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Human Resources/Human Capital

Human Capital

Employees are regarded as an asset with certain skills, knowledge, experience, characteristics and attitudes which are used in the business to reach their objectives.

Manpower Planning

Manpower Planning refers to the process of:

- estimating the number of employees
- assessing the range of skills needed
- Calculating the time frame of the employment

Job Analysis: A job analysis is performed to determine all the tasks and responsibilities associated with each job in the organization.

Job Description: A job description is done to specify the job title, a summary of the job, duties and working conditions associated with the job as well as the degree of supervision.

Job Specification: A job specification interprets the job description into qualifications, skills and experience necessary for the employee to do the job. It is used as a guide during recruitment and selection process.

Skill gap: The difference between the skills available in a business and the skills that are still needed. The process of recruitment and selection aims to eliminate the gap.

The Steps to Procuring the finest talent:

1. Recruitment
2. Selection
3. Placement
4. Induction
5. Remuneration
6. Training
7. Employee evaluation
8. Retention

1. RECRUITMENT

Recruitment: The process of procuring the finest talent for the business.

Internal Recruitment: Transferring an existing employee to a new position in the business by promoting the employee.(via an internal email, or by hearing recommendations)

Advantages of Internal Recruitment:

- Employee morale is improved.
- It is more cost effective.
- The past performance and attitude of the employee is known.

External Recruitment: This is when employees are recruited from an employment

agency, from universities depending on the qualification needed, CV application or “walk-ins”, employment agencies, employees can also be head-hunted.

Advantages of External Recruitment:

- New ideas and skills are brought to the business.
- Business gets an opportunity to meet Employment Equity targets via Affirmative Action.
- Head-hunted employee can give insight on competitor.
- No infighting occurs among employees for the position.

2. SELECTION

- A. The business will receive applications in the form of CVs or any other relevant information from people applying for the vacancy.
- B. The application forms and CVs are then evaluated to see which candidates meet the criteria.
- C. The business will then compile a shortlist of candidates by comparing each application to the predetermined standards.
- D. A background and reference check are done. The business has a pre-defined list of questions that verifies the applicants' references.
- E. Interviews are conducted. The purpose is to obtain additional information and to assess the qualities the candidates have as well as their suitability for the business and position.
- F. Tests may be taken to evaluate their suitability for the job. This can be in the form of a presentation to assess competence in communicating. Psychometric tests to check mental ability. Medical examination if there is an inherent requirement for the job. Trade tests to show what the applicant can do.
- G. The candidates are then ranked from the highest rated candidate and an offer is given.
- H. Once the offer is accepted. The employment contract is signed by the employee and employer.

3. PLACEMENT

During this stage the employee is placed in the position they have applied/best suited for. There might be more discussions on remuneration and other benefits. The correct placement ensures that the employee is used in the best way possible for the business.

4. INDUCTION

Induction is orientation training given to new employees to help them be productive as soon as possible.

An effective induction program includes:

- A written copy of business' policies and procedures.
- An organisational chart to show the various role players in the organisation.
- Face-to-face introduction to staff members.
- A tour of the facilities where the employee will be working.

- Precise instructions outlining how tasks should be performed.
- Allocating a mentor to employee.

Advantages of a well-structured induction program:

- It helps reduce stress and anxiety that may be experienced by new employee and gives them a positive impression on the company.
- Ensures new employees have all the information needed.
- Allows new employees to be mindful of the business culture and they adapt quickly.
- Retention of staff may be higher when a well-designed induction program is implemented.

5. REMUNERATION

- A salary is paid to a permanent employee. It is a fixed amount paid once a month on a pre-determined date.
- A wage is paid on a daily or weekly basis, it might be a piece rated or be calculated on the number of hours worked.
- A commission is a form of remuneration used to motivate the employee. Often used in sales where the employee receives a percentage of the sales as commission.

Deductions on remuneration:

According to the BCEA employers may not deduct money from an employee's salary. Unless it is voluntary e.g., a trade union contribution or it is a legal requirement (UIF and PAYE). Pay As You Earn is progressive in South Africa meaning the higher the salary, the higher it is.

Methods of structuring salaries:

- Cost to company: Employer offers the employee a salary and thereafter no additional contributions.
- Cost plus benefits: Employer pays the employee a salary and additional fringe benefits. These could include pension, medical aid, travel allowance, housing, accommodation etc.

6. TRAINING AND SKILLS DEVELOPMENT

Training is job specific (needed to do your job), it is aimed at employees to improve their performance, productivity levels and efficiency.

Skills development targets a broader range of skills that are not job specific such as communication skills and time management skills.

South African parliament introduced the SDA to address the shortage of skilled labour.

7. EMPLOYEE EVALUATION

Evaluation is usually done in the form of a performance appraisal. It assesses the strength and weaknesses, potential short comings. A performance appraisal gives employer and employee a chance to voice out their concerns and to discuss bonuses or possible promotion opportunities. (A performance appraisal is a planning, evaluation and feedback tool).q

8. RETENTION

High employee turnover is when employees are constantly leaving the company to find other jobs. High employee turnover is not good for a business's productivity levels, public image and employee morale.

It is also expensive to constantly recruit employees.

LEGISLATION IMPACTING ON HUMAN CAPITAL

- **CONSTITUTION 108 OF 1996**

The South African Constitution was promulgated on 18 December 1996 and came into effect on 4 February 1997.

- It is the fundamental law of South Africa.
- No other law or contract may supersede the Constitution.

The principle of human rights is one of the core values of the Constitution and the Preamble to the Constitution clearly states the intention of establishing "a society based on democratic values, social justice and fundamental human rights". This helps to redress inequalities of the past when the gross abuse of the human rights of certain groups of people in South Africa occurred.

The Bill of Rights is covered in Chapter 5 of the Constitution.

Issues detailed:

- People have the right to just administrative action which gives citizens the right to challenge government (Constitutional Court). Being able to do this is something that should give citizens peace of mind, knowing they have the right to challenge the government on certain issues, if need be.
- People have the right to citizenship and freedom of movement in and out of the country.
- People have political rights which mean they can form a political party,
- People have the right to housing, food and water, health care and social security.

The question, nevertheless, arises whether the current government is honouring its promises in this regard or, at the very least, if there is evidence of these rights being achieved quickly enough.

- Children under the age of 18 have special rights such as protection from abuse and exploitation.
- People have a right to basic education, but unfortunately too often we hear about schools being mismanaged, non-delivery of textbooks to schools, and teachers striking.
- People may not be unfairly discriminated against on the grounds of gender, race, religion, marital status, disability, pregnancy, language, culture, age, etc.

This refers to the concept of inclusivity. However, something like Affirmative Action is seen as fair discrimination due to the limitation clause.

People may do whatever work they choose, because citizens are entitled to freedom of trade, occupation and profession.

People have Freedom of Association which means workers may belong to the

Trade Union of their choice and may even strike if the correct procedures are followed. Employers also have the right to belong to employer organisations to further their aims.

People have the right to assemble peacefully, demonstrate and protest, provided the correct procedures are followed.

Citizens have the right to live in an environment that is not harmful to their health or well-being. The Constitution also guarantees future generations' rights by demanding that people become more aware of environmental issues, that conservation is promoted, that businesses focus on sustainable development and that technology is used in such a manner that, where possible, pollution is prevented.

LABOUR RELATIONS ACT 66 OF 1995

Provides the legal framework for the South African labour relations system.

PURPOSE of the LRA:

- To provide a framework for collective bargaining between trade unions and employers.
- To promote effective resolution of labour disputes through employee participation in decision making.
- To enforce the fundamental rights relating to labour issues that are in the Constitution.
- To promote economic development, labour peace, democracy, and social justice.

Positive implications of the LRA

- Ensures that international labour standards are applied.
- Gives clear guidelines on how labour disputes must be resolved.

Negative implications of the LRA

- Trade unions have a lot of power in South Africa, and it appears that they sometimes forget that they are meant to protect the rights of employees and not become involved in politics and other issues under the pretext of implementing the LRA.

Trade Unions

A trade union can be defined as a group of workers organising themselves in a collective organisation with the aim to engage in collective bargaining with the employer and/or employer organisations. The South African Constitution recognises trade unions and gives employees the right to join a trade union. The Labour Relations Act allows registered trade unions to be part of the collective bargaining process and to fulfil the following roles and functions:

- ensure industrial peace by influencing policies and decisions regarding labour issues
- address issues such as conditions of service, safety in the workplace, remuneration (wages) and workplace restructuring (including possible retrenchments)
- ensure fair treatment of workers (setting realistic working standards and representing employees in disciplinary issues)

The functions, as discussed above, appear very simplistic. If the underlined point only is examined more fully, namely: the setting of reasonable and realistic work standards, it immediately becomes clear how important the active involvement of the trade unions is to this process, as well as the huge responsibility that rests on their shoulders.

- Work standards give employees an understanding of performance expectations. Once workers are aware of expectations, it will lead to better performance, more profits, and potentially better wages. A win-win situation for all.
- At the same time workers will understand how failure to meet the required standards will be dealt with (disciplinary action).

The role of trade unions is carried out by participating with employers in the collective bargaining process. If it is not possible to reach an agreement on an issue via collective bargaining – conciliation, mediation and arbitration follow. As a last resort, the LRA allows trade unions to organise strikes (after the correct procedures have been followed) in an effort to force the employer to negotiate a settlement for the dispute.

Examples of trade unions in South Africa

CCMA

The CCMA is an independent dispute-resolution body, it is funded by NEDLAC.

The aim of the CCMA is to settle disputes between employers and employees to prevent labour unrest, e.g. strikes. The process followed by the CCMA is one of conciliation, followed by mediation and if needed, arbitration.

Conciliation refers to the process where the commissioner meets with the employer and employee to explore ways to settle the dispute by mutual agreement.

If conciliation fails, mediation will follow. The commissioner then makes a recommendation on how he/she thinks the dispute should be settled. If the parties are not willing to follow the recommendation, the process proceeds to arbitration. During arbitration the commissioner will issue an award (make a decision) that is legally binding on both parties.

If one of the parties feels there is a flaw in the arbitration process, the party has 6 weeks to refer the matter to the Labour Court.

NEDLAC

National Economic Development and Labour Council

NEDLAC is an important role player in South Africa when it comes to the relationship between business, trade unions, government and community groups. The different parties engage in social dialogue with NEDLAC, aiming to:

- make economic decision-making more inclusive
- promote the goals of social equity and economic growth

Section 77 of the Labour Relations Act empowers NEDLAC to intervene as a dispute-resolution body when there are disagreements between business, trade unions and government regarding issues of socio-economic policy.

Importance of discipline

The purpose of discipline in the workplace is to ensure that employees are adhering to the company rules and, if this is not the case, to correct this behaviour immediately, but also to prevent it from happening in future.

Not all infringements are equally serious. Some are minor infringements, while others may be so serious that it may endanger the person or other people's lives. When the manager decides on the most appropriate form of discipline, it is usually best to implement the "softest" disciplinary measure appropriate for that specific situation. If this does not correct the problem, more serious disciplinary action may be taken. This is known as a progressive approach to discipline. From least serious to most serious, the following steps may be taken to correct behaviour:

- Coaching and counselling where the manager will determine what can be done to ensure appropriate behaviour. A plan of action follows to ensure the employee complies with what is expected of him/her. The employee needs to understand that if behaviour does not change, more serious steps may be instigated.
- Correction refers to a more formal approach to intervention and may include verbal warnings, written warnings, suspension, demotion or even dismissal. There is a common misconception that the manager always has to issue three warnings before an employee may be dismissed. This is not true. When the problem is not serious, the manager may use numerous (informal and formal) verbal warnings, before a written warning is given. If, however, it is a serious problem, the consequence may be immediate dismissal, provided the correct procedures were followed.
- It is important for employers to have a Disciplinary Policy and a Grievance Procedure in place. The purpose of these two documents is to ensure employees meet the required work standards and that they act in a manner that promotes improved job performance. The difference between the two documents is:

A Disciplinary Policy provides guidelines and informs the employee what is acceptable behaviour and what the expected standards are that should be met, as well as what consequences will ensue if behaviour is unacceptable.

A Grievance Procedure allows the employee the opportunity to resolve a grievance related to his/her employment by communicating with the employer about the problems via a predetermined procedure and structure. The employee will usually take his/her grievance to the supervisor. If it is not resolved, it will be taken to the line manager (functional or departmental manager). Should the problem persist, it is usually referred to the human capital manager. The CCMA, Labour Court and Labour Appeal Court are the external bodies that can be consulted if the grievance is not resolved internally.

Substantive fairness

The three reasons that constitute substantive fairness when an employee is dismissed are:

Dismissal due to incapacity (inability to meet the required standards)

Dismissal based on misconduct (not adhering to the rules)

Dismissal due to operational reasons (retrenching workers)

Each of these reasons will be discussed, followed by an examination of procedural fairness. It is important to keep in mind that regardless of the reason for an

employee's dismissal, the correct procedure has to be followed otherwise the dismissal may be seen as unfair.

Dismissal due to incapacity

can be sub-divided into two categories poor work performance and poor health.

- Poor work performance:

Include incomplete or inaccurate work, work of a poor standard, carelessness regarding output or failure to meet deadlines.

The employer has to prove that the required work standard was fair, that the employee was aware of the required standard and that he/she was given sufficient support (e.g. training) to improve performance.

Demotion or a transfer to another job should be considered before an employee is dismissed (if this can solve the problem).

- Poor health:

The employer should try to modify or adapt the employee's tasks, if possible, to enable the employee to meet the required standards.

Extended unpaid leave should be considered if this will enable the employee to recover and thereby return to perform his/her duties to the required standard.

A transfer to another more suitable position should be considered before dismissal based on ill-health occurs.

Dismissal based on misconduct

The Disciplinary Code of the business should stipulate which offences are seen as more serious than others and what the disciplinary action associated with each offence will be. An employee may be dismissed for a less serious offence if all other methods to correct the behaviour have failed. Some offences, however, are serious enough that they may warrant immediate dismissal.

Forms of misconduct may include, but are not limited to:

- abuse or unauthorised possession of company property

- actions that are a threat to the safety of the employee or others
- being under the influence of alcohol or any illegal substance
- bribery and corruption
- failure to adhere to rules
- fighting
- illegal industrial action

Before the employee is disciplined for misconduct, it should be established that:

- The employee contravened a rule or standard in the workplace.
- The rule or work standard that was contravened, was a valid rule or reasonable standard.
- The employee was aware or could reasonably be expected to have been aware of the rule or standard.
- The rule or standard is consistently applied by the employer.
- The appropriate sanction for the contravention of the rule or standard is implemented (verbal warning, written warning or dismissal – whichever is appropriate).

Procedural fairness for incapacity and/or misconduct:

- The complaint should be put in writing and fully investigated, with the investigation process recorded in writing. This may include taking statements from the complainant and all witnesses.
- The accused should be advised of the full nature and details of the charge(s) against him/her and given full access to all written statements collected.
- The date, time and venue of the disciplinary hearing should be given to the accused in writing.
- The accused should be given reasonable time in which to prepare and to appoint his representative for the disciplinary hearing, but it is important to not delay the disciplinary hearing unnecessarily.
- The accused is entitled to have an interpreter if he/she is not comfortable with the language in which the disciplinary hearing will be held.
- The complainant presents his/her case first by giving evidence and calling witnesses to testify. The accused is given an opportunity to cross-examine witnesses.
- The accused then presents his/her defence and calls his/her own witnesses. The complainant will have the opportunity to cross-examine the accused's witnesses.
- The chairperson of the disciplinary hearing decides on the guilt or innocence based on the evidence presented by both sides. At this stage no aggravating

or mitigating circumstances are considered – only the facts relating to the disciplinary issue.

- The chairperson decides on the verdict. If the accused is "not guilty", this is confirmed in writing and given to the accused, and the matter is closed. If the verdict is one of "guilty", then the chairperson considers aggravating or mitigating circumstances and decides on a fair sanction (punishment).

may include the age of the employee, employee's state of health, length of service, level of education, position in the company, remorse shown or any other valid point.

- The chairperson will advise the accused of his/her rights to appeal and to take the matter to the CCMA.

Dismissal due to operational reasons

Section 189 of the LRA prescribes the procedures to be followed when retrenchments are implemented. Retrenchments may be implemented for a number of reasons such as:

- the restructuring of the department or business.
- if the business has economic reasons such as cost reduction or to increase profits.
- technological reasons such as new machines necessitating fewer employees and making some employees redundant.
- the business is closing.

Unfair dismissal

- The employee is dismissed because he/she participated in the activities of a trade union or workplace forum.
- The employee is dismissed when he/she is taking part in a protected strike.
- The employee is dismissed due to pregnancy or any reason related to her pregnancy or the employer refuses to allow an employee to return to her job after her maternity leave.
- The employer ends a contract of employment without appropriate notice to the employee.
- The employee is dismissed due to arbitrary factors such as race, age (except on retirement), gender, sexual orientation, religion and/or family responsibility.
- The employer makes the working environment impossible for the employee to tolerate and thus the employer "forces" the employee to resign. This is known as constructive dismissal.

Remedies for unfair dismissal may include:

- re-employment
- compensation (the maximum compensation will be the equivalent of 24 months' salary)
- combination of the two

Re-employment will not be an option if:

- The dismissal was substantively fair but only procedurally unfair.
- The employee does not want to be re-employed.
- The continued employment relationship will be intolerable for either party.
- It is impractical for the employer to re-employ the worker.

Industrial relations

Industrial relations can be defined as the relationship that exists between the employer (management), the employee (often represented by trade unions) and other institutions such as government. The aim is to establish industrial peace by ensuring high worker morale and a functional workplace where productivity is high.

Industrial action refers to steps that workers take to enforce their demands if the collective bargaining process fails to meet their demands. This industrial action may take the form of strikes, go-slows, work-to-rule or picketing which employees use to air their grievances and enforce their demands.

According to The Labour Relations Act, employees have the Constitutional right to strike, provided they follow the correct procedures. Employers on the other hand have the Constitutional right to implement a lock-out as recourse to the strike.

Different types of strikes and other industrial action:

- A strike can be defined as two or more employees that refuse to work based on a shared, work-related purpose.
- A go-slow takes place when workers still work, but they decrease their rate of productivity.
- Work-to-rule is a form of industrial action where workers do no more or no less than the minimum requirements described by the rules of a workplace.
- Intermittent strikes take place when employees stop and start the same strike, often extending it over a period of time.
- When employees refuse to work any overtime, it is a form of industrial action known as overtime bans.
- Picketing refers to a situation where striking workers demonstrate in a public place outside of the workplace. Only a registered trade union may organise a picket, and it must meet the requirements as stipulated in Code of Good Practice on Picketing issued by NEDLAC.
- Secondary/Sympathy strike action takes place when employees strike in support of another strike. For the secondary strike to be protected the original strike has to be protected.

Some of the most frequent reasons for industrial action include:

- remuneration issues
- to have a trade union recognised
- if the employer made unilateral changes to working conditions

Protected strikes:

- The issue over which workers want to strike, must be referred to the CCMA, a bargaining, or a statutory council.
- The CCMA or council has 30 days during which they must aim to resolve the issue.
- If it is not possible to resolve the issue, a certificate must be issued stating this.
- In the private sector there is a 48-hour notice period to inform the employer that workers are planning to strike. If the employer is the State, the notice period is 7 days.
- If they have not followed the above the strike is not protected

During a protected strike, the employees have the security of knowing they cannot be dismissed. If, however, they engage in misconduct during the strike, they may be dismissed for the misconduct, but not for participation in the strike.

When a strike is protected employers cannot get a court interdict to stop the strike.

Employers are not allowed to seek damages because of loss of production during the strike.

Employers must continue to provide food and accommodation for employees if it is part of the employees' remuneration. They

Essential service employees such as the South African Police Service, doctors, nurses and parliament cannot partake in a strike.

Collective Bargaining

Collective bargaining can be defined as the process where the employer and employees (trade union) discuss issues of concern in order to reconcile their conflicting goals and reach an agreement on these topics.

Management is prepared to engage in the process of collective bargaining, because it enables negotiation with one set of people and not individual employees. The employees are prepared to allow the trade union to represent them, because it gives them enhanced bargaining-power.

When an agreement is reached, the terms of the settlement will be recorded in a collective agreement and all parties sign the agreement and are then bound by that agreement.

The Labour Relations Act also makes provision for centralised collective bargaining. This is when employers in a particular sector join forces to negotiate with one (or more) unions representing the employees in that sector.

For example, a group of car manufacturers may get together to negotiate with unions representing employees in the car manufacturing industry.

Under section 28 of the LRA, bargaining councils may be formed by employers' organisations and trade unions in a particular sector. NEDLAC must agree that there is enough representation of both employers and employees on the proposed bargaining council before it can be established. This level of representation is

important, because agreements reached within the bargaining council will apply to all parties in that sector, regardless of whether they were part of the agreement or not.

Nevertheless, if an employer in the sector feels the agreement is to his disadvantage, he may apply to be exempted from the agreement.

The functions of a bargaining council:

- negotiate and enforce collective agreements on issues such as wages, benefits and grievance procedures
- design and submit proposals for policies and laws that have an impact on that sector
- prevent and resolve labour disputes in that sector / industry establish training and education schemes in that industry

Research and write down examples of bargaining councils

A statutory council is similar to a Bargaining council, BUT agreements reached at the statutory council cannot be extended to other parties in the sector / industry without the approval of the Minister of Labour. The minimum requirement for the establishment of a statutory council is 30% representation of employees and employers operating in that sector.

EMPLOYMENT EQUITY ACT 55 OF 1998

Purpose: designed to redress the inequalities of the past. This is done through affirmative action (AA).

Affirmative action means designated groups (blacks, coloureds, Indians, Chinese, all females and disabled people) who were previously marginalised in the workplace, now get preferential treatment to ensure there is equal representation in all job categories and at all levels of the workplace.

When looking at issues such as training, promotion and remuneration, any inequality due to past practices has to be rectified. Although some people may argue that this is illegal because it is "discrimination against some of the existing workforce", we need to refer to the limitation clause.

Limitation Clause

The Constitution does not absolutely protect the rights of everyone, but it also provides for the means of limiting such rights. In limiting the human rights as enshrined in the Bill of Rights, South Africa has opted for a hybrid style of rights limitation. There is a general limitation clause embodied under section 36 of the Constitution. A constitutional provision which enables constitutionally protected rights to be partially limited, to a specified extent.

Positive implications of the Employment Equity Act:

- imbalances and unfairness of the past are corrected.
- a more diverse workforce with better representation from all people is ensured.

Negative implications of the Employment Equity Act:

- Places an additional workload on the business. Employers must conduct an analysis to identify equity issues and then submit this in their EE report. There are EE inspections to ensure EE reports are accurate and this again places an additional burden on staff during this time of the inspection. Huge fines can be imposed if certain requirements are not met.
- People who do not necessarily have the skills to work in a certain position are sometimes promoted to get the right proportion of designated people. This may hamper productivity.
- The brain drain experienced by South Africa is a disadvantage of EE. Some of the well-qualified white males feel that due to AA and EE there are limited job opportunities for them and they consequently leave the country to look for better opportunities elsewhere. As a result of this brain drain, many skills have been lost to the country.

BROAD BASED BLACK ECONOMIC EMPLOYMENT ACT 53 OF 2003

Purpose: To redress imbalances of the past by bringing the black majority of the country into the economic mainstream.

THE FIVE PILLARS

1. Black ownership: The black ownership in a business should be increased to a minimum of 40%. (measured by voting rights)
2. Management level: To empower more black people achieved via affirmative action. (EEA)
3. Skills development: Encourage learnerships, internships, mentorships to promote the development of black people.
4. Black-owned suppliers: To try and bring more black people in the economy this pillar ensures businesses use black suppliers.
5. Socio-economic development: Ensuring that black people have access to funds to become economically empowered and to become business owners.

Positive implications of the BBBEE:

- A large portion of the black middle class has experienced dramatically improved standards of living, owing to promotion by businesses to meet BBBEE targets.
- Real opportunities have occurred for black people to become part of the economy, either through ownership or in management positions.
- Skills development for black people has increased.

Negative implications of the BBBEE:

- Most black people in the country have not benefited from BBBEE and still live in abject poverty. Companies find it difficult to make changes to their management structures as the number of black people with qualifications and the required experience is still limited. It takes years to gain the experience to function at top management levels.
- There are still companies that try to manipulate the system through "window-dressing" to achieve maximum BBBEE points to secure government contracts.

SKILLS DEVELOPMENT ACT 97 OF 1998

The Skills Development Act (passed in 1998) and the Skills Development Levies Act (passed in 1999) were the starting points to formulate a National Skills Development Strategy that could help to ensure South Africa develops the skills needed for economic growth, social development and sustainable job creation.

The minister of labour used representatives from business, organised labour, government and other relevant bodies to establish the National Skills Authority that was tasked to help with the drafting and implementation of the National Skills Development Strategy and to ensure SETAs (Sector Education and Training Authorities) help businesses to make skills development a reality.

Examples of a SETA and what they do:

Purpose and aim of the SDA:

- to help South Africans to improve their qualifications and skills and to ensure economic development is achieved and people have better standards of living.
- to introduce Learnerships and skills programmes to boost vocational learning (i.e. the workplace becomes a place of learning).
- to promote entrepreneurship through training and improved skills levels
- to improve employment opportunities for unemployed people by giving them skills needed to find or create their own employment.
- to encourage employees to improve their skill levels by becoming involved in training.

How the SDA is funded:

Skills development in South Africa is funded via a levy that businesses pay. This levy is equal to 1% of the total payroll. When training takes place, some of this money can be claimed back to cover the training expenses. It is important to note that the mandatory grant, (the money that the business automatically gets back for submitting the Workplace Skills Plan (WSP) and Annual Training Report (ATR), has been reduced from 50% to 20% of what was paid as the skills levy. In order to get the rest of the money, new policy dictates the business must implement essential training, unlike the training previously implemented which often was of little value to that sector. The changes were introduced in 2013.

SETAs (Sector Education and Training Authorities):

SETAs work out Sector Skills Plans (i.e. what skills are needed in that sector?) and implement the plan to make sure the skills are developed.

They do this by:

- watching over education and training in the sector.
- approving Workplace Skills Plans (WSP) and Annual Training Reports (ATR) from employers in that sector.
- making sure learnerships are established in the sector.
- making funds available to employers and trainers to do the training required to make the Sector Skills Plan a reality.

A Workplace Skills Plan is a plan developed by the business, based on the needs identified in the Skills Gap Analysis. This plan is then submitted to the SETA which uses all the WSPs in the sector to identify scarce skills and critical skills and then assist employers to train people to develop these (and other) skills.

An Annual Training Report explains which of the training plans in the previous year's WSP were implemented through training and development in the business. Records of all training programs must be available for the SETA to verify that training took place should the need arise. The date by which the WSP and ATR have to be submitted to the SETA has been changed from 30 June to 30 April.

Positive implications of the Skills Development Act:

- Funding for training is obtained from skills development levies, regardless of what the business plans to spend on training. Skills are thus not compromised when training budgets are reduced.
- 20% of the skills development levy may be claimed back simply by submitting a WSP and ATR. This encourages businesses to plan and implement training programs.

Negative implications of the Skills Development Act:

- The Sector Education and Training Authorities (SETAs) overseeing training in the different sectors are not always effective and the result is that there are large sums of money that should be spent on training that simply sit in some of the SETAs' bank accounts.
- The amount that may be claimed back for submitting the WSP and ATR has been reduced from 50% to 20% with effect from 2013. This makes it more difficult for businesses to claim back their money, because not just any training will qualify to warrant the additional 30% reduction.

THE BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997

Purpose: ensures that employees are treated in a fair manner in the workplace and through this, the BCEA promotes economic development. Protects workers against unfair labour practices. No employer may include anything in an employment contract not allowed under the BCEA. Even if the worker signs the contract, that condition of employment will not be valid in terms of the law.

Issues covered in the BCEA:

- **Working hours and overtime:** No employer may require a worker to work more than 45 hours in any week. This means nine hours a day if the employee has a five-day week or eight hours per day if the employee works more than five days in a week. After this, additional hours worked are seen as overtime. There are, however, exceptions to this specified in the BCEA, e.g. if the employee is senior management. Employees should be paid 1½ times their salary and/ or the employer has to give the employee time off if he/she works overtime.
- **Deductions:** An employer may not deduct any money from the employee's remuneration unless the employee agrees to it in writing or unless it is a legal requirement that the deduction should be made, e.g. tax.
- **Public holidays:** If the employer wants the employee to work on a public holiday, the remuneration is double pay or the employee has to get time off to compensate him/her for working on a public holiday.
- **Leave**

– **Annual leave:** An employee is entitled to 21 consecutive days' annual leave every annual leave cycle.

– **Sick leave:** An employee is entitled to 30 days sick leave in a three year cycle if he/she works a five-day week or 36 days if he/she works a six-day week.

– **Maternity leave:** An employee is entitled to at least four consecutive months' maternity leave, but it does not have to be paid leave. The employer can give unpaid leave or fully paid leave or any combination of the two. If the employee does not receive her full salary, she may claim from UIF (Unemployment Insurance Fund).

– **Family responsibility leave:** This only applies to an employee who has been employed for longer than four months and works at least four days a week for the employer. The employee is entitled to three days' paid leave per year and may take this when a child is born, when a child is sick or when an immediate family member passes away.

- **Notice periods to terminate employment:** The minimum notice period that applies is one week if the worker has been employed for less than a month. Two weeks are required if he/she has worked for the business for less than a year. A notice period of one month applies if a year's service has been completed.
- The BCEA makes provision for Employment Conditions Commissions to be established. The commission will investigate working conditions and wages in

a particular sector. A recommendation is made to the minister of labour on, for example, minimum wages in that sector. If the minister of labour decides to accept the recommendation it becomes a law in the form of a sectorial agreement.

Positive implications of the BCEA:

- It protects vulnerable employees such as part-time, farm and domestic workers.
- It provides mechanisms to set minimum wages for farm and domestic workers (sectorial agreements).
- It prevents child labour.
- It protects employees against unreasonably long working hours, especially in areas such as the transport and security industries.
- It ensures employees are treated in a fair manner.

Negative implications of the BCEA:

- Some employers and employees may view contracts as a negative restriction.
- Employees are legally restricted to maximum working hours and therefore cannot work longer, even if they chose to.
- Processes and procedures of the Act can be very costly to business.
- Businesses face penalty fees if they do not comply.
- Businesses cannot offer cheap labour.
- Some businesses regard the BCEA as unimportant and unnecessarily burdensome.
- Businesses must appoint a specialist who is familiar with the legislation and this can be costly.
- The fines for non-compliance can be severe depending on the type of infringement.
- The minimum wages for the different sectors have cost implications for businesses.
- If a business does not comply with the BCEA, it could be held liable by the CCMA and/or Labour Court.

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