

**Exploring Factors that Prevent Non-Compliance with  
the Basic Conditions of Employment Act; Sectoral  
Determination 9: The Case of Sunflower Retail Store,  
Western Cape**

by

Kutuka Cebo

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Supervisor: Prof Babette Rabie

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## **Declaration**

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## Abstract

The Constitution of the Republic of South Africa (1996) promotes the right to sound labour practices in the workplace. Part of this includes improved wages and working conditions. In line with the notion of a developmental state, the Sectoral Determination 9, which is derived from the Basic Conditions of Employment Act, No. 75 of 1997, was developed to set the minimum wage and standards and also acts as a guide to parties that are in the collective bargaining in the wholesale and retail sector.

Promoting decent work in private businesses in order to eradicate unemployment, inequality and poverty is a critical objective of government's Department of Labour. Non-compliance with the provisions of the Sectoral Determination 9 (SD9) undermines the spirit and letter of this determination.

The aim of this study is to explore factors that prevent non-compliance with the provisions of the SD9. Sunflower store is used as a case study in this research, which uses the study to determine the level of compliance of this enterprise, to look at the structures that have been put in place to promote sound labour practice in this business and also to determine the support that government is providing to promote compliance and decent work in Sunflower as a business.

The study commences with a discussion on the development state as an intervention strategy by government to reform socio-economic conditions in South Africa. Different models of a developmental state, parties in the implementation, alternative service delivery approaches to service delivery and the legal framework that promotes sound labour practice are discussed. This provides a basis for assessing the level of compliance in the case study identified in the study.

Research findings establish that, as much as the enterprise appears to be compliant with the provisions of the SD9 on paper, in reality there are a number of areas that the company is not complying with and the reasons thereof are cited. As public policy implementation is a complex issue and a multifaceted process, partnerships between government, employees and private business at enterprise level are recommended. Government, through the Department of Labour, is expected to play a strategic role

by providing relevant information pertaining to the policy and services it renders, conduct advocacy to both employers and employees to ensure that employers are aware of the legislation and their responsibilities while employees are educated of their rights. Additionally, the Department of Labour is expected to monitor compliance with the employment laws through regular inspections. However, government cannot carry out this responsibility alone, parties that are in the employment relationship are encouraged to join hands and assist the department at all levels to ensure that policies that are a product of a collective engagement at a macro-level are complied with. Employment laws also help employers and unions to self regulate, bargaining for better wages and improved conditions of employment. For this ideal to be realised, the research recommends that favourable conditions for promoting self-regulation should be created. Recommendations are also provided in terms of improving enforcement strategy, policy development and future research.

## Opsomming

Die grondwet van die Republiek van Suid-Afrika (1996) bevorder die reg tot gesonde arbeidspraktyke in die werkplek en hierby word verbeterde besoldiging en werksomstandighede ingesluit. Met die idee van 'n ontwikkelende staat in gedagte is die Sektorale Beslissing 9, afgelei van die basiese diensvoorwaardes Wet 75 van 1997, ontwikkel om die minimum loon vas te stel en wedersydse betrokkenheid tussen die vennote in die werksverhoudings binne die Groot- en Kleinhandelsektor te bevorder.

Terwyl ordentlike werk in private besighede bevorder word om sodoende werkloosheid hok te slaan, bly die bestryding van ongelykheid en armoede die dringendste doelwit van die regering wat dit deur middel van die Departement van Arbeid moet bereik. As daar nie ag geslaan word op die Sektorale Beslissing 9 (SD9) nie, sal die gees en voorneme van die beslissing ondermyn word.

Die doel van hierdie studie is om verskeie faktore te ontgin wat die nakoming van die voorwaardes van die SO9 in die wiele kan ry. Sunflower Store word hier as gevallestudie gebruik om die vlak van nakoming in hierdie sakeonderneming te bepaal met verwysing tot strukture wat in plek gestel is ter bevordering van gesonde arbeidspraktyke asook om die regering se ondersteuningrol in die uitvoer van die beslissing en die skep van ordentlike werk in die besigheid te bepaal.

Die studie begin met die bepreking van die ontwikkelingstaat as 'n intervensie strategie deur die regering om sosio-ekonomiese toestande in Suid-Afrika te hervorm. Verskillende modelle van 'n ontwikkelingsstaat, deelnemers in die uitvoering daarvan, alternatiewe diensverskaffingsmetodes en die wetlike raamwerk wat gesonde arbeidspraktyke bevorder is bespreek. Hierdie faktore is later as maatstaf tot die vlak van nakoming in die gevallestudie gebruik.

Navorsing het getoon dat hoewel dit op papier voorkom dat die besigheid die bepalinge van die SO9 in ag neem en nakom, daar wel terreine is waar hulle ernstig te kort skiet en nie die bepalinge nakom nie en die redes daarvoor word uiteengesit.

Aangesien publieke beleid 'n komplekse aangeleentheid is en vele fasette behels, word 'n vennootskap tussen die regering, werknemers en privaat besighede aanbeveel.

Die regering moet deur middel van die Dept van Arbeid 'n strategiese rol speel ten opsigte van die verskaffing van inligting aangaande beleid en die diens wat hy kan lewer, aanbevelings kan maak, die vordering kan monitor deur inspeksies sodat alle partye as waghonde kan optree om te verseker dat die maatskappy aan die bepalings voldoen, en beter lone en werksomstandighede kan skep. Die navorsing het bevind dat hierdie doelwitte slegs bereik kan word indien 'n gunstige omgewing vir selfbestuur geskep kan word. Aanbevelings is ook gemaak ten opsigte van die verbetering van toepassing-strategie, beleidsontwikkeling en toekomstige navorsing.

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# Chapter 1: Introduction and Rationale to the Study

## 1.1 Introduction

The African National Congress-led government that came into power in 1994 transformed the nature of employment relations in the South African labour market. Public policies that were introduced since 1994 at a macro level, helped to regulate both the public and business sector in order to maintain law and order in the work place and also to ensure that better working conditions and sound labour relations were instilled. The Constitution of South Africa (1996) the White Paper on Public Service Transformation (1996) and the National Development Plan (2030) are some of the government initiatives that were introduced to reverse the apartheid inheritance and to improve the working conditions in the South African labour market (Edigheji, 2003:69).

To give effect to the provisions of the Constitution(1996), the government in South Africa passed labour laws that were a product of deliberations between government working with organised labour, civil society and the private sector both at the National Economic Development and Labour Council (Nedlac), and at shop-floor level. These new measures were an effort to ensure decent work at a shop floor level and were administered by the Department of Labour (Madlala & Govender, 2018:1).

The Basic Conditions of Employment Act (No. 75 of 1997) (BCEA) is one of the public policies developed to give effect to the right to fair labour practice in the work place. Like all legislations, the BCEA is enforceable, as such it is expected that employers together with their stakeholders ensure that its provisions are observed and complied with. To ensure compliance with the provisions of the BCEA with its sectoral determinations, government plays a regulatory, advisory and monitoring role by developing policy, providing information, conducting advocacy, conducting inspections to determine the level of compliance in the workplace and also instituting enforcement measures in the case of non-compliance.

However, with all these government efforts in place, workers in the business sector, especially in work places that do not have unions, still do not have decent work and many are still subjected to poor working conditions and are paid poor salaries. As a

result of this, violent protests and strikes for better wages and conditions of employment are common in the South African work place (Nkoane, 2018:1).

## **1.2 Statement of the Problem**

The main problem that the research aims to address is non-compliance with the provisions of the Sectoral Determination 9 and the Basic Conditions of Employment Act (BCEA) by private businesses in the wholesale and retail sector, especially with regards to payment of minimum wage, issuing of payslips, payment of overtime, adherence to daily and weekly rest periods, provision of the meal interval, proof of incapacity, payment of sick leave and annual leave, keeping of records in the work place and keeping of the Sectoral Determination in a place that can be accessed by employees.

Although government initiatives to regulate the business sector have resulted in a lot of transformation from a policy perspective, evidence in the public domain shows that there is still a lot that needs to be done to ensure that employers co-operate and comply with government policies. In the case of compliance with the provisions of the SD9, the volume of complaints received at South African Labour Centres and the continuous non-compliance reflected in statistical reports of blitz inspections show that there is still a high level of non-compliance with the provisions of the legislation.

Attached to this study is **Annexure 1**, which is the report of the Provincial Wholesale and Retail Blitz that was conducted in June 2017 at different wholesale and retail stores around the Western Cape, as a point of reference for the problem statement. Subsequent to this report is **Annexure 2**, which is the statistical report summary of daily inspection reports that were conducted at Sunflower store during the 01 August 2016 to 30 August 2017 period in 14 stores in the Winelands and Cape Metro areas.

**Annexure 1** shows that from a total of 171 inspections that were conducted in the wholesale and retail stores, only 108 employers complied while 63 did not, thus giving a compliance percentage of 63%. **Annexure 2** shows that none of the 14 stores that were inspected were deemed compliant, as such compliance orders were issued to all 14 stores to make corrections within 14 days on the areas of non-compliance.

The two reports provide evidence of persistent non-compliance with the provisions of the Sectoral Determination 9 (SD9) as a result Naidoo (2007:44) warns that if this practice is left unattended, social values and legitimacy of the labour law amongst workers will be undermined.

The reports of the inspections conducted in the wholesale and retail sector reveal, amongst other things, that the use of labour consultants by private businesses to deal with compliance issues, expensive cost of compliance with labour legislations, lack of visibility by labour inspectors due to insufficient capacity, non-existence of unions and workers' forums in private businesses (especially in small businesses and informal traders), and a lack of advocacy and provision of information by the Department of Labour to private businesses are factors that perpetuate non-compliance in the sector. However, this information needs to be tested and verified through research to determine validity. See Annexures 1-3

Labour laws are public policies, as such compliance with their provisions is essential to promote sound labour relations and decent work in the work place and doing so contributes to the overall transformation of the labour market. As public policies are a product of engagement between governments, organised business, civil society and organised labour at Nedlac, it is essential to sustain this partnership at implementation, monitoring and evaluation stages. As it is understood that government is not involved in the employment relationship, the strategic role of the Department of Labour (through the Inspection and Enforcement Services Unit), which is the key department responsible for the administering of labour policies, is that of regulating the industry through policies and regulations, providing information through the appropriate platform, conducting advocacy to stakeholders to ensure that they understand the department policies and processes and continuous monitoring of compliance with policies through inspections. On the one hand, employers, employees (as individuals or through their unions of workers forums) and civil society have a responsibility to work together as watchdogs to ensure that private businesses at shop floor level observe and comply with the provisions of the law.

The assumption in this study is that since policy implementation is a complex and multifaceted process, compliance with its provisions can only happen if accurate, reliable and relevant information is provided to relevant stakeholders, collaboration is

reached between relevant stakeholders on policy issues both at macro- and shop-floor level takes place, and through continuous monitoring of compliance and evaluation of policy with the aim of aligning them to trends and dynamics in the labour market.

In an attempt to work towards addressing this problem of non-compliance in the wholesale and retail sector as the area of focus in this study, the researcher used a case study, Sunflower store, to investigate factors that contribute to non-compliance in the sector. In doing so, the specific research objectives were to:

- review relevant literature related to public policy implementation in promoting service delivery in South Africa.
- provide an overview of the role played by government and other different stakeholders in the public policy implementation in this sector.
- look at South African legislation and policies that promote sound labour relations in the wholesale and retail sector.
- observe the critical requirements set for the private sector to comply with the legislation and assess the level of compliance with the provisions of Sectoral Determination 9(SD9) at Sunflower store in the Western Cape.
- make recommendations to the Department of Labour on how lessons learnt from the study could be used to improve compliance in the wholesale and retail sector.

### **1.3 Research Design and Methodology**

This study took the form of exploratory research by making use of a case study as its design. A literature study was done on relevant legislations and relevant documents applicable to the topic in order to look at the existing body of knowledge relevant to the topic with the aim of building from the existing knowledge in order to provide answers to questions about what works and what does not (Jesson, Matheson & Lacey, 2011:10-12).

A document analysis was conducted of the Department of Labour's inspection reports. In doing so, a comparison was made between the results of inspections of Sunflower store in the 2016-2017 financial year and the results of inspections done in



2018. The purpose was to look at trends in compliance and to look at factors that are contributing to the identified trends.

Empirical data collection relied on unstructured interviews (focus groups and individual interviews) as the method of data collection. The size of the sample informed the choice of the data-collection methods, as a total of 121 subjects participated in the study. Focus group sessions were organised with 106 employees from Sunflower store, and 14 inspectors from Department of Labour participated in focus group interviews, and an individual interview was conducted with the Employee Relations Manager from Sunflower store.

### **1.4 Delimitation of the Study**

Research was conducted to determine the level of compliance with the provisions of BCEA (within a particular store) in the wholesale and retail sector in the Western Cape. No extension was given to other sectors of the economy. The reason for this limitation is that there were not enough resources to conduct a similar study in other problematic sectors or to extend the study to other provinces. Due to these limitations further research is required for a similar study in other sectors, such as agriculture and hospitality or the same sector in other provinces.

### **1.5 Sequence of chapters in this research**

Chapter 1 : Introduction and rationale of the study

Chapter 2: Approaches and models influencing public policy implementation.

Chapter 3: Legal Framework for promoting sound labour practice in South Africa.

Chapter 4: Research design and methodology.

Chapter 5: Research findings

Chapter 6: Research Analysis and recommendations

## **1.6 Chapter Summary**

This chapter defined the basis and background of this research study. It presented the research problem and objectives, the adopted design and methodology and also highlighted the limitations of this study.

## **Chapter 2: Approaches and Models Influencing Public Policy Implementation**

### **2.1 Introduction**

Chapter one indicates that since the ANC came into power in 1994, new policies and strategies have been introduced as part of efforts to reverse Apartheid inheritance, maintain law and order and to ensure better working conditions. Part of the efforts to address the socio-economic challenges in South Africa was the dedication by the ANC in its 2005 National General Council to building a developmental state that will intervene to reform the South African economy. This commitment was restated at the policy conference in Midrand in June (ANC,2007a) and the 52nd National Conference in Polokwane, Limpopo Province, both in 2007, as well as in the ANC's Manifesto for the 2009 General Elections (Edigheji, 2010:1). Kuye (2012:51) articulates that the building of a developmental state was also a focal point in the 2009 State of the Nation Address (SONA) as well as in the 2009 Medium Term Strategic Framework.

To ensure effective implementation of the South African development state, policies that are in line with this ideal were developed. Government and its social partners have been given the responsibility to ensure that measures are in place for these policies and programmes that are designed towards the realisation of this objective are successfully implemented.

In light of the discussion above it becomes essential to conduct a literature study on the concept of development state as an intervention strategy by government to reform socio-economic conditions in South Africa. These reforms include the amendment of the Labour Relations Act, Act 66 of 1995 and the introduction of new legislation, such as the Basic Conditions of Employment Act, Act 75 of 1997 which is the centre of focus in this study. The purpose is to explore the body of knowledge around this concept, looking at international experiences with the view of examining various debates and theoretical perspectives, as well as lessons to fit the South African context.

Attention will also be given to different models of development states, the role of different stakeholders in implementing the development state and alternative service delivery mechanisms in support of government efforts when achieving this objective. Through this study, the researcher also wishes to build on existing knowledge and contribute towards answering questions on what works and what does not.

## **2.2 The Developmental State**

Burger (2014:01) argues that there is no complete global discussion on addressing unemployment, inequality and poverty without mentioning the concept of a developmental state as an important guiding concept for government when addressing these socio-economic challenges. Coined by Chalmers Johnson in 1982, the term ‘development state’ is used to refer to the phenomenon of state led macro-economic planning that took place in East Asia in the late 20<sup>th</sup> century. According to Mukwedeya (2014:40), the term ‘developmental state’ was used in this context to highlight the successes or development achievements of the East Asian tiger economies of South Korea, Taiwan, Hong Kong and Singapore between the 1960s and 1990s when these countries maintained high growth rates in excess of 7% a year and rapid industrialisation. Mukwedeya (2014:40) further argues that in this particular context the state plays a strategic role in aligning domestic and international market forces with national vision. The purpose is not to propose market-oriented or state-led development as an alternative, but to find the appropriate mix of market orientation and government intervention consistent with rapid and efficient industrialisation.

Though the term has different interpretations, scholars like Auktor (2017:1) are of the opinion that the term developmental state has been used as a conceptual lens to analyse the economic transformation of countries with diverse political and economic institutions that have succeeded in adopting successful industrial policy regimes.

Such a state, as understood by Johnson (1982), should have:

- a particular focus on economic growth as the prime directive of the economy and society.

- a state-owned industrial policy with the government actively supporting selected industries.
- a totalitarian government determined on maintaining stability so as not to undermine economic growth.

Leftwich (1995:405-419)

However, using the East Asian experience as a yardstick to define developmental state is limiting in scope. Changing times and different socio-economic and political contexts around the world call for a much broader view of this concept. Silke (2017:9) argues that development success can come in many forms, as has happened at different times in history. For instance, whilst the focus of the East Asian developmental state was on attaining high economic growth, the concentration of the Scandinavian development welfare state was on reaching social equity objectives through, inter alia, welfare policies and generally active government intervention.

According to Silke (2017), the fact that Japan, South Korea, Taiwan, Singapore, France and Sweden have all had different forms of developmental statutes at some point in their national history-demonstrates just how the developmental state should be projected as a phenomenon that can take various shapes, each model according to the country's unique political, ideological and economic conditions, taking consideration of different strengths and weaknesses. Moving from this premise, the United Nations (2007) expands the definition of a development state by including that this be a government that has the political will to:

- have a professional and competent system of administration capable of translating the national vision and then effectively implementing the vision through programmes working in partnership with the private sector and other role players.
- put in place processes where there is active engagement between government and relevant stakeholders in the implementation of the countries' vision.

- make certain that there is an established development framework to ensure state resources are mobilised in order to ensure that the development programme is implemented.

As indicated above, the development state comes in different forms due to unique political, ideological and economic conditions faced by individual countries. It is important in this section to discuss the different models of a different state to see how the concept evolved and to make a comparison of what worked and what did not.

### **2.2.1 Development state in the international perspective**

Burger (2014:01) distinguishes between three types of state, in terms of efforts put by the state to reform its socio-economic conditions: (1) the Anglo-Saxon ‘liberal state’; (2) the Scandinavian ‘social investment state’; and (3) the continental ‘transfer welfare state’.

A **liberal state** is commonly known as a state that grants rights and privileges to individual’s development equally and does not impose anything upon individuals against their will. Such a state, according to Nitisha (2017:14), maintains neutrality amongst all interest groups and does not favour any particular class in the case of conflict. However, economic crises, such as the Great Depression and the emergency of the Industrial Revolution, resulted in the reformulation of the liberal state and a new redefined role of the state. As a product of a reformulated liberal state, the **Anglo-Saxon ‘liberal state’** emerged, pursuing a pro-growth strategy in an effort to respond to the deteriorating economic situation and to improve the living conditions of the citizenry (Burger, 2014:161).

The Anglo-Saxon liberal state’s pro-growth strategy tolerated more inequality, as such it invested less in efforts to address inequality arising from the (private) provision of social investment goods, such as education, training and life-long learning, as well as the maintenance and restoration of health. According to Timm (2014:4), this strategy was not random, as East Asian countries heavily rely on economic power to alleviate poverty and ensure military security. However, this is a

point that scholars such as Berger (1989:1) and Ohno (2002:1-5) criticise for compromising liberal principles by creating income gaps.

Ohno (2002:5) is of the opinion that countries such as Japan, Taiwan and Korea became obsessed with external competitiveness under industrialisation and export orientation due to the fact that they adopted an authoritarian developmentalism which featured top-down decision making under a powerful and economically literate leader and a supporting elite group.

According to Burger (2014:163), the only hope in using this approach is to pray that this strategy succeeds in lessening poverty if private initiatives generate much needed growth that would be able to lift the poor out of poverty. Burger (2014) argues further that the focus of the private sector on knowledge-intensive workers could only imply that the reformulated liberal state might not provide the poor with enough resources to undertake private investment in education and health, especially in environments where the schooling and skills level of the poor citizenry is so low. In essence, the Anglo-Saxon liberal state does not have the political will to drag the welfare-dependant out of dependency and lead them into skilled and better paying jobs.

In contrast, the **Scandinavian ‘social investment’ state** advocated for a balance between stimulating economic growth and promoting social justice. According to Kuhule (2004:1) the governments that believe in this approach can take care of welfare dependants and free up time for parents to work, thus generating a tax base that is essential for government to support its social investment programme. In support of this argument, Burger (2014:162) states that given the fact that the focus is on education, health and freeing up time for work and not on transfers, the state also improves productivity and international competitiveness.

An example of this model is the **Danish social investment programme**. Literature studied reveal that the Danish social investment program is characterised by broad public participation in various areas of economic and social life, the purpose of which is to promote economic efficiency, improve the ability of society to deal with its development challenges and to equalise the living conditions of individuals and families. According to Kuhule (2004:1), after a long period of trial and error, the Danish government could only manage to achieve a rational developmental perspective on economic prosperity and social change as part of its social investment

philosophy with the introduction of its active market policy of the 1950s and 1960s and the expansion of the public sector.

In addition, Landerso (2016:3) argues that the Danish government also invested more in policies that promote child development. In an effort to realise this objective, Landerso (2016) argues that initiatives, such as free college tuition, free access to child care, a generous pregnancy leave policy and universal free preschool were introduced. As a result of these efforts, Denmark managed to achieve high income mobility and significantly reduced inequality.

However, as Burger (2014:167) states that, like all other service delivery models this model has its success and shortcomings. For instance, Landerso (2016) argues that the Danish high level of family income and generous levels of social benefits could translate into less favourable educational outcomes as they discourage Danish children from pursuing further schooling.

**Transfer welfare states** are commonly practiced in countries such as Denmark, Finland, Iceland, Norway, Sweden, China, South Korea and the United States of America. In Du Toit's (2014:33) opinion, the adoption of a welfare state by many countries was not based on any philosophical principle but more as a relief measure or a reaction to poor economic circumstances that prevailed after the two world wars. For instance, Ringen (2013:2) argues that China adopted this approach to absorb the shock of the collapse of employment, to deliver relief rather than development and to support short-term consumption rather than reduce long term poverty.

Ringen (2013:4) further argues that it is mostly rich countries with a financial capacity to spend heavily on passive social transfer programmes, such as old age pensions and health systems that adopt this model. He asserts that these countries are mostly democratic and characterised by broad-based public participation, especially in economic and social development in an effort to bring a balance between stimulating economic growth and promoting social justice; however, the focus is on transfers.

Meyer (2013:2) expands on this discussion by stating that European Union (EU) countries and Japan spend by far the most – a quarter of the GDP within the remaining Asia. According to him, countries that are the highest spenders are



Vietnam, Mongolia and South Korea (ca 15% GDP), while the lowest are Sri Lanka and Indonesia with around 6%.

Due to the focus on transfers, Burger (2014:162) suggests that economic development for economic growth is key as many resources are needed to reduce poverty and inequality in society. However, for this ideal to be realised, active public participation that results into partnerships between government, the private sector and civil society is also essential to promote dialogue. Meyer (2013:1) approves that for Democratic Transfer Welfare States to be fair and responsive to the needs of the citizenry, representatives from a broad social spectrum should be involved in decision making on socio-economic issues.

Literature shows that the redistribution measures of welfare states minimised inequality when compared to liberal states. However, Ringen (2013:4) argues, that citizen dependence on transfers in a situation where government is the sole provider, results in high expenditure that does not improve productivity and international competitiveness. As a result of this situation there is more pressure on government to raise more revenue for welfare programmes, which results in the collapse of many welfare states.

### **2.2.2 The South African democratic developmental state**

Much comparison has been made between the South African democratic development state and the East Asian development states. Many scholars such as Burger (2014), Edigheji (2010) and Mukwedeya (2014) argue that South Africa cannot be a development state due to the fact that it possesses unique features that are different from those of East Asian countries. For instance, Burger (2014:10) argues that South Africa does not have a singular focus on growth as is the case in East Asian countries; instead it has a stated macro-economic policy that covers a number of issues ranging from unemployment to poverty and inequality.

Besides, while the South African government is committed to mobilising resources to promote economic growth, the South African Constitution of 1996 similarly advocates for measures to be put in place to realise the social rights set out in chapter two of the Constitution. Burger (2014) rounds off by emphasising that the South

African labour market cannot be subjected to a singular focus on economic growth as it has wage levels that are considerably higher when compared to East Asian countries like China due to the influence that organised labour in South Africa has in fighting for higher wages and better conditions of employment. In support of this sentiment, Edigheji (2010:1) argues that South African is too democratic to be a developmental state when compared to the authoritarian developmental state of East Asian countries that require the suppression of civil liberties in the interest of growth.

Similarly, Mukwedeya (2014:41) asserts that South Africa is a democratic country with more focus on welfare programmes to address challenges of persistent inequality, low literacy rate, unskilled unemployment and poverty. These features set South Africa apart from competing and comparing to East Asian countries.

In contrast, a number of optimistic scholars, such as Edigheji (2010), Jerome (2004) and Gumede (2011), supported by Section 13 of the National Development Plan (2013), refute the claims that South Africa cannot be a developmental state as baseless and lacking substance. Gumede (2011:1), for instance, calls upon those who dismiss the call for a developmental state as utopian or ideological to broaden their reading of economic history. According to Gumede (2011), the fact that developmental states existed only in East Asia within specific regional conditions does not mean that they cannot be replicated in South Africa. Gumede (2011) further argues that the fact that East Asian developmental states were created during undemocratic periods does not necessarily mean that the developmental state in South Africa should be autocratic, as that prescription is misplaced and biased as it favours the pursuit of growth at the expense of democracy.

According to Evans (1995:29), the historical legacies and character of the surrounding social structure determines the type of development state the country wants to adopt. In support, Edigheji (2010:1) is of the view that a country like South Africa is better placed to build a democratic developmental state, as developmental challenges facing the country require a developmental state that is democratic and socially inclusive.

In fact, Section 13 of the National Development Plan (NDP) of 2013 indicates that there is growing evidence that suggests that developmental states have been formed in both authoritarian and democratic countries. According to the NDP, democracy has been critical in ensuring that the state has necessary legitimacy to bring about

transformation, which is particularly important in South Africa where one of the most critical roles of the state is to support people to develop their capabilities. A robust democracy is therefore not just attuned with building a capable and developmental state; it is a necessary prerequisite for the sort of developmental state needed to address poverty and inequality (NDP, 2013:409).

Based on its ideal of achieving social justice and economic growth, pro-democratic development state scholars advocate that South Africa combine delivery in the economic and social spheres with the deepening of its democracy. For this objective to be successfully realized, Gumede (2011:2) is of the view that the South African government needs to put more effort in ensuring achieving the following:

- balance economic growth and social development.
- build democratic institutions.
- empower citizens with the capabilities to seize and maximise whatever opportunities may arise.
- revitalise civil society to move beyond the politics of protest to the politics of engagement.
- redesign public and private sector relationships outside the impotent tripartite negotiating platforms.

Compliance with labour policies is a critical vehicle to ensure that economic growth and social justice, which are advocated by a democratic developmental state, are realised. Given that workplaces are the hub of where economic activity takes place, ensuring harmonious labour relations is of particular importance as it contributes to economic growth. It is common sense that employers as founders of businesses will do anything to ensure the success of their business. However, employees should not only be seen as units of labour that carry costs to the company but should be recognised and treated fairly as their labour contributes to the success of the company. Lack of harmony between parties in the employment relationship could lead to severe financial loss to employers, disruption of the industrial sector and even disruption of

the national economy (Van Jaarsveld & Van Eck 2002:4) This could eventually lead to job losses and other unintended socio-political and economic consequences.

However, the adoption of a democratic development state that promotes economic growth and social justice can only be achieved when through collaboration between government and its stakeholders such as the private sector, organised labour and civil society. Having discussed the development state and how it helps to reduce inequality and promote economic growth, it is important in the section below to look at the stakeholders responsible for implementing a successful development state.

## **2.3 Stakeholders in the Implementation of a Developmental State**

The implementation of the developmental state takes different forms due to different contexts and different role-players such as public sector, private sector, organised labour and civil society has a role to play in ensuring the practical manifestation of this concept. The sections below will provide a brief description on the role of each stakeholder.

### **2.3.1 Public sector**

Davids and Maphunye (2005:53) describe the public sector as a huge and complex sector characterised by a multiplicity of stakeholders, all whom have a vested interest in its performance. He argues that the traditional the role of the state is to provide goods and services in the interest of the people or for public good. As such, public institutions (e.g. all national states departments, provincial administration, public enterprises, institutions of higher learning, research agencies, control and regulatory institutions) that provide goods and services to citizens are referred to as the public sector. These public institutions, according to DPSA (2003:15), represent government in the national, provincial and local government spheres. In promoting service delivery, Adei(2008:4) argues that the state or the public sector is generally known for:

- Development of social and economic policies;
- Establishing and implementing public programmes;

- Generating revenue; and
- Managing accountability.

For instance, the Department of Local Government (DPLG) (2007:15) asserts that the main function of the public sector at **national level** is to formulate policy, and to develop national standards and norms, rules and regulations. National government consists of structures dealing with issues such as agriculture, social development and water affairs (De Beers & Swanepoel, 2011:21). However, Davids (2014:55) argues that their jurisdiction is not only confined to the national level as they undertake activities at a provincial and local level to implement public policies.

**Provincial government**, according to DPLG (2003:15), comprises public sector institutions that are spread out over nine provinces that promote and support development at provincial level. Provincial policies geared towards development are designed and implemented to apply principles contained in the national policy and legislation to situations within their respective provinces. Just like national government, public institutions at provincial level have competencies over functional areas such as education, health and road works (De Beers & Swanepoel, 2011:21).

At **local government** level, the public sector is made up of 284 municipalities that assume government responsibilities at local level (Davids, 2014:55). Like other spheres of government, local government has departments that help effect government policies. However, to ensure that the unity of the state is maintained, municipal governmental policies and actions have to adhere to national and provincial legislation. Provincial government is required to supervise local government to ensure that essential national standards are maintained or to set minimum standards for service delivery and economic unity (Mogale, 2003:228).

As much as it is publicly known that the traditional role of the state is to provide goods and services in the interest of the people or for public good, Davids and Maphunye (2005:62) argue that there is no objective criteria used to match role to state capacity. According to them, the role of the state depends on how the state sees its role in development and implementation of policy. For instance, in countries where

the state sees itself playing an extensive role, the public sector can take part in almost anything ranging from education, health and social welfare to mining and fisheries.

However, most governments in the developing world do not have the financial and administrative muscle to play this kind of benefactor role. It is for this reason that after 1994 the role of the state was redefined and public services transformed to focus on development of all South Africans instead of serving the interests of the white minority, hence the dictum “Development is about people” which implies that the people themselves (including other stakeholders) should be at the core of their own development (Edigheji, 2010:70). This was first affirmed by the African National Congress (1994:5) in their Reconstruction and Development Policy, which asserts that citizens with their aspirations and collective determination are the most important resource; as such the empowerment of citizens for active participation in socio-economic policy implementation is essential. Cloete (2000:13) describes this approach as good governance, implying that public sector officials in the service delivery process should adopt the stance of being promoters, facilitators, regulators, observers, or even just participants instead of being producers of services, thus reducing citizens to the role of passive recipients.

However, as much as public participation in the service delivery process is supposed to be promoted at all levels of government, the focus is more on local government since this is the sphere of government that is closest to the people. As a token of government’s commitment to this approach, the term ‘developmental local government’ was introduced at local level in 1998, by the White Paper on Local Government, emphasising the developmental role that local government should undertake in rendering services at grassroots level (RSA, 1998:33).

In addition, Chapter 3 of the Constitution of the Republic of South Africa of 1996 introduced the term ‘co-operative government’ to encourage all three spheres of government to work together when deciding on budgets, policies and activities, particularly in areas that cut across all spheres as they are interdependent and interrelated. For instance, Section 41.1(a-c) provides that:

41. (1) All spheres of government and all organs of state within each sphere must—

(a) preserve the peace, national unity and the indivisibility of the Republic;

- (b) secure the well-being of the people of the Republic;
- (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;

Additionally, Section 41.1(h) states that in order to realise the above objectives the public sector spheres of government should:

- (h) co-operate with one another in mutual trust and good faith by—
  - (i) fostering friendly relations;
  - (ii) assisting and supporting one another;
  - (iii) informing one another of, and consulting one another on, matters of common interest;
  - (iv) co-ordinating their actions and legislation with one another;
  - (v) adhering to agreed procedures; and
  - (vi) avoiding legal proceedings against one another.

However, good governance cannot be achieved in a vacuum, structures should be put in place. Scholars, such as Theron (2014:119-121), Theron (2008:229), Chambers (1983:214), Burkey (1993:59) and De Beers and Swanepoel (2011:17-32) are of the opinion that democratic governance must be grounded on an overall strategy and complementary policy that is aimed at achieving authentic citizen participation, social learning, capacity building, empowerment and sustainability.

According to Theron (2014:119), **public participation** in public policy decision making, implementation and evaluation means that stakeholders can hold government accountable for the services it has rendered. He asserts that as much as the role of public sector officials is important in the service delivery process, authentic public participation means that the most important role player is and should be the public.

In addition, Burkey (1993:57-58) articulates that through participation in the service delivery process, people establish dignity and self-esteem and share in, belong to, and own their development process. However, Chambers (1997:15) warns that sharing is not done in isolation; it is a dynamic **social learning** and capacity-building process where everyone involved in the process learns from each other's mistakes, embraces error and fails forward. Theron (2014:120) admits that the new social learning attitude where citizens are seen as actors in the policy implementation process is a new phenomenon in South Africa and requires a positive learning attitude and patience.

However, when applied successfully social learning could lead to **capacity-building**, where the personal and institutional capacity of the citizens could be strengthened to participate meaningfully in the service delivery process, from agenda setting up to the evaluation of programmes. For this to materialise, De Beers and Swanepoel (2011:21) is of the opinion that partnerships between stakeholders and public officials is essential.

Burkey (1993:59) defines **empowerment** as the process of making power available so that it may be used to access resources in order to attain certain envisaged goals. Using this perspective, Theron (2005:123) believes that there is a link between participation and empowerment. According to him, the transfer of knowledge and skills to stakeholders using public participation strategies gives stakeholders power to contribute meaningfully in the decision making process at policy, programme and project level.

As was the case with other building blocks, Theron (2014:121) believes that public participation should lead to **sustainability**. This means that to secure effective public participation in the policy implementation process, the public, as actors in the process, should have access to decentralised institutions which will honour their priorities.

Since compliance by private businesses with labour legislation is part of good governance, it is essential that the Department of Labour apply the above building blocks of development to ensure that their policies are effectively implemented at shop floor level. Through advocacy and provision of accurate and relevant information to stakeholders, employers will become aware of the legislative requirements that they have to comply with and they can use these as a checklist for self-monitoring. By the same token, employees will become aware of their rights and



be able to detect when employers are infringing on their rights. In addition, the information provided by the Department of Labour could help both employers and employees to act as watch dogs in ensuring that the enterprise complies, while at the same time it can act as a guideline when unions and employers collectively bargain for better wages and improved conditions of employment.

Since the preceding session emphasises the participation of other stakeholders in the service delivery process, it is now necessary to discuss the role of other stakeholders, such as business, organised labour and civic society in the delivery process.

### **2.3.2 Private sector**

The private sector is popularly known as that part of the country's economic system that is characterised by private businesses not owned by government. According to De Beer and Swanepoel (2011:21-22), members of the private sector include big corporates that form part of the formal economy and are active in commerce, industry and mining. These enterprises are usually registered and meet all the legal requirements. Small, medium and micro-enterprises include small shops, shebeens, sex workers and hawkers and are also an important part of this sector. Some of the traders in this group, as far as De Beer and Swanepoel (2011:22), is concerned, are not registered and do not meet the legal requirements.

De Beer and Nel (2014:8) argue that for these businesses to be productive they need labour, raw material, capital and infrastructure to produce goods and render services to make a profit and satisfy customers' multiple needs on a supply-and-demand basis. However, businesses cannot function efficiently if employees are not productive and their families and society at large do not support them.

It is for this reason that academics such as Davids (2014:75) argue that businesses can play a developmental role in improving the living conditions of local people as no government can be expected to carry sole responsibility for the well-being of its people. This sentiment is supported by The King Report IV on Corporate Governance (2016), as it provides that that companies should consider, weigh, and balance the legitimate needs of stakeholders when making decisions for the organisation.

Additionally, former ANC Treasury, Mr Matthews Phosa asserts that it is not government's role to create growth; it is the domain of the private sector. According to Phosa, government's role is to create a conducive atmosphere for businesses to prosper and create sustainable jobs in support of local communities (City Press/Voices, 14.02.2016).

ILO (2010:36) postulates that businesses can use their social responsibility programmes or public private partnerships to add more value as partners in service delivery by undertaking social and environmental projects and also investing in human capital. Additionally, Hamdi and Majale (2011:36) argues that the private sector experience adds elements that are missing in the public sector such as:

- Bringing substantial technical, organisational and entrepreneurial expertise, such as marketing, forecasting and research into the partnership.
- Providing employment market and investment prospects to natural enterprises and innovations to technology and management.
- Providing opportunities to a wide network of enterprises, including multinationals.
- A practical approach that is performance related.
- A contribution to development and not just business that can advance relations with local partners and international development communities.

With that said, Davids (2014:75) argues that private sector always face hostility from communities due to their track record of employee abuse in the form of small wages, unfavourable conditions of employment and unfair dismissals in their process of profit making. Violent strikes bear testimony to this effect.

Private businesses need to recognise labour's contribution to the success of the business and economic growth at large and as such respect and promote their labour rights in an attempt to make employees happy and keep them productive. Engagement with employees can help them to understand issues on the ground and put measures in place to address these and ensure that they comply with all the provisions of the law,

not only because they are compelled to do so but because it is the right thing to do. In doing so, both parties will help promote economic growth and social justice rather than use unnecessary energy and resources on strikes and protests that are destroying the economy.

### **2.3.3 Organised labour**

By definition, Slabbert and Swanepoel (1998:85) argue that trade unions are organisations whose membership consists of employees (workers) that seek to organise and represent their interests in the work place and society and, in particular, seek to regulate employment relations through the direct process of collective bargaining with management.

Moving from this premise, Botha (2015:7) argues that unions are generally better known to perform the following economic and social roles:

- Beyond their functions of defending and vindicating, unions have the duty of acting as representatives working for “the proper arrangement of economic life” and of educating the social consciences of workers so that they will feel that they have an active role, according to their proper capacities and aptitudes, in the whole task of economic and social development and in the attainment of the universal common good.
- Responsible unionism is relevant to the “interpretation of good faith bargaining by unions”, as well as to other issues such as governance and the exercising of various rights and freedoms afforded to trade unions. It is clear that trade unions not only play an important role in the promotion of better working conditions for workers, but also contribute to shaping society at large.
- From a social justice perspective, trade unions are regarded as the primary vehicles through which social justice is achieved. This view is based upon Sir Kahn-Freund’s conception of labour law, put forward in the 1950s and 1960s, as a means of counteracting inequality in bargaining power between employers and employees. According to Kahn-Freund, equilibrium can be maintained and best achieved through voluntary collective bargaining in

which the law plays (a secondary role) as “it regulates supports and constrains the power of management and organised labour”.

Besides these economic and social functions, Nel (2012:46) argues that unions also play a political role as they influence the country’s economic policies from agenda setting through to the evaluation process and also provides inputs at Nedlac. In the context of South Africa, federations like Cosatu and other trade unions are known for their role in dismantling Apartheid legislation practices in the workplace while continuing to significantly influence the labour market and industrial relations policies in the country.

However, the role of unions in the labour market is becoming insignificant. One contributing factor is the criticism they receive for supporting unprotected strikes and other industrial actions that contribute to job losses in South Africa. Holtzhausen (2015:33) argues that a lack of resources and skills to deal with new employment practices has resulted in the decline of union membership and ultimately a lack of recognition of some unions at various work places. The figures tabulated by Borat, et al. (2014:6) in the table below bear testimony to the above sentiment.

**Table 2.1: Trade union membership: private sector employees in the formal sector**

Year	Number of union members	Union members as % of workers
1997	1.813,217	35.6%
2001	1.748,807	30.6%
2005	1.925,248	30.1%
2010	1.888,293	26.3%
2013	1.868,711	24.4%

**Source:** Borat, et al. (2014:6)

In a situation like this, Holtzhausen (2015:33) argues, employees become vulnerable as they get exposed to victimisation. Sometimes employers who are committed to sound labour relations in the workplace resort to the establishment of a workers forum in an

effort to give employees a voice in the decision making processes in the workplace. In the absence of proper representation, employees resort to following available prescribed communication or dispute resolution channels within the organisation where they are represented by fellow employees in cases of disputes. In cases where employees do not trust internal dispute resolution arrangements, they refer their cases to interest groups or to external institutions, such as the Department of Labour and the Commission for Conciliation, Mediation and Arbitration(CCMA).

With all the changes and challenges that impact negatively on the status of unions, the role of unions in employment relations remains critical. Like any other organisation that is operating in a space that is influenced by changes in the global environment, unions need to adapt to the challenges facing them. When unions collapse, their absence is not only felt at shop floor level, it affects collective bargaining at all levels and can lead to the collapse of bargaining councils due to a lack of representation. Sometimes the legitimacy of certain policy processes, such as passing of laws and amendments, requires full participation of role players including unions. Without unions it becomes difficult to mobilise employees to participate in these processes.

#### **2.3.4 Civil society**

According to Swanepoel and De Beer (2011:22), civil society groups consist of local community organisations or actions groups such as Non-Government Organisations (NGO's) and Community Based Organisations(CBO's), which are not in any way part of the public or private sector. Davids (2014:67) expands that civil society organisations have a socio-economic development purpose, which is to alleviate poverty, strength civil society and encourage public participation in grassroots development in ways that go beyond the capability or willingness of the public and private sector.

According to Monaheng (2008:129), exercising transparency and partnering with civil society in decision making, as well as empowering them on how government works for their participation in service delivery is essential for good governance in any government. Within the framework of participation in policy implementation at

grassroots level, Monaheng (2008:129) is of the view that civil society groups can execute the following roles:

- Facilitate the provision of public services by supplying accurate information about the needs, priorities and capabilities of local people (especially in community-based planning processes) and provide reliable feedback on the impact of government initiatives and services, as well as those of other development agencies.
- Provide the basis for mutual assistance and collective action-mobilisation, deployment and application of resources (money, labour, materials and managerial skills) which, in turn, creates the basis for self-reliance and local capacity building.
- Empower local people by equipping them with the voice and capacity to make credible demands on government and others in charge of resources and public policy.

Additionally, Hamdi et al (2005:22-34) and Davids (2005:67) believe that the civil society grassroots work and experience brings a touch of realism and a demand for transparency and accountability to the process of policy implementation. The benefits of their participation in the partnership are that:

- Civil society plays an oversight role to government, including criticising it when it fails to deliver in terms of its development agenda. It also documents those instances where government delivery has been effective as models of best practice in its work with communities.
- The primary objective of NGOs is to render assistance to individuals or developing communities in order to promote sustainable development at grassroots level.
- They bring grassroots knowledge and flexibility due to their autonomy from political or agency ties.

- They promote people-centred development in their capacity as private self-governing-non-profit organisations.
- They are committed to the idea of community capacity building through popular participation and social learning.
- CBOs bring local practical wisdom, accurate information and low costs to the planning and implementation of programmes. They also have a strong incentive to solve problems immediately to keep the programme focussed and on track.

However, Hamdi et al (2005:33) argues that collaboration with civil society should be well structured and managed carefully as organisations such as NGOs have been criticised for adopting the core values of donors, thus becoming service contractors for the donor community. He asserts that in response to donor demands some NGOs have even changed their organisational structure, losing their flexibility and independence.

Even though civil society groups are not part of employment relations, they play a critical role in ensuring that employee rights are respected and promoted in the workplace. As NGOs and CBOs are good at equipping local people by giving them resources, organisations such as Women on Farms and Sikhula Sonke are known for the role they play in bringing issues of employees to the local departments of labour, requesting inspections in places where they believe that employee rights are violated and requesting workshops and training for employees that work in sectors that are deemed as problematic. Some of these organisations have access to the minister of the Department of Labour and from time to time their voice precipitate the organising of a Minister's Imbizo in certain areas, whereby the minister, with her delegation, visits a problematic employer and tries to resolve employee issues using different platforms.

Having discussed the prominent roles that different stakeholders play in public policy implementation in an effort to realise the ideal of a developmental state, it is important in the following section to look at alternative service delivery mechanisms that could be used to supplement existing strategies.

## 2.4 Alternative Service Delivery Mechanisms

There is a wide pool of alternative service delivery mechanisms that can be used as an alternative to traditional methods of policy implementation. The research will only focus on decentralisation, privatisation and self-regulation as viable options, as these are deemed fit for assisting the implementation of a developmental state as has been the case in other countries. The pros and cons will be discussed with the aim of looking at success stories and seeing how best they can be applied in a local context.

### 2.4.1 Decentralisation

Different schools of thought have endeavoured to define what constitutes decentralisation. In all interpretations, there is a common agreement amongst development writers that decentralisation entails a process whereby smaller entities are given autonomy, including power and resources to manage their resources without any interference. For instance, Moya (2005:8) citing Rondinelli (1981) describes decentralisation as a handover of authority, duties and resources from central to local levels of government. By the same token, the United Nations (2009) cited by Siddle and Koelble (2016:V) defines decentralisation as a process through which power, functions, responsibilities and resources are transferred from central to local government and other decentralised entities.

From the discussion above, it is clear that decentralisation is a broad term that can be applied in many contexts. Writers generally distinguish between political, administrative and financial decentralisation.

**Administrative decentralisation**, according to Siddle and Koelble (2016:4), is a process by which the authority to administer and execute powers and functions (and by implication the responsibility to deliver services) is shifted from national to sub-national government, resulting in deconcentration of power. Even though this system is characterised by transfer of functions and responsibility to local government,



writers do not necessarily agree on what kind of responsibilities and functions get transferred to the local level of government and for what purpose.

Moya (2015:14) distinguishes between two forms of administrative decentralisation, namely deconcentration and delegation. Deconcentration refers to the process by which branches of national government are geographically dispersed but no real authority is transferred to lower levels (Sharma, 2006; Robinson, 2003). This suggests that deconcentration is a process by which central government allocates responsibilities for certain services to its regional branch offices without involving any transfer of authority to lower levels of government.

Delegation, on the other hand, is a form of administrative decentralisation through which central government transfers responsibility for decision-making and administration of public functions to local government or semi-autonomous organisations that are not wholly controlled by the national government but are ultimately accountable to it.

**Fiscal decentralisation**, according to Cameron (2013:2), is a process of transferring revenues of the central government, and also the power to raise funds from local sources, from national to lower levels of government. This implies that financial decentralisation requires autonomy, especially when it comes to making decisions on the allocation of budgets. These budgetary practices include resource allocation to local levels of government in a way that makes local government responsible for local revenues and expenditure assignments. According to Moya (2015:13-14), arrangements of financial decentralisation are often negotiated between bodies of central and local government and are based on various factors, such as interregional equity, availability of resources at all levels of government and local fiscal management capacity.

Lastly, **political decentralisation** according to Suluia (2012:13) is viewed as a process whereby power and authority gets handed over to local government with the aim of empowering them. This brings government closer to the people and provides fertile ground for government to account to communities through appropriate forums such as oversight boards and relevant citizen participation forums in development projects and policymaking. Supporting this sentiment, Siddle and Koelble (2016:4)

argue that elected representatives are granted authority in political decision making at the local level and are in turn accountable to the citizens who elected them.

In democratic South Africa, decentralisation was applied in a government attempt to give autonomy to local government, providing certain powers over various areas of local governance with little or minimal interference from national and provincial government in local affairs. This description has a constitutional reference, as Section 151(3) of the Constitution of the Republic of South Africa of 1996 stipulates that the local sphere of government consists of municipalities, which subject to national and provincial legislation have the right to govern the local government affairs of their own communities on their own initiative. Section 151(4) further prescribes that neither national nor provincial government may compromise or interfere with the municipality's ability or right to exercise its powers or perform its functions.

One simple case of decentralisation in government is the right of municipalities to appoint their own staff without interference from neither national nor provincial government as long as they do so within the prescripts of national labour legislation, such as the Employment Equity Act, Act 55 of 1998. Because of this constitutional provision, municipalities are at liberty to use their own discretion in advertising and appointing personnel (including senior management and municipal managers) with relevant skills and expertise to perform duties that are in line with the advertised post. It should also be noted that the municipal council has a right to delegate some of these functions to the mayoral committee. This initiative signified a paradigm shift on local government's status, from being a tier to being a sphere with its own power functions (Moya, 2015:5).

The Department of Labour also applies elements of decentralisation in the execution of its functions. For instance, Section 1 of the Labour Relations Act, Act 66 of 1995 provides for collective bargaining to determine wages, terms and conditions of employment and other matters of mutual interest at sectoral, enterprise and bargaining council level. Collective bargaining is in some way a form of self-regulation, meaning that parties can negotiate terms and conditions that are even more favourable. Those in the BCEA have collective agreements that are binding to all parties in the agreement and take it upon themselves to ensure that the terms and conditions agreed to are complied with. By virtue of this agreement, the services of Department of

Labour in sectors that have collective agreements, especially those that have bargaining councils, are decentralised. For collective agreements done at sectoral level, the provisions of the sectoral determination prevail over those of the BCEA, as such inspectors should observe the provisions of the determination when monitoring compliance. The same applies to collective agreements done at enterprise level; inspectors should observe the terms and conditions stipulated in the collective agreement to determine if they are in line with the provisions of the BCEA. It is only if the terms and conditions in the agreement are less favourable that inspectors can nullify them as provided for in Section 5 of the BCEA.

The section above gives a broader overview of what decentralisation is about and details its application in the enforcement of labour policies. The sections below discuss other forms of decentralisation, such as privatisation and self-regulation, which are valuable options of delivery that can be considered in the implementation of public policies such as labour legislations.

#### **2.4.2 Privatisation**

There is no universal meaning of the word privatisation as the word has been used in many countries and is interpreted differently by many people. Generally, Phaahlamohlaka (2006:19) argues, privatisation is another form of decentralisation: a permanent transfer of control of a public enterprise to a private owner and it takes the form of share sale or recapitalisation of the public enterprise by private investors. The selling off of state-owned enterprises is the popular definition and is one form of privatisation. The broader meaning, as Oyebanji (2010:4-7) puts it, can be the provisional allocation of control of public enterprise to the private sector by any of the following means:

- Contracting out/outsourcing/tenders: when a particular service that has been provided by state employees is handed over to a private company. This may be a permanent arrangement or a contract for a given period. The government competitively contracts with private organisations for profit or non-profit to provide a service or part of a service. In other words, the government hires the private sector firms or non-profit organisations to provide goods or services

for the government. Under this approach, the government remains the financial, and has managerial and policy, control over the type and quality of goods or services to be provided. Thus, the government can replace contractors that do not perform creditably well.

- Public-private partnerships: popularly referred to as PPPs, this is a process whereby the state and business jointly manage the enterprise/provision of the service. These partnerships either take the form of a sale or lease or can equally be accomplished by the government selling 100%, 51%, or even by selling a minority stake, so long as the private sector is given full managerial control. Oyebanji (2010:5) also believes that government can raise revenue by selling a smaller share without transferring control to the private sector, but that is not privatisation as such.

The scenario above shows that there is a range of privatisation strategies that can be used to maximise efficiency and improve service delivery. Some methods will be more appropriate than others, while a combination of these can be safely considered, depending on the kind of service that is needed in a particular context.

#### ***2.4.2.2 Background***

According to the ILRIG (1999:11), privatisation first gained status in Great Britain under the leadership of Margaret Thatcher's government. It further explains that Margaret Thatcher and Ronald Reagan, who became the President of the United States in 1980, pushed hard to reduce state expenditure on services and welfare provision. As both pushed for the privatisation of many state enterprises, the idea gained much prominence from many governments and political parties around the world. To ensure that the concept was implemented, transnational corporations and international financial institutions, such as the World Bank and IMF, provided funding and by early 1980s most governments started to practice privatisation, including China, Tanzania and Algeria.

In the case of South Africa, Gumede (2016:1) argues that privatisation was accepted as part of the economic policy in 1985 for the same reasons that made it popular worldwide. As is the case in many parts of the world, the South African government

also envisioned that sales of the corporations' assets could both ease the debt burden and provide government with new revenue for much-needed social programmes. Against this background, the South African government adopted a white paper on privatisation 1987 as an intervention strategy to strengthen and revitalise the apartheid political economy.

Gumede (2016:1) further argues that the South African Apartheid government was attracted to adopting this neoliberal route as they saw the private sector as running enterprises in a more efficient, effective, competitive and profitable way, and decided that such an approach could be applied successfully to state-owned enterprises in an effort to reduce government debt and improve operational performance. This became the source of the restructuring and privatisation reform programme in South Africa.

#### ***2.4.2.3 Why do we need to privatise?***

The following quotes from ILRIG (1999:1) depict different experiences people and organisations around the world have about privatisation based on the purpose and the context under which it has been used.

*“There is a fundamental conflict of interest between private multinational companies wanting quick profits and citizens needing reliable, reasonably priced, high-quality public services.”*

Hans Engelberts, General Secretary of the Public Services International.

*“Too often it (government) believes that it actually knows how to manage business. Let me tell you, it doesn't.”*

Margaret Thatcher, former Prime Minister of Britain.

*“The reason why privatisation and liberalisation have featured so much as international prescriptions is not because they are solutions to social problems*

*facing humanity. But they are mechanisms to turn the entire globe into a haven for private accumulation, principally for the transnational corporations.”*

Blade Nzimande, General Secretary of the South African Communist Party.

Source: ILRIG (1999:1).

Moving from the premise of the above citations, scholars such as Phaahlamohlaka (2006:19) and Van De Walle (1989:601) believe that generally privatisation is adopted with the aim of boosting and improving economic growth. For instance, Phaahlamohlaka (2006:19) articulates that privatisation should lead to a permanent increase in the level of aggregate output, if not in its rate of growth, and should be welfare enhancing.

By the same token, Van De Walle (1989:601) is of the view that introducing privatisation as an alternative should help both developed and developing countries to bring about good state-owned enterprise (SOEs) performance and sustain it. He further argues that in their efforts to sustain this performance, governments facing financial crises go as far as hiring new and dynamic managers, paying them lucrative salaries, granting them authority to set prices and also the power to hire and fire. These measures, according to Van De Walle (1989), often produce positive results. In support of this sentiment, Gumede (2016:3) motivates that the whole purpose of this exercise is to:

- raise revenue for the state;
- promote economic efficiency;
- reduce government interference in the economy;
- promote wider share ownership;
- provide the opportunity to introduce competition;
- subject state-owned enterprises to market discipline; and
- to develop the national capital market.

The Reconstruction and Development Programme (RDP) that was introduced in 1994 was the first democratic government economic programme stimulating a debate around privatisation, even though it never really took a fixed position around it. After the RDP did not live up to expectations many experiments were put in place. As such, the ANC-led government released its macro-economic strategy policy in June 1996, called 'Growth, Employment and Redistribution' (GEAR). A key issue that was addressed by GEAR was the role of the state in the economy of the country. ILRIG (1999:31) elaborates that according to GEAR, government should not invest much energy on owning assets or manufacturing enterprises, but rather concentrate on:

- regulating the economy, rather than being an owner or producer;
- encouraging foreign investment by providing a climate which is attractive to investors; and
- cutting back state spending.

Once GEAR became the economic policy of government, restructuring was conducted in a number of state enterprises and departments. The Department of Labour also privatised certain services, such as cleaning, catering and security; however, the administration of labour policies, which is the core function of the department, has never been privatised. Instead, the development and enforcement of certain legislations administered by the Department of Labour are shared with statutory regulatory bodies such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and Private Security Industry Regulatory Authority (PSIRA). The CCMA administers the Labour Relations Act, Act 66 of 1995 and does consolidation of proceedings between LRA and BCEA matters only when referrals to the CCMA are made on prescribed statutory forms by the Department of Labour.

The Private Security Industry Regulatory Authority (PSIRA), which was established under Section 56 of the Private Security Industry Regulation Act, Act 56 of 2001 helps in the development of the Sectoral Determination 6 (SD6) for private security and also conduct audits to ensure compliance with this determination. However, only

inspectors from the Department of Labour have the authority to enforce compliance with the provisions of the SD6.

### **2.4.3 Self-regulation**

#### **2.4.3.1 Definition**

Like most concepts, self-regulation means different things to different people, depending on the context under which the concept is used. Generally, the word refers to self-monitoring. Karoly (1993) postulates that self-regulation refers to those internal and transactional processes that enable an individual to monitor his/her goal-directed activities over time and across changing circumstances. On a broader scale it is defined as a process of “policy making by non-legislative public and private actors independently from political actors’ intervention” (Adrienne, 2008:3).

In explaining the process, Sharma (2010:6) unpacks that an industry-level organisation (such as a trade association or a professional society), unlike a governmental- or firm-level organisation, sets and enforces rules and standards relating to the behaviour of firms in the industry with the aim of decreasing risks to consumers, increasing public trust and combatting negative public perceptions. A simple example of self-regulation in the workplace is collective bargaining between unions, workplace forums and employers on matters of common interest, such as salaries and other conditions of employment. In most cases the outcome of collective bargaining is a collective agreement that is a set of rules and standards as to how operations will be conducted in the work place.

Molina (2014:2) aligns collective autonomy with collective self-regulation by stating that the latter is a process that promotes the capacity of collective social actors in industrial relations to produce norms and regulations and solve disputes autonomously. As already stated, collective agreements in a self-regulation process complements existing regulations by imposing supplemental rules to govern the behaviour of firms.

#### **2.4.3.1. Benefits and challenges with self-regulation**



Literature on self-regulation shows that, in all its numerous versions, self-regulating is an essential part of today's global economy. For instance, Castro (2011:3) observes that various industries, such as health care, higher education, fashion, advertising, mining, marine fishing, professional sports, and nuclear power, have used self-regulatory processes to administer industry practices, such as establishing industry standards, and developing and applying codes of professional ethics to ensure consumer confidence.

There are a number of motivations for industries to employ self-regulation. For instance, Sharma (2010:6) postulates that in some cases an industry might decide to police itself because government's involvement is too little, as was the case with forest and fisheries stewardship, whilst others might perceive government intervention as a threat and then decide to employ self-regulatory actions as a mechanism to escape government regulation.

Sometimes self-regulation is stimulated by a particular incident that threatens an industry. In the security and military sector in the Middle East, the development of standards was identified as a critical priority in order to govern the conduct of private contractors on the modern battlefield who were bullying the industry during the war. In this particular case, Daphné (2014:774) illustrates that the industry's expanding scope of activity and client base composed of not only states, but also international organisations, non-governmental organisations, and multinational corporations operating in volatile environments has made regulation an even stronger priority. He further argues that in just a few years, working jointly with states and civil society, the private security and military industry developed a sophisticated self-regulatory framework that was applicable to its activities.

As indicated earlier on, self-regulating companies are still subject to government-imposed regulation to a certain degree, as internal regulations put in place by the self-regulating industry only supplement governmental regulations. In this situation Sharma (2010:6) explains, companies put measures in place that are in line with government regulations and use the regulations as a check list to ensure that their processes and practices are in line with the provisions of the government prescripts.

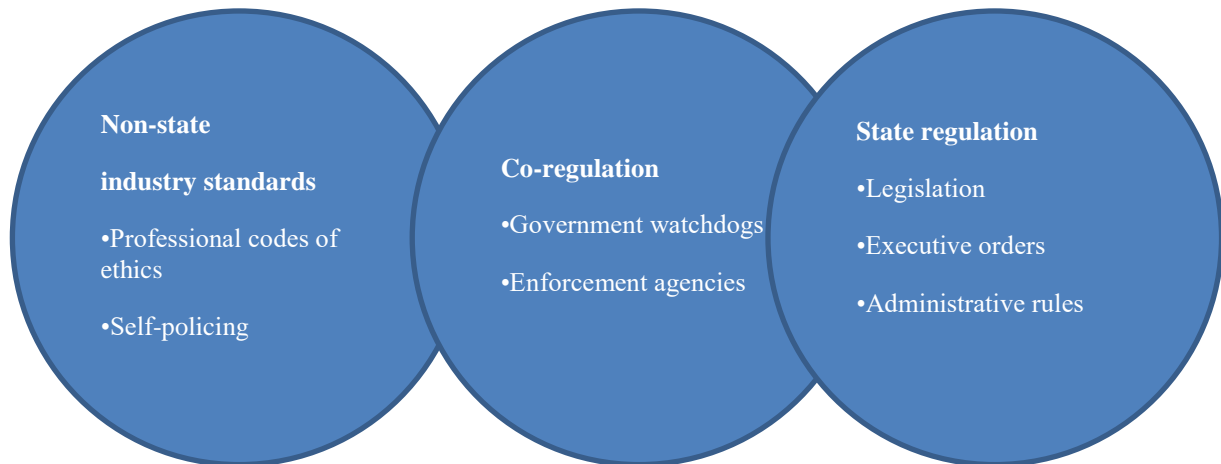
In the South Africa employment setting, collective bargaining taking place at different levels is an example of self-regulation. These bargaining processes are established in

terms of the law, as are the collective agreements reached and any conditions they want to vary. For instance, Section 49(1) of the Basic Conditions of Employment Act, Act 75 of 1997, prescribes that collective agreement concluded in the bargaining councils may alter, replace or exclude any basic condition of employment if the collective agreement is consistent with the purpose of this Act and it does not:

- reduce the protection afforded to employees by Sections 7, 9 and any regulation made in terms of Section 13;
- reduce the protection afforded to employees who perform night work in terms of Sections 17 (3) and (4);
- reduce an employee's annual leave in terms of Section 20 to less than two weeks;
- reduce an employee's entitlement to maternity leave in terms of Section 25;
- reduce an employee's entitlement to sick leave in terms of Sections 22 to 24;
- conflict with the provisions of Chapter Six.

Collective agreement reached at bargaining councils only applies to employers and employees falling under the registered scope and area of the bargaining council. Where employers request a variation on the agreed conditions of employment, a variation application will have to be made to the applicable bargaining council.

Generally, self-regulation helps to cut government costs and eliminate government interference into operations at shop floor level. Through this process government focuses less on traditional dispute resolution and legality and more on advisory interventions, thus dedicating more time and resources to other pressing issues while knowing that non-compliance with its regulation will be immediately identified by the parties in the bargaining process and be resolved before being brought to its attention. Structures like unions, work place forums and interests groups work with government and employers at different levels to ensure that the agreed upon terms and conditions are observed and adhered to by all parties, as indicated below.

Different roles of government in the self regulation process:

Source: Adei (2008:5)

The role of the state in this case is regulating the industry to guide parties in the bargaining process or advise where there are disputes. It promotes social justice, economic development, democracy and labour peace in the work place (Department of Labour, 2016:ix). By virtue of this, agreements reached through the bargaining process are either more favourable than what the law states or just fall in line with the prescripts of the law. However, Molina (2014:2) argues that in cases where parties that are self-regulating are unable to resolve their own issues, government intervenes to facilitate the dispute resolution process.

While self-regulation is a preferred service delivery option globally, it has its benefits and disadvantages just like all other service delivery processes. In advocating for an improved system of self-regulation in the media fraternity in South Africa, Reid (2012:1), in her UNISA report to the Press Freedom Commission on press accountability in South Africa, illustrates self-regulation as a powerful strategy for allowing space for journalistic and editorial independence and freedom of speech. She advocates for a situation where journalists are free to operate without fear or interference from any of the main societal centers of power, such as big business or the government. In support of this sentiment, Puddephatt (2011:12) writes that self-regulating in the media industry provides the following benefits:

- preserves independence of the media and protects it from partisan government interference.

- it could be more efficient as a system of regulation as the media understand their own environment better than government (though they may use that knowledge to further their own commercial interests rather than the public interest).
- self-regulation can fill the resulting gap as the media environment becomes global (through the development of the internet and digital platforms) and questions of jurisdiction become more complex.
- it is less costly to government because industry bears the cost and can be more flexible than government regulation.
- self-regulation may also encourage greater compliance because of peer pressure (although there is also evidence that regulation or the threat of regulation is more likely to secure compliance).
- self-regulation can also drive up professional standards by requiring organisations to think about and even develop their own standards of behaviour.

In the labour environment the Labour Relations Act, Act No. 66 of 1995(LRA) in South Africa was adopted to ensure sound labour relations in the workplace as provided by Section 23 of the Constitution of the Republic of South Africa. The LRA, as the legislation is popularly known, provides for collective bargaining in the workplace, and collective agreements which are in most cases binding between the employers and organisation are a product of this self-regulation process. For instance, Section 1 of the LRA stipulates that the purpose of the Act is to provide a framework within which employees and their trade unions, employers and employers' organisations can:

- Collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest;
- Formulate industrial policy;
- Promote orderly collective bargaining;

- Collective bargaining at sectoral level; and
- Promote employee participation in decision-making in the workplace and the effective resolution of labour disputes.

According to De Wet (2018:1), these collective agreements may be extended to all employers that fall within the agreement's 'industry' scope. This means that the terms and conditions of the agreement may be binding to employers that have not participated in the collective agreement. In this instance, Elsley and Mthethwa (2014:6) distinguish between the following three levels of bargaining in South Africa.

**2.4.3.3 Bargaining councils:** A form of centralised bargaining created in a specific industry where employers and trade unions come together and negotiate terms and conditions of employment. A bargaining council may request the Minister of Labour to extend the wage agreement to all employers and employees within the jurisdiction of council (so-called 'non-parties'). Bargaining councils generally involve more than one employer, with the exception of a public sector council, where the state or a parastatal is the sole employer. An example of this would be the Transnet Bargaining Council.

**2.4.3.4 Sectoral Determinations:** Section 51 of the Basic Conditions of Employment Act, Act 75 of 1997 (BCEA) provides for the establishment of Sectoral Determinations that regulate terms and conditions of employment for employees when there is no centralised collective bargaining, low levels of organisation and where workers are understood to be especially vulnerable to exploitation. Examples include the determinations for farm workers, domestic workers and the private security industry. Sectoral determinations are administered rather than negotiated. Even so, more than one determination in South Africa is heavily influenced by the agreements reached in non-statutory bargaining forums. One example of this is the private security industry.

**2.4.3.5 Bilateral collective bargaining:** Bilateral bargaining takes place between one or more trade union and a single employer (possibly assisted by an employers'

association) and the agreement is applicable solely to the individual company. The company may have multiple operations but it remains a single employer. This bilateral agreement may involve a single workplace or cover the national operations of a larger single employer.

In the the spirit and letter of the LRA (which is more on encouraging participative management in the workplace rather than adversarial bargaining), Grogan (2014:391) cautions that collective bargaining should be done in an orderly manner and good faith. The reason for this call is that due to South Africa's particular history, collective bargaining has been underlined by the legacy of deep adversarialism between employers and organised labour. It has been argued that various behaviours in the selection of collective representatives, the conduct of collective bargaining, and the enforcement of collective agreements are prescribed and proscribed by labour laws in that the greatest net benefit from collective bargaining can be obtained when a system is in place that promotes good faith bargaining and efficient enforcement of collective agreements (Botha, 2015:2).

With all that said, the promotion of self-regulation in the work place through collective bargaining helps to:

- equalise the power balance between employer and employees;
- conclude a collective agreement that addresses a range of issues going beyond the scope of the Basic Conditions of Employment Act; and
- set up bargaining structures / councils.

#### ***2.4.3.6 Challenges to labour practices by self-regulation in South Africa***

However, if self-regulation is not managed properly, it could lead to disaster. Risks occur when promises are not fulfilled because of weak standards or ineffective enforcement, allowing companies to continue to serve their own interests at the expense of consumers. Essential elements like governance by all stakeholders, transparency in creating standards and external, objective evaluation of impact, appear to be at the heart of the self-regulatory successes seen in some industries. Failure usually happens if these elements are missing in the process of governance.

The literature study gives us different case studies of where the implementation of self-regulation has failed. One example is the regulating of the tobacco industry in the US in the 1950s. Despite the industry's commitment to protect public health more than profit making, a number of those promises during the introduction of self-regulation were broken. Sharma et al (2010:10) observes that in an effort to self-regulate, the industry formed the infamous Tobacco Institute, which for years worked closely with tobacco companies to protect and defend practices that had disastrous public health consequences. Sharma et al (2010:10) records that "the industry developed several youth smoking prevention programs in the early 1980s in response to public and government outcries over marketing to youths and these programs were utilized by the industry executives to prevent and defend against government legislation that might minimize company profits".

Additionally, industry players were careful to design youth prevention programs that did not contradict existing tobacco advertising initiatives; no single program included information on nicotine and addiction, the causal link between smoking and disease, or the large role of tobacco marketing in promoting smoking to youths. Some evidence suggests that these programs actually encouraged young people to smoke more. Tobacco industry programs also undermined public health advocacy groups by creating competition with more respectable antismoking campaigns, such as the Truth campaign sponsored by the American Legacy Foundation. Public health advocates have found no evidence that tobacco industry programs decrease the rate of youth smoking and have concluded that they do more harm than good Sharma et al (2010:12)

In the case of collective bargaining, one example of self-regulation that is not properly managed is the lack of representation of small employers in the bargaining process. According to Botha (2015:4), the problem that enters the fray is that big employers like national companies actively partake in the collective bargaining process, while small- to medium-enterprises often do not participate at all. This action result in agreements being entered into, agreements that small businesses cannot economically afford, or which are not practically feasible for smaller businesses. Currently there is no distinction between big businesses and SMMEs as to their obligations towards employees, and the only way a distinction will be introduced is through the participation of all parties at the bargaining table.

In addition, Botha (2015:4) alludes that failure of parties in the bargaining process to bargain in good faith leads to a collapse in the bargaining process, leading to unduly tense and violent strikes whereby employees take to the street to picket and hamper productivity of employers in an attempt to apply economic pressure in support of demands. This is a popular tool used by unions in South Africa to get their demands accepted, especially on issues related to wages as shown in the tables below:



**Table 2.2: Wage settlements concluded with strikes in various industries**

Industry	Sector /employer	Agreement date in 2016	Initial request	Employers offer	Settlement	Protected / unprotected
Agriculture	Nutri-feeds	October	38%	7%	7.6%	Protected
Community	Teti Traffic Management	May	130%	7%	7%	Protected
	Eastern Cape Liquor Board	March	15%	5.6%	5.6%	Protected
	Pikitup	April	R10 000	R750 once off	R750 once off	Unprotected
	Tshwane University of Technology	February	R10 000	R5 000	R5 000 - R10 000 by 2018	N/A
Construction	Johannesburg Road Agency	February	7%	6%	6%	Unprotected
Utilities	Eskom	August	12% and 13%	7% and 9%	8,5%	Unprotected
Mining	Izimbiwa Coal	May	R12 500	8%	8%	Protected
Manufacturing	Lafergeholcim	February	13%	8%	8%	Protected
	National Petroleum Employers Association	August	12% and later 9%	7%	7%	Protected
	Alpha Pharm	August	10%	7,5%	7%	Protected
	South African Nuclear Energy Corporation	July	12%	7% and 6.1% for employees earning R600 001	R600 000 receives 7%, those earning above R600 000 receive 6.1%	Protected
	Bacalum Manufactures	November	10%	7%	7%	Protected
Finance	Automobile Association of SA	August	18%	8%	8.5%	Protected
Transport	COMAIR	April	30%	7,5%	10% in 2016, 7% in 2017 and 6% in 2018.	Protected
Wholesale and retail	Fourie's Poultry Farms	May	15%	7%	8.5%	Protected

**Source:** Department of Labour (2016).

**Table 2.3: Principal causes of strike activity measured in working days lost, Q1-Q4 2016**

Principal cause	Q1	Q2	Q3	Q4	Total 2016	Total 2015	% change
Wages, bonuses and other compensation	107 034	36 819	445041	189 980	778 874	697 810	11.62
Working conditions	13 370	40 656	1 361	5 360	60 747	26 226	131.63
Disciplinary matters	80	268	4 400	0	4 748	52 460	-90.95
Grievances	4 624	17 177	19 832	9 249	50 882	43 922	15.85
Socio-economic and political conditions	650	376	1 353	6 001	8 380	9 448	-11.30
Secondary action	0	23	1 362	0	1 385	2 812	-50.75
Retrenchments/ redundancy	1 668	591	100	0	2 359	4 145	-43.09
Refusal to bargain	5 574	2 767	0	13 012	21 351	7 228	195.39
Trade union recognition	205	6 457	0	9 800	16 462	55 624	-70.40
Other reasons	1 135	0	0	0	1 135	0	-
<b>Total</b>	<b>134 340</b>	<b>105 135</b>	<b>473 449</b>	<b>233 402</b>	<b>946 323</b>	<b>903 921</b>	<b>4.69</b>

**Source:** Department of Labour (2016).

The tables above show just how disastrous strikes are on the economic growth of the country, as they lead to loss of profit, low investment confidence and job losses.

## 2.5 Chapter Summary

The first part of this chapter gave the background and discussed different global models of the developmental state. An analysis of the South African democratic development state was done to see if it possesses characteristics that are required for the country to be deemed as a development state. The section rounded off with the discussion on the role of different role players in the implementation of a development state.

The chapter then discussed decentralisation, privatisation and self-regulation as service delivery options. The background, purpose and different types of each of these service delivery options were discussed together with advantages and disadvantages.

Having discussed factors that influence the public policy implementation, the next chapter will look at different pieces of labour policies in South Africa with which business has to comply in order to create decent work and promote sound labour relations in the work place.

## **Chapter 3: Legal Framework for Promoting Sound Labour Practice in South Africa**

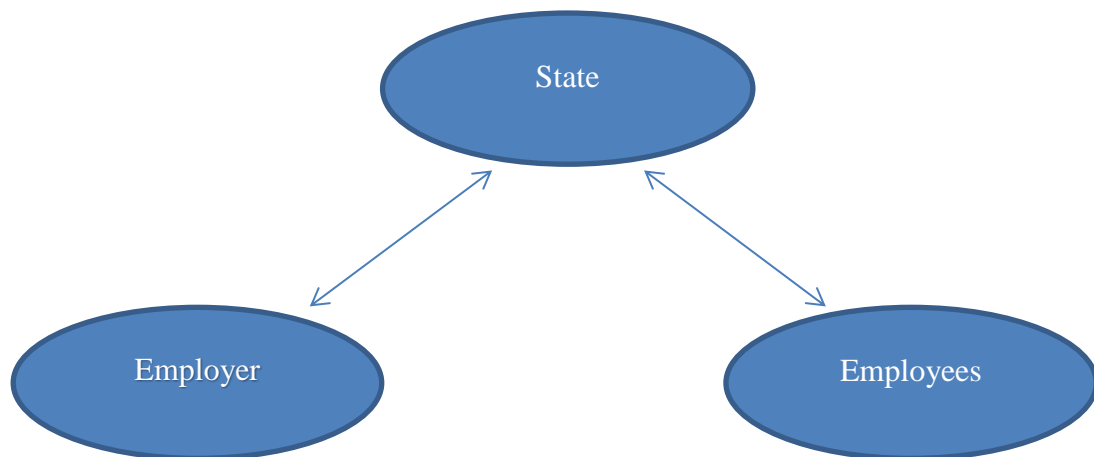
### **3.1 Introduction**

The previous chapter explained that the notion of the developmental state sees government adopting a more intervening role in promoting development. However, it also acknowledged that the successful implementation of development policy requires different partners (state, private sector and civil society) to work together to implement policies and the development mandate. Various mechanisms can be used to facilitate this joint implementation relationship, including decentralisation, privatisation and self-regulation.

Labour policies provide an interesting focus area for how the joint development mandate is shared amongst the various role players. This study focuses specifically on the implementation of labour policies through the joint efforts of the Department of Labour (government), private sector (management of Sunflower retail) and civil society (labour unions in Sunflower retail).

Given that the workplace is the hub of economic activity, ensuring harmonious labour relations is of particular importance as it contributes to economic growth. Lack of harmony between parties in the employment relationship could lead to severe financial loss to employers, disruption of the industrial sector and even disruption of the national economy (Van Jaarsveld & Van Eck, 2002:4). This could eventually lead to job losses and other unintended socio-political and economic consequences.

Within the notion of the developmental state, the South African government takes a more proactive and intervening role to regulate employment relationships. It regulates the employment relationship by putting a legal framework in place that acts as a compelling guide for the parties in the employment relationship, thus making the employment relationship triangular in shape as indicated below.

Governments role in the employment relations:

While the state is not a direct party in the employment relationship, its presence is felt as its legislations, regulations and codes of good practice that are derived from the ILO conventions guidelines provide direction to the parties in the employment relationship. Moving from this premise this chapter will identify and briefly discuss the legislative framework that has been put into place by government to promote fair labour practice in the workplace.

### 3.2 The Mandate for Sound Labour Relations in South Africa

Important pieces of legislation are recorded in the table below and discussed in the various subsections.

**Table 3.1: Legislative Framework**

Legislation	Year
Constitution of the Republic of South Africa, 1996	1996
National Development Plan 2030, 2013	2013
The Basic Conditions of Employment Act, 1997	Act 75 of 1997
3.1 Sectoral Determination 9: wholesale and retail sector	
The Occupational Health and Safety Act, 1993	Act 85 of 1993
The Compensation for Occupational Injuries and Disease Act, 1993	Act 130 of 1993
Labour Relations Act, 1995	Act 66 of 1995
The Unemployment Insurance Act, 1996	Act 30 of 1996
The Employment Equity Act, 1998	Act 55 of 1998

### 3.2.1 The Constitution

Regulation of the labour market through legislation and regulations forms part of government's effort to create a labour market environment that is conducive to sustained economic growth. The ground work to this agenda is laid down in Chapter 2 of the Constitution of the Republic of South Africa, 1996, which prescribes the following rights that are relevant to the labour environment:

- Section 10: promotion of labour standards and fundamental rights at work.
- Section 18: freedom of association.
- Section 23: ensures sound labour relations.
- Section 24: ensures an environment that is not harmful to the health and well being of those in the workplace.
- Section 27: provides adequate security nets to protect vulnerable workers.
- Section 28: ensures that children are protected from exploitative labour practices and not required to perform work or services that are inappropriate for a person of that child's age or their well-being, education, physical or mental health or spiritual, moral or social development is placed at risk.

These labour rights are mostly derived from various ILO conventions and are entrenched in the Constitution in an attempt to make them mandatory in South Africa. Their relevance in the study is that they are part of the provisions prescribed by various pieces of labour legislation, such as the Basic Conditions of Employment Act, Act, Act 75 of 1997(BCEA), Labour Relations Act, Act Act 66 of 1995 (LRA) and Occupational Health and Safety Act, Act 85 of 19939 (OHS) which are areas of focus in this study. This legislation are the core of the requirements to be observed and complied with by employers in the work place, as they are enforceable.

### **3.2.2 The National Development Plan 2030**

The Constitution's provisions that have been outlined in the preceding section are further strengthened by Chapter 2 of the National Development Plan 2030 (2013:134). Chapter 2 of the NDP, as the plan is popularly known, outlines the following areas of focus in promoting sound labour practices in the work place:

- An approach that simplifies dismissal procedures for poor performance or misconduct.
- An effective approach to regulating temporary employment services.
- Monitoring compliance to statutory sectoral minimum wages.
- Implementing and monitoring health and safety regulations.

In line with this, Chapter 11 of the National Development Plan 2030 (2013:355-357) identifies social protection as a human right. The plan proposes that the country pay special attention to this matter by designing policies that ensure citizens are kept working and that vulnerable workers are protected from any situation that could affect their well-being in the work place.

The National Development Plan further states that insufficient wages, unemployment, sickness and other conditions are different forms of vulnerability that need social protection interventions as they threaten the livelihood and dignity of citizens. According to the plan, labour market policies are a critical component of social protection as they play the dual role of providing basic conditions of employment in the work place and also set minimum wages (with the National Minimum Wage Act, Act 9 of 2018 having been introduced) for new employees.

### **3.2.3 The Basic Conditions of Employment Act, Act 75 of 1997(BCEA)**

The BCEA was mainly developed to give effect to the right to fair labour practices coded in Section 23(1) of the Constitution of the Republic of South Africa, 1996, by instituting and making provision for the regulation of basic conditions of employment and, in so doing, to comply with the commitments of the Republic as a member state of the International Labour Organisation (ILO).

The BCEA ensures social justice in the workplace by establishing the minimum employment standards with regards to regulation of working time, leave, particulars of employment and remuneration, termination of employment, prohibition of child work, variations, monitoring, enforcement and legal proceedings. It also sets out the duties of employers and of employees. As the area of focus in this study, compliance with the provisions of the BCEA provides certain benefits as it regulates the rights of workers, advances economic development, specifies details and conditions of employment and removes inefficiency. Additionally, the Act promotes fair treatment of employees and eliminates discrimination. It provides the legislative framework for acceptable practices in the workplace and promotes consultation with employees on a number of issues, such as the particulars of employment, performance of overtime and issues light the performance of night work.

The conditions of employment provided for in the workplace act as a roadmap for oversight purposes and unions and other parties in the employment relationship can use this as a checklist to ensure that the company complies. Key to the provisions of the BCEA is ensuring that employees are not taken advantage of. In order to respond to unique conditions of employment in different sectors and also address income inequality through the introduction of the minimum wage, Section 51 of the BCEA makes provision for the establishment of sectoral determinations. Below is the list of Sectoral Determinations including SD9, which is the area of focus in this study.

- Sectoral Determination 5: Learnerships
- Sectoral Determination 6: Private security
- Sectoral Determination 7: Domestic sector
- Sectoral Determination 9: Wholesale and retail sector
- Sectoral Determination 10: Children in performing arts
- Sectoral Determination 12: Forestry sector
- Sectoral Determination 13: Farm worker sector
- Sectoral Determination 14: Hospitality



Most of the provisions covered in the BCEA are covered in Sectoral Determination 9 with few additions that speak directly to the wholesale and retail sector, such as the minimum wage for different categories of employees. This determination applies to all employees in the wholesale and retail sector except for workers engaged in employment activities covered by another sectoral determination in terms of the BCEA, or those that are covered by an agreement of a bargaining council in terms of the LRA.

For employers that employ less than ten employees, the provisions of the Ministerial Determination for Small Business apply in respect of overtime, averaging of working hours and family responsibility leave. As is the case with all employment laws that regulate the business sector, the onus is on employers to observe and ensure that they comply with the provisions of Sectoral Determination 9 and failing to do so will result in enforcement processes stipulated in Section 69 of the BCEA being instituted.

However, in cases where companies are self-regulating, the BCEA makes provision for certain conditions of employment to be varied by employers through collective agreements, as permitted by sections 49 and 50 of the Act. Regulations and codes of good practice pronounce certain conditions under which specific conditions of employment can be varied. For instance, Chapter 2 of the Act, which prescribes the working hours, must be read in line with Schedule 3 of the Act and the Code of Good Practice on the hours of work.

In ensuring compliance with the prescriptions of Sectoral Determination 9, employers are expected to observe the provisions that are listed in Table 3.2, and to use them as both an inspection checklist and as a guide during the self-regulation process.

**Table 3.2: Sectoral Determination 9 provisions that the employer has to comply with**

Cl. 1: Application	Cl. 20: Public holidays
Cl. 2: Wages	Cl. 21: Annual leave
Cl. 3: Commission work	Cl. 22: Sick leave
Cl. 4: Calculation of remuneration	Cl. 23: Family responsibility leave
Cl. 5: Payment of remuneration	Cl. 24: Maternity leave
Cl. 6: Information concerning remuneration	Cl. 25: Prohibition of child labour and forced labour
Cl. 7: Deductions and other acts concerning remuneration	Cl. 26: Termination of employment
Cl. 8: Written particulars of employment	Cl. 27: Payment instead of notice
Cl. 9: Application of this part	Cl. 28: Payments on termination
Cl. 10: Application of part D&E to employees working 27 hrs or less per week	Cl. 29: Severance pay
Cl. 11: Ordinary hours of work	Cl. 30: Certificate of service
Cl. 12: Overtime	Cl. 31: Uniforms, overalls and protective clothing
Cl. 13: Payment of overtime	Cl. 32: Attendance register
Cl. 14: Compressed working week	Cl. 33: Temporary employment services
Cl. 15: Averaging of hours of work	Cl. 34: Duration of employment
Cl. 16: Meal intervals	Cl. 35: Keeping of sectoral determination
Cl. 17: Rest periods	Cl. 36: Definitions
Cl. 18: Payment for work on Sundays	
Cl. 19: Night work	
Basic Conditions of Employment Act, 1997	Employment Equity Act, 1998
S. 29: Written particulars of employment	S. 16: Consult with employees.
S. 31: Keeping of records	S. 20: Prepare and implement EE plan
S. 33: Information about Remuneration	S. 21: Submit annual report
Unemployment Insurance Act, 2001	COID Act 1993
S. 56: Registration	S. 80: Employer to register
	S. 82: Employer to furnish return of earnings
Unemployment Insurance Contributions Act, 2002	S. 86: Assessment to be paid by employer
S. 5: Duty to contribute to fund	
S. 10: Duty to register with fund	Occupational Health and Safety Act
	Sections and Regulations

**Source:** Republic of South Africa: Sectoral Determination 9.

These provisions also form part of the inspection checklist and are used to determine compliance during the inspection process. To ensure that there is proper communication between inspectors and employers and that employers are given sufficient time to prepare for an inspection, the Standard Operational Plan (SOP) (2018) of the Department of Labour provides guidelines as to how the inspection process should unfold. For instance, paragraph 3.1.7 of the SOP stipulates that before the inspection takes place, an inspector should ensure that the employer is notified in writing three days before the date of the inspection to ensure that s/he is available and required documents are prepared by the time of the inspection. The notice can be served by email or be hand delivered and it contains a list of all documents required during the inspection. As much as this arrangement is often criticised by unions, it helps the employer to organise its work and also save time and eliminates any inconveniences that could have happened during the inspection, had the notice of inspection not been served. This process does not apply in cases of child work, inspections in the informal sector or any other exceptional circumstance(s) approved by the supervisor.

Paragraph 3.1.7 further specifies that before the inspection starts the inspector must ensure the following:

- That all relevant documents required are kept in a file;
- That the trade union in the workplace are informed and are present during the inspection;
- That at least two employees are interviewed during the process, except in circumstances where the employer has only one employee;
- That the inspector must pronounce on findings verbally to the employer and employee representatives before serving any enforcement document; and
- The standardised inspection report is prepared and signed by the inspector and the supervisor.

In the case of non-compliance in the initial inspection, the enforcement processes as guided by section 68 and 69 of the BCEA applies.

### **3.2.4 The Occupational Health and Safety Act (OHS), Act 85 of 1993**

This OHS Act has particular relevance with regards to the provision of sound labour practice in the workplace. For employees to be happy and productive, a safe and conducive environment has to be created. Deemed as the strictest of all labour statutes, the OHS Act is aimed at ensuring that employers adhere to pre-determined safety standards and provide safe working conditions for employees. Popularly referred to as the Policing Act, the OHS Act prescribes certain requirements that the employer has to comply with in order to ensure a healthy and safe environment at the work place.

The protections in this Act apply to all employees except for mineworkers, since they have their own health and safety regulations. The Act is also extended to external stakeholders as it requires organisations to operate in a manner that does not expose people who are not employees of the organisation but are directly affected by the activities of the organisation to danger due to health and safety hazards. Section 7 asserts that the chief inspector has powers to instruct any category of employers to develop a health and safety policy regarding the protection of employees in the work place by placing a notice in the Gazette. Section 8 outlines the general duties of the employer to their employees.

Additionally, Section 17 provides that employers with more than 20 employees should appoint health and safety representatives in writing, with their functions being specified in Section 18. Section 19 makes provision for the establishment of OHS committees and their functions are listed in Section 20. To monitor and enforce compliance with the provisions of this Act, Section 28 gives powers to the Minister of the Department of Labour to appoint an inspector who is an official in the work place and the functions of the inspector are listed in Section 29

Provisions of this Act are important in that they ensure that no work process or condition of employment put the health and safety of workers or anyone in the place of work in danger. Certain provisions of this Act are also incorporated into the BCEA as conditions of employment and they are part of the written particulars of

employment issued by the employer to the employee before any work in the workplace commences. In conducting labour inspections, BCEA inspectors look at occupational and health issues and if any safety hazards are identified in the work place the matter is referred to the OHS for enforcement purposes. There are also OHS-related matters that form part of the BCEA inspection checklist, such as regulation of night work and prohibition of child labour.

### **3.2.5 The Compensation for Occupational Injuries and Disease Act, COIDA, Act 130 of 1993**

This Act makes provision for employees in the formal sector to be compensated in the event that they become totally or partially injured disabled or contract diseases due to their activities at work. It applies to all employees including sea men and airman. This Act should be read in line with the provisions of the OHS Act and has significant implications in the employment relationship in that it:

- Promotes safety in the work place in that employers may be heavily fined if they are found to be negligent in implementing safety measures.
- Creates a legal framework for acceptable employment practices and safety regulations.

The Act provides administration guidelines for dealing with claims and it saves time and costs that could have been spent on lengthy court proceedings. However, the Act excludes workers who are totally or partially disabled within less than three days of being employed as:

- Domestic workers;
- Getting military training.

As well as:

- Employees who are found guilty of wilful misconduct unless they are seriously disabled or killed;
- Employees working outside South Africa for 12 months and more; or
- Employees that come from outside South Africa but are temporarily performing their functions in South Africa.

Section 15 of the Act makes provision for the establishment of the Compensation Fund under the control of the Director-General. The aim of this fund is to provide income benefits and medical care to employees in the formal sector in the event they get injured, contract occupational diseases or die while in the line of duty.

This is a statutory fund; as such the employer is assessed and invoiced an amount they have to pay to the compensation commissioner annually. Should the employee get injured or contract a disease and cannot work and earn a salary, the employer only pays 70% of the monthly salary and claims the remaining amount from the Compensation Fund, as guided by sections 38 and 43 of the Act. In the event that an employee dies because of injury or occupational diseases, compensation will be paid to the deceased's dependants.

Contributions to the fund are enforceable and are part of terms and conditions of the employment relationship. BCEA inspectors demand proof of registration and proof of annual contribution to the fund as part of the BCEA inspection process. Failure to comply with the provisions of the Act requires BCEA inspectors to refer the matter to the Compensation Fund for further enforcement.

### **3.2.6 Labour Relations Act (LRA), Act 66 of 1996 1995**

The Labour Relations Act, No. 66 of 1995 (LRA) is deemed the foundation of labour law in South Africa and its aim is to advance economic development, social justice, labour peace and the democratisation of the workplace by providing mechanisms for disputes to be heard and resolved. It provides the framework within which employers

and employees using relevant platforms constantly engage and collectively bargain on matters of mutual interest, such as wages and conditions of employment. It regulates issues of fairness not only on termination but also during employment.

Whereas the focus of the BCEA and other pieces of legislation is on individuals, the LRA provides the framework for collective agreements, thereby emphasising the need for employers and organised labour to self-regulate their relationship by entering into a collective agreement that is binding for both parties.

Giving effect to the provisions of Section 23, Chapter 2 of the Act lists the employees and employer's rights to freedom of association and procedures for disputes. With each of these rights there is an obligation, as employees' rights are an employer's obligation and a balance of the two is critical in ensuring a fair and successful employment relationship.

Sections 4(1) and (2) prescribes the employees the right to join a trade union and participate in the lawful activities of the union. With this right, the employer has an obligation to ensure that s/he creates a favourable environment for these rights to be realised. S/he has to allow unions' access to the work place to recruit and employees must be given freedom to join unions of their choice without being threatened, provision must be made for union subscription to be made on employees' salaries, time off must be allowed for union meetings and space be provided for unions to engage with them on matters that affect employees.

Additionally, sections 16(2) and (3) of the Act prescribe that the employer has the obligation to advance the rights referred to in Section 4 by ensuring that s/he disclose all the information needed by the trade union representatives who are part of employees in the work place for the representative to be able to perform effectively. This provision of the Act should be read in line with the provisions of the BCEA as similar rights are coded in sections 78 and 79 of the BCEA. It is the responsibility of the employer to ensure that these rights are protected in the work place. Other issues covered under the LRA are general protections to matters of collective bargaining, strikes and lockouts, workplace forums, trade unions and employee organisations, dispute resolutions, unfair dismissals and unfair labour practice.

This piece of legislation has significant benefits for the organisation in that it advocates for a strong employment relationship, which could make a business successful and sustainable. The involvement of unions in the work place provides protection and representation of employees by competent union representatives, which in return helps to reduce employee turnover due to regular and open communication between employers and organised labour. It also helps both parties in the employment relationship to negotiate and settle their disputes before resorting to other measures like taking the matter to the CCMA and Labour Court.

The relevance of this legislation is that when inspectors are conducting inspections it is expected that they request the presence of the union representative during the inspection so that s/he can confirm the information presented by the employer. This is one way to encourage employers and union representatives to work together on labour related matters and also to ensure that unions are aware of contraventions identified during the inspections so that they can sit down with the employer after the inspection process has been completed to find an improvement strategy to ensure compliance. BCEA provisions are part of what both parties bargain about.

Firstly, if there are BCEA issues identified during the inspections process and these are related to a Labour Relations case that is to be opened at the CCMA such as unfair dismissal, those BCEA issues can be combined with LR issues and unions can advise their members to apply at the CCMA for reconciliation of proceedings, where a commissioner can make a judgement on both issues.

### **3.2.7 The Unemployment Insurance Act (UIA), Act 30 of 1996 and Unemployment Insurance Contributions Act, Act 4 of 2002**

Originally there was only one act dealing with issues of unemployment but later on the contents were separated into two. With that said, the purpose of both acts is to provide insurance against any possible unemployment, as such Section 2 of the Unemployment Insurance (UIA) Act makes provision for the creation of an unemployment insurance fund on which employers and employees contribute and from which workers who become jobless or those who stop receiving a salary due to



of illness, maternity leave, adoption, as the case may be, are eligible to benefits and in so doing relieves the harmful socio-economic effects of unemployment.

For employees to access these benefits, Section 56 of the Act provides that the employer register themselves and their employees as soon as new employees are employed and also inform the fund of any change in an employee's salary.

Additionally, sections 6,7 and 8 of the UI Contributions Act permits the employer to deduct 1% from the employee's salary and also pay 1% to the fund weekly and monthly to the fund on behalf of the employee.

The benefits of these acts are that if an employee through no fault of his or her own becomes jobless, s/he may claim unemployment benefits equivalent to the fixed percentage of his or her previous salary from the fund. Employees can also apply for unemployment benefits when they go on maternity leave or when a person has adopted a child under the age of two years, provided that in both cases they do not receive a full salary from the employer. In the event of death of the employee, the dependant of the deceased may apply for the unemployment benefits.

Eligibility for maternity benefits, especially for maternity leave, dismissal on operational grounds and on termination of the employment contract becomes part of the employment relationship as this part is part of the terms and conditions contained in the employment contract. Additionally, during the audit process employers have to provide inspectors with proof of payment towards the unemployment fund in the form of a payslip, UI declarations and proof of payment that corresponds with the monthly invoice from the Department of Labour. Failure to comply with the provisions of the Act requires BCEA inspectors to refer the matter to the UI auditors who are located in the same IES unit for further enforcement.

### **3.2.8 The Employment Equity (EE) Act, Act 55 of 1998**

The purpose of the EE Act is to achieve equity in the work place by way of equal opportunities and fair treatment by eradicating unfair discrimination. It provides a framework on how employees in the organisation are managed in terms of their skills, remuneration and roles in a fair and non-discriminatory manner.

The Act is divided into two legs: prohibition of any form of discrimination and promotion of equity and affirmative action. Chapter II prescribes that direct or indirect unfair discrimination against an employee in an employment policy or practise on the grounds of race, ethnicity, gender, pregnancy, marital status, family responsibility, sexual orientation, HIV status, political opinion, language, birth, religion and social origin is prohibited. Section 9 of the Act extends the definition of an employee under this provision to jobseekers. This means that, according to Section 9, job applicants may claim that they have been discriminated against and institute legal action against the employer in terms of the LRA.

Like all other employment laws, the EE Act contributes in ensuring fair labour practise in the work place. During collective bargaining, the contents of this Act become part of the discussion and, as required in the Act, employers and EE committees should consult with employees, including unions, during the development of employment equity plans.

As indicated in the BCEA and SD9 checklist, when BCEA inspectors observe that the employer is a designated employer by virtue of employing 50 employees and above, s/he can request information with regards with the following sections of the Employment Equity Act:

- S. 16: Consult with employees.
- S. 20: Prepare and implement EE plan
- S. 21: Submit annual report

If the inspector establishes during the inspection that the employer is non-compliant with the provisions of the above sections of the Act, s/he can make recommendations to the Specialist: Employment Standards to appoint an employment equity inspector to conduct DG review inspections in the identified work place and make recommendations in the case of non-compliance for the employer to implement those recommendations within a space of 14 days as per the SOP guidelines outlined above. However, it should be noted that in relation to the objectives of this study, the powers of the BCEA inspectors are limited to asking proof of compliance with the EE

provisions – they do not have powers to conduct a full DG Review Inspection and also cannot institute any enforcement processes in the case of non-compliance except for referring the matter to the specialist.

### **3.3 Chapter Summary**

This chapter discussed legislative framework related to the promotion of sound labour relations in the workplace. It discussed different pieces of employment laws administered by the Department of Labour based on their definition, purpose and application. The chapter discussed different sections of these employment laws at length in an attempt to showcase their relevance in promoting fair labour practices in the work place. The purpose was to highlight certain provisions in the Act that employers have to comply with as contained in the inspectorate checklist which would then be areas of focus when collecting data.

Employment laws play a role in providing partners in the relationship with different guidelines as to how certain functions in the workplace should be conducted. Those guidelines are enforceable; as such it is the responsibility of the employer working with stakeholders to ensure those guidelines are adhered to. This discussion was preceded by a brief outline of the constitutional mandate and national development provisions that support the development of these employment laws in ensuring fair labour practice and decent work in the work place. Having discussed the legislative framework, the next chapter will discuss the research design and methodologies that have been used to collect data in order to achieve the objectives of this study.

## Chapter 4: Research Design and Methodology

### 4.1 Introduction

This chapter discusses the research design, which illustrates the type of study that the researcher undertook. It also details the methodology, which clarifies the tools that were used to collect data.

According to Babbie and Mouton (2001:74), the research design and methodology are two different dimensions that are often confused by researchers; as such it is always important to distinguish between them. Research design, according to Babbie and Mouton (2001:74), is the researcher's plan of action, a blueprint that explains the approach the researcher intends using in undertaking the research. Mouton (2001:146) suggests that it gives a reader an idea of whether the study is empirical or non-empirical in nature. It is through this plan that research participants, which are the source of information to be collected, analysed and interpreting, are identified.

Additionally, Christensen (1997:311) articulates that a good research design should be theory-grounded, flexible, feasible and efficient. Such a design should be an off-spin of investigated theories that can stand as a point of reference in striking a balance between redundancy and tendency to over design.

Research methodology, on the one hand, refers to a coherent group of research tools that are of a good fit to deliver the required data and findings in answering the research question and suit the research objective (Henning, 2004:36). Leedy (1997:104) simply defines it as an operational framework within which the data is placed so that its meaning may be seen more clearly. According to Leedy (1997), research methodology and data are intimately inseparable, meaning that the research methodology to be adopted for a particular design should always consider the type of data that will be required in the resolution of the problem.

A proper distinction between the two is drawn by Babbie and Mouton (2001:74) in Table 4.1 below.

**Table 4.1 Difference between research design and research methodology**

Research design	Research methodology
<p>Focuses on the end product: What kind of study is being planned and what kind of results are being aimed at.</p> <p>Point of departure is the research problem or question.</p> <p>Focuses on the logic of the research: What kind of evidence is required to adequately address the research questions?</p>	<p>Focuses on the research process and the kind of tools and procedures to be used.</p> <p>Point of departure is the specific tasks (data-collection or sampling) at hand.</p> <p>Focuses on the individual (not linear) steps in the research process and the most 'objective' (unbiased) procedures to be employed.</p>

Developments in the field of social research present researchers with various options of research designs in collecting evidence and analysing data that fit the research objectives. Researchers have an option of using either qualitative or quantitative approaches, depending on the objectives of the study and the data that is available to achieve these. According to Niglas (1999:3), these approaches are incompatible in a sense that each has its own way of collecting and analysing data and the choice and the application of a suitable approach should be determined by the context, practicality and its appropriateness in responding to the research objectives. As this research is investigating a real life experience, it adopted a qualitative approach as a research design. This is based on its features that discussed in the section below.

## 4.2 Qualitative Approach

Contrary to what quantitative research does, qualitative research comprises of non-numerical information, such as words, pictures and observations that are used to explain a particular phenomenon. It is an interpretive, multi-method approach that investigates people in their natural environment and focuses on real life experiences. The purpose of this approach, according to Creswell (2009:4) is to explore and understand the meaning individuals and groups attach to social and human problems.

The literature studied proves that qualitative research deals with subjective data that is produced by the minds of respondents. Furthermore, this approach endeavours to understand the facts of a research investigation from a respondent's point of view. In line with this sentiment, Welman, et al. (2005:08) articulate that qualitative research is based on flexible and explorative methods because it enables the researcher to change the data progressively so that a deeper understanding of what is being investigated can be achieved. He further states that that qualitative data gathered and analysed is

presented in semantic form instead of numbers. This means that qualitative researchers talk to subjects or observe their behaviour in a subjective way with the aim to establish the respondents' view point.

A variety of qualitative data-collection techniques, such as a comparative literature study, field notes, semi-structured interviews and participatory observation are preferred by researchers in this design to get information. The advantage of these tools is that they present a full description of the research with regards to the participants involved. De Vans (2014:6) says they are unique in that they provide rich data about real life, people and situations.

### **4.3 Research Design and Methodology in the Current Study**

The discussions above allude to the fact that writers in the field of research distinguish between different schools of thought to identify the research design and methodology that fit the research objectives. According to Mouton (2001:56), the type of research design should help to answer the research question. In an attempt to achieve its objectives, this study has taken the form of exploratory research using a case study as its research design.

#### **4.3.1 Case study**

Hannie (2017:26) describes the case study as an empirical inquiry about a contemporary phenomenon, set within its real-world context. Case studies are important as they allow for in-depth focus on cases and, with their reliance mostly on primary sources, they provide an alternative view on universally accepted principles.

Given the need to understand the challenges of non-compliance to labour legislation, a case study design is regarded as valid as it allows for a detailed analysis of the context and factors that contribute to non-compliance. Like all other designs, case studies have their strengths and weaknesses; however, the compelling advantage of using a case study is that the information gathered is authentic and practical and data is generated in a real setting.

This study focus on Sunflower store, which is a national company in the wholesale and retail sector, with has stores operating across the country. The company has a total of 98 stores operating in the Western Cape and it contributes immensely to job

creation as medium to large stores employ up to 480 people, while smaller stores employ close to 37. These stores are clustered in the West Coast, Winelands, Overberg, Cape Metropole and Southern Cape regions. From these 98 stores, only 51 stores were identified and inspected in order to give the researcher baseline information in terms of their level of compliance with the provisions of Sectoral Determination 9.

To protect the identity of the organisation, the pseudonym of Sunflower store is used. In order to ensure that this design helps to achieve the objectives of this study, the following ethical considerations are taken into consideration:

- An ethical clearance application was submitted to the Stellenbosch University ethics committee on the 14<sup>th</sup> June, 2018.
- The study was conducted based on the four principles of ethical consideration in research, namely voluntary participation, informed consent, no harm to respondents/participants and confidentiality/anonymity. This means that respondents'/participants' participation was negotiated and participants were given freedom to voluntarily participate and withdraw from the study at any time without being victimised.
- Written requests to conduct research using the resources of the Department of Labour were made to the office of the Director General..
- An application was made to conduct research in the company used as a case study in the research and approval was granted.
- A request was also made to the company to appoint a company representative to assist in setting up appointments and obtaining informed consent from the respondents. This enables respondents the opportunity to indicate their preference not to participate in the study to a neutral third party. The company representative remains actively involved in the research process to assist with unanticipated issues that may come up during the process of collecting data from the respondents. Consent forms will be completed by all participants who agreed to participate.

- Consent forms are written in in English, isiXhosa and Afrikaans, the languages understood by the respondents.
- Each participant was given a consent form with detailed information about the research process and was also offered personal explanation of their rights, benefits, risks involved, as well as the purpose of the study.
- Participants were offered an opportunity to query and ask for further information on details they did not understand. This process gave them an opportunity to participate in the study knowingly and to give consent freely.
- The identity of respondents is not disclosed in the study in order to protect participants; rights to privacy. Interview transcripts were stored on a flash drive in a locked cabinet at the researcher's house. Once the thesis passed evaluation, all information that contained personal identities was destroyed.
- Participants were made aware that the interviews were being recorded for the researcher to listen to when developing transcripts.

The combination of the following data-collection methods was found to be useful in responding in achieving the research objectives.

#### **4.3.2 Data-collection methods**

Researchers choose specific data collection methods based on the type of design used. The section below discuss the type of instruments used to collect data on this study.

##### ***4.3.2.1 Literature study***

A literature study is useful in exploratory research to establish the theoretical framework for the study and to obtain useful reference material that deals with the research topic. As Bless and Higson-Smith (2006:24) argue, this technique helps the researcher to be familiar with the latest trends in the area or research and other related areas. For the purpose of this study, a literature study was performed in order to explore the body of knowledge around the topic, looking at concepts, various debates and theoretical perspectives both internationally and locally. Relevant documents applicable to the topic and legislations that inform the study were looked at and



analysed as the source of information and point of reference on what works and what does not. Secondary data was accessed through the literature and included information on the Internet, text books, academic journals, newspaper articles, departmental documents and policies and unpublished research papers.

#### *4.3.2.2 Secondary data review*

Additionally, the researcher in this study reviewed the secondary data in the form of a report for inspection that was conducted from 06-16 August 2018. This was compared to the reports of inspections that were conducted in the same organisation during the 2016/2017 financial year for analysis purposes. Between the two periods a series of advocacy sessions were conducted with human resource personnel that are dealing with compliance issues at head office, focusing on areas of non-compliance that were identified in the 2016/2017 report. The purpose was to help the organisation to improve. These reports provided the researcher with baseline information in the form of inspection reports conducted at different stores in this organisation and also provided an opportunity for data collection at shop floor level.

As a principal inspector, the researcher is part of the IES Management Team in the Western Cape province and is assigned added management responsibilities. Part of these responsibilities is to do monthly wholesale and retail sector trend analyses, to monitor and evaluate performance in the sectors and to report to the IES Head Office each month.

The Department of Labour conducted blitz inspections from 06-17 August 2018 and the researcher was not directly involved in conducting the inspections. Inspections were consolidated in a blitz comprehensive report from the labour centres that participated in the project (see Annexure 4: Inspection statistical report of Sunflower store for August 2018).

The researcher compared the 2018 Blitz report to that of the 2016/17 financial year to determine trends in non-compliance. Additionally, the researcher perused inspection files that contain narrative reports and a detailed description of what transpired during the inspection.

The following documents were included in the review:

- Notice of visit that informs companies of the inspection timeously.
- The blitz statistical report that reflects the number of workplaces visited, the compliance percentage, areas of non-compliance and contravention notices issued.
- Monthly indicator registers that reflect the compliance level 14 days after receipt of the contravention notice by an inspector.
- A verification file that confirms the number of confirmatory notices issued and number of cases sent to the provincial office for prosecution.

Based on the outcomes of this process, individual and focus group interviews were conducted with different respondents and are highlighted in the sub-section below.

#### ***4.3.2.3 Interviews***

The specific aim of conducting interviews is to collect primary qualitative data with regards to the specific phenomenon that is under study. According to Brynard and Hanekom (1997:32), the profit of using this method is that semi-structured interviews provide the researcher with an opportunity to ask questions directly in a more relaxed environment and also to seek clarity by asking follow-up questions based on the answers received from the interviewees. In addition, Welman and Kruger (2006:196) argue that unstructured interviews help the researcher to understand how individuals experience and make sense of their life and everything around them.

Interviews can be conducted in different forms. Some studies prefer individual interviews, whilst others opt for focus groups. The advantage of using individual interviews is that the researcher is able to capture how perceptions or opinions are formed, whilst focus groups make provision for the sharing of ideas in a group. They also help to overcome misunderstandings and misinterpretations of words or questions.

In this particular study the following interviews took place:

- After permission was obtained to conduct research in the store, a data-collection schedule was discussed with the Provincial Chief Inspector and was approved. After approval, the schedule together with the selection criteria was discussed with the assigned company representative and subsequently used as a guide to organised focus group session with employees (both at operational level and management). Appointments were confirmed and employees requested to sign consent forms as a sign of acknowledgment that their participation in the study is voluntary. The consent forms were in Afrikaans, English and isiXhosa and contained detailed information about the research process, as well as personal explanations to the participants of their rights, benefits, risks involved, as well as the purpose of the study.
- Before the focus group sessions started, participants were informed that their identities will not be disclosed in the study in order to protect their privacy.
- Due to the size of the sample focus group, sessions were grouped according to regions and all stores in a particular region assembled at a particular point. This approach saved travelling time around the province for interviews and also interview time with different employees from different stores.
- Group telephone conference interviews were organised with the stores in the Western Cape after the initial session had to be rescheduled due to operational requirements. The Employment Relations Manager organised the Group Conference Interviews and ensured that there was no interference from management. Data collection at Sunflower was rounded off with an individual interview with the Employment Relations Manager at Sunflower store.
- Focus group sessions with the inspectors that participated in the blitz inspection project were organised after the researcher was given permission by the Department of Labour Head Office to conduct research using the departmental resources. Inspectors were also required to sign consent forms to ensure that their participation in the study is voluntary.
- All these interviews were recorded and participants were made aware of this. Transcripts of each focus group session were done after the completion of the

session and were used to present focus group findings. These transcripts were stored on a flash drive in a locked cabinet at the researcher's house.

A list of annexures is given below as an outline of the data-collection process.

- Annexure 5(a): Consent Form English
- Annexure 5(b): Consent Form Afrikaans
- Annexure 5(c): Consent Form isiXhosa
- Annexure 6: Interview questionnaire for employees
- Annexure 7: Interview questionnaire for store managers.
- Annexure 8: Interview questionnaire for inspectors.
- Annexure 9: Interview questionnaire with the Employee Relations Manager
- Annexure 10: Attendance registers

#### ***4.3.2.4 Participating stores***

From the 51 stores that were inspected in 2018, 26 stores in the province were identified and participated in the focus group sessions. Their location is shown in Table 4.2. This is important to illustrate as it shows the scope that has been relied on in collecting data in order to arrive at the conclusions made in this study.

**Table 4.2: Location of Sunflower stores that participated in the study**

Cape Metropole Region		Cape Winelands	Overberg	Southern Cape
Northern Suburbs	Southern Suburbs			
Edgemead	Canal Walk	Laborie Centre (Paarl)	Gordons Bay	George CBD
Durbanville CBD	Gardens(Milnerton)	Paarl CBD	Whale Coast Mall	Garden Route Mall
N1 City	Kromboom	Franschoek	Station Square	Knysna
Colosseum	Blue Route Mall	Wellington	Eikestad Mall	Mosselbaai
	Sea Point		Somerset West CBD	Plettenberg Bay
			Somerset West Mall	
			Sir Lowry's pass	
			Waterstone	

A total of 120 participants from the 26 identified stores participated in the focus group session. 106 of these were employees from Sunflower store, while 14 were inspectors from the Department of Labour who conducted August inspections in Sunflower store. 46 of the employees are working as cashiers, sales persons and general assistance, comprising of 16 males and 30 females. These employees years' of experience in the business range from 11 months to 35 years and their total number of ordinary hours per week is 40. This is important to understand because in terms of clause 11(3)(d) of the Sectoral Determination 9 clause 17(1)(b) regulating the weekly rest period and clause 18, regulating payment for work on Sunday, does not apply to this category of employees. Their response to the interview questions should be analysed in the light of their understanding of this clause.

The remaining 30 participants were administration managers who are part of the decision making in the business. They comprise of 5 males and 25 females with work experience of between 2 and 24 years. The sample's variety in terms of years of experience, gender and functional levels helped the researcher to create a balance in terms of demographics, as responses were received from a broader perspective and different angles.

A total of 14 inspectors from the Department of Labour participated in the focus group sessions. The responses was very important in this study as this group holds a vast span of experience of 8 to 16 years in the compliance and enforcement environment and also due to them being part of the 16 inspectors that conducted

inspections at Sunflower and provided reports on the compliance status of each workplaces visited.

The interview session was rounded off with an individual interview with the Employment Relations Manager. This was important in order to understand the perspective of the person dealing with compliance issues in the company.

#### **4.4 Chapter Summary**

This chapter explored the research design and methodology that is appropriate and relevant for this study. Quantitative, qualitative and mixed research designs were discussed with the aim of looking at the nature of the study that could be used to respond to the research question and address the research objectives. Their advantages and disadvantages were explored. Suitable research methodology that complemented the research design was identified with ethical considerations that were noted. The chapter was rounded off with an outline of how data collection was undertaken and a discussion on the suitability of the research methods identified in collecting data, thus realising the objectives of the study.

## Chapter 5: Research Findings

### 5.1 Introduction

This chapter summarises the main research findings derived from the focus group discussions with employees, inspectors and an individual interview with the Employment Relations Manager. Findings of the collected data are presented according to main themes that are generated from each interview questionnaire.

### 5.2 Findings from the Document Analyses

The study compared Sunflower store inspection results of the 2016/17 financial year with those of August 2018 and the following data results were found. In the 2016-17 financial year, 14 inspections were conducted and all of these workplaces were found to be non-compliant with the provisions of the Sectoral determination listed in Table 5.1 below.

**Table 5.1: Contraventions found at Sunflower store in the 2016-2017 period**

No. of employers found non-compliant	Clause	Description	Issues identified
5	7	Deductions	No written consents for unlawful deductions made on the employee payslip.
13	8	Written particulars of employment	Employer to amend paragraph on deductions by stating which statutory deductions will be made on the employee's salary.
6	13	Payment of overtime	To pay employees an overtime rate of 1.5 for each hour worked.
4	17	Rest period	Employer to refrain for counting public holiday as part of the weekly rest period while the store was closed on a public holiday.
4	22	Sick Leave	Employer to refrain from compelling employees to bring a sick note for being off sick for two days and less.

In contrary, August 2018 shows a great improvement as 50 workplaces were deemed as compliant out of the total of 51 workplaces that were visited and inspected, thus

achieving an overall compliance rate of 98%. The one workplace that was found to be non-compliant was found to have failed to provide employees with payslips as prescribed in clause 6 of the sectoral determination. The employer received a notice for this contravention and he responded with corrections within 14 days.

In both rounds of inspections, the researcher perused inspection files and the results show that the following SOP processes that were highlighted in Chapter 3 were followed in helping Sunflower store to prepare for inspections:

- A notice of visit was issued to the employer in writing three days before the date of the inspection.
- The notice was served by email to the Employment Relations Manager and some were also hand delivered to the stores and they contained a list of all documents required during the inspection.
- Inspection files had inspection reports with the inspection findings and all the relevant documents required.
- At least two employees were interviewed during the inspection process.
- The inspection reports are signed by the inspector and the supervisor.
- Contravention notices were issued in the case of non-compliance and the employer was given 14 days to make corrections and provide proof of compliance.

### **5.3 Findings of the Focus Group Session with Employees**

The responses of the employees in this section will be presented according to main themes.

#### **Theme 1: Conditions of employment and reasons for non-compliance.**

- The inspection reports indicate that the employer complies with the provisions of the SD9 and the inspectors interviewed agree that the conditions at Sunflower store are fairly good. Employees did not complain; however, during focus group sessions some issues were raised and those findings on the conditions of employment are presented according to subtopics.



## Keeping of the BCEA and SD9

- The results of the focus group confirm that the company displays a summary of the BCEA on a wall as is required by the law. However, the copy of the SD9 is kept in a file and stored in the admin manager's office. As such, employees, including those in management, do not really understand the contents of the SD9. The only time that they read the legislation is when there is a pressing need and when they do not understand what the law says, they consult the Department of Labour for guidance. The company policies, believed to be derived from these labour policies, are discussed with employees during induction.

## Rest periods

- Focus group results show that the **12 hour daily rest period** is frequently violated by the store due to absenteeism and shortage of staff. According to management, this practice is more common in 'model stores', where employees are involved in the painting of the store and when emergency work has to be done due to external factors, such as a strike in the community that prevents employees from coming to work.
- With regards to **weekly rest periods** and payment for Sundays, the employer is expected to grant employees two full days off during every week and one Sunday off during every four consecutive weeks. However, focus group results show that the development of the shift roster is not favourable for everyone. The results shows that employees are rostered in a way that forces them to take their off days on separate days. As such it is difficult for them to rest enough and plan their lives. According to the focus group data, some employees work for two weeks but only get two days of time off instead of four days, which is prescribed by the law.

### **Payment of overtime**

- Focus group sessions revealed that payment of overtime is at the same rate per hour as normal working hours, therefore the employer is not compliant with the law, which states that the employer must pay an employee that has worked overtime at a rate of 1.5 for every hour of overtime worked. The data also reveals that there are instances where employees are not paid overtime or given time off at all unless they complain and take up the issue with senior management for further investigation.
- Management confirms these findings but explains that this only happens when performance of overtime by employees is not been reported by line managers.

### **Annual leave**

- With regards to annual leave, the focus group data reveals that line managers make it difficult for employees to take the annual leave they applied for. Administrative managers and the Employee Relations Manager acknowledge this and explain that these cases happen when line managers do not submit the leave application on time, thus resulting to employees getting unpaid leave until the matter is addressed with Human Resources.

### **Family responsibility leave**

- Focus group sessions reveal that employees experience problems when they inform management that they are taking family responsibility leave (FRL) to such an extent that they end up taking unpaid leave or make alternative arrangements. According to management this is due to a high rate of absenteeism in the stores.

## **Sick leave**

- With regards to sick leave, the data collected reveals that employees are compelled to bring a sick note if they are off sick for two days or less. If they do not bring the certificate they will be given unpaid leave. Management responded by saying employees do not know that sick leave is accumulated. They think that as soon as they get employed, they qualify for full 12 days per year and as such get unpaid leave when they use days that they do not have. Firstly, managers argue they resort to unpaid leave due to the fact that employees are misusing the sick leave clause.

## **Keeping of records**

- Managers conceded during the focus group sessions that during inspections inspectors often find that records for Unemployment Insurance Fund contributions and annual contributions to the Compensation Fund are not kept at the workplace and the organisation receives a compliance order.

## **Theme 2: Communication structures put in place to monitor compliance with the law.**

From the focus group data, the following internal communication channels were identified as platforms used for engagement between employees and management.

- **Inductions:** This is the platform where new employees are orientated on company policies and procedures. Conditions of employment are discussed with employees on this platform and they also receive a booklet with all the relevant information they need.
- **Round table:** This is a platform whereby the regional manager engages with employees on HR-related matters when there are lot of issues that were unresolved at a line manager level and these are escalated to a higher level.

- **Let's Talk meetings:** This platform discusses everything in the store, ranging from general well-being of employees, to stats and budgets. The session is about what should be done during the day and is held before the store opens.
- **The Game Planner:** This is a session that reviews what went wrong in the store. Even though the session lasts for five minutes, it affords employees an opportunity to raise issues that are bothering them.
- **One-on-ones:** This is a meeting between the line manager and individual employees when there are burning issues, such as absenteeism or where employees express their concerns to management.
- **Communications forum:** This is a bigger forum where representatives of management and employees meet to discuss burning issues that hamper growth in the company.
- **People's Thursday:** On these platform, line managers engage employees with regards to their well-being and conditions of employment. For instance, cashiers used to stand, however after employees raised this issue in this meeting it was discussed and a resolution was taken to provide them with chairs and carpets when cold.

### **Theme 3: Presence of unions or worker's forums.**

- The focus group sessions reveal that there are no recognised unions in the work place; however, the Communication Committees are used as a form of worker's forum where issues that could not be discussed and resolved in other platforms receive the consideration they deserve. The data confirms that the communication structures discussed above are used to deal with issues raised by employees.

#### **Theme 4: Company's ability to deal with labour disputes.**

The data collected from focus group sessions reveals conflicting results as to the company's capacity to resolve disputes. The first version confirms that:

- The internal communication channels that have been listed above are capable of dealing with labour disputes within the company, as such employees do not see the involvement of the Department of Labour and unions.
- The second version points out that while there are platforms of engagement in the store, there are few issues that from time to time warrant the attention of a third party like the Department of Labour. For example, there is a case at a store in Paarl where employees were given Christmas Day as a leave day, when the store was in fact closed. While the case could not be resolved internally, employees reported the matter to the Department of Labour. The Inspector came in and corrected the issue.
- The third version shows that employees want to join unions because they believe that the internal structures that are available are not capable of resolving their issues. Employees argue that when they raise their issues they are victimised, as such they resort to absenteeism.

#### **Theme 5: Role of the Department of Labour to enable compliance with labour laws.**

- The focus group confirms that Sunflower stores get into contact with the Department of Labour only when inspectors are in the store for inspections. Despite the results of the individual interview with the Employment Relations Manager showing that these inspections at Sunflower store in the Western Cape played a significant role in promoting a high compliance rate during the August 2018 inspections, this shows the limited role that Department of Labour plays in enabling companies to comply with the provisions of the law.
- The focus group sessions also confirm that on rare occasions where employees visit the Department of Labour for access to UIF and other matters, they wait

for a long time to get assistance due to queues. When they lodge a complaint with DoL, inspectors are taking too long to resolve their issues and there is no communication with them on what is happening with their cases.

- Employees during the focus group indicate that they feel safe at Sunflower store and so do not see a reason to consult a third party when they can be assisted within the organisation. They argue that Sunflower store is an organisation that is governed by channels that they have to follow to avoid things getting messy and chaotic. According to them, they receive everything from their HR business partner, including legislations administered by DoL and updates. If they are not sure of something, they immediately contact their HR business partner.

#### **Theme 6: Requirements for additional support systems.**

- With regards to the support system needed from the Do Labour to ensure that companies comply, the data collected shows that training on the legislation could help as a guideline during group and personal engagements between management and labour while also helping the organisation to remain compliant. Results suggest that the DoL could also place pamphlets in public places, advertisements on television and could have applications on different social networks so that workers can get easy access to information about their rights.
- Focus group sessions also suggest that the DoL should share the inspection checklist with stores so that they have an idea of what to expect during inspections, while hosting an annual session wherein the department shares common findings to help the industry to know what the law prescribes.

### **5.4 Results of Focus Group Session with Inspectors**

The responses to questions asked during focus group sessions with inspectors are presented according to the following themes.

### **Theme 1: The process used in securing inspection appointments.**

The focus group session confirms that the following processes are followed when setting up appointments with Sunflower stores:

- Inspectors phone the stores to set up appointments and, after the appointments are confirmed, notifications with documents required for the inspection are sent to the stores with the details provided by the stores.
- Some inspectors send their schedule with identified workplaces, dates and times of the appointments to the Employment Relations Manager to set up appointments on their behalf. Subsequently, notices of the visit with required documents are sent to ensure that employers at store level are aware of what to prepare for the inspection.

### **Theme 2: The conditions of employment in the company**

- Focus groups confirm that stores were prepared for inspections as everything was there, except for few stores who initially could not demonstrate compliance on whether they give employees payslips, provide contracts of employment to employees, pay monthly UIF contributions to the UIF and annual contribution to the Compensation Fund. However, given a chance to look for information from Head Office, administration managers were able to demonstrate compliance with the identified areas.
- The results also show that conditions are more relaxed and fairly comfortable as no employees interviewed complained. The store has an open policy in terms of leave, everybody knows everything they need to about attendance and they have a lot of gatherings.
- Focus group results confirm that the employer pays above the prescribed minimum wage.
- Lastly, the results reveal that employees are not really interested in legislation as they can describe where the BCEA is but do not necessarily read it. They

also confirm that employees do not know what the Sectoral Determination is as the hardcopy is always kept in the office.

### **Theme 3: Conditions of employment with which the company does not comply.**

- The results reveal that employee interviews confirm that absenteeism is a common problem in all stores. Employees were compelled to bring sick notes for being off sick for two days and less. However, employees could not provide proof of contravention with the sick leave provision, as such the employer could not be found to be non-compliant.

### **Theme 4: Measures that could be put into place to enable companies to comply**

- The results of the inspectors' focus group session suggest a need for information sessions to be done with the company to educate employees, including those in management, about the services rendered by DoL, including provisions of the legislation.

### **Theme 5: The company's ability to deal with labour disputes.**

- The results reflect that issues are store based, as such when there is a problem employees speak to the line supervisor, store manager and HR is involved afterwards.
- On legislation-related issues, the results suggest managers should be able to resolve issues related to the legislation by using the legislation on the wall as a guide, or can alternatively request guidance from the Department of Labour in the form of a workshop or ask for their opinion on a specific issue.

### **Theme 6: Additional support systems required.**

- The collected data reveals that inspections are done annually of private businesses. This keeps companies on their toes.
- Results also reveal that at provincial level there is engagement between the Department of Labour and the store.



## **5.5 Response of the Employee Relations Manager: Sunflower Store**

From the interview it was discovered that the manager has been with the organization since 2010 but he started working as an Employee Relations Manager in 2013. His response to the interview questions were presented according to the following sub themes:

### **Theme 1: The role of the Employment Relations Manager.**

- The responded indicated that this role is centralised at Head Office and it deals more with compliance issues and legal issues while also dealing with disputes.
- Similar functions at a lower level are executed by human resource business partners at a regional level and administrative managers at store level. This implies that when dealing with compliance issues at Sunflower, these persons that are collaborated with. Communication should focus on the best strategies to conduct advocacy, information sharing and inspections in the company.

### **Theme 2: Method used to secure appointments.**

- The Employment Relations Manager responded that it is better for notices of visit to be sent to the Head Office as most compliance and legal issues are handled at Head Office. When the notice of visit is received at Head Office it is then sent down to stores from their office. This process helps to ensure that these appointments are taken seriously and are acknowledged at store level. Administrative managers at store level are not really equipped to respond to issues such as compliance orders and queries and if they ignore these the business could be in trouble. However, the challenges faced by inspectors during the 2018 inspections, supported by the response of the administrative managers and inspectors, indicates that sending the notice of inspection to the ERM only is not enough.

- Communicating with HR business partners and administrative (admin) managers helps to ensure that the information gets to the stores and makes the inspection process quick and easier as stores can be prepared. Furthermore, this process helps to hear real issues from the store, as employees that will be interviewed will be prepared.

### **Theme 3: Factors contributing to high level of compliance in August 2018.**

- The respondent states that the company business approaches has been to make sure that they are always compliant with the legislation, not only from the process point of view but also to make sure that they are substantive compliant at all times. One of their values is to ensure that they are always doing their operations within the ambits of the law. From the ethical point of view they believe remaining compliant with provisions of the law is the right thing to do.
- He also confirms that the business receives a lot of inspection from Department of Labour in the Western Cape and in other provinces as such they use the feedback from the inspectors as a checklist to fix the problems and monitor compliance with the legislation. An example of this is when inspectors found out that their policies on absenteeism were non-compliant, due to the fact that they were not paying employees if they were sick for two days and did not bring a sick certificate. This was then rectified and proof of compliance sent to the Department of Labour.
- The company has a page in their internal intranet where all of the information required during inspection is made available for administration managers.
- They also have HR audits in their stores and a large component of these compliance checklists is on BCEA.

**Theme 4: Conditions of employment that the company does not often comply with.**

- The respondent indicates that being found non-compliant depends on what the inspector is referring to. He feels that it is unfair to be deemed as non-compliant just because the company could not demonstrate that there is payment to COIDA as they were able to furnish that within a day or two. According to him, non-compliance should refer to substantive **non-compliance**, which happens when an inspector discovers that the business has a policy that is unnecessarily punitive in comparison to the BCEA, e.g. policy on absenteeism where the inspector feels that the business is preventing staff from accessing their rights in terms of BCEA.
- The respondent concedes that he understands that from time to time there will be variances and there will not be 100% compliance with their policies; however, he finds it difficult to believe all issues raised by personnel during focus groups sessions. For instance, he argues that Sunflower store has a system that strives to address a lot of compliance issues in their staffing system. For instance, when it comes to staffing, the system will flag if employees did not have a 12 hour rest period, did not receive two consecutive off days in a week or worked more than ten days straight without an off day. The respondent argues that sometimes employees contribute to the problem by clocking in and not clocking out when they finish work. The system will continue counting if employees do not clock out at the correct time.
- In terms of structure for communication, theoretically the company has structures to exhaust such as consulting with their line managers, store managers and regional managers. If they do not like those structures they can consult external structures like HR business partners, an anonymous hotline and they can also bring their problems to the attention of the Employment Relations Manager.
- The respondent emphasises the importance of engagement between the Department of Labour and employers before inspections in order to ensure

that employers get more education and the information they need to prepare for an inspection.

- The respondent illustrates the need for collective engagement between general employees and management compliance issues. Unions and workers forum work as watchdogs in the workplace to ensure that law and company policies are adhered to. When there are complaints of irregularities to the company policies or non-compliance with the law, unions and management can work together to investigate and resolve the matter while collectively putting measures in place to ensure that this does not happen again.

#### **Theme 5: Structures put in place by the company to ensure sound labour relations in the workplace.**

- The respondent confirmed that besides all the interventions (to ensure that they are substantive compliant) that have been mentioned already, the organisation has what they call a ‘peoples strategy’ in place, which ensures that the employees are happy. This strategy is used to ensure that the organisation does not have excessive labour turnover and new labour turnover.. Measuring stores in terms of high labour turnover helps to determine if there are problems and store managers are directly managed in terms of those indicators.
- However, the results of the employee focus groups prove that with those structures in place, employees in the store are still not happy. This implies that more structured collective bargaining platforms where employees could be represented and issues get debated without fear of being victimised are still needed in the company.

#### **Theme 6: Relationship with the Department of Labour.**

- With regards to the engagements with DoL, the respondent states that engagement is limited to inspections due to the fact that line and administrative managers have multiple responsibilities they need to take care of. The business approach on this matter is that certain functions must be centralised so that if ever they need information on certain issues then they can

speak to HR business partners or the ERM, who are the persons assigned with that responsibility.

### **Theme 7: Additional support needed.**

- The respondent suggested that it would be better for DoL to share the inspection checklist with stores so that they know what inspectors are looking for.
- Firstly, the responded recommended that the DoL should have an annual session where the department share some of the common findings picked up in the sector.
- This response proves that compliance with labour policies is a multi-faceted process that needs the involvement of the DoL, unions and private businesses. As much as the internal structures seem to work to a certain extent, the response of the ERM and the results of the focus groups prove that the involvement of unions and that of DoL is essential in creating sound labour relations in this company.
- From the practical point of view the responded indicates that Sunflower is a national store, as such information such as payment of UIF and COIDA annually is the same in all stores. It would then be better that inspectors should liaise with the head office and request all the centralised information prior to the inspection so that it does not become part of the information required during inspection.

## **5.6 Chapter Summary**

This chapter presents the main research findings as generated from the focus group discussions. The findings were structured according to sub-themes derived from the focus group questionnaires. The following chapter will conduct analyses of these data generated according to the research objectives that were identified in Chapter 1.

## **Chapter 6: Research Analyses and Recommendations**

### **6.1 Introduction**

The purpose of this research is to look at factors contributing to non-compliance with the provisions of the Sectoral Determination in the wholesale and retail sector. The specific research objectives were to:

- Review relevant literature related to public policy implementation in promoting service delivery in South Africa.
- Provide an overview of the role played by government and other different stakeholders in the public policy implementation in this sector.
- Look at the South Africa legislation and policies that promote fair labour practice in the wholesale and retail sector.
- Observe the critical requirements set for the private sector to comply with the legislation and assess the level of compliance with the provisions of Sectoral Determination 9 at Sunflower store in the Western Cape.
- Make recommendations to the Department of Labour on how lessons learnt from the study could be used to improve compliance in the wholesale and retail sector.

This chapter will present analyses of key research findings, arguments and conclusions for each of the stated research objectives, before concluding with recommendations on what should be done to improve compliance in the sector.

### **6.2 Analysis of Research Findings According to Research Objectives**

The research findings that were provided preceding chapter will be analysed in this chapter under each research objective that has been outlined in chapter 1.

**Objectives 1 and 2: Review relevant literature related to public policy implementation and stakeholders in implementing the developmental state.**

From the literature reviewed it was firstly discovered that through the notion of development state, government has developed public policies, such as the BCEA and the SD 9, which are used to transform the labour market. Like all other legislations, these labour policies are enforceable and employers have to observe their provisions and comply with them.

Secondly, it was discovered through the literature that government, labour and private businesses have a critical role to play in the implementation of development state instruments, such as policies. As such, collaboration between government, labour and private businesses is essential. Alternative service delivery approaches, such as self-regulation are identified through the literature as options of delivery that could be considered even in ensuring compliance with labour legislation.

An important lesson learned from the literature is that when government plays its critical role of providing information and educating parties in the employment relations on labour issues, the knowledge gained could empower both employers and employees with tools to self-regulate, work together as partners in monitoring compliance with the legislation, speed up the process of resolving labour disputes easily, while also create an opportunity for bargaining for better wages and better conditions of employment.

**Objectives 3 and 4: Look at the South Africa legal framework that promotes sound labour practice and the critical requirements set for the private sector to comply with.**

In Chapter 3, different pieces of labour legislation and the legal provisions of the SD 9 that employers have to comply with were identified. The results of the document analysis were presented in Chapter 5 and show that the employer was found to be compliant with the provisions of SD9; however, the results of the focus group sessions detailed in the previous section were found to be contrary to the inspection results. These results are an example of many measures that could be put into place to

ensure that compliance with the legislation is not only determined by document analyses. The silence of employees could be due to the following reasons:

- Only few employees are chosen by the employer to come for inspection interviews. In the light of this the identity of the employees is known to the employer and they can be subject to victimisation if they present the employer in a bad way.
- The employees could potentially not be aware of the inspection as there is no engagement between the inspector and employees during the time of setting up the appointment. As such they are not prepared in terms of providing supporting documents for issues they raise during the inspection.

### **6.2.2.1 Analyses of results from focus group session with inspectors**

The research results from the focus group session with inspectors will also be analysed in this section to create a balanced view on the topic raised.

#### **Theme 1: The process you used in securing inspection appointments.**

Some of the inspectors phone the stores and send the notifications themselves while others send the notifications to the ERM to set up the appointments with the stores.

Inspectors that relied on the Employment Relations Manager (ERM) and never consulted with the stores realised that not all stores received the communication from the ERM as such they were not ready for inspections. Their appointments were rescheduled as employers could not produce all the required documents to prove compliance during the first visit. These results prove that, while communication with a central person is important in sensitising stores on the seriousness of the inspection process, interaction Sunflower stores at an operational level prior to the inspection is equally important as it gives an opportunity to inspectors to unpack the notice of inspections.

It has been noted in the literature studied that the SOP for Inspection and Enforcement service in the DOL prescribes three days for the notice to be given to the employer prior to the inspection. This is enough time to engage with the workplaces to afford the administrative managers an opportunity to ask questions



where necessary while also engaging with employees to inform them of the inspection that will take place and also encourage them to provide evidence to support the answers they will be giving during the inspection interviews.

This opportunity could be used to bargain with the employer to release a substantial number of employees in order to balance power relations between the inspector and employees during interviews. With this in place the inspector will have a true reflection of compliance level in the company as the results of the inspection will be based document review and hard evidence produced during interviews. Firstly the engagement between the inspector and the employer will help the inspector to focus on substantial issues which are practical rather than wasting energy pronouncing non-compliance based on non-availability of records.

**Theme 2: The conditions of employment in the company and areas of non-compliance identified.**

- Inspection results show a compliance rate of 98% to all provisions of the SD9 and results of focus groups declared that the company is compliant and conditions of employment are fairly relaxed and good. However, from the interviews conducted, inspectors believe that employees are not really interested in legislation as they could tell you where the BCEA as they do not necessarily read it. They do not know what the SD 9 is as the hardcopy is always kept in the office.

We have learned from literature that section 35 of the Sectoral Determination 9 prescribes that the employer should keep a copy of the sectoral determination in a place that is accessible to employees. The fact that the copy of the determination is not known to the employees proves that the place that the SDS9 is kept in is not accessible to employees. Secondly, this finding proves that the Department of labour still has to play a role in educating the employer of the importance of complying with this provision.

- Secondly, Sick leave was identified as the problem that is common in all stores due to absenteeism. This issues also noted in the results of the focus group sessions with employees including managers. However during inspections there was no case where the employer was found to be non-compliant with this clause as employees could not provide proof.

The results of the Sunflower focus group sessions informs us that the fact that the employer is compliant on paper does not necessarily mean that employer practically complies.

Moreover, the fact that employees did not complain during the inspection interviews did not necessarily mean they did not have complaints. It either indicates they kept quiet because they were afraid of being implicated on the inspection reports and end being victimised while on the focus group sessions they were free to talk as they know that they were many from different stores and their identity will not be disclosed. On the same token, there is also a possibility that employee allegations are unfounded as there is no proof to support their answers. For instance, employees conceded that they do not really know what the legislation prescribes; as such their allegations might be based on the perception of what they think things should unfold instead of what the policy prescribes. Only evidence could determine the validity of the claims made during focus group interviews.

These results also show that inspectors should study the environment during the inspection process and use a variety of strategies to get information rather than depending on what the employer provides. Secondly, these results prove stakeholder meetings with both employers and employees before the inspection date could help inspectors to get sufficient information needed to make a determination level of compliance in the business.

#### **Theme 4: The measures that could be put into place to enable the companies to comply.**

- The results of the Inspectors focus group session suggest a need for info sessions to be done with company to educate them about the services rendered by DoI so that they do not think when inspectors visit they come to find something wrong. This session could also benefit the employees because if someone from outside comes, employees could see that instructions related to policy are not coming from management but are a legislative issue.
- Results also suggest that advocacies could help to eliminate victimization and exploitation of employees in the company while assisting both management and employees on an operational level to use legislative provisions as a guide in resolving their disputes and negotiate for better conditions of employment.

#### **Theme 5: Company's ability to deal with labour disputes.**

- The results of focus groups show that labour disputes are store based as the results of interaction between management and employees using the provided platform produce conflicting outcomes. The platforms provided suggest the will for the employer to engage on labour matters however, the way they are utilised at different workplaces result to the conflicting outcomes. With self-regulation that promotes collaboration

between employers and employees on condition of employers, labour disputes could be easily resolved and cases of victimisation and exploitation could be easily eliminated as employees could be afforded an opportunity to raise their concerns to their representatives without being afraid of being victimised.

**Theme 6: Additional support system required.**

- The data collected reveals that inspections are done yearly to private businesses and such that keeps companies on their toes. They also reveal that at provincial level there is engagement between DoL and the Sunflower store. This response proves that inspections are mainly the only form of intervention that is used by DoL to enable companies to comply with the law. There is also evidence of engagement that is only taking place at a provincial level. This means that the DoL should devise an improvement strategy on how other departmental objectives such as providing information and education could be implemented in assisting companies to improve compliance.

**6.2.2.2 Response of the focus group discussions with Sunflower Store employees**

In the questionnaire, the following themes were identified:

- Conditions of employment in the company
- Structures to ensure sound relationship with employees
- Presence of unions or workers forums
- Company's ability to deal with labour disputes
- Role of the DoL to enable compliance with labour laws
- Additional support system required

The sections below will do analyses of the focus group findings as per the themes that have been identified above.

## **Theme 1: Conditions of employment in the company and reasons for non-compliance**

- The inspection reports indicated that the employer complies with the provisions of the SD9 and the inspectors interviewed agreed that the conditions at Sunflower store are fairly good as employees interviewed did not complain however, during the focus group sessions some of the issues were raised and those findings on conditions of employment are presented according to subtopics.

### **1.1 Keeping of the BCEA and SD 9**

- The results of the focus group confirm that the company has a summary of the BCEA on the wall as required by the law but the copy of the SD9 is kept in a file and stored in the Administrative Managers office as such employees including those in the management position do not really understand the contents of the SD9. The fact that employees do not know what the SD 9 is proves that, keeping the SD 9 on a file does not make the determination accessible to the employees and that is in contravention with clause 35 of the determination which requires that employers on whom sectoral determination is binding must keep a copy of the sectoral determination or an official summary available in the workplace in a place to which the employee has access.
- Employees do not necessarily read the BCEA, the only time that they read it is when there is a pressing need and when they do not really understand what the law says, they consult the DoL for guidance. However, the company policies which are believed to be derived from these labour policies are discussed with employees during induction. This response provided examples of where the BCEA Act enabled employees to consent with management arrangements (e.g. Lunch break arrangements) as well as examples where access to the BCEA Act enabled employees to successfully challenge and change management decisions (e.g. the issue of paid sick leave). It can therefore be concluded that easy access to the acts and determinations facilitate quicker responses to possible employee-employer disputes.

## **1.2 Rest periods**

- As much as the inspection reports shows that Sunflower complies with the daily and weekly rest periods, the results of the focus group results shows that the company does not comply with the daily and weekly rest periods due to absenteeism and shortage of staff. Clause 17(1)(a) of the SD9 prescribes that an employer must give an employee a daily rest period of twelve consecutive hours between the ending time and starting time the next day. With regards to **weekly rest period** and payment of Sunday, employer is expected to grant employees two full days off during every week and one Sunday off during every four consecutive weeks. These results provide us with an example of lack of collaboration between management and employees. In a situation where there was collective bargaining between these two parties, both parties could have identified the problem and the times where this problem persist and apply to the Department of labour for exemption with regards to adherence to daily and weekly rest period.

## **1.3 Payment of overtime**

- Focus group sessions revealed that payment of overtime is same as the rate per hour therefore the employer is not compliant with the law which state the employer must pay an employee that has worked overtime at a rate of 1.5 for every hour of overtime worked. The data also reveal that there are instances where employees were not paid overtime or given time off at all unless they complain and take up the issue with senior management for further investigation. This is a result of lack of communication and lack of understanding the law within the company. Collaboration between management and labour could have helped to identify these problems earlier and put structures in place to rectify and ensure that similar occurrences do not happen again.

## **1.4 Annual Leave and Family Responsibility Leave**

- With regards to Annual Leave, the focus group data revealed that line managers are making it difficult for employees when they have to take annual leave they applied for. Admin managers and the ERM acknowledge this and explained that these cases happen when line managers do not submit the leave application on time thus resulting to employees getting unpaid leave until the matter is addressed with Human Resources.

- With regards to Family responsibility leave, focus group sessions revealed that employees experience problems when they inform management that they are taking Family Responsibility Leave (FRL) to an extent that they end up taking unpaid leave or make alternative arrangements than taking FRL.
- These responses are an indication of lack of communication within the organisation hierarchy or a situation where there are certain elements within the organisation that abuse power to serve their vested interest. If the company had proper control systems in place, and employees had proper representation in a form of unions, issues of this nature could have been avoided. For instance, HR could have issued out a leave rooster, requesting engagement between line managers and their staff on when their staff will take leave during the year and demand that a leave application form be submitted with the leave rooster. HR in partnership with unions could have managed to monitor leave management and demand answers from line managers when employees are refused time to go on annual leave. On the issue of FRL, employees have a right according to section 78 of the BCEA to make a complaint to a trade union representative, a trade union official concerning any refusal by an employer to comply with the provisions of the BCEA or the SD9.

### **1.5 Sick Leave**

- With regards to sick leave the data collected revealed that employees are compelled to bring a sick note if they went off sick for two days and less. If they do not bring the certificate they would be given unpaid leave. Management responded by saying employees do not know that sick leave is accumulated. They think that as soon as they get employed, they qualify for full 12 days per year as such get unpaid leave when they use days that they do not have. Firstly, Managers argue that they resort to unpaid leave due to the fact that employees are misusing the sick leave clause.

- According to clause 22 of the Sd9, during the period of 36 months employment with the same employer, an employee is entitled 36 days which is the amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks, alternatively one day's sick leave for every 26 days worked during the first six months of work.
- This issue shows that employees do not absorb some of the issues discussed during induction as such have different interpretation of what the law says with regards to sick leave. If the communication structures that are in place at Sunflower were efficient, issues of this nature could have been debated in that platform and got resolved. A proper platform in a form of workers forum or bilateral between management and organised labour where conditions of employment are discussed and resolved could help this situation.

#### **1.6 Keeping of records:**

- Results of focus groups also show that the company is often found non-compliant when it comes to the keeping of records like payslips, UIF monthly contributions and annual contribution to the Compensation Fund in the workplace. The results show that although the DoL provided Sunflower Stores with the notice of visit to the stores, there were not enough advocacies on the notice of visit. If the DoL could have organised a stakeholder meeting where the notice of inspection would have been explained thoroughly to administrative managers, HR Business partners and the ERM, there would have been an interaction between ERM and Administrative managers on where to find certain information like contracts and payslips while inspectors would have walked out of that meeting knowing which information is stored at Head Office. Information pertaining to payment of monthly UIF contributions to the UIF and annual contribution to the Compensation fund would not have formed part of the inspections as inspectors would have requested it before the actual dates of inspections and keep it in the files.

#### **Theme 2: Communication structures put in place to monitor to encourage engagement between the employer and employees**

From the Focus group data, the following internal communication channels were identified platforms used for engagement between employees and management.

- **Inductions:** This is the platform where new employees are orientated about company policies and procedures. Conditions of employment are discussed with employees at this platform and they also receive a booklet with all the relevant information they need.
- **Round table:** This is a platform where the Regional manager engages with employees on HR related matters when there are lot of issues that were unresolved at a line manager's level as such gets escalated to a higher level.
- **Let's talk Meetings-**This platform discusses everything in the store, ranging from general well being of the employees to statistical figures and the budget.. The session is about what should be done during the day and is held just before the store opens.
- **The Game Planner-**This is a session that reviews what went wrong in the store. Even though the session lasts for 5 minutes it affords employees an opportunity to raise issues that are bothering them.
- **One on one:** This is the meeting between the line manager and individual employees when there are burning issues such as absenteeism or where employees express their concerns to management.
- **Communications Forum:** This is a bigger forum where representatives of management and employees sit to discuss burning issues that hamper growth in the company.
- **Peoples Thursday-**In this platform line managers engage employees with regards to their well being and conditions of employment. For instance Cashiers used to stand, after employees raised this issue in this meeting it was discussed and a resolution was taken to provide them with chairs and carpets when it is cold.

These platforms shows that the employer has a commitment to engage with employees on work related issues including conditions of employment and has sufficient platforms to to do that, however, the results of the focus groups sessions show that these platforms are not utilised optimally. With both management and employees will to engage in good faith, these platforms could facilitate quicker responses to employer-employee disputes.



### **Theme 3: Presence of unions, worker's forum and Company's ability to deal with labour disputes**

- The focus group sessions revealed that there are no recognised unions in this work place; however, the the communication structures that have been discussed above including the Communication Committees are used as forums where issues that could not be discussed and resolved in other platforms get the due considerations they deserve. There are only few occasions where assistance of the DoL was needed. For instance, the case at a store in Paarl where employees were given a Christmas day as a day off while the store was in fact closed is an example of cases that were resolved with the intervention of the DoL. It was also noted from the results there are Sunflower store where employees want to join unions because they believe that the internal structures that are available are not capable of resolving their issues as they get victimised when they raise issues with management.

### **Theme 4: Role of the Department of labour to enable compliance with labour laws**

- The focus group confirms that Sunflower stores get into contact with the DoL only when inspectors are in the store for inspections. In as much as the results of the individual interview with the ERM shows that these inspections at Sunflower store in the Western Cape played a significant role in promoting high compliance rate during the August 2018 inspections, it shows the limited role that DoL plays in enabling companies to comply with the provisions of the law.
- The focus group sessions also confirmed that on rare occasions where employees visit the DoL for access for UIF and other matters, they wait longer to get assistance due to long queues and when they lodge a complaint with DoL, inspectors are taking too long to resolve their issues and there is also no communication with them on what is happening with their cases.
- Employees during the focus group indicated that they are safe at Sunflower as such do not see the reason to consult the third party while they can be assisted within the organisation. They argue that Sunflower store is an organisation that is governed by channels as such whenever they wish to do anything they have to follow channels, to avoid things getting messy and chaotic. According to them, they receive everything

from HR Business partner including legislations administered by (DoL) and updates as such if they are not sure of something; they immediately contact their HR Business partner.

**Theme 5: Additional Support systems required.**

- With regards to the support system needed from DoL to ensure that companies comply, data collected shows that training on the legislation could help as a guideline during group and personal engagements between management and labour while also helping the company to remain compliant all the time. Results also suggest DoL could also place pamphlets in public places, place adverts on Television and also have applications on different social networks so that workers can get easy access to information about their rights.
- Focus group sessions also suggested that DoL should share the inspection checklist with stores so that store could have an idea of what to expect during inspections while hosting of an annual session where the department shares some of the common findings picked up in the sector could help the industry to know what the law prescribes.

**6.2.2.3 Response of the Employees Relation Manager: Sunflower Company**

The manager has been with the organization since 2010 but he has worked as an Employee Relations Manager since 2013. The amount of experience indicates that the ERM understands the dynamics in the organisation and is a suitable person to respond to the research questions hence he has been dealing with compliance which is the focus area in this study.

**Theme 1: Role of the Employment Relations Manager in the organization**

- The responded indicated that his role is located at Head Office as he is dealing with all compliance and legal issues in the company including disputes. Similar functions at a lower level are executed by HR Business partners at a regional level and Administrative managers at store level. What this implies is that when dealing with compliance issues at Sunflower store, these are the persons to collaborate with. Communication should be on the best strategies to conduct advocacy, information sharing and inspections in the company.

**Theme 2: Method used to secure inspection appointments.**

- With regards to securing of inspections, the ERM responded that it is better for notices of visit to come to him because the manager at the store might not understand the importance of the inspection and the binding effect on enforcement. Administrative Managers at store level are not really equipped enough to respond to issues of compliance as such they have to escalate enforcement notices issued by inspectors to the ERM. However, the challenges faced by the inspectors during the 2018 inspections pointed out that sending the notice of inspection to the ERM only is not enough.
- Communicate with HR business partners and administrative managers helps to ensure that the information gets to the stores, as such makes the inspection process quick and easier as stores would be prepared. Further more, this process helps to get real issues from the store as employees that would be interviewed will also be prepared and will be able to present the inspector with valid issues as they would have time to gather the information before the inspection.

**Theme 3: Factors contributing for high level of compliance during the August 2018 inspections.**

- The ERM responded that their company business approach has always been that of making sure that they are always compliant with the legislation, not only from the process point of view but also to make sure that they are substantive compliant at all times. Being non-compliant with the law has a negative impact in terms of their relationship with each other and also has a reputation element.
- To ensure that they remain compliant all the time the ERM responded that the company use the feedback from the DoL as a guideline. To substantiate, he cited a case when they were found to be non compliant for not stating the rate of pay on the payslip. Secondly, their policies on absenteeism were found to be non-compliant due to the fact that they were not paying employees if they

did not produce a sick note for being sick for two days and less. According to the ERM they rectified those issues and provided proof of compliance to DoL. The information from inspections was kept and was used to set up a page on the company internal intranet so that managers could easily retrieve it and use during their HR Audits(which included a large component of compliance with BCEA and SD9) and also in preparing for inspections.

This response is an example of how the DoL 1 intervention helps the private businesses to remain compliant with the provisions of the BCEA and SD9. Having this kind of interaction on all other aspects such as information sharing and advocacy could help the company to improve compliance, help to improve the relations between employees and management and also set as an example for other retail stores in the province and country wide.

**Theme 4: Conditions of employment that the company does not often comply with.**

- On this point, the responded argued that being found non-compliant depends on what the inspector is referring to. According to him, compliance should be divided into either procedural or substantive non-compliant. For instance, if the company is found non-compliant because they could not demonstrate that there is payment to COIDA and they are able to furnish that within a day or two, the inspector might argue that the company is procedural non-compliant. Substantive refers to when the business has a policy that is unnecessarily punitive in comparison to the BCEA, e.g. policy on Absenteeism where the inspector feels that the business is preventing staffs from accessing their rights in terms of BCEA. In this situation, it does not matter whether the company provides the inspector with different information in a day or two, that policy depicts what the company does.
- In addition the responded pointed out that Sunflower store is a large organisation with 40 thousand employees globally and 28 thousand in South Africa. In order to ensure compliance in such a huge organisation, Sunflower store developed a system that strives to address a lot of compliance issues in their staffing system. On this system most of the compliance issues are centralised and it monitors and flags when certain compliance provisions are

contravened. For instance when it comes to staffing, the system will flag if employees did not have a 12hr rest period or did not receive two consecutive off days in a week or employees worked more than 10 days straight without an off day.

- This response emphasises the importance of engagement between the Department of labour and employers before the inspection in order to ensure that employers get more education and information they need to prepare for an inspection.
- The response also shows the need for collective engagement between general employees and management compliance issues. Unions and workers forum work as watch dogs in the workplace to ensure that law and company policies are adhered to. When there are complaints of irregularities to the company policies or non compliance with the law, unions and management could work together to investigate and resolve the matter while collectively put measures in place to ensure that it does not happen again.

**Theme 5: Structures put in place by the company to ensure sound labour relations in the workplace.**

- To ensure that employees are happy, the responded mentioned that over and above other structures that have been mentioned in the focus group, Sunflower store has a “people’s strategy”, which is used to determine if there are no excessive employee turnover in stores. Measuring stores in terms of high labour turnover helps to determine if there are problems at the stores as such store managers are aware that they are directly managed in terms of this indicator.
- Be that as it may, the results of the employee focus groups prove that with those structures in place, employees in the store are still not happy. This implies that more structured collective bargaining platforms where employees could be represented and issues get debated without fear of being victimised are still needed in the company.

## **Theme 6: Relationship with Department of labour and the additional support needed.**

- The responded argued that responsibility towards compliance with labour policies is centralised at Head Office and administrative managers responsibility on this is only limited to inspections due to other responsibilities. The business approach is that if there is a need for information on labour related issues HR business partners or HR employees can be approached for assistance.
- The manager believes that it would be better for DoL to share the inspection checklist with stores so that they know what inspectors are looking for. Additionally, it was also recommended that the DoL should have an annual session where the department share some of the common findings picked up in the sector.
- This response proves that compliance with labour policies is a multi-faceted process that needs involvement of DoL, unions and private businesses. As much as the internal structures seem to work to a certain extent, the response of the ERM and the results of the focus groups prove that the involvement of unions and that of DoL is essential in creating sound labour relations in this company.

### **6.3 Recommendations**

Based on the analyses of the focus group results and individual interviews, recommendations will be presented under the following themes:

- Securing of appointments;
- Conditions of employment in the company;
- Reason for the high level of compliance during August 2018 inspections and the role of the Department of Labour in enabling compliance with labour laws;

- Communication structures and the company's ability to deal with labour disputes; and
- Additional support systems required.

### **Theme 1: Securing of appointments.**

The results of the focus groups and the response of the ERM proved that securing appointments through the Office of the Employment Relations Manager helps to speed up the process and to ensure that those appointments are prioritised. However, the communication challenges that inspectors encounter during inspection shows that it is equally essential for inspectors to engage with management at a lower level in order to ensure that the visit is explained and employers are prepared. To ensuring preparedness of the store, the following processes are recommended:

- Secure an appointment with managers at store level to visit and explain the notice and to also engage with employees about the inspection process.
- In the event of group inspections at national stores, stakeholder meetings are recommended in order to explain the whole inspection process to both employers and employees. This process will provide space for personal encounters between the employer and the inspector.
- In both sessions the inspector must bargain with the employer for more employees during the inspection interviews in order to balance the power relations and make employees feel free to talk.
- Employees must be given space to volunteer themselves for participation in the inspection process and should be briefed on the types of questions they will be asked during the interviews so that they can prepare sufficient evidence to back up their responses during the process.

### **Theme 2: Conditions of employment in the company and reasons for non-compliance**

#### **2.1 Keeping of the BCEA and SD 9**

A conclusion has been made from the results of the focus group that employees do not have access to the SD 9 due to the fact that it is kept in a file in the office. As such the employer contravenes Clause 35 of the SD 9, which requires that employers on whom SD 9 is binding must keep a copy of the SD 9 or an official summary available in the workplace in a place to which the employee has access. Furthermore, the researcher concluded that the fact that employees only read the BCEA when there is a pressing need, is proof that easy access to the acts and determinations facilitate quicker responses to possible employee-employer disputes.

In light of this it is recommended that the DoL makes the employer aware that, although the copy of the SD9 is available in the workplace and the employer can argue that it is accessible to employees, the fact that employees indicate that they do not have knowledge of the SD9 means that its availability is merely a compliance issue and does not serve the purpose for which it was meant. The DoL should play a role in making the employer understand the spirit of the legislation on this matter and therefore encourage the employer to place the copy of the SD9 together with other pieces of legislation so that employees can have access to it.

## **2.2 Rest periods, payment of overtime, annual leave and family responsibility leave and sick leave**

The responses regarding non-compliance with these conditions of employment provide an example of a lack of collaboration between management and employees. If the communication structures that are in place at Sunflower were efficient, issues of this nature could be debated on those platforms and get resolved. This requires a proper platform in the form of a workers forum or bilaterally between management and organised labour where conditions of employment could be discussed and get resolved. It is recommended that the employer create a favourable environment where unions can recruit members for their organisation up to a level where they get recognition or the formation of workers' forums. This would give employees a voice in the company, as employees would be represented with fear of being victimised. Continuing in a situation where employees are unhappy could end up in a violent strike that could result in damage to property, loss of profit, job losses and crippled economic growth.



### **2.3 Keeping of records**

Issues of non-compliance in this clause are mainly procedural and they could be avoided if stakeholder meetings were organised by the DoL provincial office before inspections are done. This meeting could afford an opportunity whereby the notice of inspection would be explained thoroughly to administrative managers, HR business partners and the ERM. In light of this it is recommended that the SOP of DoL pronounce as a requirement that before inspection projects are implemented, a stakeholder meeting be organised with national companies where inspectors will be encouraged to explain the inspection process, including the content of the notice of inspection so that employers can have a better understanding of what to expect.

Lastly, it is recommended that inspectors should request centralised information, such as the payment of monthly UIF contributions to the Unemployment Insurance Fund and annual contribution to the Compensation Fund at Head Office to avoid making it a requirement on the day of the inspection

### **Theme 3: Reason for high level of compliance during the August 2018 inspections and the role of the DoL to enable compliance with labour laws**

The 98% compliance rate during the August 2018 inspections and the response of the ERM on this point is an example of how the DoL intervention helps private businesses to remain compliant with the provisions of the BCEA and SD9. Having this kind of interaction in all other aspects, such as information sharing and advocacy could help the company to improve compliance, improve the relationship between employees and management and also set an example for other retail stores in the province and country wide.

In the light of this it is recommended that the DoL conducts a proper evaluation of what has, and has not worked in their intervention measures . Building from success stories that have been highlighted in the ERM response, the DoL should consider the recommendations made in the focus group sessions and the responses of the ERM in order to come up with an improvement strategy on how to enable companies to comply.

**Theme 4: Communication structures and the company's ability to deal with labour disputes**

From the focus group sessions, it has been proven that engagement platforms that have been put in place are manipulated, as such employees are happy. It was noted that even though some stores are capable of dealing satisfactorily with labour disputes within the company there are employees within the company that want to join unions because they believe that the internal structures that are available are not capable of resolving their issues as they get victimised when they raise issues with management. It is therefore recommended that for self-regulation to take place in this company, the establishment of workers' forums and unions should occur in order to create a platform for collective bargaining at store level. It is understood that this is merely a recommendation and cannot be enforced to the employer; however, if Sunflower store is committed to promoting sound labour practice in the workplace, it should consider doing this.

**Theme 5: Additional support systems required from the DoL**

With regards to the support system needed from the DoL to ensure sound labour relations in the company, data collected shows that training on legislation could help as a guideline during group and personal engagements between management and labour while also helping the company to remain compliant at all times. Results also suggest that the DoL could place pamphlets in public places, adverts on television and also have applications on different social networks so that workers can gain easy access to information about their rights.

Focus group sessions also suggest that the DoL should share the inspection checklist with stores so that they can have an idea of what to expect during inspections, while hosting an annual session where the department shares common findings can help the industry to know what the law prescribes.

In light of the recommendations made here, it is important that top management at the Inspections and Enforcement Unit in the Western Cape and at Head Office of DoL

should look at using e-government to bring services to the people. As recommended in the focus group sessions, IES should disseminate information about its services through platforms such as social media where they can advertise in that space and also create Facebook pages, maybe entitled ‘Department of Labour: advice unlimited’ where employees can be offered advice to their problems by inspectors without them necessarily having to wait longer at DoL offices. Print and electronic media can also be used to advertise IES services and inform employees of blitz inspections, projects and outreach programmes that will be taking place in different areas.

#### **6.4 Limitations of the Study**

Research was conducted to determine the level of compliance with the provisions of the SD9 at Sunflower store in the Western Cape. No extension was given to other sectors of the economy. The reason for this limitation is that there were not enough resources to conduct a similar study to other problematic sectors or to extend the study to other provinces. Due to these limitations further research is required for a similar study in other sectors, such as agriculture and hospitality or the same sector in other provinces.

Lastly, the initial focus group interviews that were organised for the stores in the Western Cape could not take place on the set date due to operational requirements from the stores. As such, a company representative organised telephonic conference focus group interviews to make up for the missed session. However, there was no variance in terms of the quality of information that was gathered from the telephone conference interviews.

#### **6.5 Potential Value of the Research**

This particular study has managed to identify a gap in the inspection process and offer opportunities for improvement in the IES Standard Operational Plan. For instance, the focus group sessions helped to identify areas of non-compliance at Sunflower store, something that could not be found during labour inspections. Based on this, recommendations in the form of guidelines have been made as to what inspectors

could do prior to inspections to ensure that both employer and employees are ready for an inspection and that sufficient information is presented by both parties during the inspection to enable the inspector to make an informed decision with regards to the level of compliance in the workplace.

With regards to cases where employees manage to use the BCEA legislation to challenge management on its provisions and manage to resolve issues, the study has shown that companies have a potential to self-regulate, as long as a conducive environment is created for collective engagement to take place.

## **6.6 Chapter Summary**

This chapter conducted the analyses of the research findings according to the research objectives identified in Chapter 1. Part of the analyses was to match the data gathered to the recommendations of the literature studied and to the provisions of the law. The analyses were presented in subthemes, looking at the findings of focus groups of both employees and inspectors, while also paying special attention to the responses of the ERM.

This chapter rounded off the study by making recommendations to of how to improve the role of the DoL in promoting fair labour practice in the workplace. Similarly, recommendations were made on how to strengthen the Department of Labour inspection and enforcement processes by enabling companies to comply and self-regulate. In addition, the chapter tabulated a brief overview of the limitations and potential value of this research to all stakeholders involved in the implementation of public policy to ensure an ideal development state is realised.

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## Annexure 1: Provincial Blitz Inspections

WHOLESALE AND RETAIL SECTOR							
Labour Centre: WC Provincial Office		Period	05/06/2017		09/06/2017		
DAY	Number of workplaces targeted	COMPLIED			FOLLOW-UP		COMMENTS
		YES	NO	N/A	YES	NO	
Day One	42	23	19	0	19	23	
Day Two	49	33	16	0	16	33	
Day Three	30	20	10	0	10	20	
Day Four	35	25	10	0	10	25	
Day Five	15	7	8	0	8	7	
<b>Total</b>	<b>171</b>	<b>108</b>	<b>63</b>	<b>0</b>	<b>63</b>	<b>108</b>	

(A) FOLLOW-UPS TO BE PLANNED	63
(B) LEVEL OF COMPLIANCE	63%
(C) TOTAL COMPANIES WHO COMPLIED	108

**Source:** DoL (2017).

## Annexure 2: Individual Inspections – Sunflower Store

Labour Centre : PO		Period		01/08/2016	30/08/2017		
Inspections Conducted		COMPLIED			FOLLOW-UP		COMMENTS
		YES	NO	N/A	YES	NO	
2016-2017	14	0	14	0	14	0	
Total	14	0	14	0	14	0	

(A) FOLLOW-UPS TO BE PLANNED	14
(B) LEVEL OF COMPLIANCE	0%
(C) TOTAL COMPANIES WHO COMPLIED	0



### **Annexure 3: Contraventions found at Sunflower Store in the 2016-2017 period**

<b>Clause</b>	<b>Description</b>	<b>Issues Identified</b>
7	Deductions	No written consent for unlawful deductions made on the employee payslip.
8	Written particulars of employment	Employer to amend paragraph on deductions by stating which statutory deductions will be made on the employee's salary.
13	Payment of overtime	To pay employees an overtime rate of 1.5 for each hour worked.
17	Rest period	Employer to refrain from counting public holidays as part of the weekly rest period while the store is closed on a public holiday.
22	Sick leave	Employer to refrain from compelling employees to bring a sick note for being off sick for two days and less.

## Annexure 4: Sunflower blitz inspections

WHOLESALE AND RETAIL SECTOR							
Labour Centre: WC Provincial Office		Period	06/08/2018		09/08/2018		
DAY	Number of workplaces targeted	COMPLIED			FOLLOW-UP		COMMENTS
		YES	NO	N/A	YES	NO	
Day One	51	50	1	0	1	50	
Total	51	50	1	0	1	50	

<b>(A) FOLLOW-UPS TO BE PLANNED</b>	1
<b>(B) LEVEL OF COMPLIANCE</b>	98%
<b>(C) TOTAL COMPANIES WHO COMPLIED</b>	50

## Annexure 5: Data-Collection Schedule

Activity	Place	Time
5th September 2018		
Interview with Paarl Labour Centre inspectors.	Paarl LC	07:30 -08:30
Sunflower: Interviews with employees.	Paarl Mall	09:00-10:00
Interviews with admin managers	Paarl CBD	11:00-13:00
Writing of transcripts	Wellington Fransschoek	14:00-16:00
11th September 2018		
Sunflower: Interviews with employees.	Sunflower: Oudtshoorn	09:00-10:00
Interview with Southern Cape Inspectors	George Oudtshoorn	11:00-12:00
17-18 September 2018		
Interview with SSW LC inspectors.	SSW LC	08:00 -09:00
18 September 2018		
Sunflower: Interviews with employees.	Sunflower stores: SSW	10:00-11:00
Interviews with Admin Managers		12:30-13:00
Writing of transcripts		14:00-16:00
19 September 2018		
Interview with Bellville LC inspectors.	Bellville LC	08:00 -09:00
19 September 2018		
Sunflower: Interviews with employees.	Sunflower stores: Bellville	10:00-11:00
Interviews with Admin Managers	Cape Town	12:30-13:00
Writing of transcripts		14:00-16:00
20 September 2018		

Interview with CT LC inspectors.	CT LC	08:00 -09:00
24 September 2018		
Sunflower: Interviews with employees.	Cape Town(Sunflower Head Office)	14:00-15:00
Interviews with Admin Managers	Telephone Conference with the following stores: Knysna George Mosselbaai	15:00-16:00
25 September 2018		
Interview with Employee Relations Manager (Sunflower).	Cape Town (Sunflower Head Office)	10:00-11:00

## **Annexure 5(a) Consent Form to Participate in Research (English)**

Dear Participant

My name is Cebo Kutuka a student at the University of Stellenbosch, located in Belpark Campus in Bellville and I would like to invite you to take part in a survey, the results of which will contribute to a research project in order to complete my Masters in Public Administration.

Please take some time to read the information presented here, which will explain the details of this project.

Your participation is entirely voluntary and you are free to decline to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part.

The purpose of this interview is to get your view regarding the factors that influence your company not to comply with the basic conditions of employment as prescribed in the Sectoral Determination 9 and to look for possible intervention measures that the Department of Labour could put in place in helping employees and employers to understand the provisions of this Sectoral Determination.

Individual and group interview will take approximately 45 minutes each to complete and will contain a combination of questions covering reasons that result into non-compliance with the conditions of employment in this company and to gather from you if the Department of Labour is doing enough in helping you to understand your rights and the company to comply with the provisions of the Sectoral Determination 9.

---

**RIGHTS OF RESEARCH PARTICIPANTS:**

You have the right to decline answering any questions and you can exit the survey at any time without giving a reason. You are not waiving any legal claims, rights or remedies because of your participation in this research study. If you have questions regarding your rights as a research participant, contact Mrs Maléne Fouché [mfouche@sun.ac.za; 021 808 4622] at the Division for Research Development.

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Your information and response to the survey will be protected by assigning a respondent number to each participant. All information will be stored and presented in the findings using the respondent number.

The identity of respondents will not be disclosed to protect participant's rights to privacy. Interview transcripts will be stored on a flash drive in a locked cabinet at the researcher's house. Once the thesis has passed evaluation, all information that may disclose personal identities will be destroyed.

If you have any questions or concerns about the research, please feel free to contact the researcher, Cebo Kutuka on 021 441 8000 or send an email to [cebo.kutuka@hotmail.com](mailto:cebo.kutuka@hotmail.com), alternatively you can contact the Supervisor Dr Babetie Rabie on 021 918 4186 or email her at [brabie@sun.ac.za](mailto:brabie@sun.ac.za)

Save the copy of this form on a flash disk.

I confirm that I have read and understood the information provided for the current study.	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>
I agree to take part in this survey.	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>

## Annexure 5(b) Consent Form: Afrikaans

Konsensus Vorm deelname in Navorsing

Geagte Deelnemer

My naam is Cebo Kutuka 'n student aan die Universiteit van Stellenbosch se Belpark kampus. Ek nooi u hiermee uit om deel te neem aan n opname wat deel uitmaak van n navorsingsprojek vir my Meestersgraad in Publieke Administrasie.

Neem asseblief die tyd om die inligting wat hier verskaf word te bestudeer ter verduidekining van die navorsingsprojek. U deelname is vrywillig en u mag teen enige tyd weier of u deelname onttrek. Die besluit om nie deel te neem nie sal u geensins negatief beïnvloed nie. U is welkom om enige tyd te onttrek van die navorsing, al het u reeds ingestem om deel te neem.

Die doel van die onderhoud is om n idee te kry van die faktore wat n bydrae maak dat tot die nie-nakoming van die die Wet op Basiese Diensvoorwaardes soos bepaal in Sektorale vasstelling 9 binne u maatskappy. Die doel is ook verder om te kyk na moontlike voorsorgmaatreëls wat die Departement Arbeid kan tref om werknemers en werkgewers te help om die Sektorale Vasstelling beter te verstaan.

Individuele en groep onderhoude sal ongeveer 45 minute duur om te voltooi. Die onderhoude sal n kombinasie van vrae bevat wat kyk na die redes wat lei tot nie-nakoming ten opsigte van die Wet op Basiese Diensvoorwaardes in die maatskappy. Die doel is ook om verder te kyk of die Departement van Arbeid genoeg doen om u te help om u regte te verstaan sowel as om die maatskappy te laat voldoen aan die voorwaardes van Sektorale Vasstelling 9.

**REGTE VAN NAVORSING DEELNEMERS:**

U het die reg om vrae aftewys wat aan u gestel word en kan ter enige tyd die studie verlaat sonder verduideliking. U sien geensins af aan enige wetlik eise, regte of vind

baat by u deelname in navorsing.

As u enige vrae het met betrekking tot u regte as 'n navorsing deelnemer, kontak Me. Malène Fouché

[mfouche@sun.zc.za; 021 808 4622} Divisie vir Navorsing Ontwikkeling.

Once the thesis has passes evaluation, all information that may disclose personal identities will be destroyed.

U inligting soos verskaf sal beskerm word deur n respondent nommer aan elkeen toe te ken. Alle inligting sal gestoor en voorgelê word deur die respondent nommer te gebruik. Die respondent se identiteit sal ten alle tye beskerm word om die respondent se privaatheid te verseker. Onderhoudstranskripsies sal op n geheuestokkie in n geslote kabinet in

die navorser se huis gestoor word. Na voltooiing van proefskrif evaluasie sal alle inligting wat persoonlike identifikasie blootstel vernietig word.

As u enige navrae het wat die navorsing betref, voel vry om die navorser, Cebo Kutuka te kontak 021 441 8000 of epos na cebo.kutuka@hotmail.com, alternatief kan u ook die toesighouer Dr Babetie Rabie skakel 021 918 4186 of epos brabie@sun.ac.za

Bewaar 'n kopie van vorm op geheue stokkie.

Ek bevestig hiermee dat ek inligting wat verskaf is verstaan en gelees het.	YES	NO
	<input type="checkbox"/>	<input type="checkbox"/>
Ek stem hiermee in om deel te neem aan die opname.	JA	NEE
	<input type="checkbox"/>	<input type="checkbox"/>





## Annexure 5(c) Consent Form: isiXhosa

IPHETSHANA ELINEENKCUKACHA LALOWO UTHATHA INXAXHEBA  
NEFOMU YESIVUMELWANO

Isixhosa

	IYUNIVESITHI ISTELENBOSCH
--	---------------------------

1. IPHETSHANA ELINEENKCUKACHA LALOWO UTHATHA  
INXAXHEBA NEFOMU YESIVUMELWANO

**ISIHLOKO SEPROJEKTHI YOPHANDO:** Uphando ngamabakala angunobangela wokuba iinkampani ezizimeleyo zabucala zingathobeli imigaqo yasemthethweni yhezabasebenzi emisiweyo kwicandelo lonovenkile abangomathenga ethengisa kwigrosari nakwimpahla ethengiswayo: Uphando lwenziwa kwivenkile ebizwa ngokuba nguSunflower ekho kuzo zonke izithili kweli leNtshona Koloni.

AMAGAMA OM (ABA)PHANDI: Cebo Kutuka

IDILESI: V2710 Sand Street, Mbekweni.7626

INOMBOLO YOQHAGAMSHELWANO: 021 4418083

**Yintoni UPHANDO?**

Uphando yinto esiyenzayo ukufumanisa **ULWAZI OLUTSHA** ngendlela izinto (nabantu) ezisebenza ngayo. Sisebenzisa iiprojekthi okanye izifundo zophando ukusanceda sikwazi ukufumanisa ezinye izinto ngabantwana nabantwana abafikisayo

nezinto ezichaphazela ubomi babo, izikolo zabo, iintsapho zabo nempilo yabo. Senza oku ukuzama nokwenza ilizwe ibe yindawo engcono!

### **Imalunga nantoni na le projekthi yophando?**

Uphando ngamabakala angunobangela wokuba iinkampani ezizimeleyo zabucala zingathobeli imigaqo yasemthethweni yhezabasebenzi emisiweyo kwicandelo lonovenkile abangomathenga ethengisa kwigrosari nakwimpahla ethengiswayo: Uphando lwenziwa kwivenkile ebizwa ngokuba nguSunflower ekho kuzo zonke izithili kweli leNtshona Koloni.

### **Kutheni ndimenyiwe ukuba ndithathe inxaxheba kule projekthi yophando?**

**Umenywe kule projekthi kuba kunenkolelo yokuba amava akho kulomsebenzi nolwazi lwakho lunganegalelo kwaye luncede ukuzalisekisa injongo zophando.**

Ngubani owenza uphando?

Igama lam ndinguCebo Kutuka ndifunda kwiziko lemfundo enomsila elaziwa njengeYunivesithi yaseStellenbosch.

Kuza kwenzeka ntoni kum kwesi sifundo?

Into elindelekileyo kuwe koluphando kukuba uthathe inxaxheba kudliwano ndlebe oluyakuthi lwenziwe nawe.Koludliwano ndlebe uyakuthi uphendule imibuzo oyibuzwa ngumpandi kwayo unike ingcaciso yhempendulo zakho apho umphandi angacacelwanga khona.

Kubalulekile ke ukwazi ukuba igama lam alisayi kuvezwa nanjengomntu othathe inxaxheba koluphando.Kukwabalulekile kananjalo ukuba uyazi ukuba uvumelekile

ukuba ungazikhwebula koluphando ngaphandle kokunika isizathu nangaphandle kokoyika ukuba ungaxhatshazwa okanye wehlelwe kokubi.

Ikhona into embi enokwenzeka kum?

.

Kukwabalulekile kanaanjalo ukuba uyazi ukuba uvumelekile ukuba ungazikhwebula koluphando ngaphandle kokunika isizathu nangaphandle kokoyika ukuba ungaxhatshazwa okanye wehlelwe kokubi.

Ikhona into entle enokwenzeka kum?

Eyona nto intle yheyokuba ulwazi lwakho luya kudlala igalelo ekuphuculeni nasekuziseni impendulo nesisombululo kulongxaki izanywa ukusonjululwa luphando.

Ukhona na umntu oza kundazi ukuba ndikwesi sifundo?

Kubalulekile ke ukwazi ukuba igama lam alisayi kuvezwa njengomntu othathe inxaxheba koluphando.

Ngubani endinokuthetha naye ngesi sifundo?

Ukuba ufuna ulwazi oluthe gabalala nenkcukhaca ezithe vetshe ingaqhagamshelana nomphandi kwinombolo ethi 021 441 8000 okanye kuledilesi yhe email ethi [cebo.kutuka@hotmail.com](mailto:cebo.kutuka@hotmail.com) okanye umcebisi wakhe kwezophando uGqirha Babetie Rabie kwinombolo engu 021 918 4186 okanye kwidilesi yhe email ethi [brabie@sun.ac.za](mailto:brabie@sun.ac.za)

Kuza kwenzeka ntoni ukuba andifuni kukwenza oku?

Ungazikhwebula koluphando ngaphandle kokunika isizathu nangaphandle kokoyika ukuba ungaxhatshazwa okanye wehlelwe kokubi.

Uyasiqonda na esi sifundo sophando kwaye unomdla na wokuthatha inxaxheba kuso?

 EWE HAYI

Ingaba umphandi uyiphendule yonke imibuzo yakho?

 EWE HAYI

Uyayiqonda na into yokuba UNGAYEKA ukuba kwesi sifundo nanini na?

 EWE HAYI

---

Ukutyikitya komthathi nxaxheba

---

Umhla

## **Annexure 6: Focus Group Interview Schedule with Employees at Operational Level**

### **Interview:**

My name is Cebo Kutuka, a student from the University of Stellenbosch, located in Belpark Campus in Bellville. I am doing research and not representing government or any political party. The purpose of this interview is to get your view regarding the reasons that result to non-compliance state of compliance with the conditions of employment in this company and to gather from you if the Department of Labour is doing enough in helping you to understand your rights and the company to comply with the provisions of the Sectoral Determination 9.

### **1. Opening of the interview:**

**Aim of the study:** *Exploring factors that prevent non-compliance with Basic Conditions of Employment Act; Sectoral Determination 9: The case of Sunflower Retail store, Western Cape.*

**Purpose of the study:** I would like to ask the group some questions related to their conditions of employment in the workplace.

The interview should take about 45-60 minutes. Are you available to respond to these questions at this time? Thank you for agreeing to be interviewed.

**2. Transition:** Let's start with some information that will help me describe the sample:

### **General demographic information**

**NB. Respondents will be asked to fill in an attendance register that will require them to indicate whether they are females or males as a result that information will not be asked in the questionnaire.**

A. Could you indicate the store that you are representing?

B. Experience in the store. < 1 year,> 1 year,2yrs,3yrs,4yrs or 5 yrs.

**Questions that need more details**

1. As a group how would you describe the conditions of employment in the company?
2. As a group what structures did your company put in place to ensure sound relationship with employees in relation to discussing and resolving labour issues?
3. From your observation what would you say as a group are conditions of employment that the company do not often comply with and what would you say are the factors that lead to that non-compliance?
4. In our stores are there any unions or workers forums that represent the interest of workers and if yes do management consult with them on labour issues and resolving any disputes around conditions of employment.
5. As a collective do you think the management and workers in the company are capable of dealing with labour disputes on their own without the intervention of the Department of Labour?
6. As a group do you have an easy access to the Department of Labour resources such as offices or resources to lodge complaints or seek help on any information that you need in connection with your conditions at work?
7. From your observation as a group do you think the Department of Labour is doing enough in helping the company to comply with labour laws 9?
8. What kind of support system do you think as this group the Department of Labour still needs to provide employees and management in the company in ensuring that employees understand their labour rights and that their rights are protected.

**Transition: Closing**

A, Well, it has been a pleasure talking to you; I appreciate the time you took for this interview. Is there anything else you think would be helpful for me to know?

B. Thank you very much for your time.

End: Cebo Kutuka



## **Annexure 7: Interview Schedule with Employees at Management Level**

### **1. Opening of the interview:**

**Aim of the study:** *Exploring factors that prevent non-compliance with Basic Conditions of Employment Act; Sectoral Determination 9: The case of Sunflower Retail store, Western Cape.*

**Purpose of the interview:** To ask questions related to challenges that the company experience in complying with the provisions of SD9 and the support that the Department of Labour could provide in ensuring that the company improves compliance with the Sectoral Determination 9.

The interview should take about 30-45 minutes. Are you available to respond to these questions at this time? Thank you for agreeing to be interviewed.

**2. Transition:** Let's start with some information that will help me describe the sample:

### **General demographic information**

A. Experience in the store. < 1 year,> 1 year,2yrs,3yrs,4yrs or 5 yrs.

### **Topic related questions:**

1. As a group what would you say is your understanding of the Sectoral Determination 9?
2. Can you explain the structures that the company has put in place in ensuring compliance with the provisions of the Sectoral Determination 9?
3. What kind of support does the Department of Labour provide you in ensuring that the company consistently complies with the provisions of both Basic Conditions of Employment Act and the Sectoral Determination 9?

4. How would you describe your relationship with the Department of Labour?
  
5. From time to time companies are found to be non-compliant with the provisions of the Basic Conditions of Employment Act and the Sectoral Determination 9, what do you think are some of the challenges they are facing?
  
6. In your opinion do you think the Department of Labour is doing enough to ensure that companies both employers and employees understand the provisions of the Basic Conditions of Employment Act and the Sectoral Determination 9?
  
7. What more do you think the Department of Labour still needs to do to help those companies that are still non-compliant.

**Transition: Closing**

Thank you.

## **Annexure 8: Focus Group Interview Schedule for Inspectors that Participated in the Sunflower Project at Department of Labour**

### **1. Opening of the interview:**

**Purpose of the exercise:** I would like you to share your experience in relation to the conditions of employment in the workplaces you have inspected. The interview should take about 45-60 minutes.

### **2. Transition: General demographic information**

A. Could you indicate the Labour Centre that you are representing?

B. Experience as an inspector. < 1 year,> 1 year,2yrs,3yrs,4yrs or 5 yrs.

### **In-depth Questions**

1. Could you please explain the process you used in securing inspection appointments in the store that you have inspected? Is it different from the way you normally secure appointments? If yes how?
2. How would you describe the conditions of employment in the company that you inspected?
3. From your observation what conditions of employment does the company often not comply with and what are the factors that leads to that non-compliance.
4. What do you think are the measures that could be put into place to help the company to comply?
5. Do you think the management and workers in the company could be able to resolve the issue of non-compliance on their own without any outside help from Department of Labour?
6. Do you think the Department of Labour is doing enough in helping the company to comply with Sectoral Determination 9?

7. What kind of support system do you think the Department of Labour still needs to provide employees and management in the company in ensuring that employees understand their rights and that their rights are protected through compliance with the provisions of the SD9?

D. Thank you very much for your time

Thank you

## **Annexure 9: Interview Schedule with the Employee Relations Manager**

### **Interview:**

My name is Cebo Kutuka, a student from the University of Stellenbosch, located in Belpark Campus in Bellville. I am doing research and not representing government or any political party. The purpose of this interview is to get your view regarding the reasons that result to non – compliance state of compliance with the conditions of employment in this company and to gather from you if the Department of Labour is doing enough in helping you to understand your rights and the company to comply with the provisions of the Sectoral Determination 9.

### **1. Opening of the interview:**

**Aim of the study:** *Exploring factors that prevent non-compliance with Basic Conditions of Employment Act; Sectoral Determination 9: The case of Sunflower Retail store, Western Cape.*

**Purpose of the interview:** To ask questions related to challenges that the company experience in complying with the provisions of SD9 and the support that the Department of Labour could provide in ensuring that the company improves compliance with the Sectoral Determination 9.

The interview should take about 30-45 minutes. Are you available to respond to these questions at this time? Thank you for agreeing to be interviewed.

### **2. Transition:** Let's start with some information that will help me describe the sample:

#### **General demographic information**

A. Experience in the store. < 1 year,> 1 year,2yrs,3yrs,4yrs or 5 yrs.

#### **Topic related questions:**

1. You are referred to as an HR Business Partner, is tis function centralised at HO or you have similar people in the same position spread into other regions in the Western Cape?

2. Inspectors were asked to send you the notifications of inspections so that you can send to the stores. Do you think that was the best strategy or you think there is a better approach?
3. On the recent inspections that were conducted, your organisation achieved more than 90% compliance, what would you say is the reason for that high level of compliance?
4. From time to time companies are found to be non-compliant with certain provisions of the Basic Conditions of Employment Act and the Sectoral Determination 9, what do you think are some of the challenges they are facing? E.g. Leave, sick leave, 12 hr rest period, staffing. Victimisation when raising issues during the round tables.
5. As an organisation that does not have unions, how does the company ensure that there is a sound labour relations in the workplace?
6. How would you describe your relationship with DoL?
7. What kind of support does the Department of Labour provide you in ensuring that the company consistently complies with the provisions of both Basic Conditions of Employment Act and the Sectoral Determination 9?
8. In your opinion do you think the Department of Labour is doing enough to ensure that companies both employers and employees understand the provisions of the Basic Conditions of Employment Act and the Sectoral Determination 9?
9. What more do you think the Department of Labour still needs to do to help the company to comply.

**Transition: Closing**

D. Thank you for your time.

End Cebo Kutuka