during the week.

### 4.6.6 RECORD OF PARTICULARS OF EMPLOYMENT AND REMUNERATION

Employers are obliged by the BCEA to record the time worked by each employee, the wage paid to each employee and any other particulars prescribed by regulation. Table 4.14 shows the percentage response as to whether or not records and particulars of employment and remuneration are maintained.

Table 4.14: Descriptive statistics for: Particulars of employment and remuneration.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>18</td>
<td>85.71</td>
</tr>
<tr>
<td>2. No</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Table 4.14 indicates that the majority of the respondents (85.71 percent) abide by the terms of the BCEA with regard to the maintaining of a record of particulars of employment and remuneration. Those respondents who do not maintain records have indicated that they are in the process of implementing and maintaining proper records.

4.6.7 EMPLOYMENT EQUITY PLAN

In terms of the Employment Equity Act (EEA) all employers who have 50 or more employees must submit an employment equity plan setting out the affirmative action measures they intend taking to achieve employment equity goals. Table 4.15 shows the percentage response as to whether equity plans have been prepared.

Table 4.15: Descriptive statistics for: Preparation of a Equity Plan

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>9</td>
<td>42.85</td>
</tr>
<tr>
<td>2. No</td>
<td>12</td>
<td>57.15</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Table 4.15 indicates that the majority of respondents (57.15 percent) are not required to prepare an equity plan. The reason for this is that they have less than 50 employees in their employment and, in terms of the EEA, are not required to submit an equity plan. Those respondents who indicated that they were required to prepare an equity plan were also asked as to whether this plan had been prepared and submitted to the Department of Labour. Table 4.16 shows the percentage response as to whether the equity plan had been submitted.

Table 4.16: Descriptive statistics for: Submission of an Equity Plan

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>7</td>
<td>77.77</td>
</tr>
<tr>
<td>2. No</td>
<td>2</td>
<td>22.23</td>
</tr>
<tr>
<td>Total</td>
<td>9</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Table 4.16 indicates that the majority of respondents (77.77 percent) who are required to submit an equity plan are abiding by the requirements of the EEA. The respondents who have not submitted an equity plan indicated that this was
because of time constraints.

4.6.8 PERCENTAGE BREAKDOWN OF STAFF

The EEA was passed to address South Africa’s legacy of discrimination in relation to race, gender and disability that denied access to opportunities for education, employment, promotion and wealth creation to the majority of South Africans. Table 4.17 shows the percentage response as to whether or not the respondents have addressed these legacies.

Table 4.17: Descriptive statistics for: Breakdown of staff

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority white employees</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Majority black employees</td>
<td>12</td>
<td>57.14</td>
</tr>
<tr>
<td>Equal number of employees</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 9

Perusal of Table 4.17 indicates that the majority of the respondents have addressed employment equity within their organisations. However, in order to gain a clearer picture, it is important that these statistics be compared with the
percentage breakdown of managerial/supervisory staff. Table 4.18 shows the percentage breakdown of managerial/supervisory staff.

Table 4.18: Descriptive statistics for: Breakdown of managerial/supervisory staff

<table>
<thead>
<tr>
<th>Statement</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority white managers/supervisors</td>
<td>76.19</td>
</tr>
<tr>
<td>Majority black managers/supervisors</td>
<td>23.81</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 10

Table 4.17 indicates that most respondents have introduced an equity plan to address affirmative action. Table 4.18 however indicates that equity in managerial/supervisory level still has a long way to go and that whites still hold the majority of managerial positions.
4.6.9 SKILLS DEVELOPMENT

The Skills Development Act and Skills Development Levy was introduced to improve the quality of workers, their prospects of work, and labour mobility by encouraging workers to participate in leadership and other training programmes. The Act requires all employers to register with a Sector Education and Training Authority (SETA). Table 4.19 shows the percentage response as to whether or not respondents have registered with their appropriate SETA.

Table 4.19: Descriptive statistics for: Registration with a SETA

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>15</td>
<td>71.43</td>
</tr>
<tr>
<td>2. No</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 11

Table 4.19 indicates that the majority of the respondents (71.43 percent) have registered with their respective SETA. The remaining respondents (28.57 percent) are either in the process of registration (33.33 percent) and the balance (66.66 percent) is not aware that they have to register. Respondents were also requested to indicate whether any problems were experienced in registering with their SETA. Table 4.20 shows the percentage response as to whether problems were experienced.
Table 4.20: Descriptive statistics for: Problems experienced in registering with a SETA.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>2. No</td>
<td>15</td>
<td>100.00</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 12

Table 4.20 indicates that none of the respondents experienced problems in registering with their appropriate SETA. Respondents were also requested to indicate whether any grants had been paid by their respective SETA for accredited training. Table 4.21 shows the percentage response as to whether or not any grants had been received.

Table 4.21: Descriptive statistics for: Payment of grants for accredited training from respective SETA.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>1</td>
<td>6.67</td>
</tr>
<tr>
<td>2. No</td>
<td>14</td>
<td>93.33</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 13
Table 4.21 indicates that although most of the respondents (93.33 percent) have registered with their respective SETA, they have as yet not been paid any grants for accredited training.

4.6.10 LABOUR RELATIONS ACT

Respondents were asked to indicate whether or not they had to retrench any employees the past year. Table 4.22 shows the percentage response as to whether any employees had been retrenched.

Table 4.22: Descriptive statistics for: Retrenchments

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>5</td>
<td>23.81</td>
</tr>
<tr>
<td>2. No</td>
<td>16</td>
<td>76.19</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 14
Table 4.22 indicates that the majority of the respondents (76.19 percent) did not retrench any staff this year.

Respondents were also requested to indicate whether their employees had been on strike this year, and if so, was the matter referred to the CCMA or Labour Court for conciliation or arbitration. Table 4.23 and Table 4.24 shows the percentage response to these questions.

Table 4.23: Descriptive statistics for: Strikes

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>2. No</td>
<td>21</td>
<td>100.00</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 15

Table 4.24: Descriptive statistics for: CCMA and Labour Court

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>2. No</td>
<td>21</td>
<td>100.00</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Source: Results of Section B, Question 16

Table 4.23 and 4.24 clearly indicates that all respondents (100.00 percent) experienced no strikes, and as a result, it was not necessary for any intervention by the CCMA and/or Labour Court.

4.6.11 CCMA CONCILIATION AND ARBITRATION HEARINGS

One of the main innovations of the Labour Relations Act was the establishment of the CCMA. Its primary purpose is to conciliate or arbitrate any disputes referred to it by employers or employees. Respondents were requested to indicate the number of occasions this year that they were required to attend any conciliation or arbitration hearings. Table 4.25 shows the percentage response to the number of occasions respondents attended conciliation or arbitration hearings at the CCMA.

Table 4.25: Descriptive statistics for: Conciliation and Arbitration hearings

<table>
<thead>
<tr>
<th>Occasions</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. None</td>
<td>13</td>
<td>61.90</td>
</tr>
<tr>
<td>2. Less than 10</td>
<td>8</td>
<td>35.10</td>
</tr>
<tr>
<td>3. 11 to 20</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>4. 21 to 30</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>5. 21 to 30</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>6. More than 31</td>
<td>0</td>
<td>00.00</td>
</tr>
</tbody>
</table>
Table 4.25 indicates that the majority of the respondents (61.90 percent) were not required to attend any conciliation or arbitration hearing at the CCMA. Those respondents who did attend hearings at the CCMA (35.10 percent) were also requested to indicate the purpose of the hearing. Table 4.26 indicates the percentage response for the purpose of the hearing at the CCMA.

Table 4.26: Descriptive statistics for: Purpose of hearings

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unfair dismissal</td>
<td>7</td>
<td>87.50</td>
</tr>
<tr>
<td>2. Strike action</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>3. Unfair labour practice</td>
<td>1</td>
<td>12.50</td>
</tr>
<tr>
<td>4. Retrenchment</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>5. Other</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Source: Results of Section B, Question 19

Table 4.26 indicates that the majority of respondents (87.50 percent) purpose for attending conciliation or arbitration hearings was for unfair dismissal followed by unfair labour practice (12.50 percent).

4.6.12 EFFECTIVENESS OF THE CCMA

Respondents were requested to indicate whether they felt the CCMA was functioning effectively. Table 4.27 shows the percentage response as to the opinions of the respondents as to whether or not the CCMA functions effectively.

Table 4.27: Descriptive statistics for: Effectiveness of the CCMA

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>12</td>
<td>57.14</td>
</tr>
<tr>
<td>2. No</td>
<td>3</td>
<td>14.29</td>
</tr>
<tr>
<td>3. Unsure</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 20
Table 4.27 indicates that the majority of the respondents (57.14 percent) believe the CCMA is functioning effectively. Those that disagree (14.29 percent) believe that the CCMA takes too long to reach a decision. The balance of the respondents (28.57 percent) was unsure, as they have as yet not had any dealings with the CCMA.

**4.6.13 TENDERING FOR GOVERNMENT OR PARASTATEL CONTRACTS**

In order to tender for Government or parastate contracts, organisations are requested to abide by the current labour legislation. In most instances, tender documents request information about affirmative action policies and whether or not the appropriate employment records are maintained. Table 4.28 shows the percentage response as to whether or not the respondents have tendered for Government or parastate contracts.

Table 4.28: Descriptive statistics for: Tendering for Government or Parastatelle Contracts

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>15</td>
<td>71.43</td>
</tr>
<tr>
<td>2. No</td>
<td>6</td>
<td>28.57</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>100.00</td>
</tr>
</tbody>
</table>
Table 4.28 indicates that the majority of respondents (71.43 percent) have tendered for Government or parastatal contracts at some stage or another. Respondents who tendered for Government contracts were also requested to indicate whether or not they were successful, and if not, the possible reasons why they were not successful. Table 4.29 shows the percentage response of respondents successful with their tender bids, and Table 4.30 indicates the reasons for not securing the contract.

Table 4.29: Descriptive statistics for: Success in tendering for Government and/ or parastatel contracts.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of responses</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yes</td>
<td>7</td>
<td>46.67</td>
</tr>
<tr>
<td>2. No</td>
<td>8</td>
<td>53.33</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 22

Table 4.29 indicates that the majority of respondents at some stage or other tendered for a Government or parastatel contract. Of this number 53.33
percent were not successful whilst 46.67 percent were successful in securing a contract with the Government or a parastatel. Table 4.30 indicates the reasons as to why some respondents were not successful in their tenders.

Table 4.30: Descriptive statistics for: Reasons for not securing Government or parastatel contracts

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Affirmative Action</td>
<td>4</td>
<td>50.00</td>
</tr>
<tr>
<td>2. Lack of Expertise</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>3. Lack of skills</td>
<td>1</td>
<td>12.50</td>
</tr>
<tr>
<td>4. Tender to high</td>
<td>3</td>
<td>37.50</td>
</tr>
<tr>
<td>5. Non compliance to labour legislation</td>
<td>0</td>
<td>00.00</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Results of Section B, Question 23

Table 4.30 indicates that the majority of the respondents (50.00 percent) failed
in securing the acceptance of their tenders because they did not have an affective affirmative action policy or plan in place. Other reasons for failure included tenders being too expensive (37.50 percent), and lack of skills (12.50 percent).

This brings to a close the analysis of the results of the empirical survey. The results indicate both compliance and non-compliance to labour legislature by SMME’s. Furthermore concerns raised by business and trade unions, as discussed in Chapter 3, are also substantiated in certain instances.

4.7 SUMMARY

The aim of this chapter was to set out the planning, the execution and findings of the empirical component of the study. The research population was clearly defined and a questionnaire was prepared based on information gained from the literature study. An accompanying letter for the questionnaire was composed and the questionnaires posted to potential respondents. In this discussion, reference is made to the fact that a satisfactory response rate was gained through a follow-up with potential respondents after the due date.

The results of the empirical study were then analysed in order to deduce the amount of agreement with concerns raised by SMME’s with regard to the affects of labour legislation on SMME’s. The conclusion that can be reached from the empirical study is that there is both support and disagreement against
current labour legislation. In the next chapter, an integration of the findings of the empirical survey and literature survey will be discussed with the relevant and appropriate conclusions and recommendations.

CHAPTER 5

AN INTEGRATION OF THE FINDINGS OF THE EMPIRICAL SURVEY WITH THE THEORETICAL SURVEY DEVELOPED FOR THE STUDY, SUMMARY, RECOMMENDATIONS AND CONCLUSIONS

5.1 INTRODUCTION

The aim of this chapter is to integrate the results obtained from the empirical survey, with the concerns raised by the knowledgeable people referred to and referenced in the literature study, as indicated in Chapter 2 and 3. To achieve this, the results of the quantitative analysis are reviewed to determine whether there is adherence to the relevant labour legislation. Furthermore, the analysis will indicate whether or not SMME’s adhere to labour legislation.

Once the results obtained from the empirical survey have been compared with
the concerns raised by SMME’s and Trade Unions, a summary of the study will follow, and the relevant conclusions will be drawn. Finally, recommendations as to other areas of research and potential problems encountered in this study will also be presented.

5.2 AN INTEGRATION OF THE FINDINGS OF THE EMPIRICAL SURVEY WITH LITERATURE SURVEY

As previously stated in the literature study, Finnemore and Van Der Merwe (1996: 41) described South Africa as a country of contrasts where major business is conducted from high rise office blocks using state of the art technology whilst, on the pavements below, hawkers sell their goods in order to make a subsistence level income. Within the same context, labour relations at the various workplaces differ considerably, despite the fact that they are regulated through the same legislation.

The viewpoints of knowledgeable people regarding concerns with labour legislation was discussed in Chapter 2, where a brief outline was given of the history and changes to labour legislation that directly or indirectly affected SMME’s. It was noted that numerous amendments to labour legislation had been introduced since the election of the new democratic Government of South Africa in 1994. The primary aim of the amended legislation was to redress the disadvantages in employment experienced by the previously
disadvantaged groups. Chapter 2 resolved sub-problem one, namely, what does a literature study reveal is the affect of current labour legislation on SMME’s.

In Chapter 3 the criticism levelled at labour legislation by businesses, trade unions and the response of the Government was dealt with. It was evident that businesses, trade unions and Government had, as yet, not reached mutual agreement with regard to labour legislation that was acceptable to all role-players. Each group was still concerned that, in one way or another, they would be placed at a greater disadvantage compared to the others. Given South Africa’s history of legislated oppression, it is obvious that trade unions will always resist certain amendments to labour legislation that directly or indirectly impact to the detriment of their members. Businesses, on the other hand, have the ultimate aim of making a profit, and any amendment to labour legislation will directly or indirectly lead to increased costs, which in turn will decrease profits. The Government, which was democratically elected, made promises to its constituents in return for support in the general elections, and in this case, the author is referring specifically to the trade unions. Changes to legislation can lead to their allies opposing them, which in turn can lead to mass action through strikes. The concerns raised by the major role players resolved sub-problems two and three, namely ‘How had legislation affected the SMME’s both directly and indirectly? and “What do the various role players feel are the implications of the legislation on SMME’s?”
In order to solve sub-problem four, namely ‘What problems are experienced by SMME’s in implementing the legislation?’ a questionnaire was developed with the purpose of ascertaining whether SMME’s:

- Had adhered to certain pertinent labour legislation;
- If they had not adhered to it, what were the reasons for non adherence;
- Whether institutions such as the CCMA were functioning effectively in their opinion;
- Had they been successful in securing Government or parastatel contracts, and if not, what were the reasons therefore.

The opinion was sought from organisations with staff compliments of less than 75 people, falling in the geographical municipal areas of East London and King Williams Town.

5.2.1 A REVIEW OF THE QUANTITATIVE ANALYSIS OF RESULTS WITH A VIEW TO IDENTIFYING PROBLEMATIC AREAS IN APPLYING LABOUR LEGISLATION BY SMME’s

In order to integrate the results obtained from the empirical survey with the literature study, for the purpose of the investigation, the statements that received adequate support were noted. Emphasis, however, was placed upon the statements that created concern. An examination of the quantitative results indicated that the statements that were a cause of concern can be viewed as problematic areas. The next section deals with these areas.
5.2.2 SCOPE OF THE EMPIRICAL STUDY AND RESULTS

In order to resolve the fourth sub-problem identified in Chapter 1, namely, ‘What problems are experienced by SMME’s in implementing the legislation?’ a survey was conducted among the owners/ managers operating in the demarcated area to ascertain their adherence to labour legislation. The questions posed in the questionnaire were obtained from labour legislation identified by knowledgeable people as areas of concern. The questionnaire was then mailed to owners/ managers of SMME’s employing a staff complement of 75 or fewer employees.

The results obtained from the empirical survey were subjected to a quantitative analysis and the following problematic areas identified:

- **Written letters/ contracts of employment:** The Basic Conditions of Employment Act (BCEA) states that all employers must have letters/ contracts of employment for each of its employees. The results of the survey indicated that 19.05 percent of the respondents did not abide with this requirement of the Act in that no letters/ contracts of employment were maintained.

- **Record of particulars of employment and remuneration:** In terms of the BCEA employers must maintain a record of employment and remuneration for each of its employees. The results of the survey indicate that 14.29 percent of the respondents did not maintain these records, as prescribed.
- **Addressing affirmative action:** The Employment Equity Act was introduced to address the need for affirmative action. Results of the survey indicated that most organisations were addressing affirmative action and, in most instances, had met the equity requirements in the junior levels. In managerial positions, however, the results indicated that 76.19 percent are still held by whites. From the survey it can be deduced that many organisations are addressing affirmative action in junior positions whilst the majority of managerial positions are still held by whites.

- **Skill development and skill development levy:** Results of the survey indicated that 28.57 percent of the respondents had not registered with their respective Sector Education and Training Authority (SETA). Of those respondents that had registered, only 6.67 percent had received a grant from the SETA for accredited training.

- **CCMA hearings:** Results of the survey indicated that 35.10 percent of the respondents had been required to attend between one to ten hearings. Of these hearings attended, 87.50 percent were in respect of unfair dismissalal and 12.50 percent in respect of unfair labour practices.

- **Effectiveness of the CCMA:** The results of the survey indicated that 57.14 percent believed the CCMA was effective, 14.29 percent believed they were not effective and 28.57 percent were not sure.

- **Tendering for Government or parastatal contracts:** The majority of the respondents (71.43 percent) had tendered for a Government or parastatal contract. Of those that had tendered, 53.33 percent were
unsuccessful. Reasons provided for not succeeding were lack of affirmative action practice and policies (50.00 percent), lack of skills (12.50 percent) and prices quoted being to high (37.50 percent).

5.3 SUMMARY

The problematic areas identified in section 5.2.2 arising from the results of the empirical survey raise the following concerns.

5.3.1 NON-IMPLEMENTATION OF BASIC REQUIREMENTS OF LABOUR LEGISLATION

Although SMME’s, through the South African Chamber of Commerce, have raised concerns with Government regarding legislation, the results of the survey indicate that the majority of SMME’s in East London and King Williams Town abide by the relevant legislation. There are, however, some businesses that have not implemented the basic requirements of the BCEA and these businesses will ultimately face serious problems should their employees need to be retrenched or be dismissed. Without a letter or contract of employment, and the record of particulars of employment and remuneration, the organisation will, in all probability, lose its case if submitted to the processes of the CCMA or Labour Court.
A further concern is, that although organisations are addressing affirmative action in junior positions, very little effort has been made in managerial positions. Should organisations not address this in the near future, then the trade unions will become involved and state that affirmative action has not been addressed throughout organisations. Although SMME’s can state that affirmative action in managerial positions will be addressed through skills development, the empirical survey indicated that 28.57 percent had not yet registered with their respective SETA. Furthermore 93.33 percent had received no grants from their SETA for accredited training. This in turn will cause further concerns for SMME’s, as they perceive the Skills Development Act and Skills Development Levy as an additional cost burden to them, and if some form of repayment is not forthcoming, they will start considering other labour-saving technologies.

### 5.3.2 EFFECTIVENESS OF THE CCMA

Of the 42 percent response rate, 57.14 percent believed that the CCMA was effective. Those respondents who disagreed with this indicated that they felt that the CCMA was time consuming and decisions take time before the case is finalised. It is of interest that the views of SMME’s in East London and King Williams Town regarding the effectiveness of the CCMA differs vastly from that stated by knowledgeable people. A presumption must be made that the case load in the Eastern Cape is considerably lower than that experienced in other provinces, hence the reason why it is considered effective in the East
5.3.3 TENDERING FOR GOVERNMENT AND PARASTATEL CONTRACTS

Respondents were also requested to indicate whether or not they had at some stage in the past year tendered for Government or parastatel contracts. Of those respondents who had answered in the affirmative, 53.33 percent were unsuccessful. Reasons for them being unsuccessful were cited as lack of affirmative action policies and practice (50.00 percent), lack of skills (12.50 percent) and prices quoted being too high (37.50 percent). If the comments under section 5.3.2 are taken into consideration, it can be deduced that those respondents who were not successful because of the lack of affirmative action policies and practices will, in all probability, fall under the category where very few measures have been taken to address affirmative action in managerial positions.

The completion of the empirical survey and the subsequent analysis of the data, as discussed above, have resolved the fourth sub-problem, namely ‘What problems are experienced by SMME’s in implementing the legislation?’ The results indicate that the majority of SMME’s have experienced no problems in implementing the legislation. There are some respondents who have not
adhered to the requirements of the labour legislation and this has affected them negatively in that they were not successful in securing Government or parastatel contracts.

5.4 RECOMMENDATIONS

The results of the study have identified certain areas that need particular attention. A discussion of these factors follows.

5.4.1 TYPES OF QUESTIONS USED

The majority of the questions in the study were all closed-ended questions requiring a response in terms of either a “Yes” or “No”. In some instances respondents were given a chance to substantiate their reasons. It is felt that, in hindsight, a larger variety of choices should have been given to respondents to establish whether or not the respondents identified any additional problems experienced by SMME’s in implementing the legislation.

5.4.2 POPULATION

The population used in the study numbered 50. This may be too small and possibly a larger population should have been surveyed. Although the study received a 42 percent response rate, the sample remained small. Furthermore, 10 percent of the respondents were not prepared to complete the questionnaire
and indicated that they were concerned with possible repercussions. A larger sample could possibly have highlighted additional discrepancies with regard to the implementation of labour legislation. A response of only 30.00 percent was received from King Williams Town and it is felt that this municipal area should have been excluded, and preferably, a larger sample taken from the East London municipal area.

5.5 CONCLUSIONS

From the above it is evident that all the role-players, namely businesses, trade unions and knowledgeable people have valid arguments both for and against labour legislation.

The concerns raised by knowledgeable people with regard to the ineffectiveness of the CCMA might be restricted to larger provinces such as Gauteng where businesses compete on a more regular basis for Government and parastatel contracts. These businesses, because of the competition, have no option but to abide by labour legislation in order to secure Government or parastatel contracts. Similar surveys in other larger metropolitan areas could possibly indicate that businesses that compete for these contracts pay more attention to aspects such as the application of positive affirmative action policies, skills development and the BCEA.

The newly democratically Government has, since 1995, promulgated labour
legislation to address the economic inequalities that persisted in South Africa in the past. This was because of the fact that the Government felt at that stage that SMME’s would be the prime area to employ retrenched civil servants or allow these retrenched employees to enter the SMME market. From the above it is evident that businesses, trade unions and Government have as yet not reached a mutual agreement with regard to labour legislation that is acceptable to all. At this stage, each group is still concerned and suspicious that in one way or another, they will be placed at a disadvantage with respect to the others positions, and this in turn places a serious strain on the South African economy.
REFERENCES


http://www.labor.gov.za/docs/pr/2000/pr1017.htm. Media statement issued by the Minister of Labour, Membathisi Mdladlana at the launch of a report on the reduction of weekly working hours to forty

http://www.sacob.co.za/html/labour_frame.htm. Basic Conditions of
ANNEXURE 4.1

QUESTIONNAIRE ON THE AFFECTS OF LABOUR LEGISLATION ON SMALL, MEDIUM AND MICRO-ENTERPRISES (SMME’s)
SECTION A: DEMOGRAPHIC DATA

This section of the questionnaire is purely for statistical purposes.

INSTRUCTIONS

Please place a cross (X) in the appropriate box

1. How many employees does your organisation have in total?
   
   1. [ ] 0 to 10
   2. [ ] 11 to 20
   3. [ ] 21 to 30
   4. [ ] 31 to 40
   5. [ ] 41 to 50
   6. [ ] 51 to 60
   7. [ ] 61 to 70
   8. [ ] 70 to 75

2. In which magisterial district do you operate?

   1. [ ] East London
   2. [ ] King Williams Town
3. What is the nature of the post that you hold?

1. Owner
2. Manager
3. Human Resources/ Personnel Manager
4. Financial/ Administration Manager
5. Production Manager
6. Other

4. Your race?

1. Asian 2. Black
3. Coloured 4. White

5. Are you and your employees members of

1. Chamber of Commerce
2. Trade Union
3. Bargaining Council
4. None of the above
6. In what sector of industry do you operate?

1. ☐ Manufacturing  2. ☐ Food and beverage
3. ☐ Agriculture  4. ☐ Retail and services
5. ☐ Transport  6. ☐ Tourism and hospitality
7. ☐ Motor industry  8. ☐ Stationary and printing
9. ☐ Building industry  10. ☐ Other

SECTION B

INTRODUCTION

This study is based on the premise that there are certain aspects of labour legislation that influence the ability of SMME’s to procure government and other major contracts. This study is being conducted among SMME’s in the East London/ King Williams Town Municipal areas and the questionnaire has been designed to ascertain why or what are the reasons why SMME’s cannot procure government contracts.

INSTRUCTIONS FOR COMPLETING SECTION B OF THE
QUESTIONNAIRE

Please complete the questionnaire using the following:

1 = Yes
2 = No

In certain questions kindly substantiate your answer briefly, where required, in the space indicated with a specific reason(s).

BASIC CONDITIONS OF EMPLOYMENT ACT

1. Do your employees have written letters/contracts of employment?

   1. Yes  2. No

   Reason why “No” selected.

   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………
   ………………………………………………………………………………………………………

2. Are your employees appointed:

   Permanently  1. Yes  2. No

   Temporarily  1. Yes  2. No

   Casual  1. Yes  2. No

3. What are the maximum hours worked per week by your employees?
1. 40

2. 45

3. More then 45

4. Are overtime rates paid in terms of the Act?

1. Yes 2. No

Reason why “No” selected.

.........................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................
.........................................................................................................................................................

5. Does your staff work on Sundays?

1. Yes 2. No

If yes are they paid:

Time and a third 1. Yes 2. No

Time and a half 1. Yes 2. No

Double Pay 1. Yes 2. No

Normal Pay 1. Yes 2. No

6. Do you keep record of particulars of employment and remuneration?
1. Yes 2. No

Reason why “No” selected.

…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………

EMPLOYMENT EQUITY ACT

7. Are you required to prepare an Equity Plan?

1. Yes 2. No

8. If answer to Question 7 is “Yes”, has this been prepared and submitted to the Department of Labour?

1. Yes 2. No

Reason why “No” selected.

…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………

9. What is the % breakdown of your staff?

1. White
2. Black
3. Indian
4. Coloured

10. What is the % breakdown of managerial/ supervisor staff?
1. White

2. Black

3. Indian

4. Coloured

SKILLS DEVELOPMENT ACT AND SKILLS DEVELOPMENT LEVY

11. Have you registered with a Sector Education and Training Authority (SETA)?

1. Yes  2. No

Reason why “No” selected.

………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………

12. Have you experienced any problems registering with your SETA?

1. Yes  2. No

If “Yes” kindly give brief breakdown of problems.

………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………
………………………………………………………………………………………………………………

13. Has your SETA, to date, paid any grants to you for accredited training?

Yes  No
LABOUR RELATIONS ACT

14. Have you retrenched any staff this year?
   1. Yes
      2. No

15. Have your employees been on strike this year?
   1. Yes
      2. No

16. If answer to Question 14 and 15 is “Yes” did staff take the matter to the CCMA or the Labour Court?
   1. Yes
      2. No

17. If answer to Question 16 is “Yes” was the result in favour of:
   1. Employer
      2. Employees

18. How many occasions this year were you required to attend conciliation/arbitration hearings with the CCMA/Labour Court?
   1. None
   2. Less than 10
   3. 10 to 20
4. 20 to 30

5. More than 30

19. If answer to Question 18 was either 2, 3, 4 or 5 was it in respect of?

   1. Unfair Dismissal
   2. Strike Action
   3. Unfair labour practice
   4. Retrenchment
   5. Other

   If “Other” selected give a brief description for reason for appearance:
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..

20. Do you feel that the CCMA is carrying out their work effectively?

   1. Yes
   2. No

   Reason if “No” selected.
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..
   ………………………………………………………………………………………..

   GENERAL
21. Have you tendered for any government or parastatel contracts?

1. Yes  2. No

22. Were you successful?

1. Yes  2. No

23. If the answer to Question 21 was “No” were the reasons due to?

1. Affirmative action  1. Yes  2. No
2. Lack of expertise  1. Yes  2. No
3. Lack of skills  1. Yes  2. No
4. Tender to high  1. Yes  2. No
5. Non compliance to labour legislation  1. Yes  2. No

Thank you for your time and assistance in completing this questionnaire.
20th November 2000

For attention: The Owner/ Manager/ Director

Dear Sir/ Madam

SURVEY ON THE AFFECTS OF LABOUR LEGISLATION ON SMALL, MEDIUM AND MICRO-ENTERPRISES (SMME’s)

Kindly find attached a questionnaire relating to the above. Your assistance in completing the questionnaire by 27th November 2000 would be greatly appreciated. Completion of the questionnaire should take no more than 20 minutes of your time.

When completed please contact the undersigned at 0835412339 in order that it may be collected at your premises. You may also fax it to (043) 7404008 (Kindly note that this is a telefax and you will be required to inform the secretary that you wish to send a fax). Should you wish to receive a copy of a summary of the findings, please indicate and it will be forwarded to you in due course.

Your co-operation in completing the questionnaire is greatly appreciated.
Yours faithfully,
Hylton Long
MBA Student, Port Elizabeth Technikon