

THE IMPACT OF LABOUR LEGISLATION ON SELECTED SMALL FIRMS IN MBOMBELA (NELSPRUIT)

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A thesis submitted in partial fulfilment of the requirements for the
degree of
Master of Social Sciences (Cwk/Thesis)

Submission date: December 2019

ABSTRACT

This study uses the theoretical framework of industrial relations pluralism, to study and analyse the impacts of labour legislation on six small firms (employing less than 50 workers) based in Mbombela (formerly Nelspruit), Mpumalanga province, South Africa. The analysis is based on the viewpoints of six managers and how they see the impacts of labour legislation on their respective firms. The analysis is aided by utilising theory and literature to make sense of the manager perspectives on the topic. Also, utilising a qualitative research design to collect and analyse the data, the study presents diverse findings in terms of how the participants perceived and experienced certain types of legislation. Some managers believed that the benefits of labour legislation outweighed the costs. While others believed the exact opposite. At an overall level, the study revealed that most of the participants were not as severely affected by labour legislation as might be expected; given the scarcity of resources in most small firms. This was partly because of various coping strategies and practices (mostly involving the use of informal procedures) that were adopted by the firms. Also, some small firms who aimed at expanding their businesses strategised to adopt some formal procedures and practices in order to easily absorb labour legislation and subsequently modernise their businesses in the process. While a few firms persisted with more informal customs as they appeared cost-effective and necessary in their particular market positioning.

ACRONYMS

BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
DoL	Department of Labour
EEA	Employment Equity Act
ET	Employment Tribunal
HR	Human Resources
HRM	Human Resource Management
IR	Industrial Relations
NMW	National Minimum Wage
LRA	Labour Relations Act
OH&S	Occupational Health and Safety
OM	Owner-Manager
SME	Small and Medium Enterprise
WTR	Working Time Regulation

ACKNOWLEDGEMENTS

First and foremost, I would like to extend my sincere gratitude to my supervisor, Professor Gilton Klerck, for his outstanding assistance in guiding in developing this research topic. His guidance and unwavering support throughout the research process, from start to finish, cannot be measured. He always pointed me to the right direction, and made the material understandable, while encouraging me to get back to reading and writing whenever I found myself without motivation to do so.

Second, I would like to thank the participants involved in this study. The input provided by the selected small firm managers of Mbombela was very valuable and insightful in that it provided an understanding of small firms in an easy, detailed and readable manner. And thanks to them that the impacts of labour legislation on their specific firms, and the specific ways in which they react and respond to it was also remarkably accounted.

Third, I would like to thank the friendly and welcoming staff of the Department of Sociology and Industrial and Economic Sociology of Rhodes University. The department has in a way made my academic journey a memory to never forget. All its staff, from the receptionist to the HOD, has always been supportive and happy to assist anytime I called for help. The Department awakened within me, the love for Industrial and Economic Sociology since my undergraduate studies, which made it my sole focus for all of my postgraduate studies.

Fourth, I will thank the National Research Foundation (NRF), and Rhodes University for both partially funding my Master's degree. Without their financial support, this dissertation would not have been a success.

Last but not least, I would like to thank my family and all my close friends who have all seen me struggling to get the project done, but have been very supportive since the start, and have directed me to my best potential, to be a better person and student. Each and every one of the above mentioned people have played a very important role in my life and particularly in making this research possible and successful. It is for that reason that they will all be always greatly appreciated. Although many have helped me, I am the sole author of the dissertation and all the errors, infelicities, and blunders (if any) are mine alone.

Sikhulile Blessing Dlamini

December 2019

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CHAPTER 1

INTRODUCTION AND RESEARCH DESIGN

1.1 Introduction

Small and micro firms, employing 1-50 employees, constitute the overwhelming majority of all business enterprises globally and are a crucial component of most governments' economic development and job creation programmes (including South Africa) (Biagi, 1995:439; Matlay, 1999:287; Alvarez, 2003:233, Aivbagboa, 2014:771). Governments across the globe have become aware of the importance of small firms to improvements in state and national economies (Biagi, 1995:439). Such interest arises from the view that small businesses provide the key to employment growth, job generation and innovation (Barret, 1998:3). In countries such as the UK, almost half of all the private-sector employees worked in small firms by the year 2013, whereas in Italy and Spain, two-thirds of the private sector workforce worked in small firms (Regalia, 2017:339). This makes small firms a very important component of the economy that should be studied in order to make informed policy decisions, but Edwards (2012) cited in Regalia (2017:339), noted that many of the systems which are used to operationalise employment rights in big firms are absent in small firms; making the examination of employment relations in small firms very challenging.

Understanding the dynamics of industrial relations (IR) and human resource management (HRM) in small firms and their responses to statutory interventions is therefore of vital importance and interest. And since such an analysis is key, it is important to seek a deeper understanding of what guides the relations between managers and workers within various small firms – examining the specific market positioning of the firms and how employment procedures are conceptualised and applied by small firm owners/managers. In such an analysis, it is very key to note the broad, conflicting concepts of regulation and flexibility, and how they impact on certain practices and procedures in the work arrangements of small firms. The implications of the economic, institutional and market contexts of small firms are also of key importance – as relations in firms tend to be guided by the context in which the firms exists.

The central key aspect this study seeks to highlight is the impact of labour legislation in small firms. The empirical section looks at South Africa's labour legislation pieces, particularly the Labour Relations Act (LRA), the Occupational Health and Safety Act (OH&S), the Employment Equity Act (EEA), and the Basic Conditions of Employment Act (BCEA) on small firms. The focus of the study is on examining the various impacts of these laws and the experiences that managers of small firms, as industrial relations actors, have come across in relation to these laws in their firms. This task is achieved by seeking to highlight the consequential costs/benefits (or both) of the abovementioned pieces of legislation, as perceived by the managers, on their small firms. As some literature will show in chapter two below, that regulation such as labour legislation is likely to harshly affect small firms since they have fewer administrative resources to administer these regulations, compared to large firms. However, on the contrary, some literature shows certain positive effects of regulation, and varying informal and formal means within the firms to mediate the impacts and burden of labour legislation. But, as will be noted – studies in this field cannot be generalised to all small firms as research in this field remains limited.

1.2 Context of the Study

Although there is extensive literature and publications on employment relations in large organisations; the state of proper knowledge of employee relations in small and micro-businesses remained very restricted in the not so distant past (Scase 1996 cited in Matlay, 1999: 285; Arrowsmith *et al*, 2003:438). Early studies were thought to be overly simplistic and either too pessimistic or optimistic in their understanding of employment relations in small firms (Stanworth and Curran 1978 cited in Matlay,1998:285). However recent studies have moved from the old stereotyped views to more complex ones (Chapman, 1999:75). A number of recent studies (Edwards, 2003,2004; Marlow *et al*, 2005; Regalia , 2017) have done that by also examining the impact of labour legislation on small firms.

Labour legislation continues to become widespread globally, and as a result, it has been argued that “the law now shapes UK industrial relations in a way that would have been inconceivable even in the recent past” (McKay 2001: 285 cited in Arrowsmith *et al*, 2003:285). The regulation of the employment relationship positioned the examination of small firms on the centre of the stage as small firms employ the majority of workers globally (Biagi, 1995:439). The result of this interest was because a majority of people other than the public sector now worked in small firms, and it

was there that the effects of the new regulations might most greatly be present (Arrowsmith *et al*, 2003:435). The common claim that small firms may not have the necessary resources to administer these laws, also brings great attention to small firms as they (Edwards, *et al*, 2004:255).

1.3 Aims and Objectives of the Study

The primary aim of this research project was to provide a qualitative analysis of the impacts of particular provisions of pieces of South Africa's labour legislation on selected small firms in Mbombela, Mpumalanga province, South Africa. All the firms selected in the study employed no more than 50 employees. And the various impacts and experiences (whether positive or negative) of small firm managers regarding labour legislation were particularly examined, partly in relation to how they inform different procedures and practices adopted by the firms. To fulfil this goal, the following objectives underlying the main research question were pursued:

- What is the impact of particular provisions (on wages, dismissals, maternity and sick leave, health and safety, working time, etc.) of the pieces of labour legislation on small firms?
- Which provisions of the labour legislation were either problematic or favourable (in terms of the direct/indirect costs and benefits on the firms)?
- What procedures and strategies (in terms of actions taken to implement regulations while ensuring a level of flexibility) do firms adopt in response to these laws?
- What are the effects of labour legislation on small firms' ability to operate profitably while ensuring that workers are protected?

1.4 Research Methods and Methodology

As this study's main objective was to provide a qualitative picture of the impact of labour legislation on small firms, focusing on the perspective of managers/owners of these firms – their experiences and views towards labour legislation were the most appropriate to understand, and as such, qualitative research proved as the most suitable for this task. The subjective views of small firm managers/owners towards labour legislation were consequently analysed using qualitative research methods and methodology, to highlight the overall impact of labour legislation on the firms. Qualitative research tends to be exploratory in nature, and following similar principles – this study likewise sought to explore in detail the impacts of labour legislation in six small firms

in the Mbombela area of South Africa. Mbombela, the capital of the Mpumalanga province, is a vibrant, sub-tropical city that combines a rich history with scores of wildlife and nature adventure events and charms. This lively city is not only the doorway to Kruger National Park, but is home to an outstanding botanical gardens, and great shopping malls. Mbombela Local Municipality has a well-established economy consistently achieving high growth rates (Mbombela Local Municipality, 2014, cited in Aigbavboa, 2014:774). It is well located to take benefit of strong international, national and regional connections and become an active role-player in the Southern African economy. Mbombela is also the seat of the Mpumalanga provincial government, and the foremost industrial, commercial, retail and services centre for the region, including Mozambique and Swaziland. The uniqueness of Mbombela and the number of small firms it has informed the choice of the research site, as this study represented an initial and exploratory investigation of IR, HRM and labour legislation in South African small firms in the Mbombela area.

The methodology and methods (qualitative reserach and interviews, respectively) chosen were also best suited for this kind of study as they provided a platform for small firm managers to voice out their experiences and perceptions towards labour legislation. This made it possible for the study to successfully explore the respective impacts and experiences of labour legislation in small firms within the cultural and socio-legal context of South Africa. Qualitative research methods are based on the interpretation of experiences and meanings attached to these experiences (Lune & Berg, 2017:22). The aim for this method is to understand what it is like to experience certain conditions and how people manage certain situations (Lune & Berg, 2017:22; Beuving Vries, 2015:69). Qualitative research has been known to give power to the participants, as it raises the voice of the participants over that of the researcher (Babbie & Mouton, 2007). Accordingly, the research participants in this study were given the opportunity to freely express themselves about their views and experiences of labour legislation. Qualitative research asks open-ended questions in an attempt to understand how something is the way it is rather than why it is the way it is (Beuving & Vries, 2015:12). The overall objective of this type of research is to describe and explain events instead of predicting them, as Lune and Berg (2015:22) described, that the aim of qualitative research was to inteprete views through language rather than mathematics, as quantitative research does.

Semi-structured interviews were utilised to gather the views of small firm managers. According to Lune and Berg (2017:69) semi-structured interviews are defined as interviews whereby the

researcher wishes to explore the participant's experiences and subjective views on the topic, it allows for the interview to be flexible, letting the interaction with the participant guide the direction that the interview takes. To avoid imposing time constraints on the already busy schedules of small firm managers, the interviews for this study were conducted only one time with each participant, each taking forty minutes to an hour, depending on the flow of the interview and the availability of the participants at the time. In the actual interviews with the participants, I used an interview schedule questions (see Appendix A) I had drawn from the literature review in chapter two below, and took notes during the entire interview process. I also asked for permission from the participants to audio-record the interviews and subsequently transcribed and deleted all of the audio recordings.

The six managers were purposefully sampled; this may be seen as a relatively small sample, but qualitative research does not concern itself with ensuring representativeness as quantitative research does. Instead, in qualitative research, the sample is chosen in relation to how appropriate the participants are in relation to the research question (Beuving & Vries, 2015). Thus, for this study the sample was selected not in the pursuit of finding the representative sample of all small firms in Mbombela, as quantitative research would require, but rather to understand how a particular firm defines its experiences of labour legislation. Participants chosen in this study were purposefully selected to meet the criteria that they came from various economic backgrounds and are currently employing less than 50 workers, hence small firms, as indicated in the list of interviewees in Table 1 below.

Table 1: List of Interviewees

Name	Position	Firm	Number of Employees	Date of Interview
*Bongani	Manager	Roof Truss	9	2018-10-29
*Nick	Owner-Manager	Auto-Workshop	7	2018-10-30
*Mary	Manager	Printing & Signage	27	2018-10-31
*John	Branch Manager	Forklift & Equipment	12	2018-11-01

*Barry	Owner-Manager	Aircon & Refrigeration	30	2018-11-02
*Eryn	Owner-Manager	Caravan & Camping	11	2018-11-02

* Pseudonyms

An ethics application to conduct this study was submitted to the Sociology Department Ethics Subcommittee and the Rhodes University Ethics Standards Committee (RUESC) and approved. As such, the ethical guidelines followed required that ethical conduct during the data collection stage be followed, necessitating that the purpose of the research is clearly explained to all participants and a participant consent form (see Appendix B) be made available to all interviewees prior the interviews. This was to ensure that full consent of participants was gained and making sure those participants understood the purpose of the research fully. Another ethical consideration that was made before the research took place was to ensure the anonymity of the participants and their firms by using Pseudonyms instead of their real names, this is highlighted in Table 1 above. The aim was to protect the identity of the participants of this study.

1.5 Outline of the Dissertation

The next chapters of this research will outline the theoretical approach, including a literature review, followed by the empirical findings of the study, and the conclusion and discussion. Chapter two will be divided into five sections, the first section will introduce the chapter; the second section will outline the theoretical approaches to industrial relations, greatly highlighting the perspective adopted in this study, namely; industrial relations pluralism, while briefly highlighting unitarism and radical theory; and the third section will evaluate the relevant literature regarding the dynamics of employment in small firms. The fourth part will examine the literature on labour laws and small firms. The last part of the chapter will highlight the literature on this topic in the South African context. Chapter three – the empirical analysis of the paper, builds on the suggestions of the literature and theory, and firstly contains details of each firm, organised in a standard format of market context and structure, and seeks to examine two sets of research, one on the operation of small firms (taking into consideration their specific contexts and environments), their procedures and employment relations with workers and second, on the effects of the law on firms in terms of

costs, benefits and competitiveness. The central analysis of the chapter highlights how the impacts of labour legislation on small firms are mediated by the following factors: the internal dynamics of the firms, covering laws on work-life issues and disciplinary procedures, the views of small employers towards labour legislation; and the varied nature of laws. Chapter 4 turns to the conclusions and discussions which seek to bring the central argument of the paper together and makes suggestions for future research and way forward.

CHAPTER 2

WORK AND EMPLOYMENT IN SMALL FIRMS

2.1 Introduction

As briefly stated in the introductory chapter, this section will focus on the review of the theory and literature covering work, and employment regulation in small firms. The initial part will examine the theory, looking at the theoretical foundations of industrial relations, the different frames of reference, and how industrial relations pluralism has learnt to encompass the human aspect to its study and recognise the existence of both conflicting and common interests in the workplace. The following parts will examine global literature on employment and work in small firms, firstly focusing on the development of literature on small firms and how it was initially limited in its scope by being overly simplistic on its view work in small firms. The development of the literature in recent years has transcended such limited views, but drawing from such views, developed wider definitions and studies of small firms such as the impact of labour laws. The last part of the chapter will examine the literature focusing on the South African context and highlighting how the social democratic and labour regulation policies of the country has an implication for small firms.

2.2 Theoretical Approaches to Industrial Relations

2.2.1 Introduction

This section will examine the different theoretical approaches to industrial relations, briefly highlighting the history and main aims of industrial relations as a practice. “Theory can be viewed as a coherent group of assumptions or propositions put forth to explain a phenomenon” (Chidi & Okpala, 2012:263). As such, IR comes with its own group of theoretical assumptions explaining how the workplace operates. Early founders, including Sidney and Beatrice Webb, Lujó Brentano and John Commons started researching the employment relationship in the early twentieth century (Kaufman, 2010: 74). Dunlop (1954), Fox (1966, 1974) and Hyman (1975) are also classic works that later contributed greatly to the study of industrial relations (Kaufman, 2010:75). Some of this research has carried on to most recent times as displayed by Budd (2004) and Piore and Safford (2006), amongst others. First, it is key to understand one of the definitions of IR, as Rose (2008) cited in Chidi and Okpala (2012:264) defines it as the study of both the individual and collective regulation of the employment relationship between managers and workers, and the setting of procedural and substantive rules in the workplace.

However, since IR is of a multidisciplinary nature, it does not hold a universal definition, and as a result, it has been defined by many of its scholars using different frames of reference which draw from various disciplines (Chidi, & Okpala, 2012:264). These frames of reference give an imperfect view of IR but do offer a better understanding of the employment relationship” (Chidi, & Okpala, 2012:264). Three main frames of reference/perspectives which could be used to understand the workplace were proposed by Fox (1966; 1974). The first is the unitary frame which regards the work organisation as one ‘team’ in which the interests of the employer are shared with employees, allowing the two to work together as a team. The second is the pluralist frame which sees the work organisation as a partnership of interests which may somewhat differ, and a balance for such differing interests is usually sought through systems of conflict resolution such as collective bargaining. The third is the radical frame which sees the workplace as having deeply opposed and conflicting interests between the owners of the means of production and the working class, as a result of the inherent exploitative nature of the capitalist system (Heery, 2016:2). The unitarist and radical frames/perspectives will only be briefly highlighted in this section, while the pluralist perspective will be the main focus.

In its early days, IR was initially recognised as a solution to the “labour problem” (industrial strikes and poor working conditions) that came to existence in industrialising capitalist countries in the

period of the late 19th century to the early 20th century (Kaufman 2004, cited in Heery 2016:42). IR postulates that the “labour problem” grew out of the brutal parts of competitive *laissez-faire* capitalism and its traditional labour management practices (Kaufman, 2010:76). Also, the orthodox economics modelling of labour as just another commodity, which its price and quantity can be determined in a perfectly competitive market, contributed greatly to the labour problem (Walras, 1954, cited in Kaufman, 2010:77). To institutionalist IR scholars, orthodox economics proved less useful when applied to labour markets because labour contained a human element, and it was not to be simply treated as a commodity, and the labour market is thought to be less perfect than other commodity markets, because “... individual workers often bargain at a disadvantage” compared to their employers, and the difference should be noted between a human market and a commodity market (Kaufman, 2010:77). The treatment of labour as a commodity made possible an unregulated system of free trade in labour, resulting in very harsh labour management practices (Kaufman, 2010:77). IR pluralism then was traditionally an intellectual response to the growing industrial working class, and it was focused on the advance of institutions such as trade unions and systems of collective bargaining, which could integrate workers into steady, advanced societies (Heery, 2016:36). One of the most important purposes of trade unions was to balance the “one-sided determination of the price and conditions of labour... [and] the almost unlimited control of the employer over his employees” (Ely 1886 cited in Kaufman, 2010:78).

The purpose of altering the orthodox economics model was to bridge the gap between economics and other social sciences, bringing the human aspect to the fore (Kaufman, 2010:79). By being human, employees are entitled to standards of treatment by employers that safeguard their well-being, with a right to shape the terms and conditions in which they work (Heery, 2016:38). Therefore, real efficiency in the workplace is claimed to occur if workers’ values and interests are taken into consideration (Budd, 2004: 22). It is also claimed that it is through real efficiency that workers are able to contribute fully to the production process, and if they recognise that they can share the profits of organisational prosperity, and since they are human, they require a voice and job security to work effectively (Budd, 2004:22). So, to solve the labour problem, it required the rebalancing of some aspects of capitalism in order to make the system more stable, efficient, justice-orientated and to bring human values to the employment relationship (Kaufman 2010:76; Gross 2003, cited in Heery 2016:42). Institutionalists such as Commons recommended that capitalism should be reformed by institutionalising it, rather than its complete abolishment – doing

so would, in turn, save capitalism and solve the labour problem (Kaufman, 2010 cited in Heery, 2016:36). IR then was also initially modelled as an intermediate institution between *laissez-faire* capitalism and social revolution (Kaufman, 2010:76). As briefly mentioned above, different frames/perspectives of IR were proposed, and the next section of this chapter will touch on them.

2.2.2 Unitary Frame

The unitary perspective of IR takes the position that the workplace operates as a unified structure, consisting of organisational participants who share common goals and values (Chidi & Okpala, 2012: 265). This perspective suggests the non-existence of competing factions within the workplace, and further turns a blind eye to the existence of any force that opposes the rule of management. Forces such as trade unions are perceived, under this perspective as unnecessary intrusions in the organisation, which contest for the loyalty of workers against management (Chidi & Okpala, 2012: 265). This perspective also leans towards paternalism, is pro management, stresses the existence of industrial harmony, and perceives all conflict in the workplace as illegitimate (Chidi & Okpala, 2012: 265). The unitary frame follows two wide-ranging lines of analysis. The first one is soft unitarism which gets much of its theoretical ideas from psychology, and which is demonstrated in the currently abundant, mainstream literature on high performance work systems (HPWS) (Proctor 2008, cited in Heery, 2016:13). For unitarists, workers secure their interests because employers apply management strategies that permit them to do so (Heery, 2016:14-15). For soft unitarists it is the application of sophisticated HRM that is critical (Heery, 2016:15). The second one is hard unitarism, which submits that the key management action is the design of incentive structures that allow active workers to maximize the return from their employment (Lazear 1995, cited in Heery, 2016:15).

2.2.3 Radical/Marxist Frame

Marxism is commonly known as a general theory of society and provides ground for analysis of industrial relations in a capitalist society, but it does not solely focus on the analysis of IR (Chidi & Okpala, 2012:273). Karl Marx himself did not intend to discuss IR in detail, but Marxist scholars later incorporated and applied Marxian theory to understanding IR (Ogunmbameru, 2004 cited in Chidi & Okpala, 2012:273). Scholars as Hyman (1975) cited in Chidi & Okpala (2012:273) were pioneers in applying Marxist theory to IR by examining processes in which conflict and dispute in

the workplace is generated. The ongoing conflict and power struggle between the two social classes of society: the working class, and the owners of means of production, can directly be translated to IR (Hyman, 1975 cited in Chidi & Okpala, 2012:273). For the Marxist perspective, conflict stems from the fact that in industrial capitalist societies, the owners of the means of production seek to buy labour at the cheapest possible price, while the working class seeks to sell its labour at the highest possible price (Hyman, 1975 cited in Chidi & Okpala, 2012:273). Radical scholars tend to view the employment relationship with a devastatingly negative view (Heery, 2016:71). Work within capitalism is seen as dehumanizing, oppressive, and exploitative, and the present tendency as a further degradation of the employment environments through deskilling, work intensification, or the growth of ‘precarity’ (Heery, 2016:71). The recent stress on ‘precarity’, presented as a defining feature of the present-day workplace, is a case in point. It has become a common discussion for many within the radical frame that work is becoming increasingly precarious, with a set of overwhelmingly negative consequences for the working class (Heery, 2016:108). There is an acceptance by radical thinkers that employers will not improve employment conditions and governments will not change that unless they are pressured to do so through some kind of contest from below (Heery, 2016:108). To solve the ongoing conflict between the classes requires the alteration of the imbalances of society in terms of power and the economy (Chidi & Okpala, 2012:273).

2.2.4 Pluralist Frame

In principles of pluralism, society is comprised of various interest groups, and each societal group subscribes to moral values and should acknowledge others’ values and interests, and if necessary, be willing to compromise or reject to do so if it clashes too deeply with their own values (Clegg, 1975: 311). It also seems plausible to suggest that much of people's political activity grows out of their group identity which is informed by their values and interests (Provis, 1996:479). The success of pluralism then, is the ability of social groups/parties to negotiate and reach a compromise in order to achieve social stability combined with adaptability and freedom for everyone (Clegg, 1975:311). Pluralism asserts that there is a risk of a political strike when a compromise between parties is not reached, but the pluralist net has demonstrated to keep society stable even when a concession is not reached (Clegg, 1975: 311). Despite differences between political behaviour and the conduct of industrial relations, the same outline of pluralism in politics can readily be translated

into pluralism in industrial relations (Clegg, 1975: 311). Pluralist perspectives were once dominant in the analysis of work and employment relations, and they remain the frame of choice for most scholars who label themselves as 'industrial relationists' even today (Heery, 2016:36). Although most industrial and commercial managements are selected in a very different manner from democratic governments, they, just like governments, claim a special authority and responsibility within their firms; and the doctrines of political sovereignty and management prerogative have much in common (Clegg, 1975:311). Just as pluralism is compatible with stability in political life, so the organised interaction of interest groups in industrial relations should be compatible with stability. One reason for the intimacy of pluralism and stability is the historical background of economic expansion, allowing scope for compromise among the competing parties. Another is the fact that 'rules of the game have been developed by the government and the parties themselves to keep within generally reasonable bounds their actions towards each other', so to avoid conflict (Hyman, 1978:20).

Conflict arises out of the clash of economic interests between workers seeking job and income security, and employers looking to promote efficiency and organisational effectiveness (Kochan and Katz 1988; cited in Provis, 1996: 477). In place of the class antagonism suggested by the radical/Marxist perspectives, pluralism suggested the complex existence of sectional interests in place of class-based political power, and the existence of rival parties, each subject to the constraints and influence of organised group pressure was recognised (Hyman, 1978:19). Also, unlike the unitarist perspective, pluralism did not only limit itself in assessing organisational performance as the only indicator to success, but examines how it can be beneficial to both workers and managers, since workers may have values and interests that are different to those of managers and organisational performance alone (Budd, 2004:20-21). Valid interests, it was normally assumed, are those commonly identified as such by participants in collective bargaining: that is to say, they are interests which can be accommodated in the give-and-take of negotiations between employers and union representatives (Hyman, 1978:33). When it comes to the workplace, "...greater stability and adaptability are given to industrial relations by collective bargaining rather than by shackling and outlawing trade unions" (Clegg, 1975:311). For example, workers and their representatives may feel obliged to job security and a certain fair wage, and managers on the other hand, may be interested in the expansion and profitability of their businesses (Clegg, 1975:311). Although the traditional pluralist version of IR as highlighted above, recognises that both conflict

and cooperation exist in the workplace, it seems to assume that conflict is more dominant than cooperation (Ackers, 2014:2609). This sort of structural bias has been in decline in recent research approaches of IR because the actual nature of power and conflict in the workplace can be uncovered by empirical research (Ackers, 2014:2609). According to Belanger and Edwards (2007) cited in Ackers (2014:2516), the compromise between managers and workers is at its best, composed by certain settings of technological, product market, and institutional factors.

Noting that there are both competing and common values and interests at the workplace level, the pluralist perspective also stresses that there ought to be a similar line of thinking regarding the balance of interests at the macro-economic level (Budd, 2004:23). Negative outcomes such as the labour problems of the early 20th century were all thought to originate from a very large labour supply and very few social safety nets coupled with labour market imbalances which led to companies having a great advantage in bargaining than individual workers (Kaufman 1997 cited in Budd, 2004:23). It is then believed that the inequalities in income distribution between managers and workers reduces consumer purchasing abilities, thus it prevents stabilisation at a macroeconomic level, not just in the level of the workplace (Kaufman 1996 cited in Budd, 2004:24). Since Pluralism recognises that there is not always a balance of power between competing interests, to criticise pluralism on the grounds that it assumes the balance of power is less worthy of attention (Clegg, 1975:315).

Since unions are at the centre of traditional pluralism, a nuanced and modern ‘neo-pluralism’ proves applicable even to non-union workplaces, as all workplaces have a common feature, which is the employment relationship (Marsden, 2000:320; Khan & Ackers, 2004:1342). As Regalia (2017) highlights, that the limitations of the traditional IR paradigm were that it supposes that work and employment are meant to be regulated by the interaction between the following groups of IR actors: capital – employers and employer organisations; labour – employees and trade unions; and the state. The traditional IR pluralism paradigm did recognise that labour regulation relies upon individual exchange to some extent, collective bargaining, and political exchange; however, collective, trade-union-controlled logics of action, based on worker representation seemed to dominate the sphere of traditional IR (Pizzorno, 1997; cited in Regalia 2017:336).

In advanced economies such as those of Europe, in the “Golden Years” of 1945-1975, traditional IR seemed to prosper significantly, seeing extensive worker representation, industrial democracy,

and better working conditions (Regalia, 2017: 336). However, in the late 1970s onwards, the structures which permitted the success of traditional IR were in decline due to macroeconomic and political events such as the economic crisis, international competition, and the deregulation of markets (Regalia, 2017:337). It was then when most firms internationally, decided to readjust their productive and organisational strategies, and the limitations of the traditional regulatory model of IR were realised (Regalia, 2017:337).

Some of the major limitations of the traditional IR model, such as the divide of the labour market, have since expanded and continued until this day, (Schmid, 2010 cited in Regalia, 2017:337), which saw, on the one hand, permanent workers who have full protection against unemployment, accidents etc, and temporary and casual workers who cannot benefit fully, if at all, from these protections, on the other hand (Regalia, 2017:337). This shows that industrial trade unionism no longer covers all the different sectors of work, necessitating the need for theoretical development from these shortcomings (Regalia, 2017:337). The central areas of IR interest had in decades past been “trade unions, collective bargaining and strikes”, but that “It is now widely recognized that the different aspects of the employment relationship are what define the field” (Blyton *et al*, 2008, cited in Kaufman & Gall, 2015:410). As Katz and Darbishire (1999) cited in Marsden (2002:321) once proposed, that industrial relations theory should be conceptualised from a bottom-up approach, because a decline of corporatist, national institutions in advanced industrial countries has been evident. As a result, bargaining activity has to some extent shifted to the firm level, and since firms have been exposed to international competition, they tend to foster more flexible structures and procedures (Marsden, 2000:321). “The problems of order that concern contemporary pluralists, however, tend to be of a different kind to those that exercised their classic predecessors. They are concerned with disorderly markets rather than disorderly workers and propose regulatory solutions to perceived market failures” (Heery, 2016:37).

Context is also important, as different contexts may require different explanations and theoretical grounding. Such has been evident in the sub-Saharan African (SSA) context, where the wider social and moral issues of the broader community have a key influence to employment relationships (Khan & Ackers, 2004:1330). Where also the internal IR structures, such as trade unions, do not constitute the main representative forms for employee grievances (Khan & Ackers, 2004:1330). Western employment frames of reference do not exemplify suitable theoretical

frameworks for analysing all the relevant social factors that influence the SSA employment relationship, because in SSA, stakeholders as extended family clans and religious brotherhoods, often permeate authority relations within the workplace (Khan & Ackers, 2004:1330). Western HRM has also tended to influence firms to ignore external influences and claimed them as sources of corruption and inefficiency (Khan & Ackers, 2004:1330). These issues should be re-evaluated to make an all-encompassing theory that can be applicable in various contexts without dismissing social factors which may be important.

In light of the above discussion, what may be fruitful to theory is that inquiry should be made at the weaker points of the traditional model of IR pluralism, and the linkages with other frames/perspectives of reference, as Kaufman & Gall (2015:416) explain the Marxist concept of surplus and how it leads to incentives for both cooperation and conflict in the employment relationship, which highlights the pluralist tendency of acknowledging both conflict and cooperation but using a Marxist concept. Furthermore, an attempt to synthesise the basics of the pluralist and radical-Marxist frames, while developing and formalising these pluralist-radical ideas using concepts from orthodox economics, is of key importance since it provides a well-rounded argument (Kaufman & Gall, 2015: 408).

Focus should also be afforded to the emerging fields of research which have not been widely explored such as: the new forms of employment/nonstandard work and its regulation; and the regulation of work in small firms (Regalia, 2017:338). Such inquiry will likely highlight the differences and similarities in IR practice across different sectors and workplaces (Regalia, 2017:338). While statutory and practical means for workers do exist and may even succeed over some time, the spontaneous and informal employee responses to their grievances is worth some attention as an important institution of employee representation in the non-union workplace (Hyde, 1993:154). An old problem which traditionally less attention has been paid to, is regarding the regulation of work and employment in small firms, requires closer examination which may assist the overall argument of industrial relations (Regalia, 2017:339).

2.3 Dynamics of Industrial Relations in Small Firms

2.3.1 Introduction

This section will examine various studies on small firms, highlighting the development of early literature seeking to understand the operation of small firms, to most recent literature examining the impact of labour legislation in small firms. Since the 1990s, there has been growing body of evidence which explores the employment relationship in small firms, and this section fulfils an important task by recognising the importance of this literature. As will be highlighted, prior studies were somewhat limited and overly simplistic but have guided current studies to a certain extent. Literature examining employment relations in small firms has been developing internationally, especially in the UK and Australia. Small firms have a unique and obvious feature: their size of employment. This view was backed by two universal views of employment conditions in small firms; “small is beautiful” and “bleak house” (Arrowsmith *et al*, 2003:436). This brings us to the initial part of this section which will look at the two opposing views regarding how small firms were originally perceived in the early literature. The subsequent parts will firstly look at the dynamics of HRM and IR in small firms, highlighting the notion of informality, and secondly, the impact of labour legislation on small firms and the resulting responses to it. The last section of the chapter fulfils certain tasks: first, it reviews literature focusing on the South African context; second, it outlines the broad economic frameworks of the country; and lastly, it reveals the implications of the labour legislation and its impacts on South African small firms.

2.3.2 ‘Small is beautiful’ versus ‘bleak house’

Early studies on small firms were initially focused between two opposing views of “small is beautiful” (Ingham, 1970; Bolton, 1971; cited in Regalia, 2017:339; Arrowsmith, 2003:436; Matley, 1999:285), and “bleak house” (Rainnie, 1989; cited in Regalia, 2017:339). The former view was strengthened by the Bolton’s in the early 1970s and the latter was consequently developed as criticism to the initial views depicting small firms as harmonious places.

2.3.2.1 ‘Small is beautiful’

The concern for the “small is beautiful” view was the close physical proximity between managers and workers, which it is argued encouraged a mutual and informal 'give and take' that weakens collective organization and conflict. Wages in small firms might be lower than in large firms, but workers were expected to willingly concede this in return for a more congenial work atmosphere

(Arrowsmith *et al*, 2003:436). For this view small businesses have been seen as the site for the development of a sociable HRM approach because of their direct communications and flatter hierarchies, the contribution of each employee to organizational performance can be directly recognised as they work side by side with the managers/owner-managers (OMs), and the more immediate ability of the OM to envision and bring about change (Bacon *et al*, 1996, cited in Arrowsmith *et al*, 2003:436). 'Small firms have also been described as experiencing the benefits of informal communication, direct supervision, and more broadly defined jobs' (Kaman *et al*. 2001, 36, cited in Matlay, 1999: 293).

Prior the Bolton Report of early 1970s, Revans' (1956; 1958) cited in Barrett (1998:18) also noted that unlike large firms, small firms tended to have better relations between managers and workers. These studies informed the view of industrial harmony in small firms. Positive findings also indicated that levels of absenteeism were very low, and that worker morale was high. Another significant investigation was by Ingham (1970) cited in Barrett (1998) where he argued that employees choose work environments most suitable to their own attitudes to work. In his terms, employees in small firms had a 'non-economistic expressive orientation' to work, leading them to prefer a sociable work atmosphere than an economically rewarding one (Barrett, 1998:18).

2.3.2.2 'Bleak house'

A different strand of studies which brought a differing view of small arose, as Rainnie (1983, 1984) also challenged the claim that industrial relations in small firms tends to promote co-operation, common respect and moral attachment among managers/ OMs and their employees. His study argued that 'industrial harmony' particularly in printing and clothing small firms, was almost non-existent contrary to what its supporters usually speculate (Matlay, 1999:285). In large firms' conflict (when it is seen in terms of industrial action and unionisation of employees) is more easily expressed and visible and this has led to the view which may not be true, that small firms are conflict-free (Barret, 1998:7). Additionally, employment in small firms was also thought to be likely harsh as a result of exposure to more competitive markets and dependence on large firms by most small firms, as customers (Rainnie, 1989 cited in Arrowsmith, 2003:437). Small businesses were in fact seen by this view, as autocratic, oppressive and stifling sweatshops because it was also not as easy for workers to organise and raise their concerns (Rainnie, 1989). Goss (1991) cited

in Barrett (1998:18) points out that where empirical evidence is cited to support the industrial harmony idea, it is largely derived from the opinions and views of small firm owners or managers

2.3.2.3 Policy implications

The two views have implications for policy or legislation directed at small firms; for the “small is beautiful” view, the personal face-to-face relations grounded on the ideas of reciprocity where labour protection and rights are to be naturally guaranteed by the spontaneous adjustment of procedures – these informal procedures can be seen as comparable practices to the formal rules and procedures of large firms (Edwards, 2012; cited in Regalia, 2017:339). Under this view, it would be desirable for policy to not interfere in firm procedures by introducing regulations stemming from outside that may prevent the good informal match of interests in the firm (Regalia, 2017:340). On the other hand, in terms of the “bleak house” scenario, where power relations tend to be abused by the employer as a result of the small size of the firm inhibiting the organisation of workers – external policy geared towards the protection of workers from manager abuse of power would be necessary (Regalia, 2017:340). It is also without argument that both workers and managers depend on each other, so employers are not with full control in how they utilise and discard employees, as their freedom may be restrained by how easy it is to find and replace workers (Goss, 1991, cited in Regalia 2017:340).

2.3.3 Defining small firms: Number of employees, institutional, economic and market contexts

As noted above, the starting point of defining small firms was originally by its size. The Workplace Employment Relations Survey of 1998 (WERS98) in Australia defined small businesses as private sector standalone sites with between 10 and 99 employees (Edwards *et al*, 2003:32). Others have defined small firms as employing less than 50 workers (Blackburn and Hart, 2003:60). For industrial relations and HRM purposes, the number of employees is used to describe firm size. Barrett and Buttigieg (1999) cited in Bartram (2005:139), suggest that it is often a convenient and subjective size that is chosen to distinguish between small and big firms. The definition of a small firm is complex, and therefore a wide difference of definitions of what constitutes a small firm is presented in the literature (Barrett and Buttigieg 1999, cited in Bartram, 2005:139) For example Goldberg (2009) defines a small firm as one that employs between 1 and 50 workers.

Definitions have become complex, taking into consideration a variety of many other issues (such as turnover or assets), as the literature notes that the small size of the firm tends to influence the relations between managers and workers; however, these relations tend to be contingent on the characteristics of small firms in their various institutional, economic and market contexts (Regalia, 2017:340; Marlow *et al*, 2005; Barrett, 1998). The argument is that, although the size of employment is an important variable of defining a small firm, it is not the only variable that determines a range of industrial relations processes and characteristics which exist within the firm (Barrett, 1998:4). A study by Arrowsmith *et al*, (2003), for example, provided a framework that bridged the old approaches by acknowledging both size and sector as relevant levels of analysis.

It is important to note that there are many interpretations of what is, or can be considered, a 'small' firm. The most known measurable criteria by which small firms are demarcated include: market share; turnover and/or sales; assets; and size of employment. Research has shown that definitions of small firms are not similar. For example, Forsaith *et al*, (1995) cited in Barret (1998:1) used data from the Australian Bureau of Statistics to show that measures of size, based on assets, employment and sales, are not readily interchangeable across the small firm sector. They conclude their study with the argument that qualitative definitions should be used wherever possible and, if quantitative measures are used, they should be sector specific (Barrett, 1998:1). In addition to the 'size of employment' variable, other independent, qualitative variables such as whether the main owner is present or absent, the sector in which the firm exists and whether the firm is part of a larger organisation or the single workplace of an organisation should all be considered in the study of small firms (Barrett, 1998:2). Other qualitative principles such as industrial subculture (Curran and Stanworth, 1979a; 1979b; 1981a; 1981b; Scott, *et al* 1990, cited in Barrett 1998:1) were equally important as the size.

Acknowledging the diversity in definitions of different small firms enables a more meaningful investigation of each firm in a particular industry and facilitates a well-rounded understanding of industrial relations in general (Barrett, 1998:3; Edwards *et al*, 2006:703). It can be argued that policies that place all small firms under one umbrella may miss their target because there are many ways in which a small firm can be defined and therefore their needs understood (Barrett, 1998:3). Curran (1990:129) cited in Barrett (1998:3) argues that “size is not a very interesting or important attribute of an economic unit sociologically when set alongside others such as economic sector,

technology, locality, labour and product markets etc, which are more theoretically significant”. Although a number of criticisms are made of these quantitative measures, the critical issue of having multiple definitions was the acknowledgment that variations in combinations of employees, assets, and turnover occur between industries and, as a result, it was difficult, if not impossible, to find one universal numerical indicator to define small firms Curran & Stanworth (1982) cited in Barrett (1998:5).

2.3.4 Trade unions and industrial conflict in small firms

There is extensive evidence which show that small firm employees are unlikely to be union members and similarly that industrial action is unlikely to occur in small firms. For example, union membership has been steadily dropping to the current rate of 31.1% of Australian workers with only 24% of private sector workers being members of a union (Regalia, 2017:340). Earlier evidence also shows that as the size of a location declines, so too does the proportion of employees who are union members (Barrett, 1998:9). This evidence reveals that employees in small workplaces are way less likely to join a trade union and engage in industrial action, which can be compared against the situation in large workplaces where employees are more likely to join a trade union and engage in industrial action (Barrett, 1998:11). Moreover, the under protection of atypical labour, very common in small and medium enterprises, proved difficult for this category of employees to become unionised or to become involved in collective action (Biagi, 1995:442). Since workers in small firms do not always have sufficient legal protection, it is easier for the small employer to adopt a paternalistic attitude or to engage in aggressive behaviour towards workers (Biagi, 1995:442). And other studies have established that neither low unionisation nor the absence of industrial action can be taken as indicative of good employment relations (Callus *et al*, 1992, cited in Barrett, 1998:11). Similarly, strike action is often misjudged as a good measure of the level of industrial action, however, industrial action can take a range of explicit and implicit methods other than strike action (Deer, Ploughman & Walsh, 1997, cited in Barrett, 1998:11). Despite there being differences in the likelihood of unionisation and industrial action, information depicts very little about small firm industrial relations (Barrett, 1998:11).

Furthermore, certain industry clusters are more likely to have employees who are members of a trade union than others (Barrett, 1998:12). This information proves that regardless of size, employees who work in more 'traditional' industry groups are more likely to join a trade union

(Barrett, 1998:12). However, industrial action is not a common occurrence in many workplaces, particularly when the workplace is the single workplace in the organisation and when the principal owner is present at the workplace (Barrett, 1998:14). As was shown previously that when data was analysed by moving beyond the qualitative variable of size of employment and recognising qualitative variables such as whether the owner is present or absent, industry and whether the workplace is part of a larger organisation or the single workplace of an organisation, then it was possible to start discounting the simple argument of harmonious industrial relations in small firms (Barrett, 1998:17). Newby's (1977) study cited in Barrett (1998:18) of small agricultural firms provided further evidence that an absence of industrial conflict was not a result of harmony brought on by the proximity of workers and employers in the employment relationship, but rather a pragmatic acceptance of the rural class structure common in agricultural firms. And Rainnie (1984) argued that small firms in the clothing industry; worker compliance to workplace rules was enforced by management's ability to resort the use of autocratic strategies of control (Barrett, 1998:18). In another set of small firms studied, respondents were aware of some degree of polarisation at the workplace. The 'them and us' comment came up regularly in interviews with owner/managers and their employees, noting the existence of conflict (Matlay, 1999:293).

2.3.5 Human Resource Management (HRM) in small firms

In large businesses, organisational control is normally rested with the board of directors and a chairperson (Matlay, 1999:288). A variety of operational functions are entrusted to selected management teams and/or specific managers for their specific tasks. For example, the training and HR development function normally has its own department and appointed manager (Matlay, 1999:288). This function has been defined as the "process of attracting, developing, and maintaining a talented and energetic workforce to support organizational mission, objectives, and strategies" (Schermerhorn, 2001:240 cited in De Kok & Uhlaner: 2001:3). In large businesses, thorough training and HR development plans and budgets are routinely drawn up as part of the wider business strategy and organisational control. The locus of organisational control in small and micro-businesses emerged as the most important single factor to affect employee relations in small firms as it tended to rest with the owners and differed greatly from large businesses (Matlay, 1999:288).

The above is evident in Matlay's (1999) study of 6, 000 respondent businesses of various sizes, showing that organisational control and decision-making processes regarding HRM in most of the small businesses, rested with the OMs. The OM was identified as the gatekeeper of most, if not all decisions including those relating to HRM (Matlay,1999:287). In these firms, only a small number (11.32 per cent) of small business OMs chose to delegate HR decision-making processes to HRM managers but in all cases still reserved the final decision (Matlay, 1999:287). It appears that this aspect represented a very vital component of the management style and business strategy of OMs in these firms, as the huge majority of small employers claimed to favour a flexible approach to running their businesses (Matlay,1999:288). Owners/managers who chose mixed management styles claimed to make use of both formal and informal channels and networks in their recruitment processes which involved the use of their personal networks, which usually involved family members, friends, relatives, neighbours, associates as well as existing or former employees (Matlay, 1999:293). As findings also indicated, general workers in both service and manufacturing micro-firms, were recruited through informal channels, while technical or managerial staff and individuals targeted for challenging vacancies were usually recruited through formal channels (Matlay,1999:290). After recruitment of workers, small employers in Matlay's (1999) study mentioned a number of barriers to informal, on-the-job training, including lack of time, lack of internal trainers and substantial costs that proved hard or impossible to evaluate and/or recover (Matlay, 1999:290). Informality proved to dominate the training and HR development strategies of most microbusinesses as evident in the studies. For example, current and future training needs were evaluated informally in a number of small businesses, mainly on the basis of personal perceptions or expectations (Matlay 1999:293).

In terms of pay, a small number of firms offered their workers a choice between cash increments, gift vouchers or other forms of pay (Matlay, 1999:291). There were no cases of group or representative pay bargaining, even among the small number of micro-firms that allowed unionisation of the workforce (Matlay, 1999:291). OMs were also highly aware of their venture and the risk of losing everything in the process of providing their employees with an appropriate wage (Matlay, 1999:291). At some firms, employees at all levels of activity could approach an OM individually to try to negotiate pay rises or new rates (Matlay, 1999:293).

To deal with work-related complaints or grievances, a bulk of OM maintained to resort to informal discussions or meetings (Matlay, 1999:291). The venue for grievance procedures could include informal setting such as the home of either the OM or the employee (Matlay, 1999:291). Additionally, despite the possible legal consequences, most OM also preferred informal dismissal and termination procedures and claimed that they managed to remain on good terms with their former employees (Matlay, 1999:292). The mixture of formal and Informal management structures caused differential grievance procedures that varied according to the type and complexity of the issue under review. Most grievances involving managerial, clerical or specialist staff were also dealt with informally by the OM (Matlay, 1999:292).

2.3.6 Informality and formalisation of HRM practices in small firms

Informality tends to be a central broad theme across studies of small firms, and in the context of the workplace, it is defined as “a process of management-worker relations based primarily on unwritten procedures and tacit understandings” (Barrett, 1998). To consider small firms as highly informal, they can firstly be expected to rely more on face-to-face understandings with employees, and to completely avoid written formal procedures when it comes to issues such as discipline and dismissal (Edwards *et al*, 2003:31). Informality will also mean that explicit statements of rights and duties are avoided, such as that occupational health and safety (OHS) guidelines, and recruitment and selection procedures are not written (Bartram, 2005:137). It is also less likely that formal appraisal and equal opportunity policies in small firms are formalised compared to workplaces of the same size but owned by larger firms and compared to big firms (Edwards *et al*, 2003:32). Lastly, it is also argued that external legal obligations will be ignored in most small firms, if they do not match with the recognized set of informal norms already existing in the firm (Edwards *et al*, 2003:31). On the contrary, in spite of its extensive use, there appears to be no universally accepted definition of formalization. However, in the context of the workplace, formalization can be referred to as the degree to which a procedure is written down, as in written job descriptions, and the extent to which that procedure is regularly applied within the firm (De Kok & Uhlaner, 2001:4).

The 1998 Workplace Employee Relations Survey (WERS98) of Australia is just one seminal example assessing informality and formalisation of HR functions in small firms and how informality and formality varies between and within firms (Edwards *et al*, 2003:32). In similar

assessments of informality and formalisation, small firms could be deemed highly formal, provided that they have the following pointers: formal appraisal systems; grievance procedures; disciplinary and dismissals procedures; and equal opportunities policies; and informal if they do not have such pointers (Bartram, 2005:146). Research in this area also reveals that although most small firms do not meet the formal criteria, they do not operate in a purely informal manner, as some firms display both aspects of informality and formality in their HR functions (Mallet & Wapshott, 2014:4). Kitching (1997) cited in Edwards *et al* (2003:32), noted that even in some large firms, aspects of informality are still relied upon, and that the nature of informal relationships will vary in different firms: the kinds of informal working practices in a small clothing firm will be very likely to be different from those of a hi-tech service-oriented firm. However, informality may be relatively noticeable in the firms employing fewer than 50 people (Edwards *et al*, 2003: 32 Aigbavboa, 2014:773). And as firms grow, they tend to seek more formalised relations with workers (Mallet & Wapshott, 2014:2). The process of formalisation has also been traced in case study work by Ram *et al* (2001) cited in Edwards *et al*, (2003:33), demonstrating how firms seeking to modernise their business strategies may also formalise employment relations. An implication is that part of this process may necessitate the acceptance of labour laws (Edwards *et al*, 2003:33). As will be detailed below, most small firms are likely to filter the effects of law through their informal practices, and distinct market positions will shape the nature of this response (Edwards *et al*, 2003:34; Matlay, 1999:285). For example, the more that firms are ‘dominated’ in the product market, the harder they may find it to raise wages when legislation requires them to do so (Edwards *et al*, 2003:34). Yet firm responses are not solely determined by markets (Edwards *et al*, 2003:34). For many small firms a key feature of their existence is their independence (Curran and Blackburn, 2000, cited in Edwards *et al*, 2003:34), so that each is likely to develop its own style of behaviour (Edwards *et al*, 2003:34). Small firms may also be able to get some important benefits from informality, including improving creativity and innovation (Adler and Borys 1996; Kilmann 1990, cited in Bartram, 2005:138). As illustrated in some literature, management styles seemed to considerably affect the HR function (Bacon, 2008, cited in Heery, 2016:2). This includes recruitment, training, human resource development, pay bargaining, grievance procedures and interpersonal relationships at the workplace (Matlay, 1999:293). Management styles are also likely to be one of the key influencing features in the response by small firms towards labour laws.

2.4 Small Firms and Labour Laws

2.4.1 Introduction

The previous section has examined the dynamics of HRM and IR in small firms and highlighted the central broad theme of informality (and formalisation) in the context of small firms. The previous examination is important in guiding the understanding of small firms and labour laws. Given that examination; the present section will examine the relevant literature looking at the impact of labour legislation on small firms, and the various responses of small employers to labour legislation. The common response by small employers was on how complex labour legislation was and its negative effects on their business (Blackburn & Hart, 2003:60, Marlow *et al*, 2005:81). Given the size and scarcity of resources in some small firms, neoliberal economic theory supposes that employment regulations will have negative effects on small firms (Marlow *et al*, 2005:81). Conversely, institutional theories envisage that regulations such as labour legislation could result in positive effects and modernisation to firms (Kaufman, 2010). Since economic theory predicts that regulatory interference raises the cost of labour above market equilibrium, such an interference may be said to raise the level of unemployment (Edwards and Gilman 1999; Bazen 1990, cited in Arrowsmith, 2003:437). It is therefore expected that some rational actors would seek to escape employment regulations by resorting to illegal practices (Arrowsmith *et al*, 2003:437). The effects of labour legislation on small firms have been shown to be not as widespread, and that has awakened interests in scholars such as Blackburn and Hart (2003), who note the varying levels of awareness in labour legislation in different market contexts as one reason that laws are not widespread across most firms. Edwards *et al*, (2003;2004) provided key studies examining cases of 18 UK small firms from four different sectors, namely: management consultancy, food manufacturing, key and lock manufacturers, and care homes. In this latter study, four factors shaping the impact of labour laws on practice were identified: manager perceptions towards labour legislation, the different nature of laws, role of markets, and internal firm adjustment processes (Edwards *et al*, 2003;2004). The latter studies of Edwards *et al*, (2003;2004) are used as guides in this section of the literature review, as they proved very useful in covering most aspects of the topic of labour legislation and small firms.

2.4.2 Small firm employers' awareness of labour legislation

A variation in awareness levels for small employers between different types of labour legislation was noted in a study by Blackburn & Hart (2003). In this study, a great level of awareness was noticed for maternity leave because it was one of the long-standing statutory rights for workers (introduced in 1975 in the UK), compared to the National Minimum Wage (NMW) and parental leave provisions which were both introduced later (the year 1999) (Blackburn & Hart, 2003:62). For small firms, it is also noted that awareness is raised out of necessity, and that the larger small employers are having to deal with a wider range of employment rights issues compared to the smaller employers: for example, the larger the number of people employed, the higher the chances of workers asking for leave (Blackburn & Hart, 2003:62). The larger small firms (employing 20 or more people) were found to be more likely to have been to an employment tribunal, employed mostly female workers and only a small number of part-time workers compared to smaller ones (employing 20 or less people); such factors were shown to have a positive relationship with awareness and knowledge levels on labour legislation. (Blackburn & Hart, 2003:62).

Regarding the Working Time Directive (WTD), over eight out of ten employers were aware of the right of a maximum number of hours to be worked (Blackburn & Hart, 2003:63). This right was also well known amongst enterprises employing 20 or more people (Blackburn & Hart, 2003:63). A total of 11% of the sample specified that they had experienced a legal case with a member of staff in connection with an unfair dismissal claim or break of employment contract (Blackburn & Hart, 2003:63). Firms employing 20-49 employees were also more likely to have had an industrial dispute compared to firms employing less than ten (Blackburn & Hart, 2003:63). All the different factors briefly mentioned above seem to play a great part in the awareness levels of small firm employers towards labour legislation.

2.4.3 Small firm employers' perceptions of labour legislation

As neoliberal economic theory suggests, that regulation such as employment legislation limits the freedom of employers to unanimously manage their workforce as they see fit, raises the labour costs of businesses, and adds to their administrative burdens (Avdagic, 2015:6). Such issues may affect small firms particularly acutely for reasons including their restricted administrative and personnel resources, and their economic susceptibility (Marlow *et al*, 2005:81; Edwards *et al*, 2003:7; Hasle & Limborg, 2006:7). The common and shared perception was that flexibility was restricted, for example, by the presence of maternity laws, as most small firms may have a

difficulty in arranging cover for absent workers (Edwards *et al*, 2003:35). Consequently, if the perceptions of managers define the law as an invasion, actions may be taken to minimise the impacts on the firm (Edwards *et al*, 2003:35). In conjunction with the economic theories, great amounts of data have offered undesirable views by employers on the effects of employment rights on their business performance, whereas only a minority perceived some positive effects (Marlow *et al*, 2005: 81; Blackburn & Hart, 2003:65). Otherwise, laws may be perceived to be beneficial, for example through their creation of equality between employers and workers, and improving efficiency in IR, and foster investment in workers, thus, increasing the chances of high productivity (Avdagic, 2015:6; Edwards *et al*, 2003:35). For example, the experience of an Employment Tribunal in the UK led some firms to modernise their disciplinary procedures, allowing for efficiency in handling such issues (Edwards *et al*, 2003:35). However, it would not be correct to assume from replies given in surveys that a negative or positive comment about the legislation necessarily means that the firm itself has had direct and significant experience of the relevant law (Edwards *et al*, 2003:35). It has been noted that complaints about regulation often turn on the possible effects rather than what happens in practice (Edwards *et al*, 2004:255). It is also important that the perceptions of negative effects be set in conjunction with perhaps less obvious positive effects (Edwards *et al*, 2003:35). Nonetheless, negative aspects of employment regulation tend to be stressed in overall comments, which may well emulate the popular language of red tape and bureaucracy, while there are also noted positive aspects of which managers are surely aware of (Edwards *et al*, 2003:35-36).

A common way in understanding the pattern of manager perceptions towards labour legislation is to argue that individuals use ‘rhetoric’ which does not surely have a basis in reality (Edwards *et al*, 2003:35). However, manager responses cannot be just suspended on this basis. A gap therefore exists between overall perceptions of possible effects of the legislation and the fact that such effects had not been experienced by the firm itself (Edwards *et al*, 2003:35). It is of course probable that manager perceptions might have an impact on future decisions, such as the characteristics of workers that firms may seek to recruit in future, even if they had not impacted on past workers (Edwards *et al*, 2003:36). Weick (1995) cited in Edwards *et al* (2003:36) argued that such perceptions were part of the ways in which managers made sense of their world. Managers at one food firm, for example, felt that there was a broad tendency for labour legislation to go against how small firms operate, even though the firms themselves had not encountered specific problems

regarding the legislation (Edwards *et al*, 2003:36). Thus, Edwards *et al* (2003:36) argue that such views have to be set alongside concrete experience, but not dismissed. The presence of perceived negative effects reveals that the chances that employment rights are seen as a burden and that the balance of legislation is felt to be leaning towards workers (Edwards *et al*, 2003:37).

2.4.4 Varying nature of labour legislation: Direct and indirect effects

The nature of labour legislation varied: some laws, such as the NMW had universal coverage whereas others, such as unfair dismissal, came into play only when a firm took a certain action (Edwards *et al*, 2003:8). Longer established laws, such as those on maternity leave were more likely to be deep-rooted in practice than new legislation such as parental leave (Blackburn and Hart, 2003:62; Edwards *et al*, 2004:245). Laws on collective employment rights, such as trade union recognition, were also less likely to have an impact on small firms, compared to individual employment rights which had some impact (Edwards *et al*, 2003:8). Since long-established laws were more common than new laws, their impact across small firms were reported fairly often; three out of the eighteen firms could recall a fairly recent case (Edwards *et al*, 2004:257). One rural care home for example, reported a few cases of maternity leave in the last few years with no problems in arranging cover, which was provided for by existing staff working flexibly (Edwards *et al*, 2004:257). The experience of laws such as an Employment Tribunal (ET) on the other hand, will likely push individual firms towards a more formal approach, as one care home was led to introduce a four-stage disciplinary procedure, after having experienced an ET (Edwards *et al*, 2004:257). However, there is little evidence that all small firms have attained anything like a 'good practice' model; for example, a quarter of ET cases involve an employer who has a procedure but does not utilise it (Edwards *et al*, 2004:258). It is also suspected that there will remain to be slippage away from procedures as memories of ET cases fade and as new workers come in a firm (Edwards *et al*, 2004:258).

The Working Time Regulation (WTR) in the European Union seemed to also take effect as most firms had almost no workers who frequently worked in excess of the standard of 48 hours a week, as specified in the legislation (Edwards *et al*, 2004:258). Most remarkably, long hours were mostly absent among the consultant firms studied (Edwards *et al*, 2004:258). In one of them, a formal policy of not paying for more than a limited number of hours above the standard was present, and the owner clearly detailed that productivity was weakened by long hours (Edwards *et al*,

2004:258). On the contrary, a few of the consultancy firms had wilfully set themselves against a high-pressure approach of high earnings and very long hours. (Edwards *et al*, 2004:258). However, in one food firm, there were male workers working regular 60-hour weeks (Edwards *et al*, 2004:259). This case was one of long hours being worked to raise low basic wages, and no one in the firm wished to modify that arrangement (Edwards *et al*, 2004:259). As it appears, the WTR and laws such as the NMW were mediated by competitive and market conditions (Edwards *et al*, 2004:259). It can also be drawn that newly introduced legislation had varying but mostly small direct effects in the small firms studied depending on their market conditions (Edwards *et al*, 2004:259).

2.4.5 The role of markets

It appears that even firms in apparently similar industries in fact behave differently, for reasons to do with their market situations and the choices they choose to make (Gilman & Edwards, 2008:531). It is also very likely that a firm's market conditions will affect its ability to respond to employment legislation; the greater the financial and competitive pressure, the more difficult it will be for a firm to absorb and implement any costs of legislation (Edwards *et al* 2003:8). By contrast, firms in robust market positions may not only be able to easily absorb laws but may also find that the law acts as a provocation of modernisation (Marlow *et al*, 2005:64; Edwards *et al*, 2003:8). In the care homes, unlike other sectors, financial pressures meant that regulation added to burdens from other sources. Yet there were also differences within each sector, showing practices which are specific to each workplace (Edwards *et al*, 2003:40). The general pressure towards long working hours in the larger firms in the care home sector was unquestionable, however, it did not necessarily affect all of the sector (Edwards *et al*, 2003:41). For example, the founders in one of consultancy firms had consciously taken the view that they did not seek a culture of high pay and long hours, and instead preferred a gentler balance (Edwards *et al*, 2003:41). The same was broadly true of yet another consultancy firm, which had found a profitable niche and was growing fast but did not need to exert great pressure on its staff (Edwards *et al*, 2003:41).

The greater concern for the care homes was the widespread regulatory context of the sector, as several employers described in detail considerable and increasing requirements on keeping of highly detailed records on each resident and the demands of regular inspections by Social Services Inspection Units (Edwards *et al*, 2003:41). Half the care staff and management had to be trained

as required by regulations (Edwards *et al*, 2003:42). At another care home, the variance between their rate of pay and the going local labour market rate for unskilled labour had narrowed because the NMW had raised the rates for such work (Edwards *et al*, 2003:42). This resulted in substantial recruitment and retention problems, as managers commented on the strain of attracting staff (Edwards *et al*, 2003:42). An alternative source of competition for labour at some of the care homes was the health service sector, with employees trained in care homes being poached by hospitals (Edwards *et al*, 2003:42). This competition had deepened in light of the fact that care home regulations have raised up the formal qualifications of many workers (Edwards *et al*, 2003:42).

As already mentioned, wages in the care homes were better than other sectors prior the NMW, to compensate for the demanding conditions of the job; however, with wage rises in other places, the attractiveness of the care home jobs lessened (Edwards *et al*, 2003:42-43). A possible solution for this situation was to raise prices; the challenge, however, for the care homes, was that they were squeezed on price and therefore under pressure to restrain wage costs (Edwards *et al*, 2003:43). In other sectors (including manufacturing), it was easier to raise prices to cover rising wage costs (Edwards *et al*, 2003:43). Another possible solution was to cut labour costs, either through capital investment or through the intensification of work which could include employing fewer workers and expecting them to work harder (Marlow *et al*, 2005:92; Edwards *et al*, 2003:43). However, such was difficult, partly because of shortage of capital and partly because it was harder to mechanise a labour-intensive service operation such as care homes as compared to manufacturing (Edwards *et al*, 2003:43). Consequently, at some care homes paid breaks were eliminated (Edwards *et al*, 2003:43). In the short-term, employment regulation was tolerated by having loyal workers who were described as ‘mature ladies’ who liked the home and its social relationships (Edwards *et al*, 2003:44). In the long term however, and in the context of wider regulatory changes in this sector, the ability of homes to continue functioning may be called into doubt (Edwards *et al*, 2003:44).

Another four care homes faced similar effects in terms of costs and recruitment pressures, but such effects were mediated by local conditions (Edwards *et al*, 2003:44). This was most visible at a care home which ran two homes in different locations under the same management structure (Edwards *et al*, 2003:44). The first was in a rural location and benefitted from the relatively low labour

market competition, but at the cost that its clients were fairly poor and could not afford to pay extra for improved amenities. The second one was in a town setting, where labour market competition was intense, but with clients who could afford to pay (Edwards *et al*, 2003:44). The common response to these conditions was that workers were having to work harder and that managers were working longer hours in order to cope (Edwards *et al*, 2004:260-261). For example, a supervisor at one care home described the constant struggle they go through in order to arrange cover at short notice in the case of staff shortages (Edwards *et al*, 2004:261). In the care homes studied, the WTR generally had little impact as it did not directly intrude on the organisation of work (Edwards *et al*, 2003:44). The NMW, on the other hand, had a greater impact than might have been anticipated and, together with the wider regulatory regime of the care sector, effects were clear (Edwards *et al*, 2003:44). Employers at the care homes stressed the demanding nature of the work in the sector, making jobs elsewhere relatively attractive (Edwards *et al*, 2003:45). The same issue was not specified as a concern in any of the manufacturing firms (Edwards *et al*, 2003:45). Manufacturing firms employed mostly workers with less formal skills than the care homes, and the supply of low-skilled workers was abundant (Edwards *et al*, 2003:45).

In relation to product market conditions, one food manufacturing firm clearly represented the role of product markets in encouraging an approach of modernisation (Edwards *et al*, 2003:45). Since it was established, the firm had wilfully intended to move up-market and presently had part of its business with major supermarkets, which demanded standards of high quality and reliability (Edwards *et al*, 2003:45). Product market developments were also important at another producers' cooperative food firm though they operated in a varying manner (Edwards *et al*, 2003:45). The second firm existed in a growing market niche, seeing growth in the previous years which had led to its introduction of a new retail outlet; it was, however, much less advanced in its business processes than the first food firm, and the need for improved stock control systems was recognized in its future plans (Edwards *et al*, 2003:45). The cooperative food firm paid the same wages to all staff, including managers, and because wages were already above the NMW level it had no impact here (Edwards *et al*, 2003:45). The WTR thus had little effect; for example, the cooperative food firm felt that the WTR had no relevance and the firm carried on as before (Edwards *et al*, 2003:46). Even at another third firm, which was otherwise keen to formalise its employment relationships, there had been no formal notification of the WTR to employees (Edwards *et al*, 2003:46). Only at one food firm were long hours significant, with some workers habitually working up to 60 hours

a week because work had to continue until a day's targets had been reached (Edwards *et al*, 2003:46).

In the key and locks manufacturing industry, one of two firms was positioned in the middle of the market, and was stable since it was established, with substantial growth in terms of sales, and reflected a strategy of improving efficiency and maintaining its competitive position (Edwards *et al*, 2003:47). The other firm acted in a pro-active manner as its old business of supplying key blanks to local large firms had decayed, it had replaced it by expanding into presswork so that its total revenue expanded (Edwards *et al*, 2003:47). In both the firms, the extent of the repositioning of the businesses appeared to be much more substantial than was the case in the food firms, reflecting the global nature of competition and widespread rearrangement of large firms in the locks industry (Edwards *et al*, 2003:47). The difference between the care homes and the manufacturing firms demonstrated the role of different market conditions in filtering the effects of the law, taking into consideration variations within sectors (Edwards *et al*, 2003:48). There was one specific indirect effect, reflecting particular market conditions of one Locks firm where the use of homeworkers was the norm; workers were paid for the number of items completed, and there was no recording of the hours they worked until they were brought under a factory (Edwards *et al*, 2004:259). Employers thought that the hourly rate of most of the workers was probably below the NMW level, though there had never been any records (Edwards *et al*, 2004:259). The most significant influence of the product market was also noted in the care homes because they were faced with financial pressures arising from the levels at which regulators set (Edwards *et al*, 2004:259). These care homes had been paying above the NMW level, but the NMW heightened the relative attraction of work in sectors such as supermarkets and the homes were unable to raise wages to meet these levels (Edwards *et al*, 2004: 260). In conclusion, this section has shown the importance of the positioning of the firms in filtering the effects of various legislation.

2.4.6 Adjustments within the firm

Distinctive adjustment processes within small firms may also act as filters that mediate the costs of labour legislation (Edwards *et al*, 2003:8). For example, the informality of procedures in a small firm may result in maternity leave being handled through face-to-face arrangements rather than necessitating formal administrative systems (Edwards *et al*, 2003:8). This is a result of the important role that OM's usually play in the day-to-day operation of their firms which bring them

into direct daily contact with almost all of their employees (Matlay, 1999:292). Some findings suggested that 'informality' is a tendency of small firms, but with the condition that it can take many forms and suit different purposes, as indicated by the varied pattern of response to the NMW in case studies (Arrowsmith, 2003:451).

The custom of informality is of central importance when examining the various adjustments within small firms. For example, most firms mainly responded to worker issues through uncodified and informal personal relationships (Marlow *et al*, 2005:108). This situation can reasonably be seen as a feature of many small organisations, for their size means that they can rely on personal knowledge of a particular worker to allow reasonable flexibility (Edwards *et al*, 2003:49). In a study of small firms by Bevan *et al*, (1999) cited in Edwards *et al*, (2003:49), one firm employing 33 workers, applied special leave informally, at the discretion of the owners. Edwards *et al*, (2003) study revealed how one care home ensured flexibility by having a pool of part-time workers, who could be called in to work an extra shift. In the same study, arranging cover for absent workers in a number of consultancies was largely treated as a fact of life and not something that entailed special arrangements (Edwards *et al*, 2003:50). At two consultancies for example, occurrences were given of the taking of maternity and parental leave which was covered by the reallocation of responsibilities and the hope that other employees would take up the relevant tasks (Edwards *et al*, 2003:50). The degree of flexibility was larger at the consultancies compared to other sectors; as one manager mentioned that in addition to the given paid maternity leave, employees could apply for a further period of unpaid leave of any length, and a system of sabbatical leave was open to all employees, and the restrictions between working time and domestic time were not clearly drawn (Edwards *et al*, 2003:50). At the time of the study, regular maternity leave, available to all female workers, was 18 weeks (Edwards *et al*, 2003:50). It was the right to take leave, rather than the fact that it is paid, which usually becomes a challenge, since small firms tend to find it harder to fill a gap compared to larger firms (Edwards *et al*, 2003:51). To remedy this; since 1980 a firm with five or fewer employees has been able to argue that it was hard to take back an employee taking leave, and an Employment Tribunal could defend such firms (Edwards *et al*, 2003:51).

As already noted, the extensive use of informal procedures did not mean that formality was absolutely absent or that face-to-face relationships are necessarily happy ones, but it suggested that there will be a degree of space within which procedures can be handled (Edwards *et al*, 2004:261).

With regards to maternity and other leaves, only three firms reported recent experience of maternity leave, and no serious issues regarding it, and regarding other time off, the informality of the process of each firm was important (Edwards *et al*, 2004:261). This is different in large firms, where every request for time off had to be justified against a formal statement as to when time off was to apply, so that there was some consistency, whereas in small firms – workers only had to explain directly to a manager what was required (Matlay, 1999:289; Edwards *et al*, 2004:261). In small firms, managers are likely to know the worker personally and thus to be able to take a rounded view as to what is sensible (Edwards *et al*, 2004:261).

In this generally informal approach to flexibility, there were clear differences between the firms in the degree of formalization, as there was no uniform pattern, and patterns of relationships reflected the business goals of each firm (Edwards *et al*, 2004:261-262). Some firms were already formalized and had procedures for everything. One food firm was sufficiently formal to employ a HR manager, who planned to formalize policy on family-friendly working practices and adopted a clear policy for discipline (Edwards *et al*, 2004:262). There was also a degree of formalization at three of the care homes following the experience of disciplinary cases (Edwards *et al*, 2004:262). Used interchangeably to suit the needs of the employer, formal styles of management seemed less flexible than the informal styles but proved to be strategically more useful in growth-oriented firms (Matlay, 1999:292-293). Mixed formal/informal management styles appeared to reflect the inherent conflict between some employers' desire for growth and their hesitancy to abandon control of specific managerial roles (Matlay, 1999:292-293). The relatively larger small firms were somehow formal in handling discipline compared to the very small ones, where a preference for very informal practices persisted (Aigbavboa, 2014: 773; Edwards *et al*, 2003:56). Neither of the firms studied avoided the law in the sense of deliberately not complying with legal requirements (Edwards *et al*, 2003:57). One mechanism of avoidance was to ignore provisions which seemed to have little relevance to a firm, for example the generally minimal response to the WTR (Edwards *et al*, 2003:57). Commonly, issues pertaining to maternity leave and disciplinary processes were not widespread, and existing informality was often sufficient to handle them (Edwards *et al*, 2003:57). The mix of external regulation and new technology also meant that traditional informality was being squeezed: either through firms retaining their highly informal approaches, or moving towards formality (Edwards *et al*, 2003:57). In conclusion, this section provides an

understanding of how each firm adjusts its procedures according to its needs in response to labour legislation.

2.4.7 Costs and benefits of labour regulation

Three potential burdens and benefits of regulation were distinguished by Edwards *et al* (2003:59) in three formats: (1) the direct administrative and compliance costs, (2) impacts on decision-making, and (3) the impact on competitiveness (Edward *et al* 2003:59). Given a certain business, it is possible to have costs as well as benefits as a result of labour legislation (Edwards *et al*, 2003:59). It may also appear that costs to managers are benefits to workers (Edwards *et al*, 2003:60). Also, at the macro-economic level, increased spending by firms on legal services has effects on the supply of such services (Edwards *et al*, 2003:60). The costs of unfair dismissal legislation to firms for example, may be balanced by the fact that dismissal is handled professionally with evident efficiency benefits (Edwards *et al*, 2003:60). Bevan *et al*, (1999) cited in Edwards *et al*, (2003:60) found that few firms had conducted detailed research to isolate the benefits concerned, though subjective comments were given. Since some firms were quite large, and were leaders in their field, they might be expected to conduct cost-benefit studies (Edwards *et al*, 2003:60). As a result, it should not be expected to find most small firms engaging in detailed analysis of this kind, but the aim was understanding the prior questions of how small employers think about the costs and benefits.

2.4.7.1 Compliance costs

An indirect cost of employment regulation was subscriptions to legal services; and where these services were used, approximations of costs widely differed (Edwards *et al*, 2003:60). These differences reflect, in part, two different aspects of costs: regular information and advice, and special, non-recurrent costs especially where a dismissal has gone to an ET (Edwards *et al*, 2003:61). Many firms were marginally affected by employment regulations, and thus had no specific administrative costs to report; however, in some cases, costs emerged in relation to the WTR and the NMW (Edwards *et al*, 2003:61). The wages of some poorly paid employees were raised to the NMW level, but on the other hand, overtime rates were also affected by new basic rates (Edwards *et al*, 2003:62). In the care homes for example, there were no direct costs from the NMW because pay was above this rate, but in some cases, there were indirect costs as homes

increased their pay in line with the NMW (Edwards *et al*, 2003:62). Consultancies were also less affected by most regulations, including the WTR; the exception was one consultancy firm, where a determination was made to deal with opt-out provisions of the WTR (Edwards *et al*, 2003:62). As the manager was quoted: ‘many small firm managers are not experts in legal or HR matters, and acquiring the necessary information takes time’ (Edwards *et al*, 2003:62). As highly stressed, managers saw a totality of demands on their time, and did what needed to be done without allocating proportions between different activities (Edwards *et al*, 2003:63). Managers felt that they needed skills and personnel to deal with HR issues but that the firms were not large enough to justify employing someone (Edwards *et al*, 2003:64). It may be that any administrative burdens have discontinuous effects, with the impact being sharpest where firms are strained with their existing resources but lack the grounds to employ more administrative staff (Edwards *et al*, 2003:64).

2.4.7.2 Impact on decisions

The longest-debated issue was that of constraints brought by labour legislation on hiring and firing decisions; this was however not a central theme amongst small employers (Edwards *et al*, 2003:64). Moreover, as discussed above, in some cases it related to general perceptions rather than concrete experience (Edwards *et al*, 2003:64). Turning to broader influences on decision-making, there were two cases in the consultancies where managers mentioned that decisions not to increase the size of the business were, in part, shaped by the presence of employment legislation, yet there were also a number of other reasons to remain small (Edwards *et al*, 2003:65). For example, some firms wished to continue doing what they were doing without the structure of a larger organisation (Edwards *et al*, 2003:65).

As a number of researchers (Clifton and Tatton-Brown, 1979; Evans *et al*, 1985; cited in Edwards *et al*, 2003:65) have also uncovered that constraints of regulations on practices such as recruitment and the ability to dismiss staff were smaller than might be expected. Compared to a number of other influences on a firm, the law is often an insignificant force (Edwards *et al*, 2003:65). In addition, firms are often able to adjust to new requirements more readily than some expectations would suggest (Edwards *et al*, 2003:65). It was not the case that decisions were necessarily made in a different way, or that different decisions were made, as a result of legislation but, rather, that the context was changed, and new issues highlighted (Edwards *et al*, 2003:65-66).

2.4.7.3 Overall impact and competitive advantage

The impact on competitive advantage was examined by looking at the firms' overall perceptions of the burdens of employment regulation. Costs were clearly articulated, while benefits were expressed more in terms of some positive features (Edwards *et al*, 2003:66). The concrete impact of employment regulation was not necessarily as strong as might appear from manager responses, as managers were naturally likely to focus on problems as they see them (Edwards *et al*, 2003:67). The consultancies were the less affected by employment regulations; therefore, any effect on their competitive position was small, as a number of them were operating in specific niches (Edwards *et al*, 2003:67). In the manufacturing firms, competitive advantage was determined by product market conditions and the firm's ability to respond strategically (Edwards *et al*, 2003:67). In the care homes, the 'product market' was not a clearly defined concept as it is in manufacturing, and structures such as market niches or new technology had less purchase (Edwards *et al*, 2003:68). In the food manufacturing firms, for example, competitive advantage meant the ability to provide a certain product at a certain price, and the extent to which a firm could detect and move into a profitable position (Edwards *et al*, 2003:68). Most importantly, employment legislation has been claimed to promote efficiency effects; an alteration in the price of labour can stimulate the use of labour-saving technology, while to the extent that a firm is not already having some efficiency, a shock such as employment legislation may spur it into more efficient behaviour (Edwards *et al*, 2004:252). One in five employers in Blackburn & Hart's (2003:65) study stated that labour legislation provided them with guidelines and clarification in setting the conditions for their workers. Almost 10% stated that labour legislation raised staff morale and engendered a feeling of security (Blackburn & Hart, 2003:65). In conclusion, this section has highlighted how costs and benefits resulting from labour legislation can be realised in small firms.

2.5 Small Firms in the South African Context

It is noted with great importance that South African publications on this topic (the impacts of labour legislation) are not as widespread as they are globally (Goldberg, 2009:89). And since research in this area is more extensive abroad than it is in South Africa, it was helpful to consider some of the global studies and findings in the above sections before addressing the South African

context. This section of the chapter, therefore, will begin by looking at how small and medium enterprises (SMEs) are defined and contextualised in South Africa. It is projected that SMEs make up to 97.5% of all formal enterprises in the country (Abor & Quartey, 2010, cited in Aigbavboa, 2014:771). Furthermore, this section will briefly review the current South African economic and labour regulation frameworks and the associated implications for firms, particularly SMEs.

Post-apartheid South Africa is a society in transition and far-reaching legal and policy reform is currently underway and many developments in the country's economic, social and political life are taking place at the same time (Geminiani *et al*, 2008:1115). Since the 1994 transition, the new democratic government has realised the importance of small business schemes across all sectors of the country in achieving steady economic development (Aigbavboa, 2014:771). In South Africa, SMEs have been identified by the government as a priority for the creation of jobs in order to solve the lingering unemployment situation facing many South Africans (Aigbavboa, 2014:771-772). In South Africa, it is also projected that SMEs contribute between 52%-57% to GDP and deliver about 61% of employment (Aigbavboa, 2014:772).

Another undertaking of the post-apartheid government is the creation of the Skills Development programme, established by government in 1998 (Aigbavboa, 2014:772). With this undertaking, SMEs are able to obtain assistance with the challenges they face such as the lack of management skills and forming relationships with customers (Thwala & Mvubu, 2008, cited in Aigbavboa, 2014:772). This comes from the principle that improved managerial skills equals improved productivity; and therefore, a more stable workplace and country, thus leading to economic growth (Aigbavboa, 2014:772).

According to the South African National Small Business Act 102 of 1996, SMEs are defined as separate and distinct business entities in any sector of the economy managed by one owner or more (Aigbavboa, 2014:773). The government has defined the SME sector according to numerous features namely, ownership, employment size and formality with various classifications (Aigbavboa, 2014:773). The definition uses the number of workers per business size category in combination with the turnover categories, and the gross assets aspect. According to the Republic of South Africa - White paper on national strategy for the development and promotion of small business in South Africa (1995), cited in Aigbavboa (2014:773) small businesses are defined in accordance with the following five categories:

- Survivalist firms: Here the income created is a smaller amount than the poverty line. This category includes hawkers, vendors and subsistence farmers.
- Micro firms: In this category, the turnover is projected to be less than the VAT registration limit of R150 000 per year. These enterprises generally lack formality, and they include, for example, spaza shops, minibus taxis and household industries, and employ less than 5 people.
- Very small firm: These are enterprises employing fewer than 10 paid employees, except mining, electricity, manufacturing and construction sectors, in which the figure is 20 employees. These firms operate in the formal market and have access to technology.
- Small firm: Here the limit is 50 employees. These businesses are generally more established than very small enterprises and display more complex business practices.
- Medium firm: In these firms the maximum number of employees is 100, or 200 for the mining, electricity, manufacturing and construction sectors. These enterprises are often characterised by the decentralisation of power to an additional management layer.

Although South Africa currently exists in neoliberal times, social democratic policies (especially since 1994) are still very active, and unlike neoliberal policies, they are associated with extensive statutory regulation of markets, including the labour market (Carroll, 2005:9). Hence, it is important to understand how small firms in the country 'cope' with these statutory 'burdens' associated with a social democratic country like South Africa. Goldberg's (2009) study fulfils this task by touching on the impacts of key provisions of the LRA on South African small firms. As similar to studies in other countries, the South African context suggests that institutionalisation of industrial relations is subject to context. And in a context where there are high levels of poverty, inequality and high unemployment, institutionalisation may not have the full capacity to fulfil its purpose (Chinguno, 2013 cited in Webster, 2015:32). Even in a highly regulated country such as Germany, statutory requirements to start works councils in firms with five or more employees are ignored by most small businesses (Weiss 1993 cited in Goldberg, 2003:93). "To what extent, then, can one hope that the LRA will succeed where more established systems have failed?", is a crucial question which Goldberg (2003:93) asks and this relates not only to the LRA but other pieces of legislation as well.

At the centre of the above question is the growing social distance between union leaders and their members, a fact known by the South African Department of Labour (DoL) in their 2012–2013 annual Labour Market Bulletin (Webster, 2015:32). According to Strydom (2002) cited in Geminiani *et al*, (2008:1113), the South African construction industry, as one example, in 2001, was considered by the South African DoL as one of the worst performers in OH&S in terms of deaths and injuries and was placed sixth in comparison with industries such as fishing, transport, forestry, textiles, and mining ahead of it. Some findings have also shown that the South African DoL was not carrying out its duties to implement legislation successfully (Geminiani, 1998, cited in Geminiani *et al*, 2008:1113). In general, the effectiveness of the DoL inspectorate in conducting ‘blitz’ inspections was deemed to be ineffective in most cases (Geminiani *et al*, 2008:1119). If an inspector does not conduct an inspection, the workplace OH&S (and other requirements of legislation) applied by the company are usually very basic or non-existent (Geminiani *et al*, 2008:1114). This is amplified by the language of flexibility which tends to speak against regulation, as the South African labour market is flexible in terms of most types of labour market flexibilities (Standing, 1997; ILO, 1999; Klerck, 1994; cited in Bezuidenhout & Kenny, 2000:4). The implication of labour market flexibility is that it allows employers to evade some regulation standards in the way work is organised, the number of people they employ, the way they handle dismissals, and the wages they pay their employees (Kenny & Bezuidenhout, 2000:4). In South Africa, this concept of ‘flexibility’ has expanded its reach because of the shift in prominence from demand-side policy proposals, which centre on minimum wages, skills acquisition, and a public works programme, to supply-side measures to “meet the global challenge” of competitiveness (Bezuidenhout & Kenny, 2000:7).

Godfrey *et al* (2006) noted the following: that there were about 9.5 million employees in the country covered by the LRA and BCEA. Of these, about 25 percent are covered by bargaining council agreements and about 36 percent are covered by sectoral determinations. The remaining 39 percent are covered only by the BCEA. The LRA resulted from negotiations between large employers and organised labour and this shaped the character of the legislation, such that it excluded the voices of other interested parties, in this case small and medium enterprises (Goldberg, 2009:85). Where references were made to small and medium enterprises, they had less to do with taking serious account of their specific needs but, rather, were concerned to attract them into collective bargaining forums, based on the principle of centralised bargaining (Goldberg,

2009:85). Additionally, the LRA does not clearly define a small enterprise, leaving this to individual bargaining councils. Bargaining councils are the legal forums governing collective bargaining in South Africa and it is through them that the LRA offers to regulate small and medium enterprises (Goldberg, 2009:94). The legislation is noted to impact on small enterprises in three main ways (Goldberg, 2009:93). One, they are exempted from starting workplace forums which are intended for firms with 100 or more workers, in cases where the majority unions start them (Goldberg, 2009:94). Secondly, the provisions for bargaining councils are intended to cover small enterprises, making some gestural concessions to their needs (Goldberg, 2009:94). Thirdly, evidence suggests that unions are poorly represented at the lower end of small enterprises (up to 20 employees) (: 14) and it is in these firms that the legislation is less likely to have any effect (Levy 1996, cited in Goldberg, 2009:99). Goldberg (2009:99) further notes that, in terms of its intentions and provisions, the LRA “does not make any significant concessions to small enterprises and bargaining councils are likely to act as impediments to them”. The above just shows how South African small firms are somewhat excluded from the institutions which are meant to regulate industrial relations in the country.

2.6 Conclusion

In conclusion, the above chapter has highlighted the theoretical perspectives of industrial relations, detailing how each theoretical perspective explains the work organisation/firm differently. Furthermore, the literature on small firms was presented. The first part of the literature looked at early studies in small firms, highlighting how small firms were initially analysed through the ‘small is beautiful’ view and the opposite ‘bleak house’ view. The advance of the literature has also been examined, looking how employment can be understood in small firms, taking into consideration various market contexts and institutional settings, and the notion of informality and how they affect firms. The last part of the chapter drew on the impact of labour legislation on small firms, highlighting how manager perceptions, awareness levels, the nature of legislation, market contexts shaped the response of managers towards labour legislation. The last part examined the South African context, looking at how small firms are defined in the country, and how the South African labour policies may have an implication for small firms. The following chapter will present the

empirical evidence gathered during the research process of the present study, and will analyse it in connection to the theoretical and literature review sections highlighted in this chapter.

CHAPTER 3

IMPACT OF LABOUR LEGISLATION ON SMALL FIRMS: CASE STUDIES OF SIX SMALL FIRMS IN MBOMBELA

3.1 Introduction

This section will describe and analyse the data collected during the data collection stage of the research process, and consequently relate it to the theoretical approach and literature review outlined in chapter two above. After conducting the interviews with the six interviewees, and collecting relevant information on their respective company websites, it became clear in the analysis that each participant, while existing in different market and institutional contexts, had both unique and common experiences of labour legislation and responses to it. In the initial part of the present chapter (3.2), I will be analysing the market context and positioning of the six small firms; looking at their history, structure, and internal arrangements. This is to aid in understanding the position of the firms before examining the impact of the laws. The subsequent part of the chapter will examine the various themes which emerged during the data analysis process: (3.3) the business strategies and mechanisms which firms utilise in relation to labour legislation; (3.4) the perceived costs and benefits of labour legislation, (3.5) Varied nature of the legislation in terms of which is more problematic or beneficial, (3.7) and the coping strategies and practices adopted by the firms.

3.2 Outline of Market Contexts and Business Strategies

This section provides case studies of the six small firms, outlining their histories, breakdown of jobs; product market contexts; sector dynamics; and some of the business strategies adopted in order to cope in their various market contexts. The section provides an institutional and contextual picture of the firms, by looking at how they are structured and the relevant external environment in which they exist and operate.

3.2.1 Roof

Roof is a three-year-old, black-family owned firm, it manufactures and supplies wooden roof truss to mainly government contractors and other local, domestic customers. The firm is funded and supported by the Mpumalanga Economic Growth Agency (MEGA) programme which supports start-ups such as itself in the area. This firm is located in an outlying area just a few kilometers outside the town of Mbombela. It currently employs nine workers: seven of which are full time and two part time. Job categories are as follows: six workshop workers and three office workers. Gender breakdown is as follows: one female and eight males. Since the firm is under the MEGA programme, it enjoys some exposure to government contractors as customers and receives some government support. It has potential for growth as long as the building and construction sector promises growth. The firm sees itself as participating in a slightly growing niche market, as its main focus is on supplying government contractors with its products. It seeks to expand its market share by incorporating more domestic and corporate customers to its customer base.

3.2.2 Auto

Auto is a four-year-old firm, owned by two partners on a 50/50 percent share basis; one of which is also the main mechanic of the firm. In connection to the literature presented in chapter two, this highlights the aspect that small firm owners tend to work side-by-side their employees (Matlay, 1999; Marlow *et al*, 2005:2). The firm specialises in auto-servicing and auto-electrical to all makes of vehicles. This firm is located at the heart of White River, also just outside Mbombela. The firm employs seven workers; six of which are full time and one part time worker. Job categories are as follows: two general motor workers, two office workers, three mechanics (including owner), and one vehicle washer. The firm competes in the local vehicle servicing market. It demonstrates great

potential for growth as the demand for their services was reported to be consistent. The manager also commented that the firm provided an ‘intimate and friendly’ service to its customers, and as a result it gets a lot of recommendations and referrals from its customers. However, VAT was reported to be a major cost, just below the weekly salaries of workers. The firm is a BEE level four registered workshop, but unlike big firms such as Toyota, the managers recognised that they operate quite differently and informally. The firm is between low to medium income and it strategises to expand its market share by also selling vehicle spares which are in demand. And instead of buying spares from its current supplier, the firm plans to buy them from where the supplier gets theirs, at a much reasonable price. There are also plans of investing in a bigger workshop to accommodate more vehicles.

3.2.3 Printing

Printing is a 25-year-old firm with a new owner who reportedly took over about three years ago. The firm provides quite a wide service of print and signage for a variety of customers ranging from ordinary individuals to big businesses and organisations. The firm employs a total of 27 workers; all 27 are full time. Job categories are as follows: admin, designing, printing, finishing, and signage and branding. The firm competes in the local printing and signage market along other similar firms, but the manager stated that the firm has a good number of customers even across surrounding towns, which likely means that they have a great market share in this industry. The company is deemed to be between low and medium income. Lastly, it also plans on venturing to marketing in order to expand its market share and revenue.

3.2.4 Forklift

Forklift, located in the heart of Mbombela is a 50-year-old, second division branch and subsidiary of a larger parent company, which has 44 other branches nationwide. The mother company consists of a number of companies in a leading position in the distribution of forklift trucks and equipment to a variety of customers such as supermarkets and farmers. The ownership and structure of the firm is in terms of shareholders, a board of directors, and managers at branch levels. The rationale of including this firm was that; although the interviewed branch employed only 12 workers and

could be classified as a small firm – in terms of its structure and ownership it differed, mainly because it was part of a larger company unlike the other firms interviewed, which were independently owned and single-standing firms. As a result, formal procedures of labour legislation and HR were expected to be in place in this firm. This was to paint a picture that allowed comparison and an understanding of small firms from different settings. However, this was not a major focus of the analysis. All the employees in this firm were full time. Job categories were as follows: creditors, workshop, and spares. Gender breakdown was as follows: five female, seven males. The manager stated that the firm competed in a tough market which is highly competitive. This was partly because the firm produced locally, and reportedly faces tight competition from Chinese imports which are claimed to be cheaper for customers. However, the firm still has a fair market share and potential for growth as long as customers' preference for local products persists and government regulation for certain imports remain strict. This firm is high income and well established, since it has a great exposure to markets and resources. Its main strategy for growth was to improve on delivering its products, services and solutions to its clients.

3.2.5 Aircon and Refrigeration

Aircon and Refrigeration is a 21-year-old firm, owned and managed by one owner/entrepreneur. It specialises in the repairing, maintenance, and installation of refrigeration and airconditioning units to both businesses (including Spar and other big retail chain stores), and some residential customers. The firm is now regarded as a leader in its line of business in Mbombela and surrounding areas. It is also located in the heart of the town of Mbombela. The firm currently employs 30 workers; 30 of which are full time. Job categories are broken down as follows: technicians, mechanical workers, office workers. Gender breakdown is as follows: 23 males, seven females. The firm is deemed to be medium income, and it further plans to increase its market share by expanding on its current customer base.

3.2.6 Caravan

Caravan is also owned by one entrepreneur, established by the owner in his backyard four years back, and recently relocated to new premises (workshop) in the heart of the city in 2016. The firm

specialises in the sales, servicing and customisation of caravans and camping equipment to reportedly about 500 regular campers. A rising turnover is reportedly being observed by the owner. The firm currently employs 11 full time workers. Job categories are as follows: six technicians, two mechanical workers, two office workers, and one cleaner. Gender breakdown is as follows: nine males, and two females. This firm occupies a niche market position – since it focuses on customising and servicing caravans, its main customer base were mainly campers, and as a result the manager claimed the firm does not have a ‘broad-based market’. Additionally, she stated the following: “even though the country’s economy may seem unstable, the firm does enjoy slight growth”. However, she worried that since camping is a leisure activity, it would be the first expense that people cut during economic difficulties, resulting in the firm losing its customers. The firm considers itself low income and a niche brand, and it hopes that it can expand its market share and customer base by doing more marketing such as advertising, which it currently does not do a lot of.

3.3 Market Conditions, Labour Market Constraints, Growth Prospects, and Cost Structures

Market conditions of the firms were a very important point of analysis to look at because they were equally as important as labour legislation in shaping the firm. And the response of each firm and ability to adjust to market conditions was also equally important to the analysis. This section then outlines the labour market conditions of the different firms, showing how the labour market is perceived for each firm and the resulting employment policy responses. The market conditions of the firms were also analysed in terms of how they may result in opportunities, or barriers to growth.

3.3.1 Labour market conditions

In terms of labour market conditions, particularly considering the ease of finding and appointing suitable workers for open vacancies in the firms; three of the six firms (Printing, Caravan and Auto) reported that the labour market did not pose a major challenge, mainly because of the availability and abundance of labour in its labour market context. The main reasons gathered from such a report by firms was reportedly because of the existence of regular work, the simplicity of

tasks, which usually required no special skills, and the lack of constant need to hire and fire workers in the firms market environments. The manager of Printing particularly mentioned how she completely had no problems in the recruitment and selection of workers: “We face no labour market constraints, and it is not a difficulty finding workers since there are a lot of people looking for jobs” (Mary, 31/10/2018).

The manager of Caravan added that most of the firm’s tasks are simple and generalised, making it easy to employ even the less skilled of people:

The firm does not face problems in filling vacancies because most of the work here is quite general, and there are a lot of people who can easily be appointed if the need arises, but we do not hire all the time (Eryn, 02/11/2018).

For the Auto firm, tasks were satisfactorily done by current workers, and there was reportedly no need to constantly fill vacancies:

We face no challenges in filling vacancies, since the tasks are sufficiently done by our current workers, the firm does not have to constantly hire many people. We have regular visits of people looking for jobs, but we cannot appoint them all since most tasks are done sufficiently by the workers we have now (Nick, 30/10/2018).

The other three firms (Roof, Aircon and Forklift) had tougher labour market conditions as they reported challenges, mainly from the lack of skilled workers. The commonly reported challenge was attracting skilled workers from big firms to the small firms, since they would tend to require a similar or better wage to that of a big firm. This last point relates to Edwards *et al*, (2003:42) study where several managers commented on the strain of attracting staff in the care homes as work was relatively attractive elsewhere. The manager of Roof was similarly concerned that it would be harder for the firm to recruit well-experienced workers, especially from large firms, and that the firm did not have the financial capabilities to adopt recruitment procedures which would have been able to attract prospective workers to the firm.

As more stringent labour market conditions were reported; and to compensate for the shortcomings Forklift took it upon itself to undertake training initiatives for the workers as the manager stated the following: “the firm has a difficulty in finding the skilled workers for the work we do, so we train most of the guys ourselves” (John, 01/11/2018). Similarly, the manager of Aircon expressed the difficulty he faced in finding experienced workers. As a result of labour market conditions, and the particular relationships that specific firms have with workers, small firms tended to have own ‘convenient’, and specific employment policies and practices. This has shown that circumstances and practices of hiring and firing workers differ across the firms (Edwards *et al*, 2003); others seemed constrained in the labour market, while others faced no particular challenges.

3.3.2 Policies of employment

For Roof, Auto and Caravan; employment policies seemed to be very informal and unwritten. However, their employment policies did promote long-term employment as the firms did not seem to constantly hire and fire its workers, and most of their workers were reportedly with the firms since their establishment. As the literature suggests; both workers and managers depend on each other, so employers are not with full control in how they utilise and discard employees, as their freedom may be restrained by how easy it is to find and replace workers (Goss, 1991, cited in Regalia 2017:340).

Bongani, the manager of Roof, below mentions that because the firm is family-owned, it preferred to hire members of the family. Because they are family, they would likely not want to leave and would tend to be concerned with the progress and performance of the firm, so the firm used that to its advantage. This aspect confirms the existence and use of willing and flexible family labour by some small employers to secure workers on the firm as displayed by Marlow *et al*, (2005:59).

We try to keep employees in the firm so that they do not go anywhere else. Even though most of the workers are family and would not likely leave the firm either way, we try our best to provide conditions that will keep them in the firm (Bongani, 29/10/2018).

The manager of Caravan also raised sentiments of promoting long-term employment as she mentioned that the firm does not usually engage in the processes of constantly firing and hiring workers.

Current workers have been with the company since it was founded. We also do not have to constantly hire employees since the ones we have stay in the firm (Eryn, 02/11/2018).

Forklift, Aircon and Printing managers reported having more formal employment policies and practices, but also raised views of promoting long-term employment since none of the workers were part-time and the investment of training the workers was undertaken by the firms themselves. The managing director of Aircon mentioned how the firm only employed full-time workers.

We have our policies down and in order, we promote long-term employment since we only have full-time workers (Barry, 02/11/2018).

In addition to that; the manager of Forklift detailed how the firm formally provides training to its workers and the various formal training procedures used.

The firm's employment policies are long-term and strategic; employees take a long test and undergo some training before they are placed. Our policies promote equity, and procedure is always followed (John, 01/11/2018).

As a result of such an investment on training workers, Printing manager similarly saw it fit for the firm to retain its workers.

We have no problems with our labour policies as they are in order; we are fine and without complaints. We do promote long-term employment because all our workers are full-time workers and we do promote their growth and development within the company through promotion and upskilling (Mary, 31/10/2018).

With such results it seemed that most of the firms encouraged long-term employment as some of the firms (Forklift and Printing) had invested in its workforce, through training. Other firms had reported a constraint in the labour market, so it seemed rational to retain its core workers.

3.3.3 Major blockades to growth

Various barriers impinging on firm growth and development were reported by managers. The barriers were seen as either stemming from the internal or the external environments of the firms. For three firms (Roof, Auto and Forklift), barriers to growth were seen as stemming from the firms' external environments; requiring the firms to rearrange their positions in relation to the external environment to address such barriers. Roof manager for example, reported that barriers to growth ranged from late government payments to difficulty in sourcing raw materials – resulting in the firm delaying workers' pay and unexpectedly switching raw material suppliers.

The main problem we face is with customers who at times pay us late... contractors have to wait for the government to pay them...so we also have to wait. Other contractors will take up to four months to pay and I have already taken out my cost to them, that results in challenges of paying workers and suppliers on time. Another difficulty is in sourcing timber. If we do not get it from our main suppliers, then we find another supplier who may charge an arm and a leg (Bongani, 29/10/2018).

Barriers to growth were also seen to be stemming from an external force for Auto, but, in its case it was government regulation, particularly VAT that was a major problem. As a result, the firm took particular actions such as outsourcing an accountant to do their finances and further establish a savings account to ensure its workers are paid in time, in case of shortage of funds in their cashflow. And as the manager describes it, the firm has also formed a very close relationship with its supplier to allow for flexibility in the purchasing of car parts:

...in terms of managing our VAT problems; we have an accountant that helps us with our finances and how much we have to pay and why; the accountant does all that for us. We also try to put money into our savings pocket, so that when we must pay workers in times of financial difficulties, we have something to take from. We do not use the savings account

for other things such as buying parts, because our parts supplier allows us to have a bulk of up to R12 000 worth of parts before we have to go and pay. so, we have a running account (Nick, 30/10/2018).

Just like Auto, Forklift saw VAT as the government regulation which took a substantial cost from the firm's finances. Another problem believed to inhibit growth was the excessive bureaucracy, and the lack of flexibility which denied the firm to temporarily employ workers. This highlighted the common outcry of the lack of flexibility by most employers highlighted in the study by Blackburn and Hart (2003).

The problem is that there is excessive bureaucracy, in other words, there are too many red tapes. We cannot temporarily employ, which creates barriers to growth. We also have a very big problem with VAT, which takes a substantial amount of our costs (John, 01/11/2018).

Printing and Caravan expressed rather differing views, as it was thought that the firms' own internal arrangements (such as poor-quality work), were responsible for inhibiting growth; requiring the firms to rearrange their internal work arrangements into their most efficient conditions, which would result in good quality work – and resultantly, growth if successful. Printing manager stressed the issue in detail:

Providing bad service, doing poor quality work and not having good prices can be major barriers to growth. If we have a problem regarding these, we try to address them through the various departments we have (Mary, 31/10/2018).

Equally, the manager of Caravan expressed similar thoughts:

The lack of quality work and providing a bad service to customers can inhibit growth. We avoid such problems by maintaining the good quality of work that we have always done. That should overcome the barriers to growth (Eryn, 02/11/2018).

3.3.4 Changes in firm cost structures

Managers commented on some of the nature, extent, and reasons of changes in cost structures of their firms. The nature of changes in cost structures, as reported by managers, were mainly a result of either a shift in external conditions (such as prices), and/or a change (such as expansion/downsizing) in the internal environments of the firms. At Roof, for example, the increasing prices of wood – their main raw material, impacted on the firm's cost structures since they had to regularly adjust to the unstable prices. Furthermore, the rising costs of fuel and living expenses of workers resulted in the firm adjusting its cost structures to fit these rising expenses. The manager detailed:

The cost of the wood we use has changed, and since everything else seems to be going up, we need to adjust the salaries of our workers to fit the cost of living. We also have trucks and vehicles here that need fuel; so, if everything goes up in the market, it becomes a problem for us adjusting (Bongani, 29/10/2018).

Similarly, the manager of Printing commented on the unstable prices of raw materials and how the firm has to also regularly adjust their cost structures, but could manage to adapt to such changes.

If we have a shift, we try adapting to it. For example, the price of paper has always gone up, so we always try to adjust to the situation. But we really do not have an issue (Mary, 31/10/2018).

The manager of Forklift expressed different concerns by stating how the firm has actually cut down on some of its expenses as a result of unstable prices. He also reported that firm has also cut down on well-equipped machines to bring on new, cheap ones. Lastly, as a result of these unstable costs, the firm has strategised to properly calculate its costs in order to adapt.

The firm has cut everything, from labour rates, fuel, and electricity. This is because of the unstable costs these things have. We have also brought in new and cheaper machines with less features in order to cut costs. We also try to calculate our rates and costs properly now (John, 01/11/2018).

For Caravan and Auto, not much change has been reported besides that the latter has recently appointed a new employee and that was thought that it might have slightly impacted on their worker salaries, and the former has moved to a new workshop from the owner's home, as a result of expansion.

3.4 Formality and Informality of Employer-Employee Relations

As the literature suggests, manager-worker relations in many small firms tended to be informal as a result of the closer proximity between managers and workers. Industrial relations procedures in these firms tend to be unstructured and can be as varied as the characteristics, personalities and tastes of the owners or managers themselves (Matlay, 1999:285). However, according to Edwards, *et al* (2003) some firms may have mixed formal and informal procedures as they strategise to grow. So, for the present study, manager-worker relations were classified by managers as either highly informal, fairly informal, fairly formal or highly formal but with overlaps between the responses.

The manager of one firm (Roof), regarded the firm's manager-worker relations as highly personalised and informal. Rules in the firm were unwritten and formal disciplinary procedures were almost completely avoided.

I would describe manager-worker relations in the firm as highly informal... I go to the guys from the office without shouting, and they come to the office freely. We all try to find a way forward in every issue; I do not just give instructions. When it comes to discipline; we sit and talk about things because once things are handled externally, it becomes a problem. We do not avoid explicit duties of rights since workers can always come to us if they have problems and we address them (Bongani, 29/10/2018).

As literature further indicated – informality was not always the case, as some of the firms regarded themselves fairly informal but had formalised some procedures to better manage their workforce and prepare for growth. Mixed formal/informal management styles appeared to reflect the inherent conflict between some employers' desire for growth and their hesitancy to let go of specific managerial roles (Matlay, 1999:292-293). In the present study, such patterns of mixed

management styles were noticed for the Caravan, Aircon and Auto firms as they regarded manager-worker relations in their firms as fairly informal but with some elements of formality being present.

Caravan manager stated that workers were addressed casually. The firm has had one formal disciplinary hearing thus far, but to save its time, it did not always resort to formal disciplinary procedures, and relied on face-to-face understandings with employees. Unwritten customs and practices were common, but the firm had drawn job descriptions to inform workers of their respective duties. This could be linked to the literature explaining that in the context of HRM and IR practices, formalization has been variously referred to as the extent to which a rule or procedure is written down, for example as in written job descriptions (De Kok & Uhlaner:2001:4). The firm also did not avoid explicit statements of worker rights as it had the relevant labour legislation posters (such as the BCEA) displayed in the workshop walls for workers to be familiarised with their rights.

We are fairly informal; we call each other by names. We do not do formal discipline for each and everything; we would rather tell them not to do it again. We have had only one formal disciplinary hearing in the last few years. If workers come in late, I do not discipline them every time. If the bus was late, I understand and do not deduct money from their salaries; because they had a good reason. We have unwritten custom and practice, but they have job descriptions, they know what to do; but we are such an informal company. We also have all the legislation act's posters displayed up in the workshop (Eryn, 02/11/2018).

Aircon manager also regarded manager-worker relations in the firm as fairly informal as there were mainly face-to-face understandings with employees, but the formal aspect also came up.

We are fairly informal, and we have face-to-face understandings with the workers but on other aspects we are formal because we must have some rules (Barry, 02/11/2018).

Likewise, the manager of Auto regarded manager-worker relations in the firm as fairly informal while also mentioning some formality:

...we talk to each other like we are friends. We all laugh at jokes with the guys. The other owner speaks SiSwati, which is the workers' home language; so, we all get along very well. We are not strict on discipline, unless it involves stealing. We only enforce discipline if it

is really bad, if you accidentally break something there is no problem. We never have regular hearings or meetings; warnings are not given for being an hour late because there was a taxi strike. We try to be always fair. We do have a set of informal rules; everyone gets to keep their own tools, and if you spill some oil, you must clean up. They are not rules, as such, but just common manners. We have some written rules, but we do not always try to enforce them (Nick, 30/10/2018).

Auto manager mentioned how manager-worker relations are informal in the firm but how certain basic rules were not to be broken:

We all get along very well, but we are not certain of the exact policies, because we do not actually have it written down or something like that. We are also very informal in how we do things, we are more like family here; there is no intercom or strict rules. However, we do enforce certain rules; like workers cannot be late for work and they cannot take long lunch breaks without letting us know. We also encourage our workers to treat our customers with respect and do whatever customers want, since customers always come first (Nick, 30/10/2018).

Forklift and Printing regarded relations as fairly formal. Forklift had almost all procedures formalised, but according to the manager: 'it depended on what was being discussed'. Therefore, manager discretion came to play in some cases, highlighting the occasional use of informality. The firm also had an open-door policy, where workers could freely voice their concerns as the manager mentioned:

Worker-manager relations are fairly formal in this firm, but it depends on what we are discussing. Wages are set and arranged formally but many other issues are not formal. We also have an open-door policy, and anyone can say whatever they want (John, 01/11/2018).

The same was true for Printing as manager-worker relations were also fairly formal because formal procedures in areas such as discipline and dismissals were consistently applied. The firm also called for legal advice from labour law experts when required. Explicit duties of rights were not

avoided as the firms has put up labour legislation posters on the wall. Written custom and practice was in place, and strict employment contracts were drawn.

We are fairly formal, but if there is a problem, workers come to us and we talk to them. Even though I am not friends with my staff, it does not mean I do not care about them. We follow formal procedures in areas such as discipline and dismissals. For serious cases, we call in the labour law experts. For the less serious cases, we solve it ourselves as we still do have some sort of face-to-face understanding. As you can see, we have posters of workers' rights displayed on the workshop walls; we do not have to explain everything, the workers read for themselves. We also have written custom and practice; it is all on our workers' employment contracts (Mary, 31/10/2018).

3.5 Overall Impressions on Effects of South African Labour Laws

As discussed in the literature, manager perceptions of effects tended to be general than based on actual experience and practice (Edwards *et al*, 2004:245). It was also noted that if managers perceive labour laws as intruding in the business, managers may act to reduce the effects of that particular legislation (Edwards *et al*, 2003:8). An overwhelming amount of data has presented negative viewpoints by employers on the effects of employment rights on their business performance, while only a minority perceived some positive effects (Blackburn & Hart, 2003:65). Some, of the participant responses to the present study were also expected to be general viewpoints of legislation than based on actual practice. There were some common impressions across the firms and differences in some respects; some managers saw labour laws as a benefit, while others saw them as a burden, or as both. Theory suggests that conflict arises out of the clash of economic interests between workers seeking job and income security and employers looking to promote efficiency and organisational effectiveness (Kochan and Katz 1988; cited in Provis, 1996: 477). The manager of Roof, for example, confirmed this view as he thought labour laws were a burden towards entrepreneurship and the pursuit of profit. He believed that laws interfere with the running of the business and likely conflict the interests of managers and workers. He further thought that most managers do not need laws in order to pay their workers well. Lastly, he mentioned that the laws allowed unions to nail employers and make workers unproductive.

I consider them a burden because when as an entrepreneur, I establish a business, I start on my own. My aim is to make a living and some profit so that I can get loyal workers and pay them very well as I grow. But now I get labour laws intervening in the business which in the end brings conflict between those who work in the workshop and those in the office. Unions will now have a say in the affairs of the business, and at the end of the day, we do not see eye to eye. This then leads workers to just push hours so that they can get paid and not work to their best ability. But this does not occur here since we are a family business (Bongani, 29/10/2018).

Auto manager had both negative and positive impressions regarding South African labour laws. The manager believed that everyone had a right to a proper wage as the labour law articulates, and that his firm does pay its workers proper wages. This relates to institutional analysis which sees positive effects such as the motivation of labour (by better wages) ensuing from regulation (Arrowsmith *et al.*, 2003:437). However, the manager had a problem with how workers may tend to abuse their rights in hopes that the law will protect them.

I believe that everyone has a right to a minimum salary. No one in this firm gets under R4 800 a month, we have a worker here who does not even do much, but he gets R1 200 a week. I do not even think R4 800 a month is enough, but that is what our minimum wage is here, which is above the set national minimum wage. However, I do sometimes feel like some workers know their rights too well, so they just turn their rights into the way they would want them to be. I do not see anything wrong with labour laws, but I do not completely agree with them (Nick, 30/10/2018).

The manager of Caravan expressed similar sentiments, that she had no particular problems with the laws besides minimum wage provisions. This was a problem for her as she believes the firm could employ more people, but it cannot afford to pay minimum wages. The problem was also with how the laws get more complex, making it harder for small businesses to comply. As Blackburn and Hart's (2003) study found, that reaction by small firm employers was mainly their complaint on the complexity of the legislation and the effects on their business. Thus, Eryn mentions that the law should be more lenient towards small businesses to keep them viable.

I think there is too much emphasis on the labour laws. Obviously, you cannot let people work for nothing. And it is not the labour laws I have a problem with; but that we have to pay people a certain amount of salaries which is what we are worried about, otherwise we have no issues. Without minimum wages, we can always employ more people; since I think it is easier if Robert (one of the workers) earns R3 000 a month than earn nothing. Now I cannot employ more people because I am not allowed to employ them for R3 000 a month. This is just an example, but it is a problem if we cannot employ people with what we can afford. If there were more lenient labour laws; small businesses would be able to maintain and sustain and keep their doors open. However, with the labour law being so strict and getting so complex, then it is kind of a problem (Eryn, 02/11/2018).

As expected, most managers would tend to support the idea that efficiency may seem threatened by the presence of labour legislation. As Forklift managers reported that labour legislation restricted flexibility in terms of temporarily recruiting workers. He also expressed that although the legislation did provide fairness to a certain extent, it only focused a few provisions to the employers compared to the employees.

I believe that some labour laws are messed up; flexibility is restricted. The employees get everything, and the laws make few provisions focusing on employers. However, to some extent, it does provide fairness (John, 01/11/2018).

For Mary, the impressions of labour laws were that the law catered for both managers and employees as it provided a level field and fairness for both parties. So, she did not see labour laws as negatively affecting the firm.

I think the intention of labour laws is to accommodate for both the worker and the employer. All the laws are a reality in our firm, but they do not affect us negatively (Mary, 31/10/2018).

3.6 Balance of Advantage in Labour Legislation

The overall balance of advantage in labour legislation as leaning towards employers or employees, or whether it provides fairness was examined. The views of managers regarding links between ‘public justice’ of the law and the ‘private justice’ of firm’s own internal arrangements were expressed in terms of the ability of firms to provide security for workers as stipulated by the legislation and run their businesses at the same time. For the managers of Caravan, Aircon and Roof the common view was that labour legislation leaned towards employees for a number of reasons. Eryn stated below that she regarded the labour legislation as more lenient towards workers.

I think it is more lenient towards the employee, since everything in them is about the rights of employees (Eryn, 02/11/2018).

Similarly, Barry stated how he thought the laws protected workers to the extent to which workers will do what they are not supposed to do.

The law leans towards the employees because they can do whatever they want in the hopes that labour legislation will protect them (Barry 02/11/2018).

For Roof manager the legislation was not fair for on the side of employers; the issue was that the rights allowing for worker organisation and trade unions were against entrepreneurial goals of growing the business and making profit. As theory stipulates that one of the most important aims of trade unions is to balance the “one-sided determination of the price and conditions of labour... and the almost unlimited control of the employer over his employees” (Ely 1886 cited in Kaufman, 2010:78). The manager thus thought that the influence of unions in the firms will turn workers away from employers, making an impact on the firm’s profits.

I do not think it is fair. As an entrepreneur, you are helping people by giving them jobs so they can feed their families. And like I said before, as an entrepreneur you establish the business on your own to make profit, and as your firm grows you will now have things such as unions intervening. Unions are against entrepreneurs, at the end of the day you will not make profit. Because now there is an influence on the income you were expecting, now your business will have problems (Bongani, 29/10/2018).

Conversely, Auto manager thought the political power of the employers to set the rules of the workplace, and the fact that they are the ones giving workers jobs, placed them at an advantage over the workers. The manager thought the laws will result in a balance between the parties.

I would say it leans towards employers, because as a boss, you can do whatever you want in the firm, like going for a three-hour break; as a worker, you cannot do that. So, when it comes to employers and employees, employers definitely get more benefits. You never tell the boss “you cannot do that” because he gave you a job (Nick, 30/10/2018).

On the other hand, the managers of Printing and Forklift thought that the legislation was broadly fair in that it caters for both workers and manager’s needs. Mary below, expressed that the legislation provides justice for all parties.

I think the labour legislation tries to accommodate for both the worker and the employer, so it is broadly fair (Mary, 31/10/2018).

As literature described that workers in small firms do not always have sufficient legal protection, so it is easier for the small employer to adopt a paternalistic attitude or to engage in threatening behaviour towards workers (Biagi, 1995:442). The manager of Forklift generally believed that labour legislation is fair for both managers and workers, but he stressed that it may be unfair for unrepresented workers to stand against powerful employers who are well resourced:

at some point, I believe the legislation is broadly fair. However, unrepresented workers may be at disadvantage when standing against tough employer advisors and representatives such as LabourNet. In this case, poor workers might be threatened (John, 01/11/2018).

3.7 Knowledge and Experience of Labour Legislation

None of the participants of this study claimed full confidence on awareness of the listed labour legislation below. This correlates to Blackburn and Hart’s (2003) findings that small firm owner/manager awareness levels were influenced by relevance and employer experience of labour legislation. The recurring theme in study was that the correlation between the size of the firm and awareness of legislation of labour legislation tends to be low (Blackburn & Hart 2003). Although that was somewhat applicable to the participants of this study, when asked about the pieces of

labour legislation, the managers claimed at least some knowledge and experience of particular labour legislation. Other pieces of labour legislation seemed to be more prevalent and popular than others; this is illustrated with the example of maternity leave, which was common amongst employers, this is also true in the literature; as maternity leave is common because it is one of the long-standing statutory rights for workers compared to the NMW and parental leave (Blackburn & Hart, 2003).

3.7.1 Leave (annual, sick, family, and maternity)

All managers admitted to providing some form of leave for the workers. For example, the manager of Forklift mentioned that leave was set in line with the legislation. Although roof was quite informal on most aspects, every one of the workers was still entitled to leave. Auto had an annual leave of two weeks for all the workers. Sick leave, family leave, and maternity leave were also all in place as the manager stated: “Our workers have an annual leave of two weeks, sick leave, family leave, no one has ever gotten pregnant but if someone does, they would get maternity leave” (Nick, 30/10/2018).

3.7.2 Minimum wages

Roof was quite aware of minimum wages, but it admitted that the firm was paying below the NMW, since it cannot afford the rates. This relates to Arrowsmith *et al*, (2003) study where a restaurant owner said he was aware of the NMW but said that most workers did not get it. Another study identified that owner/managers were highly aware of their investment and the risk of losing everything in the process of providing their employees with a proper wage (Matlay, 1999:291). Printing paid its workers minimum wages. Since Auto was part of a bargaining council and all wages were in accordance with the prescribed minimum; in the words of the manager; workers were paid from R1 200 a week, which was the minimum wage for the firm. Forklift manager did not stipulate if they do pay the minimum wage, but he stated that workers are paid decently. The manager of Caravan also said that workers in the firm are paid minimum wages.

3.7.3 Working time regulation

Working time provisions of the labour legislation were in place and overtime was compensated for when necessary. Even though some of the firms such as Roof were not strictly implementing

the working time provision, working time in the firm was set close to it; “Our working time is normal in accordance to the law; workers start working from seven to five” (Bongani, 29/10/2018). The same issue was evident at Auto where workers worked from 7:30 to 17:00, Monday to Friday. For Printing there was a contestation regarding working time and break time between the managers and workers; “We once had an issue with the workers regarding starting time, tea time, and break time but it was all resolved” (Mary, 31/10/2018). Caravan also admitted to implementing the working time regulation. For Forklift, the working time was set to the low of 40 hours per week amongst all the firms “Working time is in accordance to the law, 40 hours per week” (John, 01/11/2018).

3.7.4 Discipline

Discipline in Roof was completely informal as no formal procedures were written and followed. Because a majority of the workers were family; informal meetings in the home and in the firm was how the firm informally dealt with discipline:

we do not have rules written down or anything, but if there is an issue we sit down, talk about it, and resolve it, whether it is at home or here (Bongani, 29/10/2018).

Auto manager reported that the firm has not had a formal disciplinary hearing since its establishment: He continued to explain how they never even had the CCMA involved because of its informality in handling discipline.

We have given some employees warnings, but we never had a full-on hearing or ever got the CCMA involved. One of the workers got a speeding ticket with the firm’s vehicle, so we decided that he either pays the ticket or he gets a warning; he took the warning because no one wants to pay a fine. However, we have never given him so many warnings that would lead to him having a formal hearing (Nick, 30/10/2018).

Caravan manager mentioned that because the relations within the firm are good, disciplinary issues did not have to involve the CCMA, a case where the firm handled a disciplinary procedure informally regarding an employee who had committed an offence was recalled.

...I believe the relationship between managers and workers in this firm is so good, it does not get to where we have to go to the CCMA. But we had an internal disciplinary hearing once, where a guy was facing a dismissal; we reinstated the guy and it was our choice to reinstate him. The offence he did was a dismissible offence because he stole from the company, but we reinstated him (Eryn, 02/11/2018).

Conversely, Printing, Forklift and Aircon a direct effect of labour laws was reported; seeing the firms following formal disciplinary hearings and attending the CCMA. For Printing; the formal law and procedures assisted in handling a disciplinary hearing regarding former employees. Forklift manager mentioned how an extra pay cheque was issued by the firm to an employee who was fired for theft after a CCMA case outcome:

We had an incident where a guy was caught stealing red-handed. We went to the CCMA multiple times and it was a long process. The decision was that we give him an extra pay check, but we had to fire him (John, 01/11/2018).

3.7.5 Trade union recognition

Previous research has shown that as the size of a location decreases so too does the proportion of employees who are union members (Barrett, 1998:9). This information reveals that employees in small workplaces are less likely to join a trade union and engage in industrial action, which can be compared against the situation in large workplaces where employees are more likely to join a trade union and engage in industrial action (Barrett, 1998; Regalia, 2017). The lack of unions however, does not signify the lack of worker discontent with their employers as the theory indicates that workers may have varying interests to those of employers, and there are various forms of worker protest or action in the non-union workplace (Hyde, 1993:154). In the present study, Roof and Caravan did not have any workers who were part of a trade union at the time of the interview. Printing, Forklift, Aircon and Auto reported recognition of some trade unions that the firms were involved with. Auto was also part of a bargaining council as the manager stated the involvement of MIBCO in the firm.

3.7.6 Occupational health and safety

The provisions of the Occupational Health and Safety Act aimed at ensuring that workplace related accidents and hazards are minimised. According to the DoL, it is the duty of the employer to implement health and safety standards in the workplace (Geminiani *et al*, 2008). Employers in the present study took it upon themselves to have some form of safety measures in place. However, without proper inspection from the DoL, it was mostly at employer discretion to have measures in place.

Roof manager was aware of the requirements to have safety measures in place and provided safety equipment where necessary. Such measures were not formally implemented since some of the safety equipment was not appropriately used by workers as the manager reported:

We are familiar with occupational health and safety and we do provide protective clothing and safety equipment such as ear guards. However, the workers do not put on the ear guards because they say it makes them less productive; that is why they are lying all over the firm (Bongani, 29/10/2018).

Caravan and Auto provided safety equipment such as protective clothing to the workers as a measure to reduce workplace related accidents. Printing, Forklift and Aircon managers also admitted that safety precautions were always taken into consideration and made part of their operational procedures.

3.7.7 Skills development

The Skills Development Act encourages managers to equip workers with the necessary skills for a particular job through training initiatives. Managers in Matlay's (1999) study mentioned a number of barriers to informal, on-the-job training, including lack of time, lack of internal trainers and substantial costs that proved difficult or impossible to evaluate and recover. Current and future training needs were evaluated informally, mainly on the basis of personal perceptions or expectations (Matlay 1999:293). In this present study firms such as Caravan may not need training initiatives for all workers since they mostly use the ordinary type of work. Auto currently had one worker who was undergoing training from a school in the area. Roof similarly reported to currently having a student worker on the firm, undergoing training through an external agency and working part time on the firm. Printing provided training for its own workers where necessary. Since

Forklift required a special set of skills from the workers, it made it a norm to provide new incoming workers with intense training and a test to equip them with the skills and knowledge to do their jobs accurately.

3.7.8 Unemployment insurance

The labour legislation makes it a duty of employers to have a small pension/ unemployment insurance fund for their workers, in case they were to go through unemployment. As a result of such legislation, the managers in this study all admitted to providing some form of unemployment insurance to their workers. Roof recently adopted a pension fund for its workers as a result of a request from workers and the agency it is under to have one. This indicated a bottom-up pressure on an employer to rearrange work as a result of legislation. Bottom-up pressures referred to workers using new employment rights as a lever in their formal or informal negotiations with management (Arrowsmith *et al*, 2003:452). Auto, Printing, Aircon, Forklift and Caravan managers likewise reported that the firms provided a pension fund for all their current employees.

3.7.9 Employment contracts

Only Roof in all the six firms, did not draw employment contracts because even in this aspect, it came to personal understandings with workers regarding their employment conditions as the manager stated: “We never actually draw employment contracts, we do them verbally, but we never draw them” (Bongani, 29/10/2018). The other five firms did draw employment contracts for their workers.

3.8 Costs and Benefits of Labour Legislation

Since small firms may not have the necessary administrative resources and do not usually engage in cost-benefit studies; it should not be assumed that solid measures could be derived, but with the aim of understanding questions of how firms think about costs and benefits and how far they see value in making cost-benefit calculations (Edwards *et al*, 2003:60). Negative aspects of employment regulation tend to be stressed in overall comments, which may well imitate the common language of red tape and bureaucracy, while there are also positive aspects of which managers are certainly aware (Edwards *et al*, 2003:35-36). Thinking of the management of a given business, it is possible for there to be benefits as well as costs (Edwards *et al*, 2003:59). The

literature also detailed that costs to managers may be benefits to their workers, for example, the increase in pay and reduction in workload on the side of workers may be a disadvantage on the side of employers (Edwards *et al*, 2003:60). Other costs related to how decisions were impacted by the existence of labour legislation, as some firms would have taken different decisions in its absence.

3.8.1 Costs and negative influences of labour legislation

In theory, it has been argued that labour legislation impacts on small firms severely as a result of the costs of compliance and because, unlike big businesses, small firms may not have a delegated specialist on labour legislation (Blackburn & Hart, 2003:6). Another difficulty of note was that “these issues may affect small firms particularly acutely for reasons including their limited administrative resources and their economic vulnerability” (Edwards *et al*, 2003:7). Some previous studies show that many small firms were minimally affected by employment regulations, and thus had no specific administrative costs to report. In some cases, costs occurred in relation to the NMW (Arrowsmith *et al*, 2003) and the WTR (Edwards *et al*, 2003:61). Only a few underpaid workers’ wages were brought up to the NMW, but on the other hand, overtime pay was also affected by the new basic rate (Edwards *et al*, 2003:62). In some care homes, there were no direct costs arising from the NMW, since pay rates were above its level; but in some cases, there were indirect costs as homes increased their pay in line with the NMW (Edwards *et al*, 2003:62). For the present study, the views of managers regarding the costs of labour laws varied across the firms. Some small firm managers saw significant costs, mainly as a result of the rise in wages and unnecessary burdens of implementing legislation.

The content of labour legislation itself was not a problem for Forklift with, but costs arose in terms of administering these laws and the workload involved, including the complaint that some provisions of labour legislation did not generally work in practice – as employers get nothing back in return:

The laws themselves are not a problem but the fees and the amounts of work is a bit of a burden. In terms of innovation, I do not think we get anything back as a result of labour laws. Also, the BEE employment ratio that we are supposed to follow does not work in practice; the fact that I should have a certain number of coloured workers does not make

sense to me...do you know how difficult it is finding a coloured guy in Mbombela? It is even worse finding the one who knows how to do the job right (John, 01/11/2018).

Caravan manager has expressed that the costs of wage-related labour laws have resulted in the firm hiring an accountant in order to manage and calculate the related costs, and as a result, that has costed the firm some money.

We have an accountant that does all our salaries, we do not have wages, we only have monthly salaries. The accountant does everything for us but now it is costing me a few Rands to keep them going (Eryn, 02/11/2018).

She further stressed how the law negatively impacted the firm's decisions to hire more workers because it could not afford to pay other employees the minimum wage. This relates to the literature above where a consultancy firm manager stated that decisions not to increase the size of the business were, in part, shaped by the presence of employment legislation (Edwards *et al*, 2003:65). Thus, the same was reported for Caravan as the firm did not employ extra employees particularly because of minimum wages:

It is just minimum wages that are a problem for me; rather earn R3 000 a month than earn nothing. I feel sorry for the guys walking in here looking for jobs but cannot get them, some have got really good CVs, but I cannot appoint them because I cannot afford (Eryn, 02/11/2018).

For Auto, the manager revealed that the costs of labour laws on the firm were not as significant. That was besides the increases in some workers' wages, which the firm did not consider much of a burden. Also, since the firm had already implemented legislation such as the Employment Equity Act and BEE without a challenge, it was quite possible for the firm to absorb other laws without much strain, given proper conditions.

We do not pay a lot towards legal advice regarding labour legislation. If there are specific increases in the wage bill, that can affect us, but it is not much of a big deal. BEE, requiring us to have a certain amount of Indian people, black people, and a certain number of female workers also does not bother us much. Here, there is only one female worker, we do not have a black cleaning lady or anything, we do not have an Indian; we have two white guys,

one white lady, and four black guys. I do not think laws ever try to nail us since we are a BEE level 4 registered firm, labour laws never cost us an arm and a leg (Nick, 30/10/2018).

The manager of Printing thought the costs of labour legislation were reciprocal in nature, in that they catered for both the workers and managers:

We do not see any costs of existing labour laws, because they cater for both workers and employers, so they do provide something back for us too (Mary, 31/10/2018).

Conversely, some managers thought that laws brought aspects that were not really necessary in the operation of the business:

The costs are unnecessary – we are forced to do things that are unnecessary, and not part of how the business should work (Barry, 02/11/2018).

Roof manger similarly thought labour legislation was time-consuming; and he cited an example where the firm had to shut down because it had to sort out labour law administration. He also believed that the costs of labour legislation outweighed the benefits; in that the business could have flexible relationships without labour legislation because it intervenes in the job process, influencing how workers should work.

As a business we can operate without all the administrative workload that labour legislation brings. If labour legislation is complied with, it will tell you other things that are not really necessary and part of our work. So, it is a problem. Laws also require time that we do not have. Not a while ago, we had a similar issue where we had to sort out a letter of good standing; and as a result, we had to shut the firm down for two weeks until we had resolved it. Other than that, the laws have not costed us to a point where we had to hire more part time workers besides the two that we have now (Bongani, 29/10/2018).

Although there were reported costs such as extra workload, costs from labour legislation were not as significant as might have been expected for most firms. It may also be true that the perceptions of managers towards labour legislation, as discussed previously, may impact and influence how they see costs and in some cases benefits and positive influences of labour legislation.

3.8.2 Benefits and positive influences

Various benefits of labour legislation to the firms and workers in general were also reported by managers. The security provided to workers by labour legislation and the provision of a structure in dealing with worker issues was seen as the major benefit to some of the firms and added to their competitive advantage. Roof manager mentioned that without labour legislation, employers could possibly use their inherent authority on the firms to their advantage against the interests of workers. In relation to the literature above, this illustrates the 'bleak house' scenario, where for example, employers were very likely to use their power and advantage over workers, resulting in poor conditions for workers (Rainnie, 1989 cited in Arrowsmith 2003:437). For Roof manager, legislation had some positivity as it aimed to correct this type of injustice in the workplace:

... laws are important to some extent because not all firms are similar, other employers would obviously be abusive to workers, in that case, it is important to have labour laws to protect workers. Others will make you work hard from seven in the morning to six in the evening, without thinking that people get tired. So, things such as leave, and reasonable working time are very important, and we do adopt them in this firm (Bongani, 29/10/2018).

Furthermore, the manager commended provisions of the Skills Development Act in encouraging the training of workers. This was because having trained and skilled workers on the firm, might add to its competitive advantage, and generally improve the business:

labour laws encourage things such as training which may improve business generally. Since also one of our workers is currently doing training and studying, this improves the number of skilled and knowledgeable workers in the firm (Bongani, 29/10/2018).

For industrial relations pluralism theory, it is through real efficiency that workers will be able to fully contribute to the production process, if they recognise that they can share the benefits of organisational success. Workers require some form of voice and job security to working effectively because labour has a human element that tends to require justice in its relationships (Budd, 2004:21).

Printing saw similar benefits of skills development by recognising that it added value to the firm to have knowledgeable and skilled workers. She further thought the laws have channelled the firm's decisions towards the right direction and as a result, the firm has now adopted the

appropriate procedures to deal with both managerial and worker issues. This relates to the modernisation of procedures of handling human resource processes encouraged by labour laws. For example, in the literature, the experience of an Employment Tribunal had led some firms to modernise their disciplinary procedures (Edwards *et al*, 2003:35).

If we teach an inexperienced worker; that on its own adds value to the person and the firm. That is the one that benefited us a lot. And the law also puts in place a structure which we can use in dealing with worker issues...labour legislation has shaped this firm to an extent because when you know that there is a law, you do the right thing. This applies to both the workers and employers. An employee could be easily fired for something simple. Also, as a worker, you cannot just stay home or break rules (Mary, 31/10/2018).

The provision of a structure for both managers and workers to manage their interests was also seen by the manager of Auto as improving the efficiency in the making of decisions by the firm. Since the firm's strategy was to expand, the manager thought that the adoption and application of some formal labour procedures now would prepare the firm for its future prospective of expansion. This correlates to Blackburn & Hart's (2003) study in which some employers mentioned that labour legislation provided them with guidelines and clarification in setting the conditions for their workers. This has been noted to be beneficial in growth-orientated firms as Auto manager mentioned:

It does encourage us to improve decision making. It does push us in the right direction. If you want to be a big business, you have to deal with all these laws as soon as possible. Before owning this firm, I worked at Cash & Carry and we had all the laws in place, CCMA, and all that applied. That is because the bigger the firm, the more serious it gets. I think it is also beneficial because when you are part of it now as a small firm, you do not have to worry about it when your business grows (Nick, 30/10/2018).

The manager continued by reporting a case where he had to increase an employee's salary as a result of labour legislation and as an implication, the employee's productivity improved.

We actually had an instance where we increased the salary of one of our workers, as a result of labour legislation, and surprisingly he started working really hard (Nick, 30/10/2018).

For Forklift and Caravan, the benefit of labour laws was the contentment gained by knowing that workers were taken good care of. Firstly, the manager of Forklift particularly commented that workers are the firm's most important investment, so paying them the minimum wage at least should not be a problem. And the labour legislation procedures that are in place were meant to maintain this valuable investment.

I believe that some of the provisions such as minimum wages are way overdue and should be provided. Employees make the firm, especially when they are good and reliable workers; that is our main investment. We also have formal procedures in place to make sure that they are taken care of; hopefully, that is a good thing (John 01/11/2018).

Secondly, Caravan manager also expressed admiration of the labour legislation's requirement to employers to provide workers with provident funds, leave and proper working time. These provisions, according to the manager, were all good as their implementation proved that workers were taken care of and in return, they could be productive. The manager also believed that even if labour legislation did not exist, she would still feel obliged to provide workers with security:

...I agree there must be labour laws because everything I have got in place, I would have given my employees either way. What I like about the current labour law is that we now provide our workers with provident funds, which is good to me as an employer. You have got to look after your staff as they will look after you. We have implemented that; there are proper provident funds, leave days, and working hours, all these things to me are good things (Eryn, 02/11/2018).

Theoretically, the pattern of the findings suggests that neither the positive or the negative account of regulation is supported unvaryingly (Arrowsmith *et al*, 2003:452). However both negative and positive accounts could be weighed and the general pattern of responses recognised.

3.9 Changes in Existing Work and Employment Arrangements Due to Labour Legislation

Across the small firms a number of changes resulting from labour legislation were reported – these ranged from the adoption of formal procedures, reduction of working hours, introduction of overtime pay, to the unionisation of workers. The manager of Forklift, for example, mentioned

how working hours in the firm were reduced from 45 hours to 40 hours per week. Overtime, pensions and medical aid to specific workers were also introduced as a result of labour legislation. Aircon's workers had also unionised, and as a result, the manager reported that working hours were reduced as demanded by the union. Roof had no major changes in terms of work and employment arrangements, besides the recent adoption of formal pay structures such as the issuing of payslips and a small pension fund for employees. Printing, under its current owner, reported no recent changes in this regard. Similarly, the manager of Caravan also reported that no major changes had taken place. She further detailed that the firm can cope with paying the current workers decent salaries, but it cannot expand its workforce because of the high salaries she must pay to additional workers. Currently, the firm is considered as coping without challenges regarding its current workers as they are not overworked.

3.10 Enforcement of Labour Laws

The effectiveness of the enforcement of labour laws in terms of visits by labour inspectors and the severity of penalties for non-compliance set by the DoL tended to influence the level of compliance by employers. The managers were asked if they were regularly visited by labour inspectors and if they thought the penalties for non-compliance were adequate enough to force them to comply. In the responses, only one firm (Roof) reported that it was never visited by labour inspectors, reason being partly the remote location of the firm away from the centre of the city. The remaining firms thought the enforcement of labour laws was somewhat effective as they were regularly visited by labour inspectors and regulators. The penalties for non-compliance were also thought to be adequate by these firms as the managers aimed to avoid such penalties by any means necessary. Printing manager detailed the following regarding the enforcement of legislation:

... the last time we were visited by labour inspectors was just last year, and I do think that the penalties for non-compliance are adequate, but we have never been penalised because we follow the rules (Mary, 31/10/2018).

For Auto there was an industry-wide body and bargaining council which ensured the proper enforcement and compliance with labour legislation in its member firms. According to South African law; bargaining councils are the legal forums governing collective bargaining in South Africa and it is through them that the LRA offers to regulate the employment relationship in small

and medium enterprises (Goldberg, 2009:94). Such institutional bodies ensured that the involved firms abided by the set legislation. The manager also shared an instance where a worker's salary was increased as a direct result of the bargaining council's orders:

We get visited every year by the Retail Motor Industry (RMI) organisation, and representatives from the Motor Industry Bargaining Council (MIBCO), and they basically implement all the labour laws. We have never had a violation of labour laws though, except on one occasion when we did not notice that we were underpaying one of our workers; we did not know about that until we found out from MIBCO, as no one ever told us before and were not aware. So, we just increased the worker's salary and we were not penalised. The reason we got away with it was because we were not aware, but we rectified it once it was brought to our attention (Nick, 30/10/2018).

Forklift also reported recent visits by labour inspectors. However, the manager believed that the enforcement of labour laws was likely to be more effective only in big, established businesses. Caravan similarly recalled a visit by labour inspectors, and as such, the firm files everything to prepare for such visits and avoid penalties that may come with non-compliance. The limited resources of the DoL made the effectiveness of regulation very limited, but also such an issue seemed to depend on the context of the particular firm and its institutional setting.

3.11 Conclusion

This chapter has provided a detailed empirical analysis of the data gathered during the data collection stage of the research. A number of themes covering the market constraints, the formality and informality of practices, the knowledge and experiences of labour legislation, the overall impressions of labour legislation, the changes in employment arrangements on the firms, and the perceived costs and benefits of legislation, were developed. The data analysis section has provided varying patterns of responses, across these themes, from the managers, and the way they see the impact of labour legislation on their specific firms. The analysis has also shed some light by highlighting the similarities and the differences in the findings. The key thing the analysis has also tried to bring to light was understanding of the data by revisiting some of the previous studies in the literature and theory sections above, and relating them to the views of the managers in this study to see if there is divergence or similarities across some studies. As the findings indicated, it

is without doubt that small firms share quite a lot of commonalities in terms of managing labour, while also acknowledging the differences which are also present.

CHAPTER 4

CONCLUSION AND DISCUSSION

4.1 Conclusion

This paper investigated the current challenges and problems, in terms of labour legislation, facing small firms in Mbombela- Mpumalanga Province of South Africa. This study was necessitated because of the importance of small and medium sized enterprises in nation building and economic development is of great importance in South African economic discussion. The overall aim of this research was to document and analyse the impact of labour legislation on six small firms in Mbombela. The analysis was primarily based on the views and experiences that the managers/owners of the small firms held towards labour legislation; and how various laws were perceived and applied by the firms. As demonstrated above, the six participating firms of the study came from varying economic and market backgrounds and their specialisations were absolutely different. The most common feature was that they all employed less than 50 workers and were all independent firms, with the exception of the Forklift firm.

The study was contextualised within the theoretical framework of industrial relations pluralism, which explores and highlights the varying, conflicting and common interests existing in the employment relationship between managers and workers. The diverging interests of industrial relations pluralism are grounded on the principles of institutionalism – seeing positivity in the regulation of the employment relationship; and those of orthodox economics – seeing burdens and restrictions to flexibility as a result of regulation. According to IR pluralism, common interests between parties are recognised when there is a balance of interests and the benefit for both workers and managers are realised.

The research strategy of this study took the form of a qualitative research design, in which the six different participants were involved in an in-depth interviewing process. Two of the firms (Aircon & Printing) were fairly larger, in terms of the number of workers employed (30 and 27 employees,

respectively) than the other firms (Roof, Auto, Forklift, and Caravan) which all employed under 15 workers. The differences in the number of workers employed, were partly reflected in the firms' stance towards formal management practices. As already highlighted, all the firms were independently owned, except for one (Forklift), which was a subsidiary of a larger company. The rationale of including the latter firm in the study was that it offered some variety and ground for comparison, because although it employed only a few workers like the rest of the firms – decisions such as strategy and planning were made centrally by the board of directors rather than the branch manager (or owner-managers in the case of the other firms), although the branch manager ran the day-to-day operations of the firm.

Also using qualitative methods of analysis in transcribing and making sense of the manager interviews, the overall findings of the study indicated that some small firms had a clear direction of formalising most of their procedures. Such an occurrence in the literature was explained as the preparedness of the firms for growth as they sought to expand their firms. This was clearly stated by the managers of Auto and Printing, who both believed that formal procedures were a step towards the right direction in terms of growth. Another key aspect which was raised in the study, was the specific labour market conditions of the firms, as they proved to partly determine their employment strategies to some extent. Since some firms reported a difficulty in attracting skilled workers; the strategies adopted in response were to retain current workers or to train unskilled workers. In the case of Roof, the strategy for coping against tough labour market conditions was in using mostly family labour to survive, as they were easy to recruit and unlikely to leave the firm after recruitment. A further issue raised in the study was that the use of formal procedures in certain areas was avoided by most of the firms, even though some firms (Auto, Caravan, Printing, Forklift, Aircon) had some formal procedures in place, their implementation was not consistent as it would be expected, and they were applied in an ad-hoc manner as the managers saw fit, or depending on the seriousness of the issue at hand. This was described as a result of the lack of time and resources facing small employers (an issue that came up quite often in the literature), making it almost impossible for them to implement all the procedures. For some firms, such as Roof, there was a conscious strategy to remain informal, as formality had great administrative challenges. One example of a challenge in this regard, is the case of the firm closing for two weeks in order to sort out administrative processes as was reported by the manager, Bongani. However, again, it can be noticed across the firms, that rules seemed to highly depend on what was relevant and necessary

to the particular firm. The attitude of managers and the wider economic and market contexts of the firms also came to play in influencing which laws were absorbed or not complied with. The use of family labour by Roof, for example, proved as a useful strategy in retaining the workforce while bypassing some laws, since family labour was likely to remain in the firm no matter the conditions. Intensive utilization of informal networks was needed to continue to survive. This could be termed ‘strategic’ in that there was a conscious choice, with a clear end in view (survival). The firm also focused on producing for domestic customers, which it thought was profitable since focusing solely on contractors was not sustainable.

Another key finding demonstrated that the number and detailed accounts of managers who perceived labour legislation as a burden outweighed positive views. There was also some perception of the legislation as balanced. Forklift manager agreed that he would not have to take the route of a formal hearing if he was faced with an issue, rather he would fire a worker straight away if a worker was caught stealing because the formal process would take long. However, since the firm was not independent, the manager could not do as he pleases, and the presence of labour legislation required the firm to have formal procedures for handling such issues. Such an issue proved as a constraint on the firm’s decisions. However, all managers had mostly negative views coupled with some positivity, as they believed that labour legislation could add to the competitive advantage of the firm, as few managers reported that modernising procedures and having skilled workers was beneficial to their firms. This was well linked with the literature, stating that if the perceptions of managers regarding labour legislation tend to be negative, that may influence how labour legislation is applied in their firms. The common complaint for the managers of Caravan and Roof was regarding the NMW which they claimed they could not afford; Roof ignored the NMW and claimed that its family-based workers understood the firm’s situation of not affording to pay the rates. Caravan, on the other hand paid its current workers the NMW, but claimed it was being restricted on its future prospectives of hiring more workers. Complaints were also limited to some regulations, as the manager of Auto stated that the firm was coping very well with the requirements of labour legislation but struggled with a different government regulation (VAT), and the manager of Forklift struggling with market competition; this finding indicated that some small firms may be faced with tougher barriers to growth than labour legislation alone, and where it is a problem, it was usually not a big one and could be handled almost easily by the firm’s own internal processes.

4.1 Discussion

While this study provoked interesting and diverse findings, its time limitations could not cover all interesting aspects of work in small firms, as there were several areas that could be improved upon in future studies. For example, future research would also find it beneficial and important to include the views of workers as well – to see how they perceive their working conditions in small firms. However, this issue did not limit the validity of this study because it deliberately aimed to explore only the views of one party (employers), and was sensitive to the fact that another party (workers) is likely to have a different perspective on certain matters, given the inherent conflicts in the employment relationship. Although the sample used was limited and could not be generalised to all firms, the findings are indicative of the current challenges with regards to labour legislation, facing small firms in Mbombela, Mpumalanga Province of South Africa. In terms of the reliability of the methodology adopted in this study; it proves that when the procedure followed here is used in a bigger and more diverse sample, and if a quantitative methodology is also incorporated, findings would justify and improve the current study. Turning finally to wider implications of the research; the importance of context in understanding the impact of the law is underlined with great importance. Some firms were noted to easily absorb legal requirements while others basically ignore them and yet others experience significant difficulties. These difficulties imitate particular mixtures of situations, rather than solely labour law. It may also be beneficial for future research to focus on the impact of particular laws on specific sectors, and to consider employment regulations in the light of the regulatory regime as a whole and the wider economic context. It may then be possible to identify problems in small firms and recognize ways to aid small firms to manage their particular situations, rather than having a blanket policy for all small firms or a sector of small firms. This could involve minimising negative effects of the law, for example by recognizing ways to improve recruitment in a particular sector or firm; and maximise positive effects such as improved training and skills development. This could further create a better understanding of small firms, thus informing better policy decisions for the government in South Africa and across the globe.

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APPENDICES

APPENDIX A

THE IMPACT OF LABOUR LAWS ON SMALL FIRMS – MANAGEMENT INTERVIEW SCHEDULE

1.Please provide a brief outline of the firm's history and context.

[Date of establishment? Rising or declining turnover? Customer base? Ownership of the company?]

2.Please provide a breakdown of jobs in the company.

[Number of workers? Job categories? Gender breakdown? Full-time, part-time and casual workers?]

3.What are the labour market constraints faced by employers in small firms?

[Availability of sufficient qualities and quantities of labour? How do you compensate for shortcomings in the labour market? Problems encountered when filling vacancies?]

4.How would you describe the product market in which the firm competes?

[Nature of competition? Potential for growth? Dynamics of the sector? Impact of the recession?]

5.How would you describe the firm's business strategies?

[Is the firm low, medium or high income? How can you expand your market share?]

6.How would you describe the firm's employment policies and practices?

[Long-term strategic or short-term pragmatic?]

7.Please list, in order of importance, the main difficulties you face in running the business.

[Market competition? Government regulation? Labour legislation?]

8.What would you regard as the major barriers, in order of importance, to growth in small firms?

[Explore particular problems that are experienced in the development of the business. How are these problems managed and what information is used to do this?]

9.Rate, in order of importance, the various factors that shape cost structures in the firm.

[Market prices? Exchange rates? Interest rates? Labour costs?]

10.What major shifts have taken place in the firm's cost structures?

[Nature of changes? Extent of changes? Reasons for changes?]

11.Do you agree with the following statement: 'the overall extent and complexity of legal regulation is a distinct source of concern'?

[Provide reasons for your answer]

12.What are your overall impressions of labour laws in South Africa?

[Is labour legislation reflected in business practice? Is flexibility restricted by labour laws? In the context of recruiting and managing staff, are employment rights a burden or a benefit?]

13.Please rate the overall effects of labour legislation on the firm, using a 1-10 scale where 1 = minimal and 10 = extensive.

14.Do you think the overall balance of advantage in existing labour legislation leans towards employers or employees, or is it broadly fair?

[Explore the links between the 'public justice' of the law and the 'private justice' of firms' own internal arrangements]

15.Please outline the extent to which you think labour laws have had a direct and/or indirect effect on the firm.

[Evidence of specific events, such as a disciplinary hearing or a CCMA case, which led to changes in employment relations or a greater awareness of labour legislation? Constraints on hiring and firing?]

16.Do you regard any specific piece of labour legislation as affecting the competitive advantage of the firm to a significant degree?

[The effect of the law on the ability of management to pursue the firm's stated goals in relation to its competitive positioning? Which aspects of the law do you find most troublesome? Does the firm keep detailed records of the monetary costs of complying with specific pieces of legislation?]

17.Should small firms be exempt from certain provisions in labour legislation?

[Why? Which provisions?]

18.What are your views on the costs of existing labour laws?

[How does the firm think about costs? Circumstances under which legislation is perceived as imposing a disproportionate burden on business? Impact on competitive advantage? Impact on speed and nature of decision-making processes? Impact on management's time? Increased administrative workload? Specific increases in the wage bill? Direct administrative and compliance costs? Costs of legal advice? Have labour laws forced the firm to hire more part-time and temporary workers?]

19.What are your views on the benefits of existing labour laws?

[How does the firm think about benefits? Does the firm see any value in making cost-benefit calculations? Does the law encourage firms to plan in a more efficient and long-term way? Does the law encourage innovation and a shift toward high value-added activities? Does the law encourage the firm to improve its decision-making processes? Do labour laws push the firm in a direction that it wishes to go? Does the law promote business modernisation? Has the law encouraged the firm to adopt formal labour relations processes and procedures?]

20.To what extent has labour legislation changed existing work and employment arrangements in the firm?

[Nature of changes? Extent of changes? Reasons for changes? Future plans for the business?]

21.Have any employees been retrenched as a direct result of labour laws?

[If so, how many workers were retrenched? Why were they retrenched? Which categories of workers were retrenched?]

22.Do you agree with the following statement: ‘the impact of labour legislation is hard to separate from other influences on the business’?

[Provide reasons for your answer]

23.Do you think the enforcement of labour laws is effective?

[Has the company been visited by labour inspectors? Are there known violations of labour laws? Are the penalties for non-compliance adequate?]

24.Please indicate whether the presence of labour legislation leads to the making of different decisions than would have been taken in its absence?

[Explore the extent to which employers would have acted differently if no labour laws existed]

25.How confident are you about your knowledge of current labour laws?

[Confident, somewhat confident or not confident?]

26.Please provide an indication of the extent of your *knowledge* of any of the following:

- (a) minimum wages;
- (b) working time;
- (c) annual leave, sick leave, family leave and maternity leave;
- (d) discipline;
- (e) unfair dismissals;
- (f) trade union recognition;
- (g) equal pay and discrimination;
- (h) occupational health and safety;
- (i) skills development;
- (j) unemployment insurance;
- (k) strikes and lockouts;

- (l) employment contracts;
- (m) unfair labour practices

27. Please provide an indication of the extent of your *experiences* with any of the following:

- (a) minimum wages;
- (b) working time;
- (c) annual leave, sick leave, family leave and maternity leave;
- (d) discipline;
- (e) unfair dismissals;
- (f) trade union recognition;
- (g) equal pay and discrimination;
- (h) occupational health and safety;
- (i) skills development;
- (j) unemployment insurance;
- (k) strikes and lockouts;
- (l) employment contracts;
- (m) unfair labour practices

[Explore the extent to which there has been a significant impact on the firm by any of these legal provisions. Was the effect on the business positive or negative?]

28. Which of these sets of conditions would you regard as most important in determining the effects of labour legislation: external factors (such as a firm's product market position) or the internal organisation of the firm (such as the relations between managers and workers)?

[Provide reasons for your answer]

29. What would you regard as the firm's most important methods of offsetting the increased costs and burdens of labour laws?

[Explore coping strategies in relation to the legislation and the factors promoting positive and cost-effective outcomes. Focus attention on any actions either to moderate negative effects or to promote positive ones.]

30. How would you describe management-worker relations in the firm: highly formal, fairly formal, fairly informal or highly informal?

[Explore the extent of 'informality'. Is there a personalised and informal relationship between managers and workers? Does the firm avoid formal procedures in such areas as discipline and dismissal? Does the firm rely largely on face-to-face understandings with employees? Are explicit statements of rights and duties avoided? Are legal obligations ignored if they do not relate to the established set of informal rules in the workplace? Are the firm's internal procedures largely based on unwritten custom and practice?]

31. Does the firm have any of the following:

- (a) formal recruitment and selection procedures;
- (b) formal appraisal and promotion system;

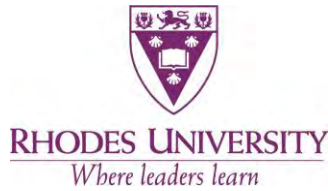
- (c) formal grievance procedure;
- (d) formal disciplinary and dismissals procedures;
- (e) equal opportunities policies;
- (f) formal training and staff retention schemes;
- (g) formal pay structures;
- (h) formal productivity agreements;
- (i) formal employee motivation schemes?

[Explore the extent to which these are formalised or whether they are dependent on managerial discretion]

32. Which of the following characterise the firm's response to labour laws?

REACTION	YES	MAYBE	NO
Employ more young/inexperienced staff			
Use more part-time/temporary workers			
Reduce training			
Reduce annual leave			
Reduce leave pay			
Reduce working hours			
Reduce pensions and medical aid			
Reduce bonuses			
Reduce the number of staff			
Reduce overtime			
Increase deductions from wages			
Introduce unpaid breaks			
Charge or increase charge for staff meals			
Apply for exemptions			
Get employees to work harder			
Employ more experienced/older staff			
Employ better quality staff			
Develop a more effective staff retention policy			
Increase training			
Reduce wage differentials			
Introduce new technology			
Get employees to work smarter			
Improve advanced planning on wages			
Use labour brokers or outsource services			
Increase prices			
Cut profits			

APPENDIX B



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Participant Consent form (Interviews)

Name of researcher: Sikhulile Blessing Dlamini

Brief description of the research topic: The research seeks to examine the impacts that small firm owners/managers have had with labour legislation.

Declaration

1. I confirm that the purpose of the research and the nature of my participation have been explained to me verbally or in writing.
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason - however I commit myself to full participation unless some unusual circumstances occur, or I have concerns about my participation which I did not originally anticipate.
3. I understand that data collected during the study, will be used by the researcher and that my personal details gathered during this research, especially my name or identity, will be kept private.
4. I agree to be interviewed and to allow audio or video recordings and transcriptions to be made of the interview.
5. I have been informed by the researcher that the tape recordings will be erased once the report is written.

Signature of participant:

Signature of the researcher:

Date:

