

**DURBAN UNIVERSITY OF TECHNOLOGY**

**THE INFLUENCE OF LABOUR LEGISLATION ON JOB CREATION AND JOB  
SUSTAINABILITY IN SOUTH AFRICA**

**By**

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## DECLARATION

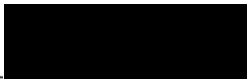
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## **DEDICATION**

This study is dedicated first and foremost to God the Father, Jesus my Saviour and to the Holy Spirit, who have guided and granted me the courage, the endurance, the strength, the wisdom, the knowledge, the understanding and perseverance to complete this study.

This study is also dedicated to my husband Martin and my son Caleb, who have encouraged and supported me throughout.

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- ❖ Survey Questionnaires - Mr Tom Wallach and Mrs Lorraine Roselt

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## ABSTRACT

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The South African economy is faced with a number of challenges, especially high levels of poverty and unemployment. Job creation and job sustainability is of paramount importance, especially during the current economic climate in South Africa. Hence, the primary objective needs to be growth, job creation and job sustainability. There is a need not only to create more jobs, but also to sustain existing jobs. At issue is the influence of labour legislation on job creation and job sustainability.

This study is multi-disciplinary and is located in the fields of management and law. It attempts to explore how the current labour legislation in South Africa influences job creation and job sustainability and whether the call for the de-regulation of and a more flexible South African labour market will improve business and investor confidence, as well as create and sustain jobs.

This study was motivated by the attention given to the on-going debate amongst the business community, unions, economists and the media about unemployment, job losses, economic growth, prospects of job growth and job creation in the current local and global economic climate. This doctoral exploration focused on how labour legislation, inter alia, the Basic Conditions of Employment Act No. 75 of 1997; the Labour Relations Act No. 66 of 1995; the Employment Equity Act No. 55 of 1998; the Skills Development Act No. 97 of 1998, and the Broad-Based Economic Empowerment Act No. 53 of 2003 influences job creation and job sustainability in South Africa.

The unique contribution to knowledge creation was unearthing the hidden sentiments of the business and trade union participants and respondents on how the current labour legislation influences job creation and job sustainability in South Africa.

Recently there has been an increased interest in the role of labour legislation in regulating the employment relationship, as well as increased criticism of labour legislation over-regulating the labour market. The legislature responded by making amendments to the current labour legislation, which in turn fuelled the on-going

debate about the influence of labour legislation on economic growth, on businesses in general, job creation, job sustainability and on labour market flexibility. The concern was that the legislative amendments would result in further regulation of an already over-regulated inflexible labour market, greater job losses and greater unemployment. However, labour disagreed as they felt that further in the current economic climate, greater labour protection was required. Consequently, the business community, labour and society in general strongly objected to some of the amendments to the labour legislation.

Consequently, the on-going criticism of the current labour market in South Africa being over-regulated and stifling economic growth, job creation and job sustainability required further exploration and investigation. The South African business community proposed the de-regulation of current labour legislation in South Africa as a solution to assisting with job creation, job sustainability and to avoid further job losses. The South African legislature responded with amending certain aspects of the various pieces of labour legislation in an attempt to introduce greater flexibility and protection. However, the concern was that the legislative amendments would have the opposite effect, increase regulation and make the labour market even more inflexible. This research attempted to respond to these views by exploring and determining how labour legislation influenced job creation and job sustainability in South Africa.

The issue of labour legislation's influence on job creation and job sustainability was addressed by looking at the influence of the 1996 Constitution of South Africa and current legislation, in particular labour legislation, as amended, had on job creation and job sustainability.

The purpose of this study was therefore to explore, determine and understand how the current labour legislation in South Africa influenced job creation and job sustainability. The overall aim was to examine whether the South African labour market should be de-regulated and if so, to what extent; whether the amendments to the labour legislation made the labour market environment more flexible; as well as whether it improved business and investor confidence, stimulated job creation and encouraged job sustainability.

In pursuit of this broad aim, the researcher took an interpretive, pragmatic, parallel convergent mixed-method approach. The foundation of the research design is a combination of the use of the literature surveyed in Chapters Two and Three herein, together with the responses to the survey questionnaires and the answers to the interview questions from interviews conducted with businesspersons, senior managers, entrepreneurs and trade unionists, including senior trade union officials in South Africa. A dual approach with two types of research instruments, both the survey questionnaire and the interview questionnaire, was used.

A mixed-methods research methodology (Creswell, 2014: 69) was deemed to be the most appropriate method for this study, in which qualitative and quantitative techniques, methods, approaches, concepts and language were mixed and combined. The whole of South Africa was purposefully selected as the area in which to conduct the research. The data production process entailed examining local and foreign literature, self-administered survey questionnaires, and conducting phenomenological interviews. The main source of data was obtained from the online research questionnaire developed by the researcher using Google Forms. The invitation and link was emailed to each of the respondents, who completed the survey questionnaire online. Information was also obtained from the semi-structured, mostly telephonic interviews, conducted with some of the respondents, who had agreed and indicated that they were also willing to participate in an interview conducted by the researcher. The interview schedule was also developed by the researcher. Amongst the respondents surveyed and participants interviewed, there were chief executive officers, senior managers, managers, entrepreneurs representing public and private companies, close corporations, sole proprietorships and partnerships from various industries and sectors across South Africa. There were also senior trade union officials and trade unionists representing various trade unions across various sectors and industries across South Africa. Due to distance and time constraints, an overwhelming majority of the interview participants agreed to be interviewed telephonically instead of face-to-face, which saved the researcher a great deal of expense with regard to travelling and accommodation, for which the researcher is deeply grateful to the interview participants.

The quantitative data and qualitative data were first analysed separately using both SPSS version 24.0 and NVIVO PRO version 24.0 statistical packages to establish



the opinions and perceptions of entrepreneurs, managers and trade unionists. The constant comparative method of qualitative analysis was used. Data reduction was carried out in three stages, each representing a progressively higher level of theoretical abstraction. The results from each strand were subsequently combined, conclusions were drawn and recommendations made to all relevant stakeholders in respect of the findings.

The findings of the research are expressed as an integrated theory and as a series of propositions, generalized within the boundaries of the study, relating to the influence of labour legislation on job creation and job sustainability in South Africa. The conclusions are summarized in seven statements. Firstly, labour regulation is necessary; it fulfils a normative role and plays an important role in ensuring fairness and equity in the employment relationship. Secondly, labour legislation, in regulating the employment relationship and the enforcement of compliance, influences job creation and job sustainability. Thirdly, the LRA, the EEA and the B-BBEEA, in regulating equity and fairness overall, have influenced job creation, some to a greater extent than others. Fourthly, businesses which are incentivised by the SDA, the EEA, the B-BBEEA, the ETIA and the UIA to train and develop their workers are expanding, growing, creating and sustaining jobs. Fifthly, labour legislation *per se* is not the problem, but rather the implementation thereof is. Sixthly, the administrative burden and the cost of compliance with the BCEA, the LRA, and the SDA threaten existing jobs and job creation. Finally, the administrative burden of complying, the enforcement of compliance and the costs of compliance with the B-BBEEA and the EEA are impeding job creation and job sustainability. The skills shortage in South Africa has adverse consequences for all South Africans, including the business community. The political and economic uncertainty have a negative influence on local and foreign investor confidence, which has a negative impact on the South African economy.

It is important from both a societal and business point of view that social justice, the right to fair labour practices and the respect for fundamental human rights continues to be affirmed. Trade unions are perceived to be a social justice movement (Wolterstorff, 2013:394) and can participate in job creation by influencing macro-economic and social policies at multipartite structures by facilitating skills development and by directly creating jobs (Mwilima, 2008:7). Deregulation of the

work environment would undermine the fundamental rights that South African citizens, as well as local and international business, enjoy. This, in turn, will have an adverse effect on local and foreign investor confidence in the South African government and its economy. It is therefore important that the state, business, labour and society are aware of and support business leaders and government in formulating and implementing a national business strategy to address job growth and job sustainability in the country.

Consequently, when considering the issue of regulation versus deregulation of the labour market, the parties should seek to find a balance between human dignity, increased profits and economic development. This problem is not just a business issue, but also a societal and legal issue.

It is therefore important that policy makers heed the current legislative regulatory barriers and economic and political threats which could undermine job creation and job sustainability, as well as local and foreign business and investor confidence in South Africa. In light of the aforesaid, the recommendation is that there should be an increase in skills development to address the skills shortage in South Africa. Furthermore government should take steps, where necessary, to remedy the aforementioned and reduce administrative and compliance costs for businesses, which will assist and promote job creation and job sustainability in South Africa.

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## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ANC:</b>	African National Congress
<b>B-BBEE:</b>	Broad-Based Black Economic Empowerment
<b>CCMA:</b>	Commission for Conciliation, Mediation and Arbitration
<b>COSATU:</b>	Congress of South African Trade Unions
<b>GDP:</b>	Gross Domestic Product
<b>KZN:</b>	KwaZulu-Natal
<b>ILO:</b>	International Labour Organisation
<b>MNC:</b>	Multinational Corporation
<b>NDP:</b>	National Development Plan 2030
<b>NEDLAC:</b>	National Economic, Development and Labour Advisory Council
<b>OECD:</b>	Organisation for Economic Co-operation and Development
<b>SETA:</b>	Sector Education and Training Authority
<b>StatsSA:</b>	Statistics South Africa
<b>SMME:</b>	Small, medium and micro-enterprise
<b>TES:</b>	Temporary employment service
<b>BCEA:</b>	Basic Conditions of Employment Act, No.75 of 1997
<b>B-BBEEA:</b>	Broad-Based Black Economic Empowerment Act, No.53 of 2003
<b>COIDA:</b>	Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993
<b>LRA:</b>	Labour Relations Act, No.66 of 1995
<b>EEA:</b>	Employment Equity Act, No.55 of 1998
<b>ETIA:</b>	Employment Tax Incentive Act, No.26 of 2013
<b>ESA:</b>	Employment Services Act, No.4 of 2014
<b>OHASA:</b>	Occupational Health and Safety Act, No.85 of 1993
<b>SAQA:</b>	South African Qualifications Authority Act, No.58 of 1995
<b>SDA:</b>	Skills Development Act, No.97 of 1998
<b>SDLA:</b>	Skills Development Levies Act, No.9 of 1999
<b>UIA:</b>	Unemployment Insurance Act, No. 63 of 2001

## **CHAPTER ONE**

---

### *OVERVIEW AND BACKGROUND TO THE STUDY*

---

#### **1.1 Introduction**

This study is multidisciplinary as it is located in the field of both management and law. The study seeks to explore the influence of labour legislation on job creation and job sustainability. The regulatory framework consists of the Basic Conditions of Employment Act No.75 of 1997 (BCEA); the Labour Relations Act No.66 of 1995 (LRA); the Employment Equity Act No.55 of 1998 (EEA); the Skills Development Act No.97 of 1998 (SDA); as well as the Broad-Based Black Economic Empowerment Act No.53 of 2003 (B-BBEEA). It is anticipated that the knowledge generated from this inquiry would afford new insights, thereby inform job creating and job sustaining practices of businesses in South Africa.

This chapter begins with an overview of the context and background that frames the study. Following this is the problem statement, the statement of purpose, the accompanying research objectives and the research questions. Included in this chapter is a discussion around the research approach and the researcher's assumptions.

#### **1.2 Background and context**

It is widely accepted that there is a very great need to create jobs, as a means to stem the tide of chronic poverty in South Africa. On-going criticisms are that the over-regulation of the labour market is stifling economic growth, job creation and job sustainability.

Venter, Levy, Conradie, Bendeman and Dworzanowski-Venter (2011:576) maintain that the legislative framework as a whole has been criticised as being skewed too much in favour of labour and of creating an inflexible labour market, which is not conducive to job creation. Neo-liberalists have identified labour market inflexibility as

the primary cause of South Africa's poor global competitive standing. Venter, *et al.* (2011:76) identified issues such as restrictive labour market conditions and the lack of skilled labour as the primary contributory factors to South Africa's poor global competitive standing, as well as to the low levels of job creation and job sustainability.

Darroll (2011:1) identifies inflexible labour legislation and broad-based black economic empowerment as major regulatory barriers to job creation. The author also asserts that the economic climate and inefficient South African Revenue Services are some of the main reasons for the lack of job creation. Van Niekerk, Christianson, McGregor, Smit and Van Eck (2008:7-8) share the critics' view that there may be a link between inflexible labour markets and the stifling of job creation. Faulkner and Loewald (2008:18) and Herrington, Kew and Kew (2010:5) agree that labour legislation, through over-regulation, has stifled job creation. Consequently, from a neo-liberal perspective it may be argued that the South African labour market should be deregulated. However, this may not be ideal from a social justice point of view. The ethical value that underlies sustainable business practices is the value of social justice, in particular the ethical requirement to treat others fairly, which includes respecting employees' labour rights (Winston, 2011:33). Business has a key role to play in promoting social, economic and environmental development, commensurate with a socio-economic responsibility towards workers and wider society (Patel and Mushonga, 2014:55).

Venter, Levy, Conradie and Holtzhausen (2010:239) maintain that one of the major concerns of political interference with the labour relationship is the B-BBEEA's influence especially on small enterprises. The authors also question whether compliance with legislation is overly onerous (Venter, *et al.*, 2010:239). Herrington, Kew and Kew's (2010:5) report also highlight these concerns and they note that South Africa has a trend of below-average entrepreneurial activity. Likewise, the authors express the view that labour regulations and the government's over-emphasis on B-BBEEA initiatives are some of the factors hampering entrepreneurship, particularly with respect to young black South Africans. Other specific constraints mentioned include general economic concerns (such as the influence of economic conditions and the cost of basic inputs such as electricity);

poor quality government administration; onerous government legislation; and the influence of South Africa's poor skills base (Herrington, Kew and Kew, 2010:5). The authors maintain that there is a significant link between a country's stage of economic development and its level of entrepreneurial activity (Herrington, Kew and Kew 2010:16). They express the opinion that South Africa's low new firm and established business prevalence rates paint a bleak picture for the SMME sector's potential to contribute meaningfully to job creation, economic growth and more equal income distribution. The authors blame this on the poor sustainability of business start-ups in South Africa. They further highlight the need for policy interventions aimed at supporting and mentoring entrepreneurs through the difficult process of firm birth (Herrington, Kew and Kew, 2010:18).

Faulkner and Loewald (2008:18) are of the view that political and economic leadership, as well as economic vision, are essential to improving the country's growth performance. They argue that the strength of South Africa's labour market institutions, unions and the collective wage bargaining structure have reduced the flexibility of the labour market, ensuring that prevailing wages are high as compared to wages across other countries at a similar level of development. However, if there was less focus on rights and a greater focus on needs through accommodation, co-operation and co-determination, there would be less reliance by businesses and trade unions on labour market institutions and on collective bargaining to resolve conflict and labour disputes (Herrington, Kew and Kew, 2010:16). Hoeppli (2014:9) also blames the poor education system, a lack of awareness of what financing options are available and the difficulties of obtaining financing as major barriers to entrepreneurship, job creation and job sustainability.

Standing (2011:267), Standing (2007:1) and Standing, Sender and Weeks (1996:113–126) identify problems influencing job creation and job sustainability, such as below average entrepreneurial activity; rising unemployment (due to factors like regional disparities in race, age, gender, education and skill differentials); barriers to entry; duration of unemployment; and discouragement to obtaining employment. Bendix (2010:552) contends that there is need for an effective, cohesive strategy to be developed on the basis of firm policy principles which can provide direction on how to address the problems identified by Standing, Sender and

Weeks (1996:113–126). Consequently, the South African business community is demanding the deregulation of the labour market in order to facilitate job creation, job sustainability and to avoid further job losses (Arnold and Hartman, 2005:207-208, Almeida and Carneiro, 2009:28-29 and (Darrol, 2013:15). However, trade unions are demanding greater regulation of the labour market and increased labour protection as a solution to job creation and job sustainability, as well as to avoid further job losses (Muthethwa, 2013:12).

According to Betcherman, Luinstra and Ogawa (2001:64) the two economic approaches are dominated by opposing economic views, namely: the Keynesian approach which favours the welfare state and the protection of workers through labour legislation and collective bargaining; and the Neo-classical approach which emphasizes the advantages of encouraging market processes (Mahadea and Simson, 2010:399). The Neo-classical approach has historically been the dominant approach in South Africa and has persisted despite the constitutional change in 1996. The Neo-classical approach is based on the Rights-Based Theory which recognises rights, entitlements and power (Van der Walt, 2004:257). The opposing Keynesian approach is based on the Needs-Based Theory which is concerned with individual need, marginality, weakness, powerlessness and lack of rights (Van der Walt, 2004:289). In terms of the Constitution of the Republic of South Africa Act, 108 of 1996 (the Constitution) and particularly the Bill of Rights, social justice and labour legislation have sought, through the establishment of a social pact between key players, to strike a balance between the opposing interests of rights and needs (Anstey, 2013:135). Recently, it has become apparent that favouring the Neo-classical approach has caused further imbalances, increased unemployment, poverty and socio-economic inequalities because of industrial unrest, especially in the mining sector. Consequently, a new social pact is required wherein the state, employers, trade unions and civil society agree not to use the full extent of the power available to them for adversarial purposes but rather agree to leverage mutual accommodation, once again recognizing that the benefits of co-operation are better than coercion (Bendix, 2010:552).

The conceptual and theoretical framework which underpins this study arises from the Michelman's Needs-Based Theory of Social Justice and the Constitutional Transformation approach (Van der Walt, 2004:289). It is important to consider social justice which is enshrined in the Constitution when regulating the labour relationship between the parties. Bendix (2010:552) posits that a number of the problems perceived by business persons and trade unions can be addressed through the formation of a new social pact between employers, employees and the state in order to ensure the growth and sustainability of local businesses.

### **1.3 Rationale for the study**

The rationale for this study emanates from the researcher's desire to uncover and offer recommendations on aspects of the labour legislation which may be hindering or impeding businesses from creating and/or sustaining jobs. An increased understanding of the various aspects of labour legislation influencing job creation and job sustainability will help the stakeholders, namely government, businesses and trade unions, to address the labour legislative issues that may be hindering or impeding the creation and/or sustainability of jobs. The informed manner in which they will address this challenge has the potential to benefit society as a whole.

The focus of this study is the influence of the legislative regulation of work and the legal protection of workers on business, with particular regard to job creation and job sustainability, as perceived by business and trade union participants. This study will focus on how labour legislation influences business attitude and commitment towards creating and sustaining jobs in South Africa.

### **1.4 Problem statement**

Research indicates that in South Africa, more job destruction than job creation is taking place and unemployment and poverty continues to rise (Pieters, 2013:3; and Hoeppli, 2014:9). According to Statistics South Africa (2017:Q3), the unemployment rate for the third quarter of 2017 was 27.7%, and the low economic growth rate was 0.6%. Primary causes of the high unemployment rate and poor job creation appear

to be low skills levels, a poor education system and the inability of the South African economy to create sufficient jobs (Le Roux, 2013:508). Tzehainesh (2010:20) maintains that South Africa's economy grew at a slower rate than was projected by government, which has caused slow employment growth; increased unemployment and underemployment; the changing nature of work; casualization; and productive decentralization.

Regulation of the labour market by labour legislation is blamed for jobs not being created, jobs being lost, rising unemployment and poverty in South Africa. Venter, *et al.* (2010:138) contend that regulation and minimum wage fixing has resulted in increased direct and indirect labour costs. Greene, Henry, Nathanson and Block (2007:85) claim that minimum wage laws are significantly detrimental as they create unemployment through pay scales being artificially kept at levels higher than worker productivity, thereby pricing workers out of the labour market. Noelke (2011:1) confirms that the two groups most negatively affected by minimum wage regulations are the poor and the youth.

Du Plessis and Fouche (2012:224); Marneffe and Vereeck (2011:352); Venter, *et al.* (2010:132); and Stähler (2008:1163) postulate that there is a danger that the implementation of the presumptions of who is an employee, in terms of Section 83A of the BCEA and Section 200A of the LRA, can further stifle job creation because this will result in businesses' perception of the South African labour market being even more inflexible, inefficient and overcontrolled, further increasing labour costs. It is unclear, however, whether deregulation and the creation of a more flexible South African labour market will improve investor and business confidence and business sustainability, or whether the result will be increased job sustainability and stimulated job creation. It may also not be in the interests of social justice (as understood in the South African Constitution) for the labour market to be deregulated.

The South African government has provided businesses with financial incentives through the SDA, the Skills Development Levies Act No.9 of 1999 (SDLA); and the Employment Tax Incentive Act No.26 of 2013 (ETIA) to create jobs and to sustain jobs through skills development (South Africa, Department of Labour, 2013:5). There is little information on which aspects of labour legislation influence job creation and



job sustainability. Thus, there is a need to explore, identify, understand and address aspects of labour legislation which may be hindering or impeding job creation and job sustainability.

## **1.5 Aim and objectives of this study**

The aim of this study is to determine the influence of labour legislation on job creation and job sustainability in South Africa.

The objectives of the study are to:

- describe, explore and understand the need for creating new jobs and for sustaining existing jobs;
- describe, explore and understand through a literature review the regulatory influence of labour legislation on job creation and job sustainability; and
- explore, compare and relate the perspectives of businesses and trade unions on the extent to which selected labour legislation in South Africa, namely the BCEA, the LRA, the EEA, the SDA:
  - fulfills the normative role of labour law, which is to protect workers, promote social equality and economic efficiency;
  - influences job creation and the sustainability of jobs particularly with respect to the manner in which it:
    - Assists with and/or encourages job creation and the sustaining of jobs;
    - Threatens existing jobs and job creation, and
    - Impedes job creation and the sustaining of jobs.

## **1.6 Research questions**

The research questions of this study are:

- Is there a need to create and sustain jobs in South Africa and how are jobs created and sustained in South Africa?

- Does labour legislation regulation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation should be amended to enable job creation and job sustainability to occur in South Africa?
- What are the factors, apart from labour legislation, affecting job creation and job sustainability?
- What strategies can businesses, trade unions and government implement to increase/improve job creation and job sustainability?
- To what extent do the qualitative results confirm the quantitative results of the empirical study?

## **1.7 Research methodology and design**

A mixed-methods research methodology (Onwuegbuzi and Burke, 2004:17) using the convergent parallel mixed-method design (Creswell and Plano Clark, 2011:78) and the concurrent triangulation approach is deemed to be the most appropriate method for this study. The research began with a deductive thinking approach (literature review and theories) and then engaged in an inductive approach with testing reality by gathering data using both qualitative and quantitative techniques. The literature reviewed also revealed paucity in prior research on this topic. The intention of this study was to gain a better understanding of the sentiments of business and trade union respondents on the influence of labour legislation on job creation and job sustainability. South Africa was selected as the geographical area in which to conduct the study.

The data production process entailed examining local and foreign literature, conducting mainly telephonic interviews, some face-to-face interviews and self-administered online survey questionnaires which were analysed to establish the opinions and perceptions of business persons and trade unionists. Survey questionnaires and semi-structured interviews were the two main tools used for gathering the necessary data. Conclusions were drawn and recommendations made in respect of the findings. Two different units of analysis were used. A group of

participants representing business (business owners, chief executive officers, entrepreneurs, managing directors and/or senior managers) and another group of trade union participants (representing trade unions and trade union federations) participated in the study. Random sampling was used for the survey participants and non-probability purposive convenience sampling was used for the interview participants (Creswell, 2015:78). Both sets of participants came from the same target population.

An attempt was made to obtain as many survey responses as possible. The target population comprised of businesses and trade unions. The two groups are unequal. The sampling frame drawn up by the researcher of 2,344 businesses, who conduct business in South Africa, as well as 186 trade unions registered in South Africa. The trade union list of registered trade unions and trade union federations was obtained from the Department of Labour's website. The survey respondents for both groups, business persons and trade unionists, were randomly selected. The minimum sample size recommended by Onwuegbuzie and Collins (2007:288) for a quantitative correlational research design is 64 participants for one-tailed hypotheses and 82 participants for two-tailed hypotheses. The authors recommend 51 participants per group for one-tailed hypotheses; 64 participants for two-tailed hypotheses for a quantitative causal-comparative research design (Onwuegbuzie and Collins, 2007:288). Consequently, it was envisaged that in order to achieve a margin of error of 10% at least 93 individual businesspersons and 16 trade unionists would have to participate in the survey (Conroy, 2018:9). Seventy-one individual business persons and eighteen individual trade unionists actually participated in the survey. There is a marginal difference in the business sample size as discussed later in the chapter. The quantitative data analysis began with a Cronbach Alpha test of reliability and SPSS software was used. Statistical techniques such as correlation, regression and principal component analysis were used to analyse the quantitative data.

The purposive convenience sample approach was used for choosing the interview participants who had agreed to be interviewed. The minimum sample size recommended by Onwuegbuzie and Collins (2007:288) for a qualitative phenomenological research design is 10 interviews. Sixteen business persons and

six trade unionists who represented various business sectors of the South African labour market participated in the interviews. The telephonic interview data is discussed within the context of quantitative data, in which the principal component analysis statistical technique and correlation work used.

This exploratory study took place over a period of just over one year; commencing on 1 March 2016 and ending on 31 March 2017.

The data gathered was analysed to establish the extent, in South Africa, to which labour legislation influences job creation and job sustainability. Integration of the quantitative data and qualitative data occurred when the results of the analysis of the quantitative data and qualitative data were brought together and compared (Creswell, 2015:78). Triangulation was used to enhance the validity of the study.

## **1.8 Delimitations**

The study was limited to businesses and trade unions operating in South Africa. The delimitations utilised by the researcher in this study were determined by a desire to gain a better understanding of the influence that labour legislation has on job creation and/or job sustainability. In order to gain the perspectives of business, the researcher sought participants in the study who were senior managers of companies, as well as business owners of small and medium sized private enterprises. The use of private enterprises did not allow the researcher to gain the views of those senior individuals involved in government enterprises or in parastatals. The researcher also sought the views of senior trade union officials representing trade unions and trade union federations in the various business sectors of the South African economy.

## **1.9 Structure of the thesis**

This thesis is organised into the following eight chapters:

### **1.9.1 Chapter one: Introduction**

Chapter one is an introductory chapter. It presents the background and context of the study, the rationale and focus of the study, the problem statement, the aims and objectives of this study, the research questions, research methodology and design and the delimitations of the study.

### **1.9.2 Chapter two: Overview of literature on the general issues influencing job creation and job sustainability in South Africa**

Chapter two provides an overview of the current state of knowledge of issues generally affecting job creation and job sustainability. It also provides the theoretical framework guiding the study on the link between labour legislation and job creation, and between labour legislation and job sustainability. In addition, legal and economic perspectives are examined on this link. The chapter also discusses and explores the concepts of social justice, human rights and corporate social responsibility; internal and external factors influencing job creation and job sustainability; increased social protection; the need for job creation and job sustainability; as well as strategies for job creation and job sustainability.

### **1.9.3 Chapter three: Literature review: The influence of labour legislation on job creation and job sustainability in South Africa**

Chapter three presents a literature review on the concepts of labour law, legal protection, labour regulation, economic efficiency and flexibility, equal distribution of power, promotion of social equality and the protection of human rights. This chapter also discusses the legislative framework, as well as reviews the literature on the four primary pieces of labour legislation, namely the BCEA, the EEA, the SDA, the LRA, including other labour legislation's influence on job creation and job sustainability. The influence of compliance costs of various labour legislation on job creation, as well as on job sustainability; the need for continued regulation and labour legislation protection; and the effect of labour legislation on economic growth and job creation are also examined.

#### **1.9.4 Chapter four: Research Methodology and Design**

Chapter four presents a discussion of the research methodology and design adopted for this study and justifies its use. Chapter four also outlines the population of the study, sampling techniques, the research instruments, administration of the research instruments, procedures for collection and analysing of data, validity tests, reliability tests and triangulation of data, as well as limitations of the study's methodology.

#### **1.9.5 Chapter five: Presentation, interpretation and analysis of data from surveys**

Chapter five presents analyses and interprets the results emanating from the quantitative data on the influence of labour legislation on job creation and job sustainability. The results are presented in tables, pie charts and bar graphs. An introspection was made of the results utilising inferential statistics such as fisher tests to describe the relationships between labour legislation and job creation, as well as job sustainability, and triangulation of data; as well as validity testing – using principal component analysis and Rotated Component Matrices; and reliability testing - using Cronbach Alpha's test for reliability. Limitations of the quantitative aspects of the study is also discussed.

#### **1.9.6 Chapter six: Additional presentation, interpretation and analysis of qualitative data from interviews**

Chapter seven presents analyses and interprets the results emanating from the qualitative data on the influence of labour legislation on job creation and job sustainability. The results are presented in tables, pie charts, bar graphs, as well as in data summaries. The qualitative data is interpreted using a thematic framework, coding, themes and subthemes, a thematic analysis, the combined approach and reflection. Triangulation of the data and merged data analysis comparison to discover meaningful patterns, differences and similarities from which conclusions can be drawn. Limitations of the qualitative aspects of the study is also discussed.

### **1.9.7 Chapter seven: Discussion of the findings**

Chapter seven provides a summary of the merged findings and discusses them based on the empirical evidence presented in chapters five and six.

### **1.9.8 Chapter eight: Conclusions and recommendations**

Chapter eight provides conclusions and recommendations based on the findings of the study in line with its stated objectives. A conclusion of the entire study is presented, and its contribution to knowledge in the fields of law and management are highlighted, as well as limitations and suggestions for future research.

### **1.10 Conclusion**

This chapter provided an overview of this study and introduces the study, which assesses the influence of labour legislation on job creation and job sustainability. It also provides reasons why the researcher undertook this study, states what the objectives and research questions are and discusses the delimitations of this study.

## **CHAPTER TWO**

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### **OVERVIEW OF LITERATURE ON THE GENERAL ISSUES INFLUENCING JOB CREATION AND JOB SUSTAINABILITY IN SOUTH AFRICA**

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#### **2.1 Introduction**

The previous chapter provided the background and overview of this doctoral exploration. The literature reviewed focuses on issues generally affecting job creation and job sustainability, namely the influence of globalization, international competitiveness, trade reforms, economic policies, strategies and economic climate. This chapter will discuss and explore the general influence of these factors on employment, job creation, job sustainability and job destruction, before attempting to explore the explicit influence, if any, that legislative regulation has on the labour relationship, in particular on job creation and job sustainability in chapter three.

The literature review will also indicate that economic growth, although essential for job creation and job sustainability, is not the only factor that should be considered. The literature appears divided over what influences economic growth and consequently, what influences job creation and job sustainability. Influences on economic growth appear to be dependent upon which economic theory is applied to the research.

This chapter discusses the effect that the above external and internal factors have on economic growth, the employment relationship, job creation and job sustainability. It also examines how these factors have influenced other countries, such as the Anglo-American countries (United States of America, Australia and England); developing countries (Brazil, China and India); Mediterranean countries (Spain, Germany and Austria); and the Nordic countries (Denmark, Finland, Netherlands, Norway and Sweden). This chapter also deals with the different employment regimes chosen by these countries. For example, the co-ordinated market economies adopted by Germany with its heavy labour market regulation (Moser, Urban and Di Mauro, 2010:302). Similarly, it explores the Nordic countries which are usually categorised as “co-ordinated”, “social-democratic” or “labour-led” capitalisms



(Sippola, 2011:358) versus the liberal market economies adopted by England and the United States of America (Kalleberg, 2009:15). The countries mentioned above are chosen for comparative purposes because of South Africa's constitutional historical background and because parallels can be drawn, not only with Anglo-American countries, but also with Mediterranean countries, the Nordic countries and with developing countries.

The aim of the study is to assess the influence of labour legislation on job creation and job sustainability. The normative principle that will be used in order to evaluate this influence will be social justice, which forms the basis of all legislation in South Africa, particularly labour legislation. A meta-theory made up of a combination of the Phenomenological, Social Constructionist, Interpretivist, Labour Law Theory of Social Justice and Industrial Democracy (based on equality and fairness) (Davidov and Langille, 2011) will be used as the underpinning theoretical framework and basis for this research.

The following introductory concepts are regarded as important for the purposes of this study. They are defined below to assist the reader in understanding their relevance and applicability to this research.

## **2.2 Introductory concepts**

This section defines key concepts to assist with the understanding of their importance, relevance and applicability in the broader context of this research.

- **Culture** is defined as the inter-relationships that occur at three stages (Blankenberg, 1997:41): substantive law and procedural rules; legal tradition, namely, the courts and the legal profession; the degree of legal conduct, and the views about the law (Sebok and Trägårdh, 2012:157).
- **Department of Labour** is the government body authorized by the Constitution, the Bill of Rights and the labour legislative framework to control the labour market through policies and programmes adopted in discussion with social associates, which are intended at:
  - enhanced economic efficiency and productivity;

- the formation of decent employment; endorsing labour standards and essential rights at work;
  - delivering satisfactory social security to safeguard defenceless workers;
  - good labour relations;
  - eradicating inequality and discrimination in the workplace;
  - improving occupational health and safety consciousness and conformity at work;
  - providing significance to social discourse in the expression of positive and receptive legislation and rules to achieve labour market flexibility for the effectiveness of businesses, which is equalized with the endorsement of decent employment (Department of Labour Annual Report, 2014:5).
- **Economic justice** is an aspect of social justice which is concerned with whether nations advance their citizens adequate chances to participate in industrious actions of their choosing anywhere they desire, either locally or overseas, and to obtain help and personal and social remunerations equal to their initiative, aptitudes and labours (United Nations, 2006:3). Economic justice is about “economic policies which ought to help those most in need or at least ought not to harm them in order to help others” (Levine, 1998:345).
  - **Employment or job protection** relates to systems and procedures, stipulated in legislation, collective agreements or individual employment contracts, namely mandatory legislative restrictions limiting the business’s ability to employ and dismiss workers by regulating the recruitment and dismissal of employees; the interpretation of the rules by labour courts and the success of their enforcement (Bassanini, Nunziata and Venn, 2009:354).
  - **Job creation** is “the process of providing opportunities for paid work” (Hornby, 2010:806). Job creation happens in businesses that increase employment or in new businesses (Kerr, Wittenberg and Arrow, 2014:2),

without displacing any other jobs (Cray, Nguyen, Pranka, Schildt and Sheu, 2011:5).

- **Job destruction** occurs in businesses that shrink their level of employment or by the business shutting down (Kerr, Wittenberg and Arrow, 2014:2).
- **Job security** is the assurance that the employee will keep his or her job for as long as he or she likes, without the risk of becoming unemployed (Collinsdictionary.com, 2014 and USlegal.com. 2014)
- **Job sustainability** means job resilience and job retention over time. For example, through skills improvement (National Audit office, 2014).
- **Labour Flexibility** is defined as the extent to which government imposes restrictions on working conditions and the employer's ability to freely employ and dismiss workers (Santos, 2009:45).
- **Labour law** is the branch of law which oversees the contractual relationship between an employer and an employee (Parker, 2012:1). The normative function of labour law is to balance competing socio-economic concerns of the rights of workers and the needs of employers (Benjamin, cited in Le Roux and Rycroft, 2013:29). It safeguards the rights of individual workers and employers, while encouraging safe, productive workplaces (Parker, 2012:1) through collective bargaining rights and compulsory criteria (Smit, 2010:1). Labour law is concerned with the themes of fairness, social justice and industrial democracy (Smit, 2010:1). It is interested in and aspires to "finding fair solutions for social issues" (Ruiz cited in Berg and Kucera, 2008:233).
- **Labour market regulations** are "areas of regulation and extra-legal areas that influence the capacity of individuals to work in order to earn a livelihood" (Benjamin, cited in Le Roux and Rycroft, 2013:30). It is the body of rules governing businesses that produce most of society's goods and services, threatening other societal interests in the process (Estlund, 2013:104). The universal goal of labour market regulation is to encourage and provide

reassurances for workers that are reliable, with the conditions for economic growth (Le Roux and Rycroft, 2013:30).

- **Legal consciousness** is defined as the conceptions, values, assumptions and expectations that people have of the law (Sebok and Trägårdh, 2012:158).
- **Legal culture** includes the aforementioned three inter-relationships, along with values and attitudes (Sebok and Trägårdh, 2012:158).
- **Non-standard work or atypical work (“precarious work”)** is defined as “part-time work, fixed-term employment, employment by temporary employment agencies and self-employment” (Houseman, Oswa, 2003:354). In addition, “on-call work, on-lease workers, employment training schemes, apprenticeship contracts, internships, dependent-independent contractors and home-based work” (Bronstein, 2009:16). These types of work have the effect of weakening workers’ rights in comparison with standard employment relationship workers, who enjoy far greater protection.
- **Regulation** is defined as “encompassing the many ways in which modern societies use law to govern them” (Estlund, 2013:104) by ascertaining satisfactory processes for collaboration, to encourage what is appropriate and to punish what is objectionable (Darrol, 2013:14). Well-crafted regulations serve many purposes, as they play a significant part in shaping the economy; leading the way for innovation and competitive markets; and aiding employment (Shapiro and Irons, 2011:11).
- **Social justice** is concerned with satisfying the needs of society, as opposed to the wants of society (Collins, 2011:152). Social justice is defined as the fair allocation of health, housing, welfare, education and legal means in society, and where required, the re-deployment of such effects on an affirmative action basis to disadvantaged members of the public (McQuoid-Mason, 1982:1). Luigi Taparelli first espoused the concept of social justice which signified, the

values characteristic of a just society, as well as the spreading of welfares and problems in that society (Taherzadeh, 2012:3).

- **Social pact** is about the co-ordination of interests at a centralised level whereby peak organisations representing particular interest groups (business, labour, civil society) recognise their interdependence on each other, perceiving their interests to be best served through mutual accommodation, and having the power to deliver something of value to the other parties involved (Anstey, 2013:135).
- **Social security** is defined as the safeguard which civilization affords its inhabitants through a sequence of public events against the economic and social suffering that otherwise will be concealed by the blockage or lessening of incomes ensuing from various factors (Mpedi, cited in Le Roux and Rycroft, 2013:270).
- **Sustainability** is defined as sustainable businesses which can prove realistically that they can uphold success without carrying out types of unjust exploitation of either human or natural capital, treating others fairly and by having regard for the triple bottom line (Winston, 2011:33). The primary ethical value performed by sustainability is social justice (Winston, 2011:35).
- **Sustainable workforce** means workers are provided with chances to unceasingly acquire and rejuvenate their skill and improve their employability, well-being and vigour to flourish on and off the workplace over their occupations (Millar and Ridge, 2009:103). Sustainable work should have an element of longevity or durability (Le Roux, 2013:519)

The following brief background provides the reader with an insight into the possible causes for the job crises in South Africa.

## 2.3 Brief background

Muthethwa (2013:1); Darrol (2013:14); and Cohen and Moodley (2012:324) agree with Tzehainesh (2010:21) that a large portion of the blame for the job crisis in South Africa can be attributed to neo-liberalism, globalisation, trade liberalisation and the global recession. The International Labour Organisation (2013: 53) found that job creation plummets more than four times quicker when a recession trails a banking crisis than during normal business cycle slumps. The overall employment growth rate in South Africa, during 2012 and 2013, averaged 0.4% (Muthethwa, 2013:8). By June 2016, the total labour force was 21 100 000, with 15 500 000 employed, 5 600 000 (26.4%) unemployed and 2 500 000 discouraged work-seekers, as well as a decline in jobs (Stats SA, 2016). South Africa is experiencing a high unemployment rate at 27.7% (Stats SA, 2017:Q3) and low economic growth at 0.9%, which has been exacerbated by the global recession. According to Le Roux (2013: 508), the primary causes of unemployment in South Africa are the poor education system, the consequent low skills levels and the economy's inability to create sufficient jobs, despite some economic growth (Le Roux, 2013:508). Hoeppli (2014:9) agrees that business confidence is low and that the local economy is not growing at the rate that will reduce unemployment and poverty.

The global nature of the South African economy has prompted a vigorous debate amongst various interest groups, in particular business and economists, who have called for the relaxation of labour laws as a means of attracting foreign direct investment (Worku, 2015:58). The regulatory burden is a source of concern for South African businesses, especially small businesses (Darrol, 2013:15). Additionally, there are increased concerns that the South African economy is not creating enough jobs, as well as concerns about the quality of the jobs that are being created (Muthethwa, 2013:1). There is also a need to create sustainable jobs within the social justice context.

The relationship between labour regulation and economics cannot be ignored, especially in light of the fact that labour and labour-related laws are constantly blamed, especially by economists, for imposing rigidities on the labour market. Economists, amongst others, argue that these rigidities need to be removed in order

to promote employment generation (Chacaltana, 2009:1). However, Bronstein (2009:40) posits that labour flexibility rarely creates new and authentic jobs as it has made many existing jobs precarious. Santos (2009:46) also contends that there is a requirement to shift from the flexibility or inflexibility framework that has controlled the analysis of labour regulation's relationship to one of growth experiences. Darrol (2013:14) postulates that a disciplined and productive economy requires regulation. The author further contends that the debate as to whether or not regulation is essential is false. The author supports Santos' argument that the question is not whether regulation is wanted, but rather what kind of regulation is required (Santos, 2009:48). Thus, before analysing the influence of labour legislation on job creation and job sustainability, it is important to look at what has historically influenced job creation and job sustainability in general.

"Equality at Work" is recognized by the International Labour Organisation (ILO) as a source of economic growth (Munin, 2012:26). There is consensus that economic growth is necessary to create jobs and to reduce poverty (Vellem, 2014:5; Muthethwa, 2013:2; Suryadarma, Suryahadi and Sumarto, 2013:549; Escudero, et al., 2013:111; Ayanda and Laraba, 2011:200); Herrington, Kew and Kew, 2010:18; Heitmann, 2009:3; Gaal and Fox, 2008:17; Zagler, 2007:228; Pascual and Jepsen, 2006:26; Da Piedade and Thomas, 2006:66; Islam and Mageres, 2001:289; and Kitson, Martin and Wilkinson, 2000: 632). Muthethwa (2013:2) contends that there is a correlation between growth and employment. According to the Industrial Development Corporation (2017:3), South Africa's economy only grew by 0.3% in 2016. There is sufficient empirical support in the literature that economic growth generates more employment prospects and that various sectors in an economy have diverse job-creation potential, such as the service sector in the urban areas and the agricultural sector in the rural areas (Suryadarma, Suryahadi and Sumarto, 2013:549). Nevertheless, economic growth is not the only factor which needs to be taken into account for job creation and poverty reduction.

Munin (2012:26) postulates that economic growth does not necessarily generate equitable and sustainable outcomes *per se*. Wolterstorff (2013:389) emphasises that what needs to be guarded against is social injustices, inflicted on members of society by laws and public social treatments. Winston (2011:34) also emphasises that the main ethical value achieved by sustainability is social justice, in particular the value

of preventing unjust exploitation. Consequently, he claims that sustainable businesses are accountable for preventing the unjust misuse of human and natural capital. McGrath and Akoojee (2007:427) agree with Winston. They maintain that comparatively high growth rates in South Africa have not brought about meaningful developments in the reduction of poverty, inequality or unemployment.

Furthermore, Le Roux (2013:513) maintains that there should be a shift towards an economic model that focuses on sustainable human well-being rather than one that focuses on GDP-based measures of progress. Consequently, for the purposes of this study, the theories and models of economic growth alone are inadequate. The extent to which they include the principles of social justice, in particular the Labour Law Theory of Social Justice (Davidov and Langille, 2011); the Labour Theory of Value (Martin and Pimentel, 2014:122); and Industrial Democracy provide a theoretical framework and basis for this research.

Zagler (2007:228) contends that economic growth is driven by structural change and that there is an association between unemployment, structural change and economic growth. Thus, both government and business play a vital role in making important strategic decisions about infrastructure, the restructuring of the economy, as well as the exposure of businesses and their ability to deal with and respond to greater risk and macro-economic uncertainty, which further influences economic growth, job creation and job sustainability. As there is a link between preventing social injustices and economic growth, the next section examines social justice.

## **2.4 Social justice**

Social justice is identified as the process through which society reaches a more reasonable sharing of power in the political, economic and social spheres (Smith, 2007:1). Consequently, the concepts of equity and power are part of social justice (Smith, 2007:1).

According to Standing (1999:341) a just society and, by insinuation, a good labour market necessitates policies and foundations that improve self-control and fundamental security. Thus, social justice requires the co-ordinated action and cross-



sector collaboration of government, business and society to change the unjust systems and structures (which the stakeholders have played a role in bringing about) which have led to the unequal balance of power in society.

Consequently, social justice is concerned with the reduction of poverty and the improvement of living standards. Nevertheless, Freiman (2012:26) contends that distributive justice should be equated to sufficientarian justice, whereby sufficientarian regimes are used to direct all of the nation's resources towards uplifting people to an appropriate level, such as the family sufficiency threshold level. Standing (1999:351) claims that a distributive justice strategy that places work and occupation at the centre of society is appropriate for the flexible open economies that characterise the era of global capitalism. He proposes the establishment of a system based on three principles, namely basic income security, universal representation security (voice) and the difference principle (reforms are justifiable only if they improve the position of the worst-off) (Standing, 1999: 352). The author states that the strategy must facilitate flexibility and promote lifestyle work flexibility. He also notes that distributive justice depends on achieving a better balance between the forms of labour regulation and on reducing the faith in market regulation (Standing, 1999: 353).

Nili (2011:630) contends that there is an international moral duty on the affluent nations to stop exploiting and harming the world's poor. In addition, Sornarajah (2006:330) claims that law should be found in justice rather than in power. He maintains that it is up to the lawyers to correct the imbalance which has occurred in international law, namely the role of private power in making international law through neo-liberalism (Sornarajah, 2006:330). International law on foreign investment has become deprived of the values of peace and justice (Sornarajah, 2006:331) and needs to be addressed. Social justice schemes need to be similarly universal, due to the worldwide character of capitalism, the global spread of imperialism, and the subsequent global structures of inequality (Coates, 2007:582 and Nielsen, 1983). Aptly, Coates (2007:585) states that the social justice standard must comprise of the following:

- the creation of perfect forms to which and by which the existence of present social arrangements or circumstances may be compared;

- a background of circumstances where social participants interact as equivalent and unrestricted members beneath systems of fairness; and
- a valuation of the level to which justice is attained and what kinds of policies, procedures and/or cures must to be applied to attain a just social system.

In addition, Sornarajah (2006:338) maintains that the problem with international economic law is that for the past century, it has developed along neo-classical lines. He contends that international law needs to be revisited to promote the principles of fairness, equity and justice to all nations and in particular to protect the interests of developing countries which are vulnerable to exploitation. Dahan, Lerner and Milman-Sivan (2013:678), who propose a model of shared responsibility, share his view. Furthermore, Sornarajah (2006:338) claims that international trade treaties are inadequate as they emphasise the liberalization and protection of foreign investment, whilst simultaneously disregarding concern for human rights and the environment.

Accordingly, there is a need for international distributive justice because of globalisation. It is no longer good enough to simply deal with distributive justice on a national level. The time has come to deal with distributive justice amongst states as well (Williams, 2010:43). Williams (2010:61) claims that the solution lies in the creation of an international order, a federation of free states from which imperialism and colonialism are expressly excluded. The author proposes that the global redistribution of the world's historical resources, to ensure stability and to ease global poverty, can and should take place through a system of co-ordinated taxation (Williams, 2010:45). However, in order to achieve the aforesaid, Williams (2010:49) contends that there has to be a combination of legislative wills across state borders. Additionally, Dahan, Lerner and Milman-Sivan (2013:678) argue that the ILO should assign legal responsibility for remedying unjust working conditions not only to the states in whose territory the violations of labour standards occur, but also to brands and powerful transnational corporations. Olsen (2010:303) recommends that international regulations should be developed through the international framework agreements to deal with these issues. Nevertheless, Thomas, cited in Bellace (2011:24) claims that social justice is "much more than the removal of social injustice". He postulates social justice to be the approach through which "the

individual might attain his or her political, economic and moral rights” (Bellace, 2011:24). To achieve social justice for workers, not only must rights be agreed upon internationally, but these rights must also be observed and applied in practice, implying that the tripartite parties (government, employers and workers) must take action to make this happen (Bellace, 2011:25). Furthermore, the International Labour Organisation (ILO) has always held the view that the achievement of lasting peace and social justice are inseparable (Bellace, 2011:22).

Moreover, social justice “acknowledges the importance of certain aspects of a welfare state and the need to give preferential treatment to disadvantaged members of society” (McQuoid-Mason, 1982:5). Thus, Hattersley and Hixon (2012:11) claim that the pursuit of social justice requires an active central state. According to Bosch (2004:619), there are three kinds of welfare states, namely the social democratic (e.g., Sweden), the corporatist (e.g., Germany) and the neo-liberal (e.g., the USA). The best model of the three welfare states for South Africa would probably be the social democratic welfare state. Welfare states or regimes are institutional arrangements between the market, the state and the family in which the state plays a key role in safeguarding individuals against market risks (Pöder and Kerem, 2011:56). Nevertheless, Donnelly and Dunn (2006:1) claim that South Africa, since the new constitutional dispensation, has embarked on labour market reform which included distributive justice based on the European Social Model. However, Bronstein (2009:171) insists that there has been a shift away from the social welfare approach to a human rights approach. Finnemore (2002:145) makes an important observation that human dignity should be respected as the organisation’s workforce may provide it with the necessary competitive edge that it needs in order to succeed in a highly competitive world. Consequently, social justice is concerned with human dignity, equity and freedom to contribute in all of the political, socio-economic and cultural areas of society (Collins, 2011:142). Human dignity in the workplace also requires just treatment and to be free from arbitrary action by those holding authority (Wheeler, Klaas and Mahony, 2004:1). Therefore, social justice is the balancing act of granting rights to employees, even if their rights impede on the rights of their employers. Thus, the ethical normative principle that will be used to evaluate the influence of labour legislation on job creation and job sustainability in this study will be social justice.

## 2.5 Human rights

Globally, there is recognition and an expectation that certain levels in terms of human rights have to be complied with. Fundamental rights have three shared features:

- they display the central values of society;
- they cannot be relinquished; and
- when in disagreement with other laws and rights they must be given precedence (Bronstein, 2009:128).

Consequently, business, amongst others, is expected to comply therewith, especially in light of the fact that there can be no form of slave labour in a civilized world. Moreover, the International Labour Organisation states that everyone should have a right to decent work which incorporates the right to a living wage (Warikandwa and Osode, 2014:43). Therefore, to pay someone a wage below the breadline and to subject the individual to poverty is tantamount to, or even worse than, slave labour. Warikandwa and Osode (2014:43) contend that it is worse than slavery because in order to preserve his or her property, the master was obliged to care for, provide for and look after his or her slaves and livestock, whereas no such obligation rests on an employer other than to pay an employee a wage or remuneration.

Historically, social justice has been neglected in South Africa in the pursuit of the adoption and implementation of global neo-liberal economic policies and strategies to grow the South African economy (Von Broembsen and Davis, 2008:1). Consequently, the South African government needs to address this neglect urgently, which it appears to be doing through the adoption of its New Growth Policy (Swanepoel, Slabbert, De Bruin and Joubert, 2012:286). Smith (2007:3) supports Von Broembsen and Davis' argument and maintains that what is required is the collaboration of a multi-stakeholder, multi-sector and effective development partnership to address the social and economic inequalities which exist in South African society. The author argues that rights and duties are not enough. Furthermore, Smith (2007:3) contends that people need to have access to the means to claim and act on their rights and duties. Thus, Smith favours a system change that requires inclusive partnerships. Smith's contention supports Ferree's

assertion that “what has been made by people can be remade by people” (Ferree, 1997:iv).

The ILO has primarily regarded economic and social rights as indivisibly connected to any robust notion of human rights. Consequently, in achieving social justice, one must take into account not only the ILO’s standards but also International human rights law. This was highlighted in the ILO’s 2008 “Decent Work” campaign, wherein it stated its strategic objectives of gender equality; creating jobs; guaranteeing rights at work; extending social protection and promoting social dialogue; protecting the dignity of workers, and promoting human rights at work (Bellace, 2011:6). Furthermore, the four basic principles emphasized by the ILO as applicable at work emanate from fundamental human rights and are not simply from labour standards (Bellace, 2011:14). A connection should exist between a country’s adherence to labour standards and the granting of favoured trading standing, especially in light of globalisation. Additionally, there should be social clauses in trade agreements applicable to all countries (Bellace, 2011:15). Developing countries are, however, opposed to this argument because it is unfair to impose the developed world’s standards on them. The fact that they are developing countries is not a justification in itself for them to be exempted from adhering to basic human rights principles. Nonetheless, South Africa appears to be committed to social justice, which is reflected in its laws in general, as well as in labour law.

Finally, labour relations has a paradoxical nature as it tries to simultaneously balance the opposing interests of achieving the aims of social justice whilst ensuring economic efficiency. Labour relations are constantly reformed by the quest for maintaining this balance. Sadovaya (2010:528) claims that the main undertaking of regulation is to ensure the country’s competitiveness due to globalization. Burgess (2010:19) is opposed to deregulation and maintains that deregulation has a tendency to weaken both individual and collective labour rights by giving employers authority that is more flexible, thereby moving power away from workers and unions. Thus, it is imperative to determine “how labour legislation, institutions and state policy in the labour market and the system of collective bargaining regulation of labour relations undergoing change, on the one hand, will create opportunities and stimuli for enterprises to invest funds in developing production, creating jobs and expanding the

levels of activities, while on the other hand contributing to the maintenance of employment and an acceptable level of social guarantees for the employed” (Sadovaya, 2010:528). This research explores the extent to which labour legislation influences job creation and job sustainability in South Africa and how labour laws and policies can best respond to South Africa’s current employment protection challenges. The intention of this research is to be solution oriented, hands-on and recognized by everyone to be just (Coates, 2007:581). In order to do so, the areas of labour protection legislation are discussed below.

Consequently, the normative principle that will be used in this research to evaluate the influence of labour legislation on job creation and job sustainability will be social justice, as a price cannot be placed on fundamental rights, such as human rights and equity.

## **2.6 Theoretical framework to assess the influence of labour legislation on job creation and job sustainability**

This section provides the rationale for the chosen labour legislation framework and social justice as the underpinning theory forming the theoretical framework and the basis for this study. Efficiency and social justice are the normative foundations of labour law (Collins, 2011:137). Social justice includes economic justice. The ideas of social justice and responsibility are not new. They have accompanying neo-liberal ideas. The two opposing economic frameworks, namely the neo-liberalist framework and the neo-corporatist framework, assert the extent to which the South African government should intervene in the industrial relations system.

Neo-liberalists argue that government should play a minimal role to facilitate a negotiation framework between employers and employees, whereas corporatists support a social democratic approach that government should play an active role in the industrial relations system wherein business, labour and the state work co-operatively (Klerck, 2009:23). At the centre of it all is the issue of how power is distributed in South African society. The neo-liberalist versus neo-corporatist theoretical framework therefore shapes the extent to which employers perceive

labour laws or the state's regulatory role in influencing business, and consequently job creation and job sustainability.

However, Santos (2009:67) maintains that the legal order interrelates with other social norms that considerably influence behaviour. Consequently, the author is of the view that if one aims to discern how law influences the behaviour of employers and employees, then it is important to understand issues such as how justly institutions and affected parties apply that law. He questions how effectual the means of enforcement are; how expensive they can be when contrasted to the alternatives, and what the occurrence of transgressed parties getting legal remedies is (Santos, 2009:67).

### **2.6.1 Legal theories from a labour perspective**

Labour law requires a theory to justify its existence and weight for typical labour law rules and principles. It also requires theory to address the moral, political, and legal force of labour law. Schömann and Schömann, cited in Houseman and Oswa (2003:352) reference two legal theories to explain the new roles of laws and changes to the laws, namely the Legal Theory of the Standard Employment Relationship and the Theory of Reflexive Labour Law. Houseman and Oswa (2003:352) maintain that both theories highlight the need to take into account the internal and external factors in legal regulation to better understand how the regulation of non-standard work developed.

However, Collins (2011:154) argues in favour of adopting a legal theory which constitutionalises fundamental rights as a justification for labour law. According to the author, there are two primary justifications for a legal theory. The first justification, namely, neo-liberalist efficiency based wealth maximization justification, is about efficiency or welfare considerations wherein labour law is concerned with regulating employment contracts through a mixture of special contract law and market regulation (Collins, 2011:137). The second justification for labour law is social justice. The social justice justification is based on considerations of a fair distribution of wealth, power and other goods in a society wherein labour law is concerned with implementing social justice by supporting the collective bargaining system and the

imposition of basic labour standards such as a minimum wages “because these interventions in the labour market are calculated to improve the position of poorer and weaker members of the society” (Collins, 2011:137).

Botero, Djankov, La Porta, Lopez-de-Silanes and Shleifer (2004:1340), claim that a country's approach to regulation under the legal theory is shaped by its legal tradition. The authors contend that the political power of labour has been central to the legal and regulatory design of the twentieth century, which is true of South Africa wherein positivism shaped its legal tradition (Botero, *et al.*, 2004:1340). They further contend that it is common knowledge that South Africa inherited her basic legal structures from her colonizers, the English, which significantly influenced the South African legal system, particularly with regard to legislation. During the prolonged period of Colonialism and throughout the subsequent apartheid era, labour law adopted the first justification, a positivist theoretical approach which was primarily regulatory (Botero, *et al.*, 2004:1340). The labour law during that time was anti-social justice, as it promoted discrimination and unfair working conditions.

However, since 1994 and under the new constitutional dispensation, labour law adopted the second justification, which is social justice. It has become more concerned with social justice and human rights by seeking to redress past inequalities and injustices. Consequently, the Labour Law Theory of Social Justice and the Industrial Democracy Theory based on equality and fairness, have influenced South Africa's legal tradition since the change in the constitutional dispensation in 1994, with its strong labour movement (Davidov and Langille, 2011) forming part of the meta-theory underpinning this research and which will be used to explore and determine the influence that labour legislation has on job creation and job sustainability in South Africa. Consequently, social justice will form the ethical normative framework and the theoretical basis for this research in which both internal and external factors in legal regulation will be taken into account. Therefore, social justice as a primary ethical value and normative principle will be used to determine labour legislation's influence on job creation and job sustainability.



## **2.6.1.1 The Social Justice Theory of Labour Law**

### **2.6.1.1.1 Definition**

Some of the leading theories of social justice are the Influential Utilitarian Perspective of Habermas and the Dominant theory of John Rawls (Taherzadeh, 2012:3). The two prominent theories of social justice are John Rawls' Theory of Social Justice, which is about fairness and David Miller's Pluralistic Theory of Social Justice about determining if any procedure or consequence is consistent with Miller's three principles of social justice, namely need, desert or equality (Robinson, 2014). John Rawls (1971) argued in favour of a balance between social equality and individual freedom. Nevertheless, Amartya Sen's alternative capabilities perspectives, which are based on the fair distribution of capabilities for a just society and Martha Nussbaum's concept of human dignity should also be considered (Morris, 2002:368). The Labour Law Theory of Justice is defined by labour law's morality (Langille, 2011:11) and labour law's jurisdiction and content are bound together by this morality, namely the moral ideas of exploitation and social justice (Winston, 2011:33). Consequently, labour law is an exercise in ethics, applied and otherwise (Langille, 2011:3).

Historically, two predominant elements for the justification of labour law are the efficiency-based or welfare tradition and the social justice tradition, which ensure the fair distribution of wealth, power and other goods in a society (Collins, 2011:137). Traditionally, labour law's "paramount and systemic rationale" is the "protection of the worker against unfair exploitation", which has caused constraints to be imposed on "general contract and commercial law" (Langille, 2011:8). Therefore, the normative foundations of the content of labour law are based on the inequality of the bargaining power relationship that "labour is not a commodity", as well as on "human dignity" (Langille, 2011:7). Nevertheless, Sen's (1997:31) notion of substantive human freedom should be the overriding consideration and a distinction should be drawn between workers as objects and workers as subjects. Furthermore, social justice, the right to decent work and human rights are all inextricably linked (Bellace, 2011:27). Thus, the overall purpose of labour regulation is to improve the lives of the inhabitants of the world, including their work (Langille, 2011:12). "The right to decent work is not only to survive but to prosper and to have a dignified and fulfilling quality

of life” (Rogers, 2014:1544). Nevertheless, labour law structures either constrain or liberate human capital creation and deployment (Langille, 2011:13). Hence, the social justice theory of labour law will be used as the underpinning theory which forms the theoretical framework and the basis for this study of the influence of labour legislation on job creation and job sustainability.

#### **2.6.1.1.2 Advantage**

Social justice enforces on each person a personal obligation to act with others to create and constantly improve establishments as instruments for personal and social development (Center for Economic and Social Justice, 2014). Social justice also encompasses economic justice. Hence, social justice as a primary ethical value will be used as part of the underpinning meta-theory, which forms the theoretical framework and the basis for this research.

#### **2.6.1.1.3 Disadvantage**

Conversely, the Action and Research Centre of the Republic of South Africa (2014) states that social equality and individual freedom are often understood as “in tension”. The Centre is of the opinion that the discussion endures as to how and to what degree, social equality and individual freedom can be balanced.

#### **2.6.1.1.4 Challenges in the implementation of social justice**

Social justice is both a process and a goal (Pieterse, 2003:172). The aim of social justice is the complete and equivalent contribution of all sections of society that is commonly influenced to address their needs. The procedure for reaching the objective of social justice should also be democratic and participatory, inclusive and confirming of human activity and human abilities for working together to make change. Supremacy cannot be terminated through forced manoeuvres, but through a "power-with" rather than “power-over” example for enacting social justice goals (Pieterse, 2003:172).

However, Van der Walt (2004:257) contends that the Transformation-Based Approach to the Theory of Social Justice is most appropriate for the South African context.

#### **2.6.1.2 Transformation-Based Approach to the Theory of Social Justice and Human Rights**

Van der Walt (2004:257) claims that the Transformation-Based Approach to the Theory of Social Justice satisfies the requirement for and the validation of constitutionally established and judicially enforceable social and economic rights. Consequently, he maintains that labour legislation regulation is necessary and justified for the balancing of rights, social justice and safety (Van der Walt, 2004:257). In addition, the author contends that the two contrasting theoretical approaches, namely the rights-based and needs-based approaches, separately or combined are unable to attend to all sides of social justice in a transformative context, as is required to be in accordance with the Constitution which entrenches social justice and human rights (Van der Walt, 2004:257).

The traditional Rights-Based Approach depends on a wide-range of adaptations of clarifications and applications to protect social and economic rights, with allusion to property rights, technical justice rights and equality rights, respectively (Van der Walt, 2004:257). Furthermore, the role of law from a Rights-Based point of view is, amongst others, to redress; to regulate; to ensure compliance with human rights; to ensure business sustainability; and to enhance social equality. The purpose of social justice, however, is wider - to serve the greater good in terms of socio-economic justice, distributive justice and to redress past wrongs.

The second Needs-Based Theoretical Approach centres on the notion of weakness rather than strength and relies on moral or psychological replies to total need or unbearable individual suffering, in order to clarify and validate the establishment and implementation of social and economic rights (Van der Walt, 2004:257). Warikandwa and Osode (2014:44) claim that the aim of distributive justice is simply to re-order economic relations in order to achieve a just division of all benefits and burdens in society, which can only be achieved once a minimum standard has been

set. According to Michelman's Theory of Social Justice chooses extreme need or deprivation as its basis and reinforces that a minimum threshold of social insurance must be supplied before the normal economic equalizing of rights can take place (Van der Walt, 2004:290). Accordingly, corrective justice should take preference over distributive justice and economic efficiency.

Therefore, even if labour legislation influences job creation and/or job sustainability and labour regulations are found to be too rigid, labour legislation is nevertheless necessary and justified in terms of the Needs-Based Theoretical Approach, as well as in terms of the Constitutional Transformation-Oriented Approach. Consequently, the Transformation-Based Approach to the Theory of Social Justice appears to be the more appropriate approach to address inequality, unemployment and poverty in South Africa (Van der Walt, 2004:257).

Postone (2005:70) maintains that the basic historical transformations have re-stated the essential significance of comprehending global past forces at work and far-reaching global structural changes in the modern world. Botero, *et al.* (2004:1342) contend that the underlying theory justifying most state interventions is that free labour markets are imperfect. The recognition of the need for state intervention to deal with the worst effects of capitalist growth and development, have occurred as early as the nineteenth hundreds, culminating in the creation of the modern day welfare state (DeMartino, 2002:229).

## **2.6.2 Economic justification theories**

There is a relationship between labour regulation and economics (Chacaltana, 2009:1). This relationship cannot be ignored, especially in light of the fact that labour and labour-related laws are constantly blamed, especially by economists, for imposing rigidities on the labour market. The perception of labour legislation's regulatory influence on job creation and job sustainability is dependent on which economic viewpoint it is evaluated from (Darrol, 2013:14). Economists, amongst others, argue that these rigidities need to be removed in order to promote employment generation (Chacaltana, 2009:1). However, Bronstein (2009:40) posits that labour flexibility rarely creates new and authentic jobs as it has made many

existing jobs precarious. Santos (2009:46) also contends that there is a requirement to shift from the flexibility or inflexibility framework that has controlled the analysis of labour regulation's relationship to one of growth experiences. Furthermore, Darrol (2013:14) contends that the debate as to whether or not regulation is essential is false. He supports Santos' argument that the question is not whether regulation is wanted, but rather what kind of regulation is required (Santos, 2009:48). Consequently, the answer as to whether labour legislation influences job creation and job sustainability and the extent to which it is dependent upon the economic theories as applied in the studies explored, particularly relating to the literature reviewed.

The two predominant sub-strands under the efficiency wealth maximisation justification of labour law, namely the efficiency-based neo-classical neo-corporatist efficiency-based justification theory and the Keynesian welfare justification theory as they relate to labour law, job creation and job sustainability are explored below.

### **2.6.2.1 The Prevailing Neo-classical Labour Market Theory**

Neo-liberalism is not only a revival but is also a departure from the liberal economic policies originated by Adam Smith (Kitson, Martin and Wilkinson, 2000:632).

#### **2.6.2.1.1 Definition**

Neo-liberalism is an efficiency-based theory in terms of which the control of the economic factors is shifted from government to the private sector by limiting government interference in the free markets. It is based on the assumption that monetary regulation will check inflation, that labour market de-regulation and reverting tax and benefit reform will obtain full employment. Additionally, a more uneven re-deployment of income and the markets operating with fewer restrictions will radically enhance economic performance (Kitson, Martin and Wilkinson, 2000:632). Consequently, the main traits of neo-liberalism are a free market; the cutting of public expenditure for social services; the de-regulation of markets; the privatization of public enterprises; and a shift away from community or public goods towards individual responsibility.

The neo-classical approach claims that there may be a link between inflexible labour markets and the stifling of job creation (Van Niekerk, *et al.*, 2008:7-8). Hence, neo-classical economic theorists favour the de-regulation of the South African labour market (Van der Walt, Le Roux and Govindjee, 2012:3). Cörvers, Euwals and de Grip (2012:83) support this view and affirm that, at policy level, there is a call for greater labour market flexibility. The authors maintain that globalization, technological and organisational change are major drivers of accelerated change in the economic environment. Thus, neo-liberalists, corporatists and the business community are all in favour of de-regulation and support the return to individualistic and voluntary rights regulation as they believe that doing so will enable local businesses to become more competitive globally (Van der Walt, Le Roux and Govindjee, 2012:3).

#### **2.6.2.1.2 Advantages of the Prevailing Neo-classical Labour Market Theory**

The leading view is that increased competitiveness will be achieved through the reduction of labour costs. Han, Mok, Kong and An (2011:59) support this view when they maintain that China's economic growth over the past few decades is founded on the advantage of its low labour costs. Moreover, Van Niekerk, *et al.* (2008:7-8) support the neo-classical argument in favour of de-regulation affirming that there may be a link between inflexible labour markets and the stifling of job creation. Their view is further supported by Faulkner and Loewald (2008:18) as well as by Herrington, Kew and Kew (2010:5) who maintain that South African labour legislation has stifled job creation through over-regulation. Consequently, the prevailing Neo-Classical Labour Market Theory, the Organisation for Economic Co-operation and Development – International Monetary Fund (OECD-IMF) and the beliefs amongst some academics and policy makers is that protective labour institutions impede the workings of the labour market (Berg and Kucera, 2008:22).

Conversely, the neo-classical argument is countered by Deakin, Malmberg and Sarkar (2014:2) who observed that an increasing number of studies suggest that the assumed negative effects of labour laws may be either very minor or just absent, and that such laws could actually have beneficial consequences on productivity and

innovation. Moreover, the authors contend that labour laws can have several positive and negative consequences on efficiency, contingent on the circumstances (Deakin, Malmberg and Sarkar, 2014:6). Likewise, Cazes, Khatiwada and Malo (2012:36) claims that there does not appear to be a strong connection between employment protection legislation and employment levels. The author maintains that employment heights incline to be positively related with stricter regulations (Cazes, Khatiwada and Malo, 2012:36). Furthermore, Burgess (2010:19) opposes de-regulation and maintains that de-regulation tends to weaken both individual and collective labour rights by giving employers more flexible power, thereby removing power from workers and unions. Santos (2009:51) similarly emphasises that regulation has positive economic effects for targeted groups. He asserts that the growth of establishments such as internal labour markets and collective bargaining is not incompetent government interference, but rather an effective solution arising out of actual needs that cannot be supplied by individual market transactions (Santos, 2009:51). The author further maintains that without employment protection legislation, employees and employers would negotiate ineffective contracts which do not promote the improvement of skills or the internal flexibility required for adaptation to changing external markets (Santos, 2009:51).

Santos (2009:51) makes a valid point that economic efficiency is not the only normative standard that should be contemplated when determining the advantages of regulation. The author highlights other significant contemplations of equity, justice and fairness that deserve equally significant consideration because these values cannot be sacrificed for greater efficiency. Furthermore, society holds these values in such high regard that it will rather sacrifice the latter for the former (Santos, 2009:51). Thus, social justice is the appropriate ethical value with which to evaluate the influence of labour legislation on job creation and job sustainability.

#### **2.6.2.1.3 Disadvantages of the Prevailing Neo-classical Labour Market Theory**

Labour flexibility has become symbolic of jobs beneath the living wage; demeaning working conditions; and informal, unrecorded jobs (Santos, 2009:45). Berg and Kucera (2008:138) posit that the perpetual recommendations being put forward in response to the need to be competitive and to survive in the global economy have

placed a significant burden on workers. Santos (2009:45) postulates that the dominant flexibility-rigidity conception is imprudent. He argues that the World Bank's "Doing Business (DB)" report is based on a flawed understanding of regulation. The author argues that overall, DB fosters an idea of legal flexibility that does not comprehend that flexibility for some may mean rigidity for others (Santos, 2009:46). Additionally, labour is dehumanized when it is viewed as a commodity by efficiency theorists (Collins, 2011:151 and Smit, 2010:4). Externalization is often used as a strategy to save on labour costs (Tzehainesh, 2010:20). Han, *et al.* (2011:59) maintain that "the laws and regulations relevant to the Chinese labour market did not adequately protect their workers' rights, which resulted in labour conflicts and labour grievances over workplace degradation, exploitation and discrimination." Kitson, Martin and Wilkinson (2000:632) identified five snares of neo-liberal theories and policies, namely:

- the unemployment snare;
- the low wage/low productivity snare;
- the fiscal snare;
- the social exclusion snare; and
- the economics, politics and policy snare.

Le Roux (2013:513) claims that labour productivity is an essential ingredient of profit-making. Nevertheless, there is an increasing consciousness of the dangers related to an extreme emphasis on short-term fiscal amalgamation. Proposals are being forwarded that it is better for the long-term to link judicious macro-economic policies plus employment and income goals (Escudero, Khatiwada and Malo, 2013:105). Han, *et al.* (2011:59) further affirm that the Chinese government realised that future economic development could not rely only on below low-value-added labour-intensive processing industries to create jobs and that job creation single-handedly might not ensure social constancy. In addition, Botha (2015:31) contends that employees contribute to a business's long-term growth, prosperity and sustainability. Han, *et al.* (2011:59) state that the Chinese government has altered its industrial development strategy to higher-technology based industrial production and secure labour relations in order to ensure long-term social cohesion and harmony.



Thus, social justice is the appropriate ethical value with which to evaluate the influence of regulation and labour legislation on job creation and job sustainability.

#### **2.6.2.1.4 Challenges of implementation**

Han, *et al.* (2011:60) assert that the alleged influence of law on increased labour costs having a harmful effect cannot simply be viewed from their effect on business cost competitiveness and profit margins alone. The challenge for job creation and job sustainability should not only be to manage labour costs but to simultaneously improve skills (Badenhorst-Weiss and Waugh, 2015:7).

Santos (2009:46) states that the discussion concerning which type of labour market regulation results in better economic outcomes has been especially intense in Europe over the past fifteen years. However, Strauss and du Toit (2010:308) contend that excessive emphasis has been put on numerous topics such as numbers, quotas and Broad-Based Black Economic Empowerment (B-BBEE). The authors argue that the matter of skills has been seriously neglected and that these issues need to be urgently addressed in order to make the country more competitive globally, as well as to improve job creation and job sustainability (Strauss and du Toit, 2010:308). According to Santos (2009:46), there are three different labour administrations that join flexibility and rigidity in diverse approaches. The author states that the systems, which he calls the employee-friendly; employer-friendly; and free-for-all systems, describe the full range of legal rights accessible to employers and employees in the employment relationship. Consequently, it would appear that inflexible labour market policies have been erroneously accused for weak labour market performance.

Lee, McCann and Torm (2008:416) are also of the opinion that a more flexible regulatory framework does not necessarily equate to increased growth and employment creation. They maintain that there is growing evidence that regulation may in fact bring about both economic and social benefits (Lee, McCann and Torm, 2008:425). Furthermore, Smit (2010:4) argues that lasting peace is based on social justice as stated in the Philadelphia Declaration of 1944 and this should be the primary aim of labour policy both nationally and internationally. Hence, the Neo-Classical Labour Market Efficiency Based Theory is inappropriate for this study, as it

promotes non-intervention by government in labour-related issues. The theory results in the cutting of public expenditure for social services, the de-regulation of markets and the privatization of public enterprises. This is a shift away from community or public goods towards individual responsibility, which is contrary to social justice, job creation and job sustainability.

#### **2.6.2.2. Heterodox Keynesian Fiscal Stimulus and the Need for the Social Control of Business Theory**

John Maynard Keynes' Welfare Justification theory challenged neo-liberalism as the best course of action for capitalists. Keynes argued that full employment, which is the absence of involuntary unemployment, is essential for capitalism to grow, but this can only be attained if governments and central banks get involved to increase employment (Kitson, Martin and Wilkinson, 2000:632).

##### **2.6.2.2.1 Definition**

Keynesianism can be defined as "government intervention in the economy and the implementation of a re-distributive tax-benefit system to stimulate growth" (Kitson, Martin and Wilkinson, 2000:632). Taylor and Atkinson (2013:185) postulate that improved government backing connected to the new South African National Development Plan (2011) is necessary to subsidize national development objectives and to create jobs. Consequently, during a recession such as the present one, Keynesian policies for fiscal stimulus which include the utilisation of temporary tax cuts or increases in government spending can be used to enlarge aggregate demand when this is too weak to engender normal production; employment (Seidman, 2012:273); job creation and sustain jobs, and which is aligned with social justice.

##### **2.6.2.2.2 Advantages of the Heterodox Keynesian Fiscal Stimulus Theory**

Keynesian policies recognize labour rights as fundamental rights where the emphasis is on individual dignity (Collins, 2011:151). Tcherneva (2012:72) states that Keynes' objective is not only to create jobs but also stable and good jobs, which is in line with fulfilling the aims of social justice. Keynes claims that public works offers employment to those who are otherwise unable to find employment and that

they deal with the unemployment problem in a direct and deliberate manner (Tcherneva, 2012:64). Taylor and Atkinson (2013:185) argue that the rural economy can not only be increased by means of better backing for agriculture, but also by way of assistance to mining, tourism, agro-processing and fisheries. Tcherneva (2012:68) supports Keynes' advocacy for a permanent public works programme as basically a policy of employing workers at the verge since he sees it not only as a short-term solution, but also as a long-term solution to attain economic stability.

Kitson, Martin and Wilkinson (2000:632) state that progressive taxation mixed with benefits schemes are intended to provide a minimum social wage which assists in reducing income inequalities, as well as to stop the marginalisation of low income earners and the unemployed, which is aligned with social justice. The authors maintain that together, the redistributive tax-benefit system assists to strengthen aggregate demand in the economy and consequently, to attain full employment and increase economic growth, which once again fulfils the goals of social justice (Kitson, Martin and Wilkinson, 2000: 632). Furthermore, the authors are of the view that this will in turn broaden job prospects and lead to gradual labour market improvement, especially amongst those who had been previously left out, again in accordance with the principles of social justice. They also claim that this redistributive tax-benefit system resulted in high economic growth rates, full employment and lessening income disparities during the 1950's until the 1970's (Kitson, Martin and Wilkinson, 2000:632), thereby positively influencing job creation and job sustainability.

### **2.6.2.2.3 Challenges in implementation**

Tcherneva (2012:74) maintains that the modern output gap analysis that is being applied is completely in conflict with Keynes' method for producing full employment. The author is of the opinion that the Keynesian Demand Gap Approach has been incorrectly applied based on growth output and unemployment, which provides for an increase to a wide range of pro-growth policies, whereas the Keynesian measures close the gap in labour units (Tcherneva, 2012:73). The author argues that most orthodox and heterodox economists' models, such as the Hicks–Hansen–Samuelson Models, have missed this (Tcherneva, 2012:75).

Therefore, the Keynesian Welfare State Economic Theory is better suited for this study than the Neo-Classical Economic Theory as it promotes government fiscal intervention. The theory results in government investing and stimulating the economy in labour-related issues. It increases public expenditure for social services and the regulation of markets through a shift towards community or public goods and away from individual responsibility, which is in line with social justice, job creation and job sustainability.

### **2.6.2.3 Labour Theory of Value**

The Labour Theory of Value is also concerned with active government intervention to bring about social change which benefits society as a whole (Martin and Pimentel, 2014:122).

#### **2.6.2.3.1 Definition**

The Labour Theory of Value is not about the individual but about all people in society and it is about the requirement for active government interference to generate social change which will benefit society as a whole, rather than simply the wealthy (Martin and Pimentel, 2014:122). According to Karl Marx, labour-values determine a general rate of profit and then, with the profit rate, prices of production (Lee, 1993:463). Marx sees labour as the sole source of value (Fulda, 2007:54). Consequently, according to the Labour Theory of Value, labour is perceived to be the effective maker of wealth and its distribution is vital for growth (Martin and Pimentel, 2014:96). The Labour Theory of Value is also appropriate for this study as it promotes active government intervention to bring about change for society's benefit as a whole, including job creation and job sustainability, which is in line with social justice.

#### **2.6.2.3.2 Challenges in implementation**

The Labour Theory of Value, has been extensively criticised, especially by Hume who viewed it as a fallacy (Fulda, 2007:55). Nevertheless, the Austrian School of Thought has demonstrated that value is subjective and cannot be measured by the amount of effort placed into something's creation (Fulda, 2007:55). Baird (2004:10) maintains, however, that the focus should not lie on employers' and workers'

opposing interests but rather on their common goals, especially when weighing up the issue of regulation versus de-regulation of the labour market. Jarvis and Sitas (2009:28) support this argument and propose a system of governance of economic institutions, which is a “multi-vocal agency” that addresses the need for an economic system that is accountable to social and civic needs. The authors further argue that the economic system should go beyond the dualistic European Social Co-Determination Models in order to create a just society without exploitation and oppression and in accordance with the principles of social justice.

Thus, the Social Justice Theory of Labour Law; in particular the Transformation-Based Approach to the Theory of Social Justice and the Keynesian Welfare Theory, will be used as the underpinning meta-theory which will form the theoretical framework and the basis for this research. This meta-theory will be used to determine the influence of labour legislation on job creation and job sustainability in South Africa, which is aligned with the principles of social justice and in particular, socio-economic justice.

## **2.7 External factors influencing and affecting job creation and job sustainability**

A number of external factors, primarily globalisation and the implementation of neo-liberal economic policies, affecting job creation and job sustainability and have contributed to the job crisis in South Africa. Daroll (2011:1) maintains that the neo-classical liberal economic policies, strategies and economic climate created and implemented by the South African government are the primary reasons for the lack of job creation in South Africa. Miller (2012:20) agrees that job creation is closely linked to economic, fiscal and monetary policies. The author, however, contends that there is a lack of co-ordination between those responsible for implementing political commitments for job creation (Miller, 2012:20).

The South African economy is considered a free market system with a dual economy, as it has a sophisticated financial system with a third-world social infrastructure (Nienaber, 2007:77). Li and Ng (2013:25) observe that despite impressive economic growth in South Africa in the past, economic growth on its own

is not a sufficient condition for attracting FDI in the short- or long-term in South Africa. The authors claim that there are also several social problems in South Africa, such as the energy crisis (electricity shortage); the crime rate; the HIV/AIDS crisis; as well as income inequality, which have seriously affected foreign direct investment (FDI) and consequently economic growth, job creation and job sustainability in South Africa (Li and Ng, 2013:25).

Heightened macro-economic insecurity leads to decreased investment and consumption, thereby decreasing economic growth (International Labour Organisation, 2013:8). The OECD (2017:20) corroborate that economic growth in South Africa has continuously fallen in recent years, which they attribute to weak investment due to persistent policy uncertainty and continued low business confidence. The exposure of business to several forms of risk, as well as business's limited capacity to cope with adverse outcomes and to recover from those outcomes, have all resulted in greater economic uncertainty under which businesses trade (Standing, 2007:1).

The problem with increased macro-economic uncertainty is that it has a direct positive relationship with unemployment as reduced private sector investment results in lower demand for new workers, thereby reducing vacancies and job matching (International Labour Organisation, 2013:8). Furthermore, employing a new person represents a long-term commitment for the firm and entails a cost to the firm. Consequently, firms are less willing to employ as they are concerned with the threat of less future demand for their goods or services (International Labour Organisation, 2013:8). Accordingly, firms advertise fewer vacancies, leading to a fall in job seekers finding employment and resulting in a rise in unemployment, which in turn negatively influences household income (International Labour Organisation, 2013:8).

The broader structural trends that have taken place in the South African economy are some of the primary underlying reasons for job losses (Tomlinson (2003:112). Trade reforms have been identified as another factor affecting economic growth, job creation, job losses and job sustainability (Gaal and Fox, 2008:15). Jobs have been lost due to the restructuring of the economy to meet local and global changes in the demand for goods and services (Tomlinson (2003:112). Rigorous employment

protection legislation has also been identified as causing the reduction of employment and labour productivity. More stringent employment protection has also increased labour market segmentation as firms are increasingly using temporary jobs as opposed to permanent jobs to adapt employment to changes in production (Cahuc, 2014:27). The Organisation for Economic Co-operation and Development (OECD) (2012:37) and Bassanini, Nunziata and Venn (2009:387) are equally concerned about the extreme disparities in employment protection legislation between permanent or regular jobs and temporary contracts as contributing to duality in the labour market, which in turn may hamper employment and productivity. However, there are other external factors affecting job creation, such as trade liberalization and globalization which have contributed significantly to the present job crisis in South Africa (Tzehainesh, 2010:21).

Consequently, Darrol (2013:15) contends that the perception that labour legislation imposes major liabilities on business, increasing business expenses and eventually costing jobs, needs to be addressed. Kleinknecht, Oostendorp, Pradhan and Naastepad (2006:171) claim that although moderate wage increases and the flexibility of labour markets may create numerous jobs, it is of concern that it may be at the cost of labour productivity growth, thereby raising serious doubts about the long-term sustainability of a low-productivity high-employment growth path. Levin-Waldman (2012:30) further confirms Richard Lester's observation that employment levels are not defined by wage rates, but by the rate of production.

Therefore, economic growth is not only affected by employment protection legislation. There are other important internal as well as external factors, such as the global economic recession, local economic and political uncertainty which influence job creation and job sustainability in South Africa. Some of these external factors are discussed below.

### **2.7.1 Globalisation and the pursuit of neo-liberal policies**

Globalisation has been referred to by those opposed to it as finance-driven imperialism or neo-colonialism (Bond, 2010:196). Neo-liberalism is the driving force behind economic globalisation which originated from capitalist assertions of liberal

consumerism, market flexibility, corporate autonomy and optimal competition (Pieterse, 2003:4). Thus, globalisation favours liberal concerns over egalitarian objectives (Pieterse, 2003:172).

By means of economic globalisation, neo-liberal culture has influenced local legal systems and prescribed a particular approach towards the safeguarding of civil liberties, the control of internal markets, state power over public initiatives and state-backed social aid spending (Pieterse, 2003:4). Consequently, some perceive it to be an instrument for accelerated development, whilst others perceive it to be just another means of enslavement and re-colonisation (Adefolaju, 2012:94). Vellem, (2014:1) equates cheap labour to a modern form of slavery. The author attributes cheap labour to be a significant cause for South Africa's history of poverty and inequality (Vellem, 2014:1). Moreover, Winston (2011:34) contends that the globalization of production and finance has provided business with a substantial gain over labour in labour relations.

Globalisation, decentralization of production and technological innovation are important megatrends, affecting economic growth, job creation and job sustainability (International Monetary Fund, 2013:5 and Bronstein, 2009:60). The status of globalisation requires improved policy co-ordination, both nationally and internationally in order to sustain economic and employment growth (Rosas and Rossignotti, 2005:146). One of the consequences of globalisation is changing patterns of work and labour (Standing, 2007:1) resulting in the growth of "atypical" work arrangements (Tzehainesh, 2010:41) caused by casualization and externalisation (Le Roux and Rycroft, 2013:220).

The resultant changes in production methods have also led to a change in the skills mix of the labour force, requiring a more skilled labour force (Tomlinson, 2003:112). The OECD (2017:11) identified skills shortages and mismatches as key bottlenecks to growth and inclusiveness. Furthermore, the progression of de-industrialisation of the industrialized world, worsened by global recessionary conditions, has led to social division, homelessness and unemployment in numerous less-preferred areas (Geyer, Coetzee, Du Plessis, Donaldson and Nijkamp, 2011:265). Gaal and Fox



(2008:14) maintain that employment growth in industry has fallen and although the service sector has grown, wage and salaried jobs in that sector have not.

Dahan, Lerner and Milman-Sivan (2013:680) claim that economic globalization has increased global competition amongst nations, above capital and jobs. Pieterse (2003:4) agrees that this may be primarily attributed to the strength of multinational neo-liberal institutions which have dominated the influence of global human rights structures, thereby ensuring that neo-liberal values are entrenched. Pascual and Jepsen (2006:26) contend that globalization comes at a social cost of depressed wages, job losses and a loss of social and labour protection. Pieterse (2003:8) affirms that the effect of globalisation appears to be that economic issues are viewed as separate from social issues. The author maintains that, previously, the economy was viewed as a vehicle for meeting the welfare needs of society, whereas society is now inversely being tasked with resolving economic problems (Pieterse, 2003:7).

Thus, a recurrent criticism of globalization is that it can lead to a progressive lowering or deterioration of labour and environmental standards, or tax rates in order to attract foreign capital (Olney, 2011:1). Additionally, Tzehainesh (2010:20) contends that globalization has increased economic insecurity for workers through the casualization and externalization of production, as well as labour trends that are changing the full-time and permanent nature of employment (Tzehainesh, 2010:4). Accordingly, Kapstein (2004:79) claims that the global economy is unjust and unfair. Consequently, global competitiveness is an external factor which has been identified as affecting economic growth, job creation and job sustainability as it appears to be driving current economic policy (Berg and Kucera, 2008:120). The OECD (2010:117) noted that there are still comparatively high barriers to competition in certain sectors which need to be addressed. According to Darrol (2013:15), South Africa's monitoring and enforcement of legislation expenses relative to GDP are more than twice over those of several other comparator economies (including those of Sweden, Norway and New Zealand) that are connected with widespread state interference. Thus, emphasis is being placed on costs, productivity and labour market reform, resulting in increased demands for greater labour market flexibility. Various globalisation factors such as financial liberalisation; capital mobility; national government's failure to regulate the banks; foreign exchange volatility; trade

liberalisation; inadequate legal protection of global labour rights; increased reliance on foreign investments and multi-national corporations (MNCs); diminished state sovereignty and autonomy; qualified international support; global recession, and growing global uncertainties, are adversely influencing job creation and job sustainability. These are further deliberated upon below.

#### **2.7.1.1 Financial liberalisation and capital mobility**

A vital part of the globalisation drive is financial liberalisation (Siddiqui, 2012:18). Globalisation has resulted in increased deregulation; governments' withdrawal from the workplace; decreased protectionism; increased demand for speed and quality by global customers; the disappearance of international boundaries; and increased trade (Ndimande, 2000:11). Consequently, Siggel (2010:93) argues that globalisation and economic reforms have had a negative influence on both the formal and informal sectors. Tzehainesh (2010:4) maintains that trade and financial liberalisation, strengthened competition for markets and foreign direct investment (FDI) have caused work arrangements to extend beyond the scope of labour law. Therefore, "unregulated markets do not produce efficient outcomes" (Siddiqui, 2012:21), especially in relation to job creation and job sustainability.

Globalisation has also adversely influenced small scale industries in terms of economic development and job creation. Standing (2007:1) claims that globalisation is the cause of growing incidences of social and economic shocks, which in turn have led to more systemic insecurities and growing inequalities, resulting in greater macro-economic uncertainty. The author argues that all of the preceding factors are likely to have an adverse influence on a business's capacity to remain sustainable and to grow in a global recession, while negatively influencing job creation and job sustainability (Standing, 2007:1).

Servais, Bollé, Lansky and Smith (2007:3) contends that it is capital mobility and not labour mobility which has limited what governments can do to attract foreign investment, often pressurizing them to reduce not only fiscal checks and controls, but also social and labour regulations, which in turn may adversely influence job creation and job sustainability. Islam and Verick (2011:20) assert that national

government's failure to properly regulate banks and financial institutions, are to blame for the global economic and financial crises, which is having a negative impact on job creation and job sustainability (Martinelli and Midttun, 2010:10).

#### **2.7.1.2 Global recession and rising global uncertainties**

Increasing global insecurities; tight credit circumstances for families and businesses; public sector severity processes; and the subsequent slowdown in aggregate demand are adversely influencing trade and investment flows. The International Labour Organisation (2013:21) posits that slow growth is set to weaken employment, particularly in developing countries (International Labour Organisation, 2013:70). According to the International Labour Office (2012:31), one in three workers in the world's labour force is unemployed or poor. Thus, economic growth drivers, such as stronger investment, labour productivity and higher wages are needed to increase jobs (International Labour Organisation, 2013:67). Globalisation and the global economic recession have compounded the problem of poverty and unemployment. The global financial crisis has intensely influenced the South African labour market, resulting in the discarding of almost one million jobs over 2009 and 2010 (Verick, 2012:373). Countries have still to recuperate from the loss of jobs and income triggered by the global financial crisis (Escudero, *et al.*, 2013:102). The speedy implementation of financial sector reforms and the creation of an operational framework encompassing both local and international financial markets would greatly help to reduce financial market volatility and stimulate employment growth (The International Labour Office, 2012:28).

#### **2.7.1.3 Exchange rate volatility influence**

Belke and Kaas (2004:247) claim that exchange rate volatility has an adverse influence on labour markets and significantly lowers employment growth. The International Monetary Fund (IMF) (2013:14) concurs that there is plenty empirical proof that the prolonged over-valuation of the exchange rate hurts growth and employment. Belke and Kaas (2004:247) recommend that the reduction of exchange rate volatility should be considered as an alternate for removing employment protection legislation as a means to improve job creation and job sustainability.

#### **2.7.1.4 Qualified International Support**

Chowdhury and Islam (2011:931) claim that international support has become qualified upon developing countries following a macro-economic policy mix deemed to be “sound” by international financial institutions such as the World Bank, the IMF and the donor community.

The OECD (2014:4) confirms that a number of recommendations need to be implemented in order to attend to the main hardship of labour informality, such as expanding the exposure of social security schemes, controlling labour expenses and reducing excessively rigorous job security for formal workers. The OECD (2014:4) suggests that product market reforms could improve short-term growth, particularly if applied in certain protected sectors, for example, the retail trade and professional services where the possibility of creating jobs rapidly is great.

#### **2.7.1.5 Increased reliance on foreign investments and multi-national corporations**

Increased reliance on MNCs and foreign investments is problematic as this reliance causes national governments to have far less autonomy in their economic policy decision-making (Siddiqui, 2012:20). There is growing concern about the control of MNCs and the damage their actions can cause to the population and the environment (Winston, 2011:34). Bernstein (2007:89) supports Cassanova’s (1996:41) argument that globalization has resulted in the weakening of state sovereignty and that nation states are being transformed into disaggregated states, as the power of large transnational corporations (TNCs) increases, which has negative consequences for job creation and job sustainability. Tzehainesh (2010:21) claims that trade liberalisation has contributed to the rampant externalization through sub-contracting and the outsourcing, of labour. Consequently, De Jonge (2011:67) warns that although it may be alluring for a country to invite TNCs to invest in its economy, the country’s policy-makers need to be cautious as they also have the capacity to do great harm in that more jobs could be destroyed than created. Murphy (2009:307) maintains that the solution to address inequalities caused by global neo-liberalism lies in a global focus on egalitarianism (Murphy, 2009:307).

### **2.7.2 The current inadequacy of legal protection of labour rights globally**

The absence of an international legal organisation to hold TNCs responsible for breaches of international norms (De Jonge, 2011:66) is a serious threat to job creation and job sustainability. Consequently, the author proposes that regional human rights courts and the International Labour Organisation (ILO) should be used to hold TNCs accountable, ensuring that more jobs are sustained (De Jonge, 2011:66). Dahan, Lerner and Milman-Sivan (2013:678) also support the view that powerful TNCs should share legal responsibility with the states in whose territory violations of labour standards arise and be held accountable thereof to the ILO. This view is corroborated by Blackett, Helfer, Langille, Leary and Diller (2007:393) who maintain that the ILO is uniquely positioned to take a leadership role in promulgating and monitoring a comprehensive set of corporate social responsibility standards. These standards will ensure that fewer jobs are destroyed and more jobs are created and sustained. Blackett, *et al.* (2007:393) are also of the view that civil society groups should play a more active role and be included as partners in ILO initiatives. Consequently, corporate social responsibility is progressively being endorsed as a tool for global governance to attend to the regulatory void surrounding TNC business activities and as a technique for inspiring business to contribute to sustainable development at a national level (Gjølberg, 2010:203).

### **2.7.3 The moral and ethical crisis in values, and the vision of humanity and society**

The extent to which the globalisation of business and capital enhances or hinders social justice is a factor which must be considered in business ethics at a global or international level. Swanepoel, *et al.* (2012:113), claim that the global financial crisis is a result of the serious moral and ethical challenges that the world is facing. Van Gennip (2010:107) contends that the global culture has become hedonistic, over-sexualized, secular, commercial, urban and individualistic. He claims it is focused on self-realization. The author argues that the solution to the global moral and ethical crisis requires a different attitude, one which does not prefer the maximization of profit, the culture of monetarisation and the supremacy of shareholders value, or only focuses on better control and supervision” (Van Gennip, 2010:107). Swanepoel, *et al.* (2012:198), agree with Van Gennip (2010:107) when they assert that the creation

of an identity and vision of market, society, social cohesion and the importance of values that are not defined in terms of money and profit but a humane and stable society in which community engagement are essential (Swanepoel, *et al.*, 2012:198).

## **2.8 Internal factors influencing job creation and job sustainability in South Africa**

There are a number of internal factors, other than labour legislation, affecting job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers, the shortage of critical skills and the lack of infrastructure which have contributed to the job crisis (Le Roux and Rycroft, 2013:35). A further internal factor affecting economic growth, job creation and job sustainability is the decisions that both government and business make, which influences future performance and prosperity (Nienaber, 2007:82). These factors have largely arisen as a result of South Africa having pursued neo-liberal economic policies such as restructuring and privatising the public sector; freeing up the local trade market through trade reforms; increasing deregulation; decreasing the protection of local industries, and an over emphasis on B-BBEE initiatives (Mahadea and Simson, 2010:399). This has resulted in changing patterns of work and labour, making the South African economy increasingly vulnerable to social and economic shocks.

The broader structural trends that have taken place as a result of neo-liberalism are the restructuring of the economy, the de-industrialisation of the developed world, movement of investments to the services sector and a change in production methods. Globalisation appears to be the driving force behind these trends (Tzehainesh, 2010:21), which in turn have led to a number of issues that need to be addressed in order to increase job creation and job sustainability in South Africa. Some of these are discussed below.

### **2.8.1 Restrictive labour market conditions**

Restrictive labour market conditions have been identified by Venter, *et al.* (2010:22) as the primary contributory factor and primary cause of South Africa's poor global competitive standing. The lack of skilled labour and the strong link between political and labour dispensations also contribute to restrictive labour market conditions.

Badenhorst-Weiss and Waugh (2015:6) corroborate the above authors' view and affirm that the World Economic Forum indicators for the quality of the education system in South Africa are very weak (ranked 146th of 148 countries); that labour market efficiency is weak (ranked 116th); that the employing and dismissing practices are exceedingly rigid (ranked 147th); wage determination is inflexible (ranked 144th), and that substantial tension exists in labour-employer relations (ranked 148th).

### **2.8.2 A decline in productivity growth**

The main factors underpinning the broad decline in productivity growth is heightened macro-economic uncertainty and weak and slowing investment (International Labour Organisation, 2013:39). This macro-economic uncertainty, as well as reduced confidence in the capability of policy-makers to attend to present economic challenges are another key contributing factor to decelerating growth and weak labour market outcomes. Consequently, focussed action by policy-makers is required to reinstate confidence, to encourage investment and to create jobs (International Labour Organisation, 2013:42). Another problem alluded to by Ndimande (2000:11) is that South African businesses have emerged from a culture of protectionism and isolation, which has nurtured low productivity and efficiency in an internationally competitive environment. The author maintains that South African businesses need to formulate a common goal and vision of global competitiveness which takes into account national competencies in order to achieve a sustainable international competitive advantage (Ndimande, 2000:11).

The International Labour Office (2008:3) is of the view that productivity is the main determinant of income growth. According to the International Labour Office (2012:44), sustainable increases in job productivity growth will require accelerated structural transformation from a shift towards higher value-creating activities. Thus, it is essential that productivity is increased through skills development in order to ensure efficiency and effectiveness, as well as greater economic growth, which will have a positive influence on job creation and job sustainability.

The OECD (2017:20) is of the view that not enough has been done to attend to other significant productivity-enhancing urgencies, such as the reduction of barriers to entrepreneurship, foreign direct investment, the improvement of the rule of law and governance systems. They claim that growth-friendly tax reforms could increase job creation and job sustainability through the elimination of tax expenditures and moving the tax burden towards tax bases that are less destructive to employment and growth. For example, immovable property, consumption and environmental taxes.

### **2.8.3 Self-employment and the creation and sustainability of small and medium enterprises**

The South African government has recognized the importance of small and medium enterprises (SMES) for job creation and economic growth (Heitmann, 2009:3). Nkosi, Bounds and Goldman (2013:1), also acknowledged the important role played by SMEs in job creation. Internationally and domestically, it is recognised that small enterprises are the most reliable job creators (Rankin, Daroll and Corrigan, 2013:11). Van Loggerenberg and Ferreira (2012:212) confirm the view that SMEs are regarded as primary creators of jobs and economic stability. The authors also maintain that it is universally established that SMEs can have an essential influence on employment and income generation.

Fairoz, Hirobumi and Tanaka (2010:34) identify entrepreneurship as playing an important role in economic growth, innovation, competitiveness and poverty alleviation through job creation and job sustainability. Entrepreneurship is also associated with innovation (Nkosi, Bounds and Goldman, 2013:3). Furthermore, Ayanda and Laraba (2011:200) contend that the small, medium and micro-enterprise (SMME) sector is the mainspring behind job creation, poverty reduction, wealth creation, income distribution and a fall in income disparities. Lowrey (2011:1) agrees with them that the entrepreneur creates a job not only for himself or herself, but also for others.

Entrepreneurial characteristics such as commitment and determination; leadership; opportunity obsession; and motivation to excel are important for the successful



management of small enterprises (Nkosi, Bounds and Goldman, 2013:3), which in turn influences job creation and job sustainability. However, Herrington, Kew and Kew (2010:5) assert that South Africa has a trend of below-average entrepreneurial activity, which does not bode well for job creation and job sustainability. Hoeppli (2014:9) blames the poor education system, a lack of awareness of what financing options are available and the difficulties of obtaining financing, as major barriers to entrepreneurship, job creation and job sustainability.

Clover and Darroch (2005:238) identify eight factors or constraints that affect business survival or growth, namely:

- a lack of access to services;
- funding constraints at start-up;
- a lack of management capacity in the enterprise;
- poor access to tender contracts; and
- a lack of institutional support,

all of which influence job creation and job sustainability. Moreover, Hoeppli (2014:9) identifies the lack of business and financial skills of entrepreneurs to be one of the biggest threats to start ups, job creation and job sustainability. His view is supported by Nkosi, Bounds and Goldman (2013:2) who claim that a lack of business skills is the chief causal factor of the closure of new businesses, which again affects job sustainability. The authors identify the following business skills as essential for small enterprises:

- marketing skills;
- financial skills;
- purchasing or procurement skills;
- legal skills, and
- entrepreneurial skills of pro-activeness, achievement orientation and commitment to others (Nkosi, Bounds and Goldman, 2013:3).

These basic business skills identified are also necessary to create and sustain jobs.

Herrington, Kew and Kew (2010:18) profess that South Africa's low new firm and established business prevalence rates portray a situation that is not hopeful for SMMEs' potential to contribute meaningfully to job creation, economic growth and more equal income distribution. Furthermore, the authors blame this on the poor

sustainability of start-ups in the country (Herrington, Kew and Kew, 2010:18) which has a negative influence on job creation and job sustainability. Clover and Darroch (2005:238) contend that these problems can be overcome through the provision of appropriate infrastructure and training; the development of innovative loan products; and policies to reduce the cost of compliance with legislation affecting agri-business SMMEs. Hoeppli (2014:9) affirms that some of these difficulties can be overcome through seed funding and the use of mentors.

Moreover, Herrington, Kew and Kew (2010:33) argue that labour regulations and government's over-emphasis on B-BBEE initiatives are factors which hamper entrepreneurship, particularly with respect to young black South Africans. This will negatively influence job creation and job sustainability. Clover and Darroch (2005:242) identify certain labour legislation as imposing either financial or administrative constraints on SMME operations, such as paying a skills levy and managing employees' unemployment insurance fund payments, which will have a negative influence on job creation and job sustainability. The authors affirm that their respondents considered the skills levy procedure to be too complicated and regarded the levy as an extra tax (Clover and Darroch, 2005:248). They notice further that the minimum wage constraint possibly leads to an increased demand for casual labour (Clover and Darroch, 2005:248), which they discovered negatively influences job creation and job sustainability.

Therefore, the OECD (2010:117) maintains that there is a need to remove barriers to entrepreneurship in order to create and sustain jobs.

#### **2.8.4 Shortage of managerial expertise**

Ayanda and Laraba (2011:200) claim that inadequate investment in skills development and training hinders SMMEs' growth because of the rarity of skilled workers, managers and entrepreneurs. Venter, *et al* (2010:140) agree that the serious shortage of sound managerial expertise in South Africa needs to be addressed in order to improve job creation and job sustainability. Nienaber (2007:72) concurs that the unavailability of competent senior managers to deal with the

competitive challenges that South Africa is faced with is problematic for job creation and job sustainability.

The human factor in SMMEs, specifically entrepreneurial actions and business management skills, is the strongest predictor of small business survival (Ligthelm, 2011:160). Barker (1999:125) maintains that a major constraint to productivity improvement is the lack of management skills in leadership, mentoring, work re-organisation and decision-making. Venter, *et al.* (2010:140) affirm that there are compelling business and strategic reasons for businesses to adopt policies that will diversify the composition of the middle and upper personnel levels in order to address past racial and gender discrimination in a deep and meaningful way while also addressing job creation and job sustainability. Barker (1999:125) postulates that despite productivity increasing in the 1990's, employment decreased. This was not due to labour regulation and therefore did not influence job creation and job sustainability. Ayanda and Laraba (2011:200) thus argue that government energies should be focussed on supporting SMMEs, fostering domestic investment and encouraging economic growth.

Ayanda and Laraba (2011:200) note that continuous changes affecting the business environment, due to globalization progression and technology innovations have forced SMMEs and other businesses to continually look for new competitive improvements in order to continue and expand their market position (Ayanda and Laraba, 2011:200). A national strategy involving all the key actors (government, business, unions and civil society) needs to be formulated to create a more conducive business environment which will enable local businesses to compete both nationally and globally, whilst simultaneously creating and sustaining local jobs (Van der Walt, 2004:289). Nienaber (2007:72) affirms that in order to meet these competitive challenges, managers need to be aware of the South African economic environment in which they operate.

### **2.8.5 Ability to anticipate and to adapt to change**

Globalisation has made it crucial that businesses develop a strategy for achieving and maintaining their competitive advantage, which is essential to creating and

sustaining jobs. Bassanini, Nunziata and Venn (2009:387) contend that surviving globalization is essentially about managing change. The ability of an organisation to anticipate change and to respond accordingly is the mark of a good organisation (Montgomery and Maggio, 2009:203) and will sustain jobs.

Ashton (2005:68) claims that there are several trends affecting modern businesses, causing them to establish new business forms, business models and business practices which may influence job creation and job sustainability. The author contends that the trends which need to be taken into account are technology; globalisation; shifting demographics; movement to market-orientated economies; more sophisticated and demanding customers; more individualistic and entrepreneurial employees; increasingly activist shareholders; more powerful interest/pressure groups; greater share market volatility; and corporate scandals (Ashton, 2005:68). The OECD (2010:117) agrees that by reducing the speed at which businesses respond to fluctuating market conditions and altering their business strategies, they decrease the economy's ability to cope with the problems of globalization, especially for technological nations where competition is beneficial to further innovation. This will have a negative influence on job creation and job sustainability.

#### **2.8.6 Preparedness and the ability to respond appropriately to crises**

The global recession has also highlighted the importance of an organisation's ability to be prepared and to be able to anticipate and respond appropriately to crises, thereby influencing job creation and job sustainability. Venter, *et al.* (2010:18) claim that the organisation's ability to understand the influence of internal and external influences on it is critical for sound management. Tennant (2010:472) posits that the manner in which private sector businesses responded to the global crisis in terms of what crisis response principles they implemented and what coping strategies they adopted, is equally important for job creation and job sustainability. The author also contends that how prepared businesses were and what preparations they took to weather the storm were essential to determine their survival, success or failure during the global crisis (Tennant, 2010:476), all of which influenced job creation and job sustainability.

### **2.8.7 Other specific constraints on job creation and job sustainability**

Other specific constraints on job creation and job sustainability facing businesses in South Africa are general economic anxieties (such as the influence of the recession and the price of basic inputs such as electricity); inferior quality government administration; burdensome government legislation, and the influence of South Africa's poor skills foundation (Herrington, Kew, and Kew, 2010:5). This view is corroborated by Badenhorst-Weiss and Waugh (2015:6) who cite the World Economic Forum's (WEF) (2014) recognition of an insufficiently educated workforce as the most challenging issue for engaging in commerce in South Africa. Herrington, Kew and Kew (2010:16) also affirm that there is a significant tie between a country's period of economic development and its height of entrepreneurial action, which in turn influences job creation and job sustainability.

Furthermore, Pascual and Jepsen (2006:26) make an interesting point that economic growth needs to be combined with social unity, in order to ensure, amongst other things, job creation and job sustainability.

### **2.9. Social responsibility**

The ethical value underlying sustainable business practices is the importance of social justice, especially the ethical obligation to behave towards others fairly which includes respecting employees' labour rights (Winston, 2011:33). Therefore, a strong connection exists between corporate social responsibility, corporate governance and sustainable business development (Botha, 2015:15). Accordingly, business has an ethical and moral obligation to create jobs, to sustain them and not destroy them. Courville (2003:269) contends that with the rise of corporate social responsibility, numerous and astounding assortment of initiatives have been recognised to incorporate social justice concerns into business actions. These range from self-regulatory methods with company self-declarations to highly developed private regulatory systems founded on independent third-party endorsement, which may influence job creation and job sustainability. Moreover, business has the potential to promote economic growth and to provide jobs (Da Piedade and Thomas, 2006:66).

Corporations should act in a socially responsible way towards people in general (Botha, 2015:9). This view is shared by Patel and Mushonga (2014:61) who contend that business has a socio-economic responsibility towards their workers and to wider society. Kloppers (2014:63) agrees that businesses are accountable to the societies within which they function and it is essential that this accountability is achieved. He contends that a regulatory basis that encourages development, employment and beneficial control is necessary to guarantee an effectual procedure for corporate social responsibility, whereby all members have confidence about their rights and duties (Kloppers, 2013:123). As soon as regulations are inaugurated, a business' capacity to manipulate is limited and the business is obliged to conform to laws plus the added costs of compliance (Kloppers, 2014:64). Nevertheless, regulations should be reliable, effectual, obvious, reasonable and comprehensible (Kloppers, 2013:123).

Botha (2015:13) claims that corporate social responsibility and corporate governance are equally helpful and interconnected.

### **2.9.1 Corporate governance**

Zaharia, Zaharia, Tudorescu and Zaharia (2011:459) contend that good corporate governance is seen as an essential lever for social justice. According to Davis and Le Roux, cited in Le Roux and Rycroft (2013:309), a system of corporate governance that takes meaningful account of the interests of employees needs to be developed. Corporate governance became significant not only because of the necessity to safeguard employees from exploitation due to inequality, but also because employees are vital stakeholders in companies (Botha, 2015:3), especially with regard to job sustainability. Consequently, the granting of participation rights ensures that companies are held responsible to behave in an answerable and ethical way in creating and sustaining jobs.

Verdeyen, Put and Van Buggenhout (2004:327) propose the Stakeholder Social Model to make institutions accountable for their actions and the consequences thereof. The authors also maintain that their proposed model fits in with the business ethics and corporate social responsibility movement (Verdeyen, Put and Van

Buggenhout, 2004:326). Their view is supported by Davis and Le Roux, cited in Le Roux and Rycroft (2013:309), who contend that the Companies Act (No. 71 of 2008), contains new provisions that shift the previous focus from the sole interests of shareholders to include the interests of other stakeholders as well, especially employee interests (Da Piedade and Thomas, 2006:311), which is significant for job creation and job sustainability.

Nevertheless, Botha (2015:4) maintains that as a result of the Companies Act, No.71 of 2008, there appears to be a novel emphasis in corporate law and in corporate governance on workers' lawful securities and hopes, which has the potential for enhanced worker participation in the workplace, job creation and job sustainability. Badenhorst-Weiss and Waugh (2014:291) contend that businesses must participate in skills development, guidance and encouragement through corporate culture rather than the unequal or considerable rise in salaries of administrative and management staff (Badenhorst-Weiss and Waugh, 2015:8), which will have an influence on job creation and job sustainability. Deakin and Whittaker (2007:2) affirm that there is a common comprehension that the idea of corporate social responsibility functions as a connection between concerns of governance on the one hand and ideas of equity and fairness in employment in society on the other, which might influence job creation and job sustainability.

### **2.9.2 Corporate social responsibility (CSR)**

Corporate social responsibility (CSR) is about re-focusing a company's activities to take into account employees' and society's interests (Weiss, 2005:45). In addition, the integration of human rights (including important labour rights) is currently an essential CSR concern for companies in South Africa, as well as for MNCs (Botha, 2015:33). The general public requires businesses to accept CSR that surpasses legal responsibility and profit maximization to incorporate economic and environmental sustainability and social development (Inyang, 2013:123).

The problem with CSR is that it is voluntary and because the state does not participate in the formulation of CSR initiatives or the enforcement thereof, workers are unable to bring their claims before a court in instances where CSR breaches

have occurred for enforcement thereof (Bronstein, 2009:123). Jamali (2007:1) verifies that despite various CSR initiatives that have occurred more recently in Western countries such as in the United Kingdom, France and in Denmark, similar intense interest or activity has not occurred in developing countries. Fig (2005:601) confirms that businesses in South Africa usually evade the idea of CSR. The author contends that businesses usually favour the idea of corporate social investment (CSI) to that of CSR (Fig, 2005:599).

Kloppers (2013:122) agrees that an entirely voluntary attitude to CSR, deprived of any statutory interference, will not turn out well. The author claims that the state should play a greater dynamic part in the facilitation of CSR. He further maintains that a well-defined public programme necessitating a socially responsible tradition by the whole of the private sector is required (Kloppers, 2013:122). Consequently, “corporate social responsibility initiatives should be considered as an addition, rather than as an alternative, to state action” (Bronstein, 2009:123). Nevertheless, the private sector can play a crucial role through strategic goodwill. Jamali (2007:24) postulates that in addressing poverty and unemployment issues, reinforcing state-led development policy is necessary, not just simply through accountability. In Germany, an institutional framework was created which promotes employee involvement in management decision-making through works councils and employee representation on supervisory boards in large corporations (Weiss, 2005:45). Shamir (2011:331) recommends a business case approach model to CSR so that there is greater financial commitment from business.

Wang and Dong (2007:383) also share the view that TNCs should share social responsibilities. In fact, the authors maintain that there are four social responsibilities that TNCs should bear, they should:

- obey the national laws and code of ethics;
- cherish their employees;
- uphold environmental quality; and
- make inputs to social and economic well-being, as well as add to the founding of a strong market economic system and the sustainable development of the economy in host countries (Wang and Dong, 2007:383).



Consequently, business should be held socially responsible, as well as socially accountable: they should not only be concerned with making a profit at all costs. Business needs to look beyond the bottom-line and consider wider social and environmental responsibilities. Law has had to step in through the passing of legislation to deal with instances where business has no conscience. For example through the King Reports, which have made CSR mandatory in South Africa (Cohen, cited in Le Roux and Rycroft, 2013:99).

Ramlall (2012:271) claims that business and human rights are indivisibly connected. The author affirms that the South African government has enacted a variety of laws that indirectly force businesses to participate in CSR, namely: the B-BBEEA; the EEA; the National Empowerment Fund Act, No.105 of 1998; the Preferential Procurement Policy Framework Act, 5 of 2000, and the SDA (Ramlall, 2012:273). CSR can also be used as a developmental tool, not simply as a business tool (Newell and Frynas, 2007:677). In addition, Swanepoel, *et al.* (2012:498) contend that business leaders should have integrity; be morally, ethically and socially responsible, and that they should lead by example. Consequently, corporate governance and social responsibility procedures play an important part in the formation and implementation of essential labour rights (Botha, 2015:34). However, Kloppers (2013:123) maintains that CSR should not replace regulation or legislation concerning social rights.

On the contrary, Dawkins (2010:129) is of the view that business should not be the only ones responsible for CSR. He contends that labour unions should also bear joint responsibility to society since they are vital corporate partners and important organisations in their own right.

### **2.9.3 Trade union social responsibility**

Trade unions are perceived to be a social justice movement (Wolterstorff, 2013:394). Labour's social responsibility is seen as an extension of corporate social responsibilities (Caroll and Burke, 2010:113). Trade unions can participate in job creation by shaping macro-economic and social policies at multifaceted structures; by assisting with skills development, and by creating jobs directly (Mwilima, 2008:7).

Consequently, labour unions have the ability and responsibility to influence the social and economic environment.

Dawkins (2010:131) claims that the unions' voice, through advocacy, is the labour unions' means of influencing society in order to advance society's interests and objectives. Carroll and Burke (2010:113) share this view that labour unions should assume social responsibility in the local and national communities. Consequently, Dawkins (2010:131) contends that trade unions' corporate social responsibility lie in engaging in their roles and activities through collective bargaining and fair treatment in the workplace, in a way that is consistent with prevailing ethical standards and societal expectations.

#### **2.9.4 Workplace governance**

Botha (2015:34) maintains that workers perform a significant role in the success of any business. Consequently, the genuine welfare of employees as stakeholders (with reference to the King reports), should be considered by businesses (Botha, 2015:35), especially with regard to job creation and job sustainability.

The common form of workplace governance in South Africa is collective bargaining. However, the ideal workplace governance form would be greater employee participation in the workplace (Botha, 2015:31). The Companies Act, No.71 of 2008 grants novel rights to employees as stakeholders, which are to their advantage and could influence job creation and job sustainability. The Act has also extended employee participation rights within the company by providing for participation at board level and participation in the Social and Ethics Committee; greater access to information, and access to statutory derivative action. These structures help to provide employees with opportunities to have a greater say in the structure of the company (Botha, 2015:48), which might influence job creation and job sustainability.

In addition, performance-enhancing mechanisms such as employee share ownership structures; the appointment of employee agents to the board of directors, and employee contributions are also favourable to employee involvement in corporate governance. This may be directly and indirectly beneficial to companies (Botha,

2015:38), as well as to job creation and job sustainability. Furthermore, the crisis in the welfare state requires a new model of public governance which includes corporate governance and corporate social responsibility to address the social needs that cannot be met by the state (Kloppers, 2013:122).

## **2.10 The need for job creation in South Africa**

This section examines the extent of the need to create jobs in South Africa, especially to address the patterns of social injustice that occur, namely growing inequality; job insecurity; poverty and unemployment, as well as under-employment, particularly amongst the youth. Job creation programmes are perceived to be the cornerstone of Keynesian economics (Anon, 2009). The literature reviewed herein will also highlight the need for business and the South African government to amend and improve labour legislation to promote job creation, employment opportunities and job sustainability: to protect vulnerable groups; to stem the tide of chronic poverty by reducing or eliminating inequality, and to dramatically reduce the unemployment rate in South Africa.

### **2.10.1 Chronic poverty, unemployment and inequality**

Literature indicates that poverty, unemployment and inequality are increasing at an alarming rate. Van Scheers (2010:221) claims that despite an increase in economic growth, unemployment in South Africa remains high. According to the Department of Labour, 15.8 million people were employed in September 2015, of which 6.3 million were aged between 15-34 years. Furthermore, the official unemployment rate was at 25.5% and that 5.4 million people were unemployed. The Department of Labour also reported that the youth represented about 3.5 million or 65.2% of the total unemployed in the country (Department of Labour Annual Performance Plan, 2016-2017:1). In 2016, 2.5 million people were recorded as discouraged work-seekers (StatsSA, Q2, 2016:1). The unemployment rate in 2017 rose to 27.7% (StatsSA, Q2, 2017:1).

Luis (1999:15) maintains that the real unemployment rate is higher than the reported figures due to a number of countries increasingly substituting full time jobs for informal and part-time jobs. His view is corroborated by Kim (2011:2683) who maintains that South Africa is facing one of the uppermost proportions of unemployment amid middle-income countries, having reached 25 to 30 per cent over the previous period. Bargain and Kwenda (2011:S106) agree and claim that in South Africa, informal jobs co-exist with unemployment. The authors assert that self-employed workers earn less than formal salaried workers (Bargain and Kwenda, 2011:S106). Miller (2012:10) validates their view and claims that informal work is often typified by long hours, low productivity, low revenues and poor working conditions. Cohen and Martinez (2012) agree and maintain that the unemployment rate has reached 29.8% and could increase to 40% if one takes into account those who had given up searching for a job, despite the ANC government's undertaking to create 5 million jobs and to reduce the unemployment rate to 14% by 2020. Blaine (2012) contends that the rate of youth unemployment is even worse, at 33.7% among those aged between 25 and 29 years, and 27.4% for the 30-34 year age group.

Economic growth, although important for overall employment creation, is insufficient on its own to reduce chronic poverty, unemployment and inequality (Escudero, et al., 2013:111). Extensive research has demonstrated that economic growth on its own does not benefit certain vulnerable or excluded groups. Job creation requires not only sustained growth, but also inclusive growth (Salazar-Xirinachs, 2012:110). Improved job matching will help such groups to benefit from economic growth (Escudero, et al., 2013:111). In addition, Wentzel and De Hart (2015:106) posit that in 2011, the South African government identified six sectors, one of which was the manufacturing sector, in which it had confidence to contribute significantly to economic growth and employment creation. The authors, however, agree that investment and training are vital in upgrading the manufacturing sector (Wentzel and De Hart, 2015:106).

Inequality has been identified as the root cause of the current global economic and financial crises. DeMartino (2002:218) contends that global neo-liberalism causes inequality both domestically and globally. Pons-Vignon (2011:77) also claims that

class interests have been the instrument of neo-liberalism. The author further states that growing inequality is closely linked to the decline in wages and worker rights. He therefore maintains that the defence of workers' rights and wages is essential to ensure sustainable growth (Pons-Vignon, 2011: XV). Olsen (2010:295) maintains that the sources of inequality and oppression need to be identified and meaningful steps in the form of revolutionary practices and changes need to be made urgently by current institutions in order to address them.

Consequently, the patterns of social injustice continue to occur. There is growing inequality, job insecurity, unemployment and poverty, in particular unemployment and under-employment, amongst the youth.

### **2.10.2 Youth unemployment and under-employment**

There is growing recognition of the need to create productive, decent quality jobs for the youth worldwide (Rosas and Rossignotti 2005:139). Muthethwa (2013:14) validates this view that the youth unemployment problem, which was at 59%, needs to be addressed as the youth constitutes the majority of the working age population group of between 15 to 64 years (Muthethwa, 2013:14). The official youth unemployment rate in the first quarter of 2015 was 37% in South Africa, which equated to approximately 3,646,000 young people between the ages of 15 and 34 years (Graham and Mlatsheni, 2015:51).

Jansen and Von Uexkull (2010:11) claim that jobs that are needed for young people have not been created and the numbers of youth who have managed to retain their jobs and their real wages have declined. The authors contend that those who lost their jobs during the financial crisis remain unemployed (Jansen and Von Uexkull, 2010:11). The International Labour Office (2012:21) confirms that a large number of youth are trapped in low productivity, temporary employment and part-time work. Furthermore, young people are also more likely to be in vulnerable employment, a category that includes not only informal self-employment, but also casual day labourers (Miller, 2012:12). Governments play an important role in creating a favourable environment to foster employment-intensive growth (Jansen and Von

Uexkull (2010:11). They provide support for the private sector in creating jobs (Rosas and Rossignotti, 2005:146) and in reaching employment targets (Miller, 2012:14). Thus, there is a need for the formation of partnerships between government, businesses and trade unions in order to create decent jobs, especially for young people (International Labour Office, 2012:9).

### **2.10.3      The lack of appropriate skills, work experience and the growing skills mismatch**

The lack of education, poor levels of skills and little experience characterise most unemployed people and have been a serious blow to human capital. Muthethwa (2013:14) claims that human capital plays a pivotal role in economic growth and the development of the country. The author further contends that the astounding number of persons amidst the unemployed who did not finish secondary education make up 52% of the unemployed (Muthethwa, 2013:14). The Department of Labour also identified this group as an essential component of the labour force that needs to be addressed, as they almost certainly will lose their jobs in times of retrenchment (Department of Labour Revised Annual Performance Plan, 2014:4). Muthethwa (2013:5) supports this view and recognises that there is a rising demand for qualified and skilled people in the South African labour market. The author claims that employment has decreased in the semi-skilled and less skilled occupations and highlights the fact that the most required qualification in the job market is a tertiary qualification (Muthethwa, 2013:12). Muthethwa's (2013:12) study signifies that there is a great need for managers and professional workers in the labour market. He maintains that his results reveal the great importance of educated and skilled labour, rather than unskilled and less experienced workers (Muthethwa, 2013:12). This need is further exacerbated when economies restructure, when a mismatch arises between the available supply of skills by the large majority of unemployed caused by economic disaster and the need for skills, especially in industrialized economies (International Labour Organisation, 2013:34). Consequently, the lack of sufficiently educated and skilled workers poses a serious risk to job creation and job sustainability (Badenhorst-Weiss and Waugh, 2015:8).

#### **2.10.4 Growing informal and precarious employment**

As a result of the worsened insecurities under which businesses have been functioning and because of the indeterminate macroeconomic perspective, businesses are more likely to favour employing new workers on temporary or part-time employment contracts. This provides for greater flexibility to decrease the actual number of employees in the event of deteriorating economic essentials, as well as to raise the hours worked should the position improve (International Labour Organisation, 2013:36). This strategy to employ workers in informal and precarious work has led to a fragmentation of the employment relationship through the acceleration of the crumbling of labour markets into varied forms of employment (McCann, Lee, and Belser, 2014:7). Such a situation may directly or indirectly negatively influence job creation and/or job sustainability.

Goldberg (1997:302) contends that the benefits of employing permanent staff instead of contract staff can outweigh the costs, as the employer gains loyalty; stability; increased productivity and efficiency; less time spent on training, and receives a return on investment. Goldberg (1997:302) further asserts that full employment is a means of reducing poverty and economic inequality, although she acknowledges that it is not the only way. She maintains that full employment is more conducive to health and that it is the most appropriate key strategy for reducing economic inequality, as opposed to direct income redistribution through income transfers. This may directly and/or indirectly positively influence job creation and/or job sustainability. Various authors maintain that long-term investment in skills, knowledge and experience has become a social and economic essential for Europe, as well as for the rest of the world. Employees benefit from stability and receive additional social benefits. Employers, however, will not invest in training if workers are employed on a short-term or temporary basis. Without investing in human capital, labour market flexibility will win a definitive victory over income security. Thus the values of social justice and solidarity urgently need to be re-awakened in order to prevent social exclusion and to stimulate economic innovation and growth (Euzéby, 2012:85).

Goldberg (1997:311) claims that the best assurance for the future is to share work more equitably or even halve the amount of work so that twice as many people can be employed to do the same job. The author is, however, also of the view that although full employment is possible, there are political barriers such as political will and political feasibility which prevent it from being possible (Goldberg, 1997:316). Therefore, there is need to increase the scope for permanent employment and to limit the scope for temporary and part-time employment, which has been addressed by the legislature in the amendments to the BCEA, the LRA and the introduction of the ETIA, which will be explored further in chapter three.

#### **2.10.5 Below-average entrepreneurial activity**

The promotion of self-employment, entrepreneurship development and private sector support is necessary to create and sustain jobs. Caliendo and Künn (2011:311) claim that directing unemployment into self-employment has become a progressively significant function of active labour market policies in numerous OECD countries. The authors assert that Germany is a good example of where spending on start-up subsidies for the unemployed have accounted for nearly 17% of the total spend on active labour market policies in 2004 (Caliendo and Künn, 2011:311). However, Arranz, Serrano and Hernanz (2013:327) argue that self-employment is not enough and that further active labour market policies are required, such as agendas offering assistance and direction to the unemployed, public employment services and vocational training services. Their argument is supported by the International Labour Office (2012:9), which has also recommended the implementation of active labour market measures to address youth unemployment and under-employment.

The apparent trends in employment inequality and income distribution are as a result of South Africa's economy developing at a slower speed than was predicted by government and which in turn has caused slow employment growth; increased unemployment and under-employment; the changing nature of work; casualizations and productive decentralization (Tzehainesh, 2010:20); increasing disparities and unfair discrimination in the workplace; increased domestic and cross-border labour migration; deficient mechanisms for the evaluation of labour market policies and programmes to determine their influence on the economy (Department of Labour



Revised Annual Performance Plan, 2014:5). Promoting the creation and sustainability of SMMEs is critical for job-rich growth (Escudero, et al., 2013:108). Consequently, the problem does not only lie with job creation but also with job sustainability, as many people are experiencing difficulties in remaining employed.

## **2.11 The need for job sustainability in South Africa**

This section will examine the extent of the need to sustain jobs in South Africa. Some of the factors affecting job sustainability are structural interference; high levels of job insecurity, high levels of inequality; the inadequacy of social security systems; the surplus of low-skilled workers; and the shortage of critical skills (Le Roux and Rycroft, 2013:29). To a large extent, the perpetual re-composition of jobs through the process of job creation and job destruction is at the core of the countless economic and social problems of this period (Cahuc, 2014:23). Mitchell, Juniper and Myers (2006:248) confirm that the trend is that more jobs are being destroyed than are being created. Consequently, the literature reviewed herein supports the view that there is a great need for business as well as the South African government to not only create jobs, but also to sustain jobs.

Corporatists (Klerck, 2009:23) maintain that in order to achieve a sustainable economy, reinforced long-lasting competitiveness needs to occur through: innovation; more and better education and training; the formation of a closer partnership between the private and public sectors; and finding the appropriate balance between private sector initiatives and public sector support in the framework of decent work, especially for the youth. This section therefore examines several reasons advanced for the needs to not only create jobs, but also to sustain jobs.

### **2.11.1 Better skills and qualifications are required to increase efficiency and productivity**

Benjamin, cited in Le Roux and Rycroft (2013:29), contends that there is a surplus of low-skilled workers and a scarcity of critical skills. The private and public investment in workers has been identified as a fundamental necessity for sustainable economic growth and development in Africa (Isgogo, 2014:62). Additionally, there is a need to

increase the scope for permanent employment and to limit the scope for temporary and part-time employment in order to sustain jobs. Consequently, there is a need to invest in education and training to improve the skills and qualifications, which are essential for economic growth. Heitmann (2009:1) claims that skills development is generally recognised as an important tool for a person's success and the lack of access to skills development is seen as the cause of failure. There is a great need for better education and training, not only to combat the problems of illiteracy, poverty and ill-health but also to sustain jobs. The International Labour Office (2008:1) confirms that skills development and investment in workers is essential to maintain competitiveness, productivity and employment growth; to reduce poverty; and to sustain jobs (International Labour Office, 2008:1). Competitiveness is defined "as acquiring essential skills, investing in higher education and training, efficient markets, the ability to harness the benefits of existing technologies and business sophistication" (Strauss and Du Toit, 2010:302) all of which are essential to ensure job creation, long term job retention and job sustainability.

### **2.11.2 Addressing the chronic shortage of decent work**

Miller (2012:8) maintains that there is a prolonged shortage of decent jobs in South Africa. Muthethwa (2013:12) claims that most people would like to have a permanent full-time job in order to plan and sustain their current living conditions. The author contends that decent work is characterised by sustainability and security of work (Muthethwa, 2013:12). The four core values of decent work are: the opportunity to work, the right to freedom of association, social protection and to have a voice (Le Roux, 2013:512). Nevertheless, Allais (2012:633) maintains that the failure of the South African social security system; the increased heights of job insecurity; and increased ranks of inequalities, make it nearly impractical to form a strong and comprehensive skills development system. The author states that it is neither a 'skills shortage' nor an inflexible labour market which is the primary cause of unemployment. In order to sustain jobs, people increasingly need better education, training, skills and qualifications to compete in today's labour market (Allais, 2012:633). Partnerships between government, businesses and trade unions should be formed in order to sustain and retain jobs. To address job sustainability, business as well as the South African government need to adopt and implement better

employment skills and support programmes linked to business and labour market needs.

From the literature reviewed, it appears that there is a great need, not only to promote the creation of jobs, especially for the youth, but also to retain and sustain jobs generally, as well as to provide for better social protection during the transition to a sustainable economy.

## **2.12 Increased social protection in South Africa**

The need exists for better and improved social protection, especially for the youth in South Africa. Botero, *et al.* (2004:1342) posit that there are five main justifications for the regulation of labour markets in order to protect workers from their employers, namely:

- firstly, forbidding discrimination and granting workers certain "basic rights";
- secondly, restricting the range of possible types of work contracts;
- thirdly, raising the costs of retrenching workers;
- fourthly empowering labour unions to represent workers collectively, and
- finally, through the government providing social insurance against unemployment and disability (Botero, *et al.*, 2004:1342).

Olsen (2010:308) agrees with the International Labour Office's (2012:9) recommendation that improved social protection and social security is required, especially for the youth. Rosas and Rossignotti's (2005:150) study confirms the view that employment protection legislation influences the category of persons (for instance, the youth and "insiders versus outsiders"), rather than the number of persons who are unemployed, although their research results were inconclusive. Furthermore, Santos (2009:49) contends that labour institutions create inflexibilities that favour workers who are 'insiders' to organized labour, while marginalizing the 'outsiders'.

Bassiani, Nunziata and Venn (2009:352) postulate that employment protection legislation should protect more vulnerable persons in industries where it is most needed. The authors claim that dismissal regulation reforms influence productivity

(Bassiani, Nunziata and Venn, 2009:352). Where there is non-existence of regulations, businesses rely on retrenchments to make operational alterations in sectors where internal labour markets or voluntary turnover are more important, thereby causing more jobs to be destroyed than created, having an adverse influence on job creation and job sustainability (Bassiani, Nunziata and Venn, 2009:352). Therefore, the importance of determining the benefits of employment protection legislation as opposed to or offsetting the costs needs to be explored. Noelke (2011:7) contends that by increasing the duration of periods of employment, both young people and employers have greater reasons to invest in general and specific skills. He claims that because investments in skills development increase the productivity of job matches, employers are recompensed for the potential costs resulting from dismissal (Noelke, (2011:7). The author argues that de-regulation destroys incentives for skill formation and damages the youth's labour market career prospects of the youth (Noelke, 2011:7).

Consequently, economic growth and employment protection legislation are not the only factors which influence job creation and job sustainability. There are other important factors apart from protective labour legislation, namely globalisation; financial liberalisation; lack of financial regularity; exchange volatility; the weakening of state sovereignty and the corresponding increasing power of and reliance on MNCs; qualified international support; foreign investment; and the moral and ethical crisis in values, the vision of humanity and society are factors, which influence economic growth, job creation and job sustainability in South Africa. Furthermore, internal factors such as low new firms; established business prevalence rates and below-average entrepreneurial activity; labour market conditions; and low productivity and efficiency stemming from a culture of protectionism and isolation also influence job creation and job sustainability. Consequently, an increased investment in education and skills development, social protection and an increased discourse between workers, employers and government is essential to ensure comprehensive founded growth underpinned by a reasonable, fair allocation of economic profits (International Labour Office, 2012:44).

### 2.13 Strategies for job creation and job sustainability

This section examines various strategies that have been implemented for job creation and job sustainability. Cray, *et al.* (2011:5) claim that job creation strategies can be organized around four broad themes, namely:

- “macroeconomic strategies”, which are aimed at promoting net new job creation;
- “place-based job creation strategies” which focus on business lure and business sectors;
- “business-based strategies” which try to create jobs in certain kinds of business or industries, for example green jobs and small businesses; and
- “worker-based strategies” which concentrate on job excellence and pursuing jobs for disadvantaged workers.

Likewise, Maree (2007:2) identifies six major ways in which employment can be created:

- the first way is through macro-economic policy;
- secondly, through industrial restructuring;
- thirdly, through skills development;
- fourthly, by fostering the success of the informal economy;
- fifthly, by eliminating unnecessary regulation in the formal economy for developing small businesses, and
- lastly, through public works schemes.

A skilled workforce is a vital component of sustainable economic and social development and is crucial to attaining global economic effectiveness (Kloppers, 2014:67).

The implementation of neo-classical economic policies in South Africa has led to more job destruction and job losses than jobs being created. The Keynesian approach is better matched to deal with South Africa’s high rate of unemployment, inequality and poverty. Thus, the South African government needs to be more actively involved in creating jobs through investment in public works and infrastructure. Most of the developing world, including China, Russia, India and

Brazil, has adopted neo-classical economic policies which have resulted in their workers being demeaned; their rights being attacked and undermined; and the majority of the working population becoming further impoverished (Siddiqui, 2012:16). Thus, neo-liberal employment policies are not suitable for the South African context (Vellem, 2014:6).

Employment and the quality of employment are crucial for poverty reduction. Pieters (2013:23) claims that private sector employment creation has been weak, due to a low growth-elasticity of employment. Islam and Mageres (2001:289) contend that a deliberate policy is needed which makes employment a key clear objective and which is perceived to be as important as economic growth. However, they state that economic growth is not sufficient on its own to reduce poverty (Islam and Mageres, 2001:279). This can be achieved by choosing employment intensive activities and sectors, by adopting employment intensive technologies and through public investment in infrastructure (Islam and Mageres, 2001:279). Furthermore, Gaal and Fox (2008:17) maintain that growth in industrial and manufacturing output is essential for significant successful economic growth. The authors do however note that private investment is required, particularly in large labour-intensive firms producing for export (Gaal and Fox, 2008:17).

A job-centred approach should be adopted whereby macro-economic and employment goals are balanced simultaneously taking into account social influences (Escudero, et al., 2013:101). In order to achieve a job-centred approach, policymakers need to give a great deal more consideration to macro-economic, labour market and social protection policy areas. Sophisticated labour market and social security programmes will help to fulfil social goals and contribute to aggregate demand (Escudero, et al., 2013:101). McGrath and Akoojee (2007:427) are in agreement with this view. The authors maintain that in order to achieve development, the state must to be sound, both in ability and in positioning the direction of the economy, especially with regard to infrastructure, public sector administration, education and skills (McGrath and Akoojee, 2007:427). Additionally, Chowdhury and Islam (2011:944) express the view that new development-oriented macro-economics such as full and productive employment, should be undertaken to combat unemployment and poverty. There needs to be a clearer agreement on job

creation and sustainable growth. In order to achieve this, government needs to take control of policy barriers that fail to appreciate the prioritisation of employment and social issues. These should be placed near the top of the reform agenda (Escudero, et al., 2013:101).

Barchiesi (2007:569) argues in favour of a basic income grant for poor South Africans, especially the unemployed, in order to facilitate employment. Standing (2011:267) shares a similar view and suggests a national cash transfer scheme for very poor households which will help to stimulate local markets and will result in generating local employment or livelihoods (Standing, 2011:268). However, NEDLAC's business representatives are opposed thereto, preferring the European model of the means-tested guaranteed minimum income. The adoption of labour-based methods in infrastructure will provide a connection between job creation and economic growth (Islam and Mageres, 2001:289). This view appears to be in line with South Africa's National Development Strategy (Zarenda, 2013:1) and with international trends, which is crucial for increasing economic competitiveness (Swanepoel, *et al.*, 2012:113). Islam and Mageres (2001: 289) express the opinion that government investment in basic services such as roads, irrigation, drainage, sanitation, water supply schemes, markets, housing and schools will all contribute to economic growth while simultaneously creating jobs for the poor. Olsen (2012:136) is also of the view that a greener economy creates employment across a variety of sectors, in particular the renewable energy, waste management and recycling sectors. Islam and Mageres (2001: 289) argue further that labour-intensive methods and techniques can in some instances be more cost effective than capital-intensive methods and techniques (Islam and Mageres, 2001:291).

Increased private investment is also essential for job creation. Gaal and Fox (2008:17) claim that information and communication technologies help to stimulate economic growth and create jobs. Thus, growth in industrial and manufacturing industries, as well as, improvement in the quality of labour (education, health and nutrition) are necessary to stimulate economic growth and to create more jobs.

Ayanda and Laraba (2011:200) postulate that SMMEs have long been considered the catalyst for economic growth and the advancement of equitable development.

Herrington, Kew and Kew (2010:33) emphasize the necessity for policy intercessions to sustain and guide entrepreneurs in the tough procedure of starting a business. Ayanda and Laraba (2011:200) contend that the main benefit of the SMME sector is its employment possibility at minimum capital expense. They also state that labour concentration of the SMME sector is much higher than that of large businesses. Their view is shared by Lowrey (2011:1), who maintains that business creation adds to job creation and that this should be taken into account in policy development. One of the most prominent job creation strategies for South Africa at present is the National Development Plan 2030 (NDP), which is supplemented by a host of governmental programmes (Le Roux, 2013:508).

### **2.13.1 Neo-liberal employment strategies of developing countries**

Siddiqui (2012:22) claims that the pursuit of neo-liberal economic policies has contributed very little to reducing unemployment and inequality in developing countries. Developing countries have used various strategies to increase employment through:

- an emphasis on agriculture;
- the promotion of small businesses;
- upgrading the skills of the workforce;
- improved marketing;
- the expansion of the service sector;
- developing exports;
- increasing self-employment;
- organisational innovation;
- improved management systems;
- extended basic education;
- increased speed of commercial transactions, and
- employment planning (MSS Research, 2014).

Labour markets in developing countries present a complicated mixture of truths, including paid employment and self-employment often typified by continuing informality, low productivity and limited access to social security (Pieters, 2013:8).



Furthermore, Miller (2012:13) contends that macro-economic policies associated with the neo-liberal development theory did not necessarily lead to growth. Additionally, Vellem (2014:6) claims that the gap between the wealthy and the underprivileged in numerous countries that have accepted an economic strategy of growth is morally unjustifiable. Furthermore, Miller (2012:13) maintains that growth does not automatically lead to employment creation and poverty reduction. Consequently, the OECD (2008:122) is of the view that the labour market, social welfare and the education system needs to be upgraded and reformed further in order to provide an adequately large group of highly qualified labour.

### **2.13.2        Keynesian European Employment Strategy**

Dependence on the private sector and marketplace to create jobs has been found to be ineffective (Escudero, et al., 2013:101). Jones (2012:16) argues that the state should not have withdrawn from the market, but rather that the market should be reformed so that it is more reactive, more answerable and flexible. Young (2004:369) claims that the state is the proper facilitator to regulate a human rights level, below which wages and working conditions should not be allowed to fall. Consequently, the state is the best avenue to ensure equity, access to health, education and other vital services to ensure social justice.

Cray, *et al.* (2011:5) contend that there are four main approaches through which the state can influence job creation: interest rate reductions; government employing and purchases; transfer payments, and tax credits. Escudero, et al. (2013:101) also affirms ingrained beliefs that government interference negatively affects competitiveness and economic growth. However, Cray, *et al.* (2011:5) state that the success of policies depends on the economic situation of the nation, and that not every policy can be applied to every economic condition. One of the primary aims of the European Employment strategy has been to raise employment levels (Raveaud, 2007:412). The primary aim of the European Employment strategy was “flexicurity”: the mixture of labour market flexibility and security of employees (Knogler and Lankes, 2012:152), which the BCEA and the LRA try to achieve. Employer’s need for flexibility and workers’ demand for protection can be achieved through the flexibilization of the law governing dismissal, coupled with active labour market

policies, including unemployment insurance schemes such as has occurred in Denmark (Bronstein, 2009:71), which South Africa attempts to do through the LRA and the UIA.

Furthermore, Sørensen (2011:26) contends that the Flexicurity Model is an implicit social contract between employers, employees and the state in which employers benefit from non-interventionist employing and dismissing rules; and employees and their trade union representatives accept a lesser extent of formal job protection because of the extremely good unemployment benefit offered by the state; and the state also helps unemployed persons to qualify for new jobs by offering additional education and training, if required. However, Schmid (2011:171) criticises the objective of flexicurity because of the nebulousness and uncertainty of its definition. It has been subject to the manipulation of socio-economic and political interests, which has emphasised flexibility to the detriment of job security (Schmid, 2011:171). Consequently, the Keynesian economic policy approach and employment strategy is more aligned with social justice and is better suited to the South African context.

### **2.13.3 A national job creation strategy**

Faulkner and Loewald (2008:18) argue that political and economic leadership, as well as economic vision, are essential to improve the country's growth performance. Copley (2006:4) claims that what is required is for the government to have a grand strategic perspective of the state in order to manage its endurance when confronted with competing societies. Part of this perspective would be a national job creation strategy, which builds employment and sustains jobs around national skills and skills development.

### **2.13.4 National Development Plan 2030 (NDP)**

The aim of the NDP is to increase employment levels over the next twenty years by creating eleven million new jobs and reducing unemployment to about six percent by 2030. However, Vellem (2014:5) is unconvinced that economic growth will create and sustain jobs as it has not led to job creation in South Africa, at any rate not insofar as it has been depicted as a solution to the problem of unemployment. Le

Roux (2013:508) is also sceptical of the NDP as it focuses primarily on employment in the formal corporate economy and it does not give adequate consideration to inspiring alternate forms of work, such as self-employment, co-operatives, waste management and recycling (Le Roux, 2013:516). Vellem (2014:5) agrees that the NDP implies that economic growth is essential and that it is perceived as the popular solution for dealing with unemployment in South Africa. Moreover, Le Roux (2013:508) is sceptical of the perception that the service, retail, business and finance sectors hold the biggest potential for job creation. He contends that the recent growth in this sector is false as it is primarily due to the growth of labour brokers, cleaning and security services (Le Roux, 2013:508). The author further claims that, in fact, no new jobs have been created. He maintains that existing jobs are simply transferred from core business to the service sector through the process of externalization (Le Roux, 2013:508). Likewise, the Congress of South African Trade Unions (COSATU) contends that the NDP is not formed to improve economic proprietorship and re-distribution of wealth in South Africa (Vellem, (2014:6).

### **2.13.5 Accelerated structural transformation**

Some of the strategies adopted in other countries to accelerate structural transformation are:

- accelerated structural transformation towards higher value-creating activities;
- increased investment and reform in education, skills and social protection;
- strengthened dialogue between employers, workers and government;
- updating of labour market, social welfare and education systems;
- firm incentives to encourage regular employment and the ease of product market regulation, and
- more favourable immigration policies for highly-skilled labourers.

### **2.13.6 Infrastructure investment**

Infrastructure investment has the ability to create jobs quickly, while offering a basis for future growth (Ianchovichina, Estache, Foucart, Garsous and Yepes, 2013:2016). Thus, government should be involved in programmes of direct job creation, such as investing in the improvement of social infrastructure through an active labour market

policy to cope with perpetual unemployment (Goldberg, 2012: 45). Improved service delivery of high-quality basic infrastructure services such as hospitals, schools and water supply and sanitation raises living standards, improves the employability of populations and provides prospects for inclusive growth (Ianchovichina, *et al.*, 2013:209).

#### **2.13.7 A national wage policy**

According to Levin-Waldman (2012:27), a wage policy is essential for job creation, whilst monetary policy and fiscal policy are insufficient. The author argues that in order for there to be job creation, there needs to be aggregate demand for goods and services, which will only happen if individuals have the financial means to demand goods and services, otherwise nothing is going to happen (Levin-Waldman, 2012:27).

#### **2.13.8 A sound labour relations management system**

Montgomery and Maggio (2009:200) claim that it is in the long-term economic interest and financial well-being of private business to establish a positive labour relations management system. Brandt (2014:32) and Badenhorst-Weiss and Waugh (2015:7) contend that restraints in labour relations have an exceptionally negative effect on economic growth and development. Bell (2014:23) attributes the continuing labour conflict to a legacy of years of inattention, oversights and tactlessness made on behalf of employers, unions and all tiers of government, with the resulting actions of workers participating in lengthy strikes leading to them suffering serious deprivation (Badenhorst-Weiss and Waugh, 2015:7).

Olsen (2010:302) claims that collective bargaining is critical as it gives workers a representational say, which allows innovation to take place in decision-making and it can increase the influence of crisis responses to the requirements of the real economy, while simultaneously ensuring that workers' rights are meaningfully protected. Hence, Anstey (2013:138) affirms that government and business recognise that a new social pact is necessary to address the increase in industrial action manifested in the last few years. Swanepoel, *et al.* (2012:427) maintain that it

is important to foster healthy workplace relations, establish trust, good communication and participative management. Finnemore (2002:145) also asserts that human dignity should be respected as the organisation's workforce can provide it with the necessary competitive edge to succeed in a highly competitive world.

### **2.13.9      Manage human and organisational resources and relationships effectively**

Wilhelm and Wilhelm (2012:63) postulate that culture forecasts the outcome of certain management practices, as well as entrepreneurship. It is argued that strong emphasis should be on co-determination, which is one of the most distinguishing traits of the Nordic model of employee relations. This model is interconnected with co-operation and trust (Gustavsen, 2011:465) and it is suitable in a country where trade unions are well established and recognized as part of society. This is opposed to the Anglo-American model of employee relations which regards unions as an annoyance and an obstruction to private enterprise (Sippola, 2011:358).

However, if businesses continue with poor labour relations, Botha (2015:31) warns that this can cause not only deterioration in confidence but can also produce difficulties with the employment and retention of staff, as well as with productivity, creativity and loyalty. Consequently, in order to determine a company's success, focus should be on the company's potential for value creation through the management of human and organisational resources and relationships by using value-based measures such as the Scandia Business Navigator, Scandia value scheme and the Intellectual Capital Distinction Tree (Ashton, 2005:65).

Montgomery and Maggio (2009:203), on the other hand, assert that simple compliance with existing legal requirements is not enough for sound labour management. The authors claim that private business needs to include best practices that complement or exceed minimum standards (Montgomery and Maggio, 2009:203). Nevertheless, workplace forums established in terms of the LRA have the potential to provide unions and workers with greater opportunities to implement much more power over production issues and influence in areas which have traditionally been considered as managerial prerogative (Du Toit and Ronnie, 2012:216).

Consequently, the South African government needs to develop a deliberate policy that makes employment a key objective, which the National Development Plan attempts to do. Furthermore, the state needs to create new legislative and regulatory tools to promote job creation and job sustainability. Moreover, the state also needs to adopt a job-centred strategy and invest in basic public services, including public administration, education and skills. Furthermore, South Africa needs to invest in employment-intensive activities, adopt labour-based methods in infrastructure, as well as invest in infrastructure. Likewise, the state needs to create national cash transfer schemes, eliminate exchange rate volatility and stimulate local markets. Correspondingly, the private sector needs to invest in industrial and manufacturing output, improve competitive intelligence skills and adopt an employment management relations strategy which is conducive to sound labour relations.

## **2.14 Conclusion**

This chapter has provided a general overview of the need for job creation and job sustainability in South Africa within the social justice context. It has also provided the rationale and theoretical basis for the study. As stated by Tebeneur (1998), cited in Tzehainesh (2010:10) law is not tied as a whole to society but to the various social sub-systems within which it interacts. Consequently, labour law differently influences on various social groups within a society. Therefore, when considering the influence of labour legislation on job creation and job sustainability, it cannot be viewed in isolation. The following variables need to be taken into account, namely:

- the labour market structure;
- the socio-political structure;
- the state's legal framework (beyond labour law);
- the legal culture;
- non-state regulatory systems and social norms, as well as
- the economic ideological environment (Tzehainesh, 2010:11).

The two main economic theories explored and contrasted were the Neo-classical Economic Theory and the Keynesian Stimulus Theory, as they shape perceptions of labour legislation's influence on job creation and job sustainability. It is understood that the British Neo-classical Economic Approach which was transplanted and

adopted in South Africa from colonial times (Sebola and Nkuna, 2014:926) has influenced labour law and persists as the pervading economic theory to date. It was further uncovered that throughout its implementation, this approach has had an adverse influence on job creation and job sustainability. Conversely, it was also unearthed that the South African government has, in some instances but to a lesser extent, inconsistently applied Keynesian Economic Theory principles which have also influenced job creation and job sustainability. Therefore, the prevailing social, economic and political views in South Africa are neo-classical. Big business, especially MNCs, appear to hold the power and to dictate to the South African government. Global economic neo-liberalism appears to have had a very strong influence on national economic policy. Its collective influence has been to undermine and reverse labour protection legislation and reduce the regulation of the employment relationship. It would appear that instead of improving job creation and job sustainability, neo-classical economic policies have had a negative influence on job creation and job sustainability as a whole.

Thus, it would be short sighted to simply focus on labour law and to ignore the influence of economic paradigms and their related external factors which have and continue to influence the labour relationship, such as the International Labour Organisation, national governments pursuing trade agreements, MNCs and international financial institutions (Burgess, 2010:198). Poverty will not be overcome if informal employment and unemployment are not dealt with and, in order to achieve this, illiteracy and ill-health need to be addressed (Walker and Pellissery, 2008: 82). From a social justice and societal point of view, healthy and well-educated workforces enable countries to compete globally in terms of a high-productivity and high-wage portfolio (Walker and Pellissery, 2008:86). Accordingly, there are a number of external and internal factors influencing job creation and job sustainability. As a result of intensifying globalisation and global competition, there needs to be a co-ordinated national integrated industrial policy which targets competitiveness and sustainability through innovation and private sector development, which will promote the creation and growth of SMMEs; job creation and job sustainability, whilst simultaneously increasing social protection and social security.

Therefore, job creation and job sustainability is not achievable simply by focusing on labour legislation's influence on job creation and job sustainability. Such a view is

short sighted and inadequate. The design and implementation of appropriate policies at the global, national and local levels are necessary. Transparent public policy-making will create and strengthen the contribution of businesses to productive and equitable economic and employment growth. Badenhorst-Weiss and Waugh (2015:8) maintain that a skilled, educated and efficient workforce continues to be a considerable predicament. The authors also claim that businesses operating in South Africa need to invest in the education, development, up-skilling and mentoring of their workforce and make an effort to retain them. The authors identify labour relations, strikes and instability in particular as serious risk factors to all businesses in South Africa. They blame the unstable state of affairs on a mixture of the use of labour brokers, migrant workers, bargaining councils, labour unions and working conditions. The authors maintain that investment in the social welfare of the labour force is essential (Badenhorst-Weiss and Waugh 2015:8). Nevertheless, regulatory policy can play an important role in creating and formalising job opportunities (Miller, 2012:10). Therefore, government should only amend and improve labour legislation which promotes job creation and job sustainability.

The following chapter provides a review of relevant local and international literature around the influence, if any, of labour legislation on job creation and job sustainability in South Africa.



## CHAPTER THREE

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### LITERATURE REVIEW: THE INFLUENCE OF LABOUR LEGISLATION ON JOB CREATION AND JOB SUSTAINABILITY IN SOUTH AFRICA

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#### 3.1 Introduction

The previous chapter provided the background and an overview of the factors influencing job creation and job sustainability in general. While labour legislation should be accommodating of economic growth and employment, it is vital to acknowledge that the emphasis of law is not on job creation and ensuring employment for the Republic's inhabitants (Kettledas, 2013:3). It is therefore important to view law in its local, regional, national and international context, as well as from its historical perspective (Tzehainesh, 2010:11), since the labour market and work organisation are a result of political choices (Tzehainesh, 2010:28).

In this chapter, some of the primary labour legislation of South Africa will be explored to understand the extent to which the legislation in question influences job creation and job sustainability, as well as to determine whether it meets the normative and ethical requirements of the principles of social justice. Opinions will also be explored as to whether the current labour legislation can be further improved upon, whilst simultaneously ensuring that the principles of social justice are met. In particular, the basic needs of the marginalised, the poor and the weak need to be met in order to ensure that South Africa is a free, just and fair society. Secondly, in line herewith, this research also seeks to explore which model, if any, is aligned with normative social justice principles and would be the most appropriate to measure the influence of labour legislation on job creation and job sustainability.

The aim with regard to job creation and job sustainability is also to identify optimal monitoring practices to advance social and economic justice goals (Lee, McCann and Torm, 2008:428). It also briefly explores how similar labour legislation in other countries has influenced job creation and job sustainability.

The following section provides the background to the need for labour law.

### **3.2 Brief background**

Labour guiding principles are not merely an enquiry of economics. The essentials of the Constitution must be considered when alternatives are formulated in order to validate any constraint of any rights (Botha, 2015:33). Consequently, it is necessary to first acknowledge and understand that law is not created in a vacuum, neither does it operate in a vacuum (Deakin, Malmberg and Sarkar (2014:4). The South African labour arena requires apt labour legislation to confront the disparities in the labour market (Cole and Van der Walt, 2014:511). Labour legislation is primarily involved with affording the employed with essential safeguards against unfair labour practices, unsafe working conditions and a decent living wage (Kettledas, 2013:3). The Constitution, as well as the LRA, the BCEA and the EEA safeguard the right of an employee to fair labour practices and the rights to freedom of association, freedom of expression, privacy and equality (Botha, 2015:33).

The Constitution is the highest law and acts as the overseer of all legislation reducing everything to its provisions (Cole and Van der Walt, 2014:515). However, concern has been expressed about the two cornerstone pieces of labour legislation, namely the BCEA and the LRA, as acting as disincentives for investment and being too onerous for small businesses, which could lead to the widespread evasion of labour legislation (Darrol, 2013:14).

It was, therefore, essential in the previous chapter to first explore the prevailing social, economic and political models around which labour law developed in South Africa; who actually holds the power and what influence global economic neo-liberalism had and is having on national economic policy. This was deemed necessary in order to determine what their collective influence is on labour legislation; on the regulation of the employment relationship; and on job creation and job sustainability overall. Nevertheless, it is accepted worldwide that fundamental human rights in the workplace must be respected. "Rights are not external realities that exist outside of space and time" (Bronstein, 2009:1). Human rights concerns now occupy a far more prominent place in labour law than they did in the previous thirty years (Bronstein, 2009:126).

Tzehainesh (2010:35) contends that the neo-liberal argument of flexibilization and deregulation, which supposedly contribute to employment creation, has resulted in a reduced level of protections, as well as a diminished social and political legitimacy of labour law. Nevertheless, the law on its own cannot address all the issues necessary to achieve social and economic objectives, especially those oriented in dealing with opposing concerns of decreasing the magnitude of unemployment, improving living standards and ending disparities in earnings (Kettledas, 2013:3). This view is supported by Bronstein (2009:71) who maintains that there is no evidence to support the assumption that deregulatory labour reforms alone are sufficient to improve the country's levels of employment. Consequently, a regulatory system has to be comprehended from the standpoint of what it expects to achieve (Darrol, 2013:14). Furthermore, the demands to review labour legislation in order to solve all the labour market problems in South Africa are an over-simplification of what is actually required to address these issues. South Africa still bears the weight of the remains of repression, racial discrimination and immense earnings inequalities (Kettledas, 2013:3).

Consequently, the literature reviewed in this chapter will take into account the influence of labour legislation, its practical application and the corresponding reality by exploring labour legislation's influence on employment behaviour, its principles, techniques and practices. Focus will particularly be on business' responses to labour legislation when creating and sustaining jobs, as well as their resultant influence on job creation and job sustainability.

Furthermore, there is a historical mismatch between the realities of the developing world and the dominant labour law model with its underlying assumptions, which has been exacerbated further through globalization (Tzehainesh, 2010:9). Moreover, Warikandwa and Osode (2014:63) maintain that the developing countries' argument is imperfect as it relies on the World Bank's "Doing Business" (DB) indicators, which are defective. It does not recognize the social purposes of labour regulations, nor do the DB indicators evaluate the amount of protection given by the domestic criteria they cover (Warikandwa and Osode, 2014:44). In a capitalist economy, it is the marketplace and not the law that formulates, moderates and obliterates employment (Bronstein, 2009:71). However, regulatory policy can play an important role in

creating and formalising job opportunities (Miller, 2014:10). This is in line with the Distributive Justice Theory, which aims at changing the neo-liberal economic order into an inclusive economic order by attempting to reach an equilibrium between businesses exploiting and guaranteeing sustainable development, wherein the safeguarding of workers' rights are considered as one of its fundamental standards (Warikandwa and Osode, 2014:69).

Employment security is being traded for the hope of job creation, which is at the heart of many government policies (Bronstein, 2009:71). This was confirmed by the Deputy Director General of the Department of Labour, who stated that the Department supported economic growth and employment (Department of Labour, 2014:9). Although employment protection legislation achieves its aim by safeguarding current jobs, it simultaneously makes it more difficult for jobseekers to enter the job market (Bronstein, 2009:70). Conversely, Gwatidzo and Moyo (2014:300) claim that there is no consensus on whether employment protection legislation is beneficial or harmful to the economy. Nevertheless, there has been a move from the traditional economics viewpoint of encouraging labour market flexibility to one which emphasises protecting labour rights in business activities (Deakin, 2009:16), which Warikandwa and Osode (2014:65) confirm. This argument aligns with Tzehainesh (2010:3), which maintains that labour law in industrialized countries which were traditionally based on the Fordist Model of Production, is being challenged. Estlund (2013:103) also agrees with this view and argues that labour law should be perceived as part of the larger societal project of regulating work and working conditions. This view is further supported by Kettledas (2013:3).

According to the Supriot Report (Freedland, cited in Tzehainesh, 2010:6), labour law should be widened to the broader concept of work, and not limited to the narrow concept of employment (Tzehainesh, 2010:6). Consequently, there should be a move away from using the Employment Protection Model of Standard Employment which is based on the Economic Productive Model, as it only represents a minority of the labour force (Tzehainesh, 2010:13), to a broader notion of "work", which integrates the various patterns of work. Moreover, Estlund (2013:104) observes that a great deal of law has emerged from democratic processes to regulate businesses and constrain their potentially harmful conduct, which businesses seek to resist.

Broadening the concept to work opens the scope of labour law to other types of work contracts which typically fall outside the traditional employment contract (Tzehainesh, 2010:13). The recent amendments to the LRA appear to be aligned with this kind of thinking.

Employment protection legislation, therefore, comprises regulations that are intended to influence the behaviour of employers in order to improve the welfare of employees (World Bank, 2011:3). The rationale is to attend to the exposure of workers associated with dismissal through a sequence of obligations with which the employer must comply when dismissing workers. In addition, an important benefit of employment protection is that it limits job destruction, whereas temporary jobs intensify it (Cahuc and Postel-Vinay, 2002:63). Consequently, the more adaptable the regulation on fixed-term contracts, the greater the potential to decimate jobs, intensify unemployment and decrease collective well-being, especially when dismissal costs are elevated (Cahuc and Postel-Vinay, 2002:65). Thus, the danger of enabling the creation of additional temporary jobs to foster job creation is that it can increase job destruction, thereby increasing unemployment.

Moreover, even though regulations may have significant compliance costs, those costs are justified if the regulations will create much greater economic and social benefits (Shapiro and Irons, 2011:2). The authors further contend that a one-dimensional theory is inadequate to encapsulate how rules influence markets and the economy. Rules can be calculated to openly advantage the economy and particular industries, which in turn can cause investments that create jobs; advance workers' health and productivity; motivate important technological innovations, and improve job sustainability (Shapiro and Irons, 2011:2). Consequently, a multi-dimensional theory on the effects of regulations on employment is more appropriate (Shapiro and Irons, 2011:3). This study seeks to clear this disparity by investigating the influence of employment protection legislation on job creation and job sustainability, as well as to examine the extent to which labour legislation can be used to achieve the goals of social policy. Furthermore, labour law should be perceived as an area of regulation amongst many other areas of regulation, such as consumer products, the environment and financial integrity (Estlund, 2013:104).

Furthermore, according to the Critical Legal Theory, law reflects the prevailing social, economic and political views of society, especially of those who actually hold power in a country which it regulates. Generally, the power structure in society has been, and is, weighted towards the “haves”. Consequently, the vulnerable members of society need protection (Sodhi, 2014:100). Bronstein (2009:1) argues that labour law is not just a means of regulating the exchange between labour and capital but rather it is a means to not only protect the worker, through the International Labour Organisation’s concept of “decent work”, as well as to ensure democracy in the workplace. Thus, labour law requires a theory to validate the presence and influence of usual labour law regimes and values by addressing the moral, political and legal influence of said law (Collins, 2011:137).

The problem in many developing countries is that labour law, which was transplanted during the colonial period, has remained entrenched and reinforced after independence (Tzehainesh, 2010:10). During the prolonged period of colonialism and the subsequent apartheid era, labour law was primarily regulatory and adopted a positivist approach. It was anti-social justice; it promoted discrimination and unfair working conditions. Nevertheless, under the new dispensation, since 1994; labour law has become more concerned with social justice, human rights and redressing past inequalities and injustices. Consequently, social justice is the normative ethical principle that will be used to evaluate the influence of labour legislation on job creation and job sustainability as social justice forms the basis of legislation in South Africa, in particular the Constitution and labour legislation. A social justice duty is stipulated in the two cornerstone pieces of labour legislation, namely the BCEA and the LRA. The LRA lists its goals or purposes as to "advance economic development, social justice, labour peace and democratising the workplace" (Botha, 2015:33).

The Labour Theory of Social Justice will be used as the underpinning theory to form the theoretical framework and the basis for this research. Furthermore, as social justice is entrenched in the Constitution (Smit, 2010:6-7), it is the yardstick against which all governmental, societal and corporate policies, processes, procedures and actions are measured in South Africa.

The following section provides the background to the importance of labour law.

### **3.3 The importance of labour law**

The normative role of labour law as a means to protect workers and to promote social goals is being undermined by the weakened regulatory function of the state and political support for the neo-classical economic theories promoted by international financial institutions (Tzehainesh, 2010:4). The dominant school of thought, especially amongst international financial institutions, has encouraged developing countries to flexibilize labour relations and to deregulate through structural adjustment, privatization, trade and financial liberalization often as a condition of financial aid (Tzehainesh, 2010:21). Warikandwa and Osode (2014:44) observe that developing countries rely on the argument that inflexible labour legislation may bring about unintentional negative effects on the economy and lower labour standards in order to attract investors. This global neo-liberalist argument has resulted in the relevance, role and purpose of labour law being questioned and viewed in a negative light (Warikandwa and Osode, 2014:44).

Legal scholars are divided in their views on what the normative justification for individual employment law is. Some maintain that it is about economic efficiency, whilst others such as the social equality theorists argue that it is there to protect workers against the imbalances of bargaining power and exploitation (Bagenstos, 2013:225). The weight of the research appears to favour the economic efficiency approach and to rely on economic analysis to deal with employment problems (Bagenstos, 2013:232). Nevertheless, Benjamin (2013: 29), cited in Le Roux and Rycroft, is highly critical of the neo-liberal approach. The author argues that the neo-liberal demand for deregulation, which is built solely on the premise that labour market regulation is detrimental to efficiency, is misleading. Darrol (2013:14) endorses the above statement, and contends that the debate as to whether or not regulation is necessary, is false.

The following section provides the background to the need for and the importance of legal protection.

### 3.3.1 Legal protection

The purpose of labour law is to afford a legal safeguard to employees and employers through the promotion of safe and productive workplaces; the correction of unsafe, bad working conditions; the prevention of exploitation by limiting hours worked; the payment for overtime worked; equality in the workplace; job security; freedom from bias, and discrimination (Benjamin, 2013:29 cited in Le Roux and Rycroft). This view corroborates Botero, *et al.*'s (2004:1339) opinion that labour law governs the individual contract of employment. Labour law is involved with the employment terms and conditions agreed to in terms of which employees work, as well as the situations in which the contract is ended (Benjamin, cited in Le Roux and Rycroft, 2013:31). Nevertheless, it is important to note that law is the instrument, not the motivating influence, of a noble society. It must always continue as the servant, never to be the master (Clark, 1942:393).

According to Smit (2010:1), it is unquestionable that people require laws and support in order to achieve social justice. Consequently, the primary goal of labour law is the protection of employees in the employment situation. However, it is essential that the enforcement of labour standards and rights can no longer take place solely within the nation-state boundaries, and that it is necessary that labour standards and rights be enforced globally (Bhattacharjee and Roy, 2012:70). Botero, *et al.* (2004:1339) confirm that countries throughout the world have founded a multi-faceted scheme of laws and establishments meant to safeguard the interests of their national workers, as well as to assist in guaranteeing a minimum living standard for their inhabitants in general. This view is supported by Djankov and Ramalho (2009:4) who agree that countries establish employment law, collective labour relations law and social security law to safeguard and to guarantee their workers' interests. South Africa appears to have a similar arrangement. As a previous British colony, the British labour law of "master and servant" was transplanted into South Africa. This was subsequently replaced over time, especially after 1993, with the start of the new constitutional dispensation (Pieterse, 2003:10).

The Constitution and the Bill of Rights not only entrench civil and political rights but also guarantee justiciable social and economic rights in South Africa (Pieterse, 2003:10). It is now at the top of the hierarchy of the sources of labour law, in which



court decisions play a crucial role. The Constitution acknowledges essential labour rights and fair labour practices as being important. In terms of Section 123, social justice is an essential pre-requisite for forming a robust economy and society, as it imposes clear restrictions on the policy options available to those who try to regulate the labour market (Botha, 2015:33). Thus, the Constitution and labour legislation play a crucial role in supporting the employment relationship. In addition, labour legislation and social security legislation, particularly employment-based social insurance, are interconnected (Mpedi, cited in Le Roux and Rycroft, 2013:272).

### **3.3.2 Economic efficiency and flexibility**

Laws and policies respond to business needs, as well as to general social norms (Berg and Kucera, 2008:14). Law is necessary to change society (Barnes and Burke, 2006:493). Consequently, Ruiz (2008:233), cited in Berg and Kucera, states that labour law affords employers with the means for handling labour issues relating to managerial and disciplinary powers, collective bargaining and worker participation in the workplace.

Educating from neo-classical labour-market models, diverse legal scholars have contended that minimum wage laws compound unemployment; bring about further ineptitudes, and that direct transfers are an excellent way of guaranteeing distributive justice (Rogers, 2014:1543). Barker (1999:30-39) cites provisions in the BCEA as an example which can have a negative influence on flexible working conditions and working time flexibility. His view is supported by Chen and Funke (2005:688) who maintain that issues such as wage flexibility, non-wage labour costs and job security all add to labour market rigidity. Barker (1999:30-39) claims further that a major reason for unemployment is the inability of labour markets to adjust quickly to changing circumstances. He also attributes the main sources of market rigidity to laws and regulations, as well as trade unions' unwillingness to change their behaviour or opinions to help others (Barker, 1999:30-39). In addition, the author maintains that labour market establishments, such as the National Economic Development and Labour Council (NEDLAC), Bargaining Councils and Sectoral Determinations affect the labour market directly and indirectly. Political support of this viewpoint has resulted in the weakening of the state's regulatory functioning and

the normative role of labour law, as a means of promoting social goals being challenged.

The results of the study conducted by Feldmann (2009:76) revealed that labour regulation does affect unemployment globally. His regression results discerned that stricter regulation generally increases unemployment. The author contends that stringent employing and dismissing laws have an adverse effect on employment, as does collective bargaining which he maintains increases female unemployment, with the greatest effects amongst the youth (Feldmann, 2009:76). Cohen and Moodley (2012:323) confirm his finding that 71% of the unemployed are under the age of 34. Noelke (2011:1) shares their view that employment protection legislation negatively influences job creation, especially for the youth. Bassanini, Nunziata and Venn (2009:352) disagree with Feldman (2009:76) and Barker's (1999:30-39) views. The authors claim that there is little evidence of protective labour legislation having a negative influence on employment (Bassanini, Nunziata and Venn, 2009:352). However, they conceded that employment protection legislation may be more binding in some industries than in others (Bassanini, Nunziata and Venn, 2009:352). Bronstein (2009:71) shares their view that there is no evidence to support the assumption that deregulatory labour reforms alone will be sufficient to improve a country's employment levels.

Interestingly, Gwatidzo and Moyo (2014:300) discovered that there is no consensus in the literature they reviewed on whether employment protection legislation is beneficial or harmful to the economy. Furthermore, Bennington and Wein (2000:31) also found that the employers who participated in their study did not strongly support the economists' view that legislation creates inefficiencies and interferes with market mechanisms. In fact, they found evidence to the contrary. The employers who participated in their study indicated that legislation had little or no influence on efficiency and that legislation did not really affect the cost of recruitment and selection. In addition, very few of them had any major difficulty with complying with legislation. Consequently, South Africa as a democratic industrialised country should not entertain the question of whether or not employment relationships should be deregulated. Rather, it should consider how the employment relationship should best be regulated and to what extent. The South African government sought to achieve this through 'regulated flexibility' (Kettledas, 2013:4) by combining the safeguarding

of basic employment requirements with systems and processes to amend these criteria, through collective bargaining, sectoral determinations for unorganized sectors and administrative exemptions (Cheadle, 2006:668).

Furthermore, Davidov (2012:3) claims that any effort to answer to assaults on labour law must be founded on a well-defined opinion and enunciation of why such laws are needed. The author hypothesizes that when confronted with assertions that labour law has a negative influence on job creation, one could respond by refuting the influence on increased unemployment (through job losses or lack of job creation) or alternatively, by contending that in spite of increased unemployment, there are additional justifications such as social justice and social responsibility that validate the law. Those additional justifications have a positive effect, resulting in increased employment, job security and decent work, as well as the alleviation of inequality and poverty, are the explanations that need to be enunciated unambiguously (Davidov, 2012:3).

Employment protection legislation is not enforced uniformly across the board (Boeri and Jimeno, 2005: 2057). The informal sector remains poorly regulated or unregulated in many countries (Cooke, 2011:101). There is also feeble obedience with labour laws in many developing countries, which is expressed through the presence of large informal sectors that are frequently contended to be detrimental for workers, and damaging to growth (Almeida and Carneiro, 2009:64). The authors' study on labour inspections in Brazil found that austere enforcement led to an upsurge in formal sector employment and non-employment and that there was a decrease in employment in the informal sector, which seemed mostly to be owing to a decline in self-employment (Almeida and Carneiro, 2009:86).

### **3.3.3 Equal distribution of power**

Labour law is the compensatory power which assists the weaker party to counter-balance the disparity of the bargaining power integral to the employment relationship (Benjamin, cited in Le Roux and Rycroft, 2013:22). Guest (1997:349) maintains that labour legislation is critical in ensuring participation by all stakeholders, as well as

minimizing exploitation. Berg and Kucera (2008:23) corroborate Guest's view that the aim of labour law is to deal with the imbalance by defensive and procedural rights which, if absent, could end in unfair consequences for employees. Van Niekerk, *et al.* (2008:3) confirm the view that legislative interventions during the past century were deemed necessary in order to address the unequal power balance in the employment relationship. Additionally, Schwartz (2013:73) supports their view that there is a difference in the resources and power that MNCs enjoy, compared to that possessed by a human being.

Consequently, as long as there is a need to correct the power imbalance in the employment relationship in South Africa, the need for labour law and social protection will remain.

#### **3.3.4 The promotion of social equality and the protection of human rights**

One of the primary purposes of law is to protect human rights. Bagenstos (2013:232) claims that the goal of individual employment law should be to promote social equality rather than simply be concerned with supply and demand. The author also posits that distributive justice on its own is insufficient. Distributive justice is concerned with the intervention and the redistribution of wealth and income in order to address inequality so that everyone is left equal (Williams, 2010:43). De Vos (Van der Walt, 2004:271) claims that substantive, context-sensitive transformation is required to address inequality.

Furthermore, Hepple, cited in Le Roux and Rycroft (2013:18), argues that deregulation is not compatible with decent work. Blackett, Helfer, Langille, Leary and Diller (2007:390) contend that the point at which market control is suffused with human dignity is essential to understanding labour law. Moreover, the authors claim that guaranteeing decent work is not the sole role of law. Neither is it that of international labour law. It is rather that of national political motivation and international policy consistency, which are essential (Blackett, *et al.*, 2007:389). Burgess (2010:198) supports this view and asserts that one cannot simply focus on labour law alone and ignore all the other external factors which influence the labour relationship, namely the International Labour Organisation, local governments

pursuing trade agreements, MNCs and international financial institutions (Burgess, 2010:198).

According to Van Staden (2013:472), contemporary South African labour law draws on five different sources, namely: the Constitution; statutory legislation and its regulations; collective agreements; international law and case law. This viewpoint is also shared by Bronstein (2009:7) who agrees that the power of the judiciary to interpret the law can potentially have a significant influence on the effectiveness of labour law. Consequently, the courts are important participants in the regulation of labour markets (Van Staden, 2013:472). The primary means of regulation by legislation is necessary. Thus, the focus of this study will be on the influence of statutory legislation and its regulations on job creation and job sustainability in South Africa.

While labour legislation should encourage economic growth and employment, it is imperative to acknowledge that the focus of law is not on job creation and obtaining employment for the country's inhabitants. The focus is on affording the employed fundamental protections against unfair labour practices, unsafe working conditions and a decent living wage (Kettledas, 2013:3). The following section will deal with the labour legislative framework in South Africa and its influence on job creation and job sustainability.

### **3.4. The Constitution of the Republic of South Africa, Act No.108 of 1996**

The Bill of Rights, entrenched in the Constitution, provide for a number of fundamental workers' rights (Bronstein, 2009:4 and Moseneke, 2012:12). The overarching effect is that these laws apply to all aspects of the employment relationship, including the rights to human dignity and to be treated with respect (*S v Makwanyane and Another* 1995 (3) SA 507A-B (CC)); Freedom of Association; fair labour practices, as well as the right to strike. Furthermore, according to De Vos's Equality theory, the Constitution is a vehicle for transformation (Van der Walt, 2004:266). However, Van der Walt (2004:266) is critical of De Vos's Equality theory and argues that it limits the notion of social justice and is, therefore, inadequate for the South African context. The author maintains that the South African Constitution is a transformative document which approves and supports not only the protection of

current rights, including socio-economic rights, but also the expansion of rights to those who were formerly refused them (Van der Walt, 2004:266). It is still relevant that De Vos argues that the transformative process is necessary for 'the achievement of long term "real" equality (Van der Walt, 2004:266).

The relevant sections of the Bill of Rights are as follows:

- *Section 9*, which is to guarantee equal access to opportunities;
- *Section 23*, the advancement of labour standards and essential rights at work;
- *Section 18*, the freedom of association;
- *Section 10*, human dignity;
- *Section 23*, comprehensive labour relations;
- *Section 24*, an environment that is not detrimental to the health and welfare of those in the workplace;
- *Section 27*, the provision of sufficient social guarantee to safeguard defenceless workers;
- *Section 28*, guaranteeing that children are safeguarded from unfair labour practices and not obliged or allowed to do work or render services that are not age appropriate for children or their welfare, education, physical or mental health or spiritual, moral or social advancement is threatened; and
- *Section 34*, access to courts and to fair and speedy labour justice (Department of Labour Annual Report, 2014:4).

The labour legislation framework in relation to job creation, job sustainability, social justice, the Constitution and the Bill of Rights is discussed below.

### **3.5 The labour legislative framework in South Africa**

Statutory regulation is an important source of labour law in South Africa (Bronstein, 2009:4). The employment relationship is one of the most regulated types of contracts (Le Roux and Rycroft, 2013:vii). There has also been a long history of established elevated levels of poverty, structural inequality and structural unemployment (Chibba and Luiz, 2011:307). According to Benjamin, cited in Le Roux and Rycroft (2013:23), there is a shortage of critical skills in South Africa, which May and Govender

(1998:1) contend is, as a result of continued colonialism. Aliber (2003:474) shares their viewpoint and contends that the critical skills shortage reached its height during apartheid. This resulted in divisions developing in the socio-political system, which were displayed in its labour relations programme.

However, the new dispensation in 1994 resulted in South Africa's labour legislation being amended to align it with the Constitution and the Bill of Rights, which in turn resulted in increased labour protection for basic conditions, health and safety, unemployment insurance, dismissals, right to strike and so forth (Le Roux and Rycroft, 2013:vii). NEDLAC has formed a significant part of the formulation and improvement of labour law since 1994 (Gostner and Joffe, 1998:133). Labour policy, however, is not only an issue of economics. The pre-requisites of the Constitution need to be considered when alternatives are crafted, as well as to substantiate any limitation of rights (Botha, 2015:33).

The labour legislative framework as a whole has been criticised by business in particular as being skewed too much in favour of labour and for creating an inflexible labour market, which is not conducive to job creation. Hepple, cited in Le Roux and Rycroft (2013:1), is critical of "rigid" labour laws being blamed for South Africa's very low ratio of employment rate to working age population. He contends that the blame is unsubstantiated and is nothing more than crude reductionism (Le Roux and Rycroft, 2013:2). This view is supported by Venter, Levy, Conradie and Holtzhausen (2010:132) who claim that legal protection of labour is not necessarily negative, especially since the way in which a business manages its relationships with its employees is crucial to its overall success.

The South African government has responded to the perceived rigidity of the labour laws by making certain changes to the BCEA, the LRA and the EEA. However, the legislative amendments have not provided greater flexibility. Instead, they have increased labour protection. An example is the supervision of non-standard employment, or labour broking, which has resulted in the increased security of employment for vulnerable workers (Kettledas, 2013:4), which may influence job creation and job sustainability. Another important amendment is Section 198 of the LRA, dealing with the equal treatment of workers, which may also have an influence on job creation and job sustainability.

The legislative amendments have been criticised by economists. In addition, Government in its Regulatory Influence Assessment (RIA) through the Department of Labour has acknowledged that jobs may be lost because of their implementation (Goldberg and Wilkinson, 2014). Despite the aforesaid criticisms, the South African government re-affirmed its commitment to creating a labour market that is more favourable to job creation and job sustainability, as well as to ensuring that the aims of social justice are addressed (Kettledas, 2013:7). Kettledas (2013:7) further contends that labour law cannot provide solutions to the socio-economic challenges that South Africa is faced with - it can simply provide the framework within which solutions can be found. Pieterse (2003:3) and van der Walt (2004:255) both assert that socio-economic rights are constitutionally protected and enforceable in South Africa. Consequently, the influence of the Constitution and the Bill of Rights in relation to the labour legislative framework in South Africa on job creation and job sustainability is examined below.

### **3.6 Specific labour legislation in South Africa**

An all-inclusive unified legislative framework currently standardises and enables the employment relationship. The four primary pieces of labour legislation are: the BCEA; the EEA; the SDA and the LRA.

The BCEA provides the foundation and sets a floor for minimum standards in the labour market (Du Plessis and Fouche, 2012:49). The EEA targets the legacy of racial and gender discrimination in the workplace and in the labour market, providing a framework for businesses to implement affirmative action measures (Naidoo, 2013:8). The SDA promotes training with the aim of facilitating skills acquisition in order to match demand and supply in the labour market with the necessary skills (Cole and Van der Walt, 2014:525). The LRA binds all the pieces of labour legislation together. Even though the LRA focuses on labour relations, it is instrumental in promoting sound labour relations between employers, employees and trade unions, primarily through collective bargaining and through the variation of minimum employment standards, in terms of the BCEA (Van der Walt, Le Roux and Govindjee, 2012:39). The legislative intention is to use collective bargaining to promote efficiency and to overcome any rigidity in the workplace and the labour



market (Du Toit, Godfrey, Cooper, Giles, Cohen, Conradie and Steenkamp, 2011:39). However, the BCEA and the LRA are perceived by organised business as primarily to blame for restricting job creation (Godfrey, 2014:2587). Although labour legislation is supportive of economic growth and employment, job creation and obtaining employment for the inhabitants of the country, this is not its aim. There are, however, a number of labour laws regulating and influencing job creation and job sustainability. Some are perceived to have a positive influence, whilst others are perceived to have a negative influence.

The focus of this chapter is to determine the extent of the aspects of each of the Acts' possible influence on job creation and job sustainability.

### **3.7 Influence of increased labour costs, as a result of compliance, on job creation and job sustainability**

Almeida and Carneiro (2009:28-29) contend that compliance with labour regulation increases labour costs. Arnold and Hartman (2005:207-208) maintain that the primary reason for the call for de-regulation is to reduce labour and compliance costs, in order to improve job creation and job sustainability. The authors claim that enduring economic growth will only occur if developing countries take advantage of their low-cost advantage to entice foreign expansion (Arnold and Hartman, 2005:207-208). Almeida and Carneiro (2009:28-29) agree with Arnold and Hartman and argue that more severe enforcement of labour regulation limits business' size, production, productivity and leads to higher unemployment. The authors contend that in most developing countries, austere labour market decrees result in excessive labour costs for employing workers and effect reduced labour flexibility (Almeida and Carneiro, 2009:28-29).

Ayanda and Laraba (2011:200) share the sentiments expressed by the authors above, maintaining that the problems of complying with government regulations and tax authorities are skewed more heavily onto smaller firms through higher compliance costs. For example, import or export and tax costs; labour market procedures; and licensing and price control. Furthermore, Almeida and Carneiro

(2009:28-29) postulate that efficiency and firm size are sacrificed in the process, as well as more informal labour being employed to evade compliance with the laws. Consequently, the authors recommend the relaxation of enforcement and the promotion of more flexible labour laws to stimulate growth. However, they do concede that it is not only labour regulations which affect resource allocation in the economy, but also other regulations such as investor protection, financial, business entry and tax regulations.

According to the Standard Economic Model of Enforcement, the employer will only conform if the likelihood of being discovered times the penalties is greater than the cost of compliance (McCann, Lee and Belser, 2014:162). However, the authors contend that the problem with the model is that it is too simplistic in that it directs attention away from other important considerations. Compliance costs can be evaded or minimised by non-compliance; however, the majority of employers choose to comply with the law (Gimpelson, Kapelyushnikov and Lukyanova, 2010:618). Consistent with the neo-liberalist approach, collective bargaining, labour costs, minimum wage regulation and international competition influence job creation and job sustainability. These, however, cannot be viewed in isolation. From a neo-classical viewpoint, there are a number of issues which influence the local labour market. Firstly, wage regulation and minimum wage fixing; sectoral statutory regulation and statutorily-backed centrally bargained collective agreements; a vigorous and strong trade union movement, and a dramatic increase in industrial action, result in increased direct and indirect labour costs.

Secondly, labour market inflexibility could possibly result in business demanding complete labour market flexibility. Social justice theorists, however, argue that complete labour market flexibility is not possible as all governments need to provide a safety net of protective legislation for their constituencies, especially for the most disadvantaged employees. Venter, *et al.* (2010:130) claim that there is no such thing as a perfectly flexible labour market. The authors' view is corroborated by Benjamin (Le Roux and Rycroft, 2013:27) who argues that the debates centring around de-regulation creates a false dichotomy. The author is of the opinion that there can never be a total absence of regulation, and maintains that the debates are really about substituting one body of regulations for another (Le Roux and Rycroft,

2013:27). Nevertheless, governments have a responsibility towards their citizens to balance the needs of business with societal needs, such as to provide remedies for unemployment; to safeguard health and safety, to ensure the general well-being of all its citizens, as well as to provide for retirement availability and skilled labour (Venter, Levy, *et al.*, 2010:134).

Thirdly, the issue of labour sub-contracting, outsourcing and labour brokers is one which employers are in favour of and to which unions and workers are vehemently opposed. Fourth, is the issue of the growing inequality of income distribution (Venter, *et al.*, 2010:138). Fifthly, the issue of the social cost of the effects of past labour market discrimination based on race and gender through job reservation, unequal education and training opportunities has led to inefficiencies in the labour market (Venter, *et al.*, 2010:139). Sixth, the issue of labour productivity, efficiency and globalisation is important (Venter, *et al.*, 2010:142). Seventh, is the issue of the skills shortage in South Africa, which Venter, *et al.* (2010:146) claim is having a negative influence on South Africa's economic performance. Furthermore, the authors postulate that this is being further compounded by the serious shortage of sound managerial expertise in South Africa. Their view is corroborated by Badenhorst-Weiss and Waugh (2015:6) who maintain that it is hampering economic growth. Finally, there is the issue of the high unemployment rate in South Africa (Venter, *et al.*, 2010:147), impacting on job creation and job sustainability.

However, Hepple, cited in Le Roux and Rycroft (2013:7), warn that based on the World Bank's Employing Workers indicators, it is not possible to draw any conclusions about the links between labour laws and economic performance or unemployment, as they provide no persuasive evidence thereon. The author further asserts that it is therefore necessary to find an explanation for the high unemployment rate elsewhere, other than in the labour legislation (Hepple, cited in Le Roux and Rycroft, 2013:7).

### **3.8 Influence of compliance costs of various labour legislation on job creation and job sustainability**

Compliance with labour law can occur in three main ways, namely voluntarily; mandatory with little or no consequences, and mandatory, with serious repercussions for non-compliance with said laws.

#### **3.8.1 Voluntary compliance through corporate social responsibility**

Weber and Gerard (2014:32) posit that corporate social responsibility should be part of management's responsibility to create an ethical culture, wherein compliance is part of a more proactive corporate governance approach, in which preventative steps are taken to avoid compliance violations. The problem is that in South Africa, labour legislation is based on a liberal market system (Kalleberg, 2009:15). The Co-ordinated Market Model seeks to recognise the opinions of employees within the business, thereby accepting that employees are essential stakeholders who add to the sustainability of the business (Da Piedade and Thomas, 2006:315). This results in the promotion of institutional responsibility, which in turn could lead to the expansion or at least, the protection of jobs. Bronstein (2009:123), however, postulates that because corporate social responsibility is voluntary and the state does not participate in the formulation of corporate social responsibility initiatives or the enforcement thereof, workers are unable to bring their allegations before a court in instances where corporate social responsibility breaches have occurred, for the enforcement thereof. A further problem is that not all businesses adhere to it. Consequently, Jamali (2007:1) and Fig (2005:601) contend there is a need for regulation. Kloppers (2014:78) suggests that compliant businesses should be taxed at a lower rate than non-compliant businesses, to encourage and ensure compliance.

#### **3.8.2 Compulsory compliance with no or little consequences**

There are various pieces of labour legislation requiring regulatory compliance, some to a lesser degree, and others to a greater degree. Some of the regulatory labour legislation requiring mandatory compliance with little or no consequences is: the SDA; the SDLA; the ESA and the B-BBEEA.

### **3.8.2.1 The Skills Development Act, No.97 of 1998 (SDA)**

There is a shared appreciation that skills development is one of the major contributors to generating new employment; reducing poverty amongst the unemployed and underemployed; stimulating the economy, and increasing the potential for employment and income generation (Heitmann, 2009:2). The SDA was promulgated to attend to the serious skills shortage in South Africa and to change the skills profile to suit the needs of the economy, which underwent massive restructuring (Venter, *et al.*, 2010:146). Consequently, the SDA aims to encourage proactive action in the labour market.

The SDA was introduced as a result of government's recognition of the need to train and retrain workers to meet changing industry requirements and to re-skill retrenched workers to enable them to re-enter the labour market. It represents an attempt to connect the emphasis on equity in the LRA, the BCEA and the EEA and more effective human resource development as a means of generating greater efficiency (Du Toit, *et al.*, 2011:37). Consequently, the SDA created an empowering official and controlling framework for increasing strategic investment in education and training throughout all economic sectors (Rasool and Botha, 2011:2).

The SDA provides the legal framework wherein the state assumes responsibility for the training of workers and it is tied to the capacity-building strategy encapsulated in the EEA (Cole and Van der Walt, 2014:525). In order to achieve these aims, the SDA created a new uniform monetary framework for training and skills development. The Act is accompanied by two other pieces of legislation, namely the South African Qualifications Authority Act, No.58 of 1995 (SAQA) and the Skills Development Levies Act, No.9 of 1999 (SDLA), which together provide a broad dispersal of training and skills development for the entire economy (Du Toit, *et al.*, 2011:37). The skills development responsibility falls under the backing of the Department of Higher Education and Training, is facilitated through approximately twenty SETAs that operate through a levy-and-grant system determined by the SDLA (Cole and Van der Walt, 2014:525).

The SDA also endorses a skills development strategy that is adaptable, manageable, demand-led, dispersed and built on a partnership between the public and private sectors (Du Plessis and Fouche, 2012:199). The SDA has a direct positive link with job sustainability and job creation as its aims are to remedy past imbalances; to enhance the level of investment in educating and training workers; to utilise the workplace as a learning environment; to inspire participation in leadership; to increase the employment prospects of disadvantaged people, and to guarantee quality education and training in the workplace (Cole and Van der Walt, 2014:525). By implication, any training programme presented must first be sanctioned; support must be provided to work seekers to find work and to help retrenched workers to find alternative employment; it should ensure facilitation and control of employment services, and have the backing of employers to participate in learnerships (Du Toit, *et al.* (2011:37).

There are a number of benefits flowing from this Act. The SDA, through its various structures such as the Sector Education Training Authorities (SETA), can certify that essential degrees of training are uniform with the skill necessities of the labour market (Du Plessis and Fouche, 2012:201). The SDA lessens the free-rider problem by guaranteeing that all businesses participate in the cost of training through the SDLA. The SDLA enhances collection efficiency through the collection of levies by the South African Revenue Services, which improves compliance (Du Plessis and Fouche, 2012:207). The SDA promotes training effectiveness and efficiency by ensuring that training is relevant. The Act also guarantees multi-faceted involvement by employers and employees in the control of training and education funds. Thus, skills development can be used to promote sustainable livelihoods, as well as employability by ensuring that training excellence occurs in the workplace; that people who want to be self-employed are assisted; and that those who want to, acquire the necessary skills. The SDA ensures that critical skills are developed, as sustainable growth and equity encourage economic growth, which results in job creation and poverty alleviation. The structures created in terms of the SDA assist in detecting the skills connected to market demand.

All of the abovementioned aspects contribute to job creation and job sustainability, as they do not only benefit the employee but the employer as well, which will ultimately promote social justice.

### **3.8.2.2      Employment Services Act, No.4 of 2014 (ESA)**

The ESA's overall purpose is to promote employment (du Plessis and Fouche, 2015:213). It is a government initiative to set up public 'employment services agency', which regulates the enrolment of private employment services agencies (Hofmeyer, 2013:26). The aim of the ESA is to assist the unemployed in seeking new employment (Govindjee, Olivier and Dupper, 2011:776). The further aims of the ESA are to:

- offer public employment services;
- fund plans to encourage the employment of young work seekers and other vulnerable persons;
- make available arrangements to help employees in financially strained businesses to maintain employment;
- the registration and control of private employment agencies;
- the formation of the Employment Services Board;
- the launching of Productivity South Africa;
- the instituting of Supported Employment Enterprises;
- provide for transitional provisions and for concerns associated therewith; and
- enable the engagement of foreign nationals (Morotoba, cited in the Department of Labour Annual Report, 2014:8).

The role of the employment agencies is not to be labour brokers but establishments that will offer work-seekers certain services, such as pairing work-seekers with available work opportunities; registering work-seekers to fill employment vacancies; and enabling other employment opportunities (Hofmeyer, 2013:26).

Consequently, the ESA also intends to reinforce the delivery of employment services within the Department of Labour; to abolish the employment services stipulations in the SDA; to provide for a range of measures to promote employment, and to also regulate the employment of foreigners (Department of Labour Revised Annual

Performance Plan, 2014:6). The ESA also establishes a nationwide database to oversee employment and assist with government's aim of generating additional jobs, decent work and a sustainable living (Hofmeyer, 2013: 26). Morotoba, cited in the Department of Labour Annual Report (2014:10) confirms this view and contends that the ESA transposes public employment services to more importantly participate in employment promotion and employment preservation, as well as help employers and workers to adjust to changing labour market conditions (Morotoba, cited in the Department of Labour Annual Report, 2014:10). The author further claims that the ESA strives to, *inter alia*, assist in decreasing unemployment, poverty and inequality; decreasing work-seekers' dependence on UIF, compensation fund or social security grants; hastening employment creation, and encouraging employment growth and productivity (Morotoba, cited in the Department of Labour Annual Report, 2014:10). All of these aspects will positively contribute to job creation and job sustainability, which will ultimately promote social justice.

### **3.8.2.3      Employment Tax Incentive Act, No.26 of 2013 (ETIA)**

The ETIA was promulgated in 2013 to try to attend to the excessive levels of youth unemployment in South Africa by providing employers in the private sector with a tax incentive, to employ young workers between the ages of 19 and 29, with limited work experience in all sectors of the economy. This tax incentive can be utilised to provide jobs to the numerous school-leavers entering the labour market. However, this incentive scheme is a temporary measure used by government to try and reduce the high numbers of unemployed youth in order to provide them the necessary skills and experience to increase their chances of finding long-term employment.

### **3.8.2.4      Broad-Based Black Economic Empowerment Act, No.53 of 2003 (B-BBEEA)**

According to Kloppers (2014:58) the B-BBEEA is a broad socio-economic development strategy introduced in an attempt to de-racialise the economy and to increase involvement in the economy, particularly by those recognised as being previously excluded or denied access into the business arena. The author further contends that the Act also attempts to address the disadvantages and vulnerability



caused by colonialism and apartheid and is therefore remedial in nature (Kloppers, 2014:59). Thus, the purpose of the B-BBEEA is the financial liberation of all Black people, including women, people with disabilities, people living in rural areas and the youth (Kruger, 2011:207). Kloppers (2014:59) posits that the B-BBEEA attempts to transform society by dismantling economic inequality and is the leading instrument for the redistribution of wealth in post-apartheid South Africa. The B-BBEEA necessitates the development and publication of Codes of Good Practice to establish instructions for the B-BBEE procedure for the entire economy. There are arguments for and against the impact of B-BBEEA on investment, productivity, growth (Acemoglu, Gelb and Robinson, 2007:1), job creation and job sustainability.

A balanced scorecard is used to measure compliance with B-BBEE requirements (Duffett, Van der Heever and Bell, 2009:91 and Kloppers, 2014:65). The scorecard is used to obtain government contracts; regulate the formation of public-private partnerships and the sale of state-owned enterprises; when licenses are applied for, and for any other relevant economic activity (Tucker, 2003:1). Therefore, when dealing with government, a company's B-BBEE status will be taken into account. Of major concern, however, is the B-BBEEA's influence on small enterprises, as well as compliance with the B-BBEEA is excessively burdensome (Venter, *et al.*, 2010:239), which may influence job creation and job sustainability. Duffett, Van der Heever and Bell (2009:91) identify some of the challenges and criticisms pertaining to the implementation of the B-BBEEA, namely:

- the high costs associated with compliance with the B-BBEEA, which are believed to be detrimental to foreign investment;
- B-BBEE partners often add little value to B-BBEE deals;
- insincere government affiliations;
- fronting, and
- discrimination and narrow-based transformation.

Nevertheless, the authors argue that there are benefits to B-BBEE, namely:

- the achievement of the goals of the B-BBEEA enhances the lives of previously disadvantaged individuals;

- a sizable Black middle-class has emerged because of B-BBEE policies, and
- B-BBEEA enables the use of the rare and distinctive skills of the previously disregarded Black majority (Duffett, Van der Heever and Bell, 2009:94), which may influence job creation and job sustainability.

The three major deterrents recognized in the ACA survey to job creation and job sustainability were the lack of skills of Black executives, the low number of Black females at management level and the brain drain of senior employees (Burger, 2009:16). Consequently, there is ambivalence as to whether the B-BBEEA's effects are positive or negative on investment, productivity, growth (Acemoglu, Gelb and Robinson, 2007:23), job creation and job sustainability. However the, B-BBEEA is a useful tool for upliftment, and it connects with corporate social responsibility (CSR) movement (Kloppers, 2014:60). All of these aspects should contribute positively to job creation and job sustainability, which will ultimately promote social justice.

### **3.8.3 Compulsory compliance and adverse consequences**

There are other pieces of labour legislation, such as the BCEA, the LRA, the EEA and the recent amendments made thereto, which regulate and influence job creation and job sustainability. Such mandatory compliance has adverse consequences which could contribute negatively to and present challenges to job creation and job sustainability, ultimately hindering social justice: the severest of penalties for non-compliance being in terms of the EEA, as amended (Hofmeyer, 2013:26).

#### **3.8.3.1 Employment Equity Act, No.55 of 1998 (EEA)**

The EEA gives effect to the right of equality contained in Section 9 of the Bill of Rights in Chapter II of the Constitution (Du Plessis and Fouche, 2012:89), which is adapted to fit the workplace context (Cole and Van der Walt, 2014:519). Du Toit, *et al.* (2011:656) claim that Section 9(2) of the Constitution expands the idea of equality past the simple prohibition of officially unequal treatment to the aim of attaining equal enjoyment of rights. The South African equality legislation is based on the Canadian Employment Equity Act (Cole and Van der Walt, 2014:528).

The aim of EEA is to oppose inequalities and labour distortions (Du Toit, Godfrey, Cooper, Giles, Cohen, Conradie and Steenkamp, 2015:666), which should positively influence job creation and job sustainability. Le Roux and Rycroft (2013:244) confirm that the EEA's purpose is to regulate discriminatory conduct and to provide a structure for the operation of affirmative action. Venter, Levy, *et al.* (2010:139) also agree that the EEA was passed to address the social cost of the effects of past labour market discrimination based on race and gender through job reservation, unequal education and training opportunities, which should positively influence job creation and job sustainability.

Consequently, Du Toit, *et al.* (2011:36) contend that the aim of the Act is to achieve employment equity through measures based on the circumstances of the workplace that will promote rather than hinder economic efficiency and human resource development, which in turn should positively influence job creation and job sustainability. The main aim of the Act is therefore to attain equity in employment through fostering equal prospects and fair employment practices (Du Plessis and Fouche, 2012:91), as well as to attain the equitable representation of Black people, women and people with disabilities in all occupational classifications through the implementation of affirmative action measures (Du Toit, *et al.*, 2011:36). The implication for job creation and job sustainability is that affirmative action ascribes socio-economic benefits such as positions or government contracts to those disadvantaged by status, as well as by introducing appropriate training and human resource development (Dapper and Garbers, cited in Le Roux and Rycroft, 2013:253), which should positively influence job creation and job sustainability. Du Toit, *et al.* (2011:726) share this view and further contend that when employers invest in their workforce and treat their workers with fairness and equity, their actions can result in increased productivity, motivation and resourcefulness in the workplace, which should positively influence job creation and job sustainability.

All of the aforementioned aspects should contribute to job creation and job sustainability, which ultimately will promote social justice. Some of the amendments made to the EEA, which came into effect on 1 August 2014, as well as their likely influence on job creation and job sustainability are discussed below.

### **3.8.3.1.1      Employment Equity Amendment Act, No.47 of 2013**

In terms of the EEA, there is an overall responsibility on employers to initiate action to eliminate unfair discrimination at work with regard to employment conditions, remuneration and benefits (Du Plessis and Fouche, 2012:93). The regulations and a draft Code of Good Practice provide substance to the legal framework of the EEA when enforcing the provisions of the EEA (Naidoo, 2013:8). Although designed to assist employers and to explain the terminology and methodology, they are not that straightforward. They pose quite an administrative problem and increased workload for employers to implement (Solidarity Trade Union, cited in the Solidarity Research Institute Report, 2012:4), which could influence job creation and job sustainability. According to Bronstein (2009:129), equality legislation needs to address both direct and indirect discrimination, which is what the amendments to the EEA sought to address. The amendments clarified the discrimination criteria in the workplace (Hofmeyer, 2013:26).

In terms of the amendments, the fines and penalties for non-compliance with the affirmative action provisions of the Act were increased significantly and pose severe restrictions on the employers' abilities to change working practices (Hofmeyer, 2013:26), which might influence job creation and job sustainability. Furthermore, the amendments provide that only South African citizens can now benefit from affirmative action. The employment of foreigners will not be taken into account (Hofmeyer, 2013:26). The use of contract workers by organisations is also affected, as employees who are assigned to a client by a labour broker for longer than six months are deemed employees of the business, for affirmative action purposes. This will pose quite an administrative problem to implement these provisions, which could influence job creation and job sustainability and could ultimately either promote or hinder social justice. The amendments to the EEA added additions to Section 6 of the EEA, such as the prohibition of wage discrimination (Cohen, 2014:27). Section 6(4), the “unequal pay for similar work or work of equal value” provision focuses on identifying and eliminating pay differentials and unfair remuneration practices. Payment and benefit differences are significantly itemized as a type of unfair discrimination, especially where it occurs on a prohibited or arbitrary basis (Cohen,

2014:27). All these aspects present challenges to job creation and job sustainability, which ultimately could hinder social justice.

Sections 6(4) and 6(5) of the EEA, which are direct instruments for achieving pay equity in the workplace, are discussed further below.

#### **3.8.3.1.1.1 Pay equity and the prohibition of wage discrimination**

In terms of Sections 6(4) and 6(5) of the EEA, pay equity necessitates that individuals who are similar in every detail should not receive different pay established on discriminatory or prohibited factors (Cohen, 2014:27). The provision is aimed at addressing the pay discrimination and inequalities that exist (Hlongwane, 2007:71) based on workers being employed on fixed-term contracts or being allocated from a labour broker as opposed to being employed on a permanent basis (Cohen, 2014:27). Nevertheless, it does not require that everyone should receive the same remuneration. Examples of valid wage dissimilarities are those differences founded on skill, performance, length of service, capabilities or flexibility, seniority and responsibility (Hlongwane, 2007:76). The need to eliminate pay discrimination has long been recognised both locally and internationally (Du Toit, *et al.*, 2015:703). In addition, the EEA must be interpreted in compliance with the ILO Conventions that advance the concept of equal pay for equal value, to which South Africa is a party.

#### **3.8.3.1.1.2 Affirmative action and employment equity**

In promoting the goals of affirmative action and employment equity, the amendments to the EEA place the onus on employers to review all employment policies, as well as to develop new and more in-depth job profiles, where the required competencies to perform the job are clearly outlined (des Squire, 2014). According to des Squire (2014) the method in which employees are recruited and selected, based on education skills, competencies and experience, is going to have to be carried out more effectively. The author contends that recruitment and selection based only on educational qualifications and experience will no longer be acceptable. Education based on academic qualifications and/or formal workplace qualifications and experience will, however, need to be considered (des Squire, 2014). Competencies necessary to perform key elements of the job will have to be established and written

into job profiles, and other related selection criteria will have to be clearly defined and established. There will also be a greater need for employers to take recognition of prior learning (RPL) in terms of their recruiting and selection policies and procedures, as well as for employers to address wage differentials between men and women. This commitment to equal pay will increase labour costs, which will affect the employer's budget and ultimately the salary bill (Chen and Funke, 2005:688). Given such constraints, employers may choose not to employ additional staff or not to employ more staff on a permanent basis, which could not only influence job creation but also job sustainability and could ultimately either promote or hinder social justice.

#### **3.8.3.1.1.3 Increased reporting**

Amendments made to Section 21 of the EEA have resulted in increased detailed employment equity plan reporting (Du Plessis and Fouche, 2012:91) and the progress made in its implementation (Solidarity Trade Union, cited in the Solidarity Research Institute Report, 2012:4).

Preceding its amendment, Section 21 of the EEA differentiated between employers who employed more than 150 employees from those who employed less than 150 employees. This difference is no longer relevant and every employer who employs more than 50 workers or has an annual turnover greater than the amount differentiated in Schedule 4 is obliged to present the equity report annually (Solidarity Trade Union, cited in the Solidarity Research Institute Report, 2012:4), instead of once every two years, as the EEA mandated before. If an employer expects that he/she/it is unable to submit the report on time, the amendment currently obliges the employer to notify the Director-General of the Department of Labour in writing of this anticipated failure before the last working day of August. The employer is also required to set out the reasons why he/she/it foresees that he/she/it is unable to submit timeously (Hlongwane, 2007:77). This will increase the administrative problem of complying with these provisions, which could influence job creation and job sustainability and could ultimately either promote or hinder social justice.

#### **3.8.3.1.1.4 Employers' increased fines and penalties for non-compliance**

In terms of Section 20(7) of the EEA, the Director-General of the Department of Labour is authorised to obtain a Labour Court order to fine the employer who fails to comply with the Act (Giles, 2011). Enforcement is underpinned by fines up to 10% of the employer's turnover for repeated contraventions (Du Toit, *et al.*, 2015:36; Goldberg and Wilkinson, 2014). The fines contribute to and present challenges to job creation and job sustainability, which could ultimately either promote or hinder social justice.

The amendment to the EEA provides disgruntled employees with cheaper and easier access for disputes of claims of unfair discrimination (Cohen, 2014:27) to be heard by the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of Section 10(6) (aA) of the EEA. The CCMA is authorized to arbitrate on such allegations where employees earn below the maximum earnings, which was R205 433.30 per annum or less than R17 119.44 per month as at 1 August 2014 (Cohen, 2014:27). Previously, such claims had to be transferred to the Labour Court, which was a costly exercise. This cheaper referral could result in an increase in the number of disputes heard by the CCMA, which could lead to increased regulatory costs (Stähler, 2008:1163) that could contribute to or present challenges to job creation and job sustainability, ultimately either promoting or hindering social justice.

Mandatory compliance with affirmative action and employment equity; the removal of unfair pay discrimination; increased reporting; and increased fines and penalties for non-compliance could contribute negatively to and present challenges to job creation and job sustainability, which may ultimately hinder social justice.

#### **3.8.3.2 The Basic Conditions of Employment Act, No.75 of 1997 (BCEA)**

The main aim of the BCEA is to advance economic development and social justice by regulating the right to fair labour practices as stipulated in Section 23 of the Constitution (Van der Walt, Le Roux, and Govindjee, 2012: 39), which safeguards trade union, organisational and individual labour rights as essential rights. The main purpose of advancing economic development and social justice is achieved by the

BCEA guaranteeing certain minimum standards of employment such as hours of work and leave entitlements for the safeguarding of workers who lack other defensive methods (Du Plessis and Fouche, 2012:49), whilst simultaneously creating mechanisms to vary the application of those standards through a policy of “regulated flexibility”, in order to improve job creation and to enhance job sustainability (Bronstein, 2009:248).

The BCEA’s aim to strike a balance between equity and efficiency is achieved through the introduction of working time flexibility in terms of Sections 49 and 50 of the Act; by the variation of collective agreements, sectoral determinations and ministerial determinations, as well as through the legislative provisions dealing with average hours of work in terms of Section 12; and the compressed working week in terms of Section 11 of the Act (Du Toit, *et al.*, 2015:35). Sections 51 to 58 of the BCEA enable the Minister of Labour to make sectoral determinations to establish basic conditions and minimum wages (Du Plessis and Fouche, 2012:63). Berg and Kucera (2008:12) argue in favour of minimum wages as mutually beneficial to the employer, as well as for workers. The authors contend that minimum wages would be to the employer’s advantage as it will lead to increased productivity. They further posit that because of minimum wages the employer is also more likely to adopt health and safety measures at work. Rogers (2014:1544) supports the view that minimum wage laws advance social equality for low-wage workers, and is far better than direct transfers. Consequently, minimum wages aid in decreasing workers’ poverty and inequality and acts as a safeguard against pay devaluation (Escudero, *et al.*, 2013:109). These mutual benefits to both employers and workers can positively influence job creation, as well as job sustainability, ultimately promoting social justice.

However, regarding the benefits of a minimum wage, Greene, *et al.* (2007:87) adopt a contrarian view to that advanced by Rogers above. The authors contend that minimum wage laws create unemployment through salary bands being maintained at unnaturally elevated levels, as opposed to worker productivity, thereby pricing workers out of the labour market (Greene, *et al.* (2007:85). Venter, *et al.* (2010:138) agree with Greene, *et al.* (2007:87) that the resulting increased direct and indirect labour costs could threaten job creation and job sustainability (Marneffe and



Vereeck, 2011:352). However, Hepple, cited in Le Roux and Rycroft (2013:6), refutes their negative sentiment and argues that South Africa's minimum criteria are no greater influence than in other countries, especially with regard to annual leave. The author concedes, however, that the restriction of night work is the only exception, where South Africa is more rigid than other countries (Hepple, cited in Le Roux and Rycroft, 2013:6). Nevertheless, Greene, *et al.* (2007:85) argue that the poor and the young are the two groups most negatively affected by the minimum wage regulations. The authors oppose the argument that a higher income for some compensate for the cost in job losses. Additionally, the reduction of wages and income, although increasing external competitiveness, also results in a reduction of domestic consumption, threatening job creation and job sustainability (Escudero, *et al.*, 2013:107). Furthermore, the difference between labour earnings and productivity growth, as well as the disproportionate high rise in labour costs threaten job creation and job sustainability (Chen and Funke, 2005:688). However, Hepple, cited in Le Roux and Rycroft (2013:7), contend that South Africa has the shortest notice period and lowest severance pay for a retrenchment dismissal. Rogers (2014:1544) also refutes the argument that minimum wage leads to job losses. The author posits that there is significant empirical evidence supporting the claim that past minimum wage increases have not led to job losses (Rogers, 2014:1544). Consequently, the argument in favour of minimum wages is that it could result in an increase in real wages, which could prove to be beneficial to the local economy - especially during an economic crisis - which could influence job creation and job sustainability. In addition, domestic consumption could be stimulated by increasing minimum wages and encouraging collective bargaining in order to raise overall wages (Escudero, *et al.*, 2013:109).

Berg and Kucera (2008:12) contend that employers' incentives are altered by controlling working conditions through health and safety, child labour regulations, minimum wages, employment protection and labour standards. Du Toit, *et al.* (2011:597) support their view that the regulation of working time by prescribing minimum standards for ordinary, overtime hours, meal and rest periods, night work, work on Sundays and public holidays are important provisions, which promote the health and safety of employees in terms of Section 7 of the BCEA. However, there needs to be a balancing of rights between industry and labour. If viewed in the

abstract, it would appear that industry may have just cause to complain that minimum wages and other protection offered by legislation negatively influence business. This, however, cannot be viewed in isolation. It must be viewed in the context of the history of the exploitation of labour. Conversely, Pauw and Liebbrandt (2012:771) do not believe that a minimum wage policy is an effective anti-poverty tool for South Africa. As an alternative, Block (2011:18) argues in favour of a universal subsistence level income for all citizens; increased public participation in local and regional governments, and for democratic decision-making in businesses through the use of corporate stakeholder boards.

Section 83A of the BCEA creates presumptions of who is an employee, thereby increasing the categories of workers who fall under the definition of employee to include situations where the nature of work performed or the service provider falls into grey areas (such as disguised employment relationships, part-time, casual and seasonal employees). This ensures that such workers also fall under labour protection, which could result in increased regulatory costs in turn contributing to or presenting challenges to job creation and job sustainability, which could ultimately hinder social justice (Stähler, 2008:1163).

Venter, *et al.* (2010:132) caution that the implementation of these presumptions can further restrain job creation, as it will result in business' perception of the South African labour market as being even more inflexible, inefficient, over-controlled and further increasing labour costs (Marneffe and Vereeck, 2011:352). The authors further claim that an employer burdened with substantive costs as well as direct costs and procedural costs, will be less inclined to employ more workers on a permanent basis. Consequently, the trend for business is to move away from permanent, normal full time employment contracts to increased temporary, part-time and outsourced work, as well as to contracting outside the law, resulting in fewer jobs being created, greater unemployment and growing inequality of income distribution (Venter, *et al.*, 2010:134). This presents challenges to job creation and job sustainability, which can ultimately hinder social justice.

Greene, *et al.* (2007:85) postulate that the problem with labour legislation is that it tends to hurt the very people it is envisioned to assist, through job destruction and by

eliminating jobs that they are qualified to perform. Nevertheless, the amendments to the BCEA and LRA were implemented to counter these adverse business practices and to specifically deal with atypical employment, which should contribute to job creation and job sustainability and promote social justice. The amendments to the BCEA sought to increase employee protection in the workplace (Hofmeyer, 2013:24), which could contribute to job sustainability and ultimately promote social justice.

The BCEA was primarily amended in three areas, namely increasing the Minister's powers in issuing sectoral determinations; clarifying the Labour Court's jurisdictional powers; and in streamlining the enforcement system, which are discussed further below.

#### **3.8.3.2.1 Basic Conditions of Employment Amendment Act, No.20 of 2013**

The objectives of the amendments to the BCEA were to:

- safeguard the employment relationship;
- to initiate laws to control contract work, sub-contracting and out-sourcing,
- to attend to the predicament of labour broking;
- to guarantee decent work for all workers;
- to avoid the exploitation of workers and to outlaw particular offensive methods;
- to reinforce the operation and implementation of the BCEA by increasing fines for non-compliance (Du Plessis and Fouche, 2012:67 and Hofmeyer, 2013:24);

and to ensure that South Africa complies with International Labour Standards Conventions 100 and 111.

The stricter regulation of labour brokers and temporary employment services; the prohibition of accepting payments from employees in respect of their employment or allocation of work; the Minister's increased powers with regard to sectoral determinations; the employer's increased liability for non-compliance, and certain

acts by employers constituting criminal offences, further expanded upon below, may additionally be perceived by business as contributing to greater inflexibility, thereby presenting challenges to job creation and job sustainability. However, in reality this may not necessarily be the case.

#### **3.8.3.2.1.1 Stricter regulation of labour brokers and temporary employment services**

The triangular nature of the relationship between labour broker, employee and client poses challenges to labour regulation (Du Toit, *et al.*, 2015:42). Outsourcing has increasingly been used in the supply of labour to circumvent the definition of who is an employer (Bronstein, 2009:62). Additionally, this is one of the methods which business and government has used as well as being a justification for creating jobs, and to create labour market flexibility. However the converse was found in that atypical employment, instead of creating new jobs, actually resulted in more jobs being destroyed. Consequently, in order to combat this unfair business practice, Section 82 of the BCEA was introduced to regulate labour brokering more rigidly by making it unfeasible for employers to employ a full-time worker on either short-term contracts or through labour brokers (Du Plessis and Fouche, 2012:64). This important amendment has curbed the widespread abuse and practice of employers exploiting vulnerable employees through outsourcing in an attempt to evade labour legislation protections (Brand, 2010:1). This amendment could have a positive influence on job creation and job sustainability.

In addition, both the temporary employment service (TES) and the business client are now jointly and severally liable, if the TES does not meet its obligations as an employer in terms of the BCEA or any sectoral determination (Du Toit, *et al.*, 2015:591). Consequently, both are now liable for procedural fairness that could contribute to job sustainability although it may present challenges for job creation and could ultimately either promote or hinder social justice. Moreover, in terms of the amendment after a three-month period, the client company now becomes the employer. This could contribute to job creation but presents challenges for job sustainability and could ultimately hinder social justice.

Furthermore, in terms of Section 82(3) of the BCEA, TES employees are also now covered by bargaining council agreement or sectoral determinations applicable to the sector in which the client, not the TES, is engaged. Therefore, vulnerable employees are now included under the entire ambit of the subject of fair labour practices, the prohibition of unfair dismissal and any other type of procedural obligations, contributing to job sustainability but presenting challenges for job creation and ultimately may hinder social justice.

#### **3.8.3.2.1.2. Prohibitions against requiring or accepting payments from employees in respect of their employment or allocation of work**

Another significant amendment which may influence job creation and/or job sustainability is Section 33(A)(1)(a) pertaining to the prohibition of employers from obliging employees to pay in order to obtain employment, and from obliging employees to buy goods, services or products (Du Plessis and Fouche, 2012:58). However, this restriction is not applicable to arrangements in which employees obtain a financial advantage through the purchase of goods, products or services at a fair and reasonable price, such as insurance, medical aids, pensions, uniforms, etc. (Cohen, 2014:8).

The amendment also makes it an offence for anybody to involve or authorize a child to do any work or offer any services that place the child's well-being at risk (Du Plessis and Fouche, 2012:61). The prevention of anybody from compelling or allowing a child under 15 years of age to work is extended to cover all work done by children (as employees as well as independent contractors). A further important amendment is that the Minister of Labour may issue an "umbrella" sectoral determination prohibiting or regulating the sub-contracting of work. Both these aspects could further contribute to and present challenges to job creation and/or job sustainability, which ultimately may hinder social justice.

#### **3.8.3.2.1.3. Minister's increased powers with regard to sectoral determinations**

In terms of Section 55(4) of the BCEA the Minister has been given additional powers to, *inter alia*, prescribe minimum wage increases; prohibit or regulate sub-contracting

with other forms of non-standard work, and set a national minimum wage. Thus, the Minister's increased powers may affect the building sector and the IT sector (Hofmeyer, 2013:24), which could present challenges to job creation and job sustainability, and ultimately hindering social justice.

#### **3.8.3.2.1.4. Employers' increased liability for non-compliance**

Labour inspectors in terms of Section 64 of the BCEA, have been given wide powers to conduct inspections; advise employees and employers of their rights and obligations; investigate complaints; secure written undertakings to comply in terms of Section 68 of the BCEA, and issue compliance orders in terms of Section 69(1) of the BCEA against employers who do not conform with their statutory duties. In terms of Section 73 of the Act, failure of an employer to remedy non-compliance is now enforceable through a labour court order that could result in increased regulation costs (Marneffe and Vereeck, 2011:352), which may present challenges to job creation and job sustainability and could ultimately hinder social justice.

Furthermore, labour inspectors have the power to enforce compliance with all employment laws during a single visit to the employer's premises (Du Toit, *et al.*, 2015:639).

#### **3.8.3.2.1.5 Certain acts by employers constitute criminal offences**

The BCEA has criminalised certain acts committed by employers in terms of Section 33A; Section 43; Section 44; Section 46; Section 90; and Section 92. Consequently, in terms of Section 93(2), if the employer is found guilty by a Magistrate's court of having contravened one of the aforesaid sections, the employer can be sentenced to a fine or imprisonment of up to a maximum period of a year. All these aspects may be further perceived by business as contributing to greater rigidity and inflexibility, thereby presenting challenges to job creation and job sustainability, which in reality may not necessarily be the case. These business perceptions may in turn ultimately promote or hinder social justice.

### **3.8.3.3 The Labour Relations Act, No.66 of 1995 (LRA)**

The principal aim of the LRA is to advance economic development and social justice by regulating the right to fair labour practices as provided for in the Constitution (Van der Walt, Le Roux and Govindjee, 2012:39). In addition, the Constitution in terms of its Bill of Rights protects trade union, organisational and individual labour rights as basic human rights. Consequently, the LRA seeks to promote job creation and job sustainability through creating greater flexibility by eliminating inflexibilities and inadequacies from the BCEA's control of minimum employment conditions, by promoting flexibility through collective bargaining; through the enforceability of collective agreements; through the encouragement of workplace forums; through codes of good practice; by allowing for the variation of employment criteria in certain situations, and by the discerning treatment of legislative criteria, subject to certain thresholds (Du Plessis and Fouche, 2012:50).

In making dismissals more difficult, the LRA provides businesses with greater incentives to train their workers. The advantage is that by doing so, numerical flexibility is replaced with functional flexibility, which in turn results in the preservation of mass production but the displacement of the sweatshop (Berg and Kucera, 2008:14). This may contribute to job creation and/or job sustainability, which ultimately promotes social justice. Despite the aforesaid, one of the major criticisms levelled against the LRA is that it makes it difficult for employers to retrench workers when there is a reduction in demand for their goods or services (Bronstein, 2009:69). Consequently, the protection against dismissals could also deter or prevent some employers from creating jobs, which can present challenges to job creation and/or job sustainability, ultimately hindering social justice. Conversely, Hepple, in Le Roux and Rycroft (2013:7) opposes this argument by maintaining that it is no more difficult or expensive for employers to retrench workers in South Africa than in the United Kingdom, or in the developing economies of China or South Korea. Consequently, the protection of workers against unfair dismissal remains as highly sensitive and controversial an issue as security of employment, which remains an important trade union negotiating issue (Bronstein, 2009:69).

Moreover, the spirit of the LRA is to democratize the workplace and to facilitate joint conciliation between parties through collective bargaining in order to minimise adverse labour relations, in line with the essence of the Constitution and present government guiding principles of reconciliation (Venter, *et al.*, 2010:23-24). This can contribute to job creation and/or job sustainability, which ultimately promotes social justice. Consequently, the LRA recognises the workers' right to strike for the objective of collective bargaining. Even though workers have the right to strike, they should not be forced to strike against their will through violence and intimidation by union leaders and majority members (Baird, 2007: 47). Baird suggests that the number of pickets that can be held during a strike should be limited in order to reduce violence and intimidation, and picketing should be restricted to employees only, not to outsiders. These aspects of industrial action could further contribute to and present challenges to job creation and/or job sustainability, which ultimately promotes or hinders social justice.

The LRA provides for coercive unionism through compulsory membership in closed shop agreements (Baird, 2007:33), which is contrary to the principle of freedom of association entrenched in the Constitution, when workers are forced to choose either to join the trade union or not to work, which in turn can potentially present challenges to job creation and/or job sustainability, which ultimately could hinder social justice. Consequently, Baird (2007:33) cautions that unions' coercive acts should not go unchecked or unpunished. Furthermore, closed shop agreements can also be perceived as anti-competitive behaviour, which should not be allowed or at least it should not be endorsed by legislation, as it can present challenges to job creation and/or job sustainability, which could hinder social justice.

In consideration of the aforementioned, union coercion should be constrained by removing legislative provisions such as closed shop agreements as found in the LRA (Baird, 2007:37) in order to promote job creation and/or job sustainability, which ultimately ensures social justice. Nonetheless, trade unions should be encouraged to compete with each other, as this will result in workers being able to secure the best form of representation of workers' interests and not that of the unions (Baird, 2007:46), which could contribute to job creation and/or job sustainability, which could ultimately promote social justice. Thus, Carby-Hall (2006:430) argues in favour of



industrial democracy in which social dialogue takes place between the social partners through information sharing, consultation and collective bargaining, resulting in the conclusion of social partnership agreements which could contribute to job creation and/or job sustainability and ultimately promote social justice. Furthermore, the author maintains that social dialogue is the very fabric of law, justice and democracy. Radu and Avram (2012:95) agree with Carby-Hall that the aim of social dialogue is to achieve social peace. In addition, Carby-Hall (2006:430) posits that social dialogue gives workers input into how the organisation is managed. The author contends that worker participation in the management of the business through the creation of a scheme of worker directors, supervisory boards, two-tier boards of management, and joint production committees could advance job creation and/or job sustainability and ultimately, promote social justice (Carby-Hall, 2006:430).

The amendments to the LRA, which came into force on 1 January 2015 as further elaborated on below, established significant changes for employers in the manner in which they conducted their businesses, which could further contribute to and present challenges to job creation and/or job sustainability, which ultimately promotes or hinders social justice.

#### **3.8.3.3.1 The Labour Relations Amendment Act, No.6 of 2014**

The amendments in terms of Section 198(4A) to Section 198(4F) provide enhanced protection to fixed-term employees, which is an attempt by the legislature to attend to the problem of the intensified informalisation of labour and atypical work to guarantee that vulnerable groups of workers are sufficiently safeguarded and are employed in decent work circumstances (Du Plessis and Fouche, 2012:225). Nevertheless, Section 198 is only applicable to employees earning below R205 433 per annum. Amendments were also made to Section 200A, dealing with the presumptions as to who is an employee. This was extended to include all other employment laws, including Section 98A of the Insolvency Act, No.24 of 1936 (Du Plessis and Fouche, 2012:224) and the addition of the new Section 200B, which expanded the scope of who is an employer for compliance purposes. Such

amendments could further contribute to and present challenges to job creation and/or job sustainability, which ultimately promotes or hinders social justice.

Cohen and Moodley (2012:322) cite the Adcorp Employment Index (September 2011) report that 998 000 people were employed by temporary employment agencies in September 2011. The authors also claimed that temporary employment services contributed considerably towards externalisation and vulnerable working conditions. Bronstein (2009:77) contends that in the past, many countries allowed and even promoted the utilisation of fixed-term contracts of employment, especially for those categories of workers who were likely to experience greater trouble in entering into the labour market, when it was thought that the utilisation of fixed-term contracts would lead to the creation of new jobs. However, Bronstein (2009:77) found that the contrary occurred. Consequently, the author argued that fixed-term contracts ought only to be authorised for time-limited tasks or to replace workers who are temporarily absent from work (Bronstein, 2009:77). It appears that the South African legislature followed his line of reasoning in enacting the new Section 198B, which deals with similar limitations on the abuse of fixed-term employment contracts.

Consequently, the amendments in terms of Section 198(4A) to Section 198(4F) seek to reverse the trend of atypical employment by encouraging employers to employ workers on permanent contracts of employment (Bronstein, 2009:77).

#### **3.8.3.3.1.1 Stricter regulation of atypical work and non-standard employment contracts**

The amendment of Section 198 and the insertion of Sections 198A to 198D dealing with temporary employment service providers (labour brokers) (Section 198A) and fixed-term contracts (Section 198B) sought to regulate non-standard employment more actively, which could further contribute to or present challenges to job creation and/or job sustainability, which ultimately could promote or hinder social justice. The amendment seeks to limit the employer's use of fixed-term contracts by making it legally more difficult to use them as a device to create flexibility for a period longer than three months. In terms of Section 198B, all fixed-term contracts are legally regarded as normal open-ended employment contracts, unless the employer can advance cogent reasons, which are justified in terms of Section 198D as to why the

arrangement should be on a fixed-term basis. Consequently, fixed-term contracts will not be allowable where the employer tries to use the fixed-term contract as a way of employing a full-time employee on an open-ended basis, thereby transferring the threat of unemployment to the employee (Cohen and Moodley, 2012:331).

Consequently, the amendment provides for fixed-term contracts or consecutive fixed-term contracts for longer than six months only if the work is of a short duration or the employer can prove a justifiable reason for fixing the term of the contract (Cohen and Moodley, 2012:331). Legitimate reasons are where the fixed term contract is used as a tool to employ for a short period. For example, where the contract is used for a restricted role or definite duration, and where the employer can suggest a justifiable reason for fixing the term of the contract (du Plessis and Fouche, 2012:226), which could contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice. Accordingly, an employee who is employed on a fixed-term basis for longer than six months acquires the right to equal treatment in terms of Section 198C, the same as a permanent employee doing the same or similar work (Du Toit, *et al.*, 2015:42), unless there is a justifiable reason for dissimilar action (du Plessis and Fouche, 2012:226). This new provision could influence job creation and job sustainability, as it should encourage more permanent appointments. However, it could also deter employers from employing more temporary staff and/or renewing fixed-term contracts after three months.

The onus and burden of proof has shifted to the employer to prove that the fixed-term contract is justified. Therefore, the change has made it simpler to show abuses, which are effectively monitored, and employees are more conscious of them (Cohen, 2014:18). Thus, employers are presently unable to employ contract workers on repeated fixed-term contracts. In addition, such employees are entitled to the same treatment afforded to permanent employees once the six month period has elapsed, without a justifiable reason for the extension of the fixed-term contract (du Plessis and Fouche, 2012:226). This could contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice, especially with regard to deterring employers from employing more temporary staff and/or renewing fixed-term contracts after three months. Therefore, Sections 198A

to 198D of the LRA could influence businesses, especially those relying on outsourcing arrangements, such as cleaning, maintenance and surveillance (Bronstein, 2009:62), as well as either contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice. Nevertheless, employers who already obey the law will discover that, effectively, there is no actual difficulty (Bronstein, 2009:62).

#### **3.8.3.3.1.2 Assignment of liability to person(s) deemed to be an employer**

Section 200B of the LRA is an important deeming provision in which any person or persons carrying on any related activity with the intention or effect of directly or indirectly defeating the intentions of the LRA or any other law is/are deemed an employer in respect of any obligations arising from the LRA or any other labour law. This also has important implications for the extension of organisational rights and bargaining councils to include non-standard contract workers (Du Toit, *et al.*, 2015:44). This deeming provision could contribute to or present challenges to job creation and/or job sustainability, since the role of such a person has become more onerous as a result of this provision, which ultimately might be an obstacle to social justice.

#### **3.8.3.3.1.3 Limitation on strikes and violence in the workplace**

The amendment to Section 65 of the LRA stipulates that the court may suspend a particular strike (du Toit and Ronnie, 2012:195). Evidently, if employees do not accept the court order, this is serious contempt (du Plessis and Fouche, 2012:385), which can either contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice. It also signifies that prolonging the strike would be unlawful, and therefore, unprotected, and consequently the protections against dismissal and having to pay damages would seemingly decrease. This amendment limits the effectiveness of the strike (McCammon, 1990:207), which could contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice.

Consequently, the literature is divided on labour legislation's influence on job creation and job sustainability. There are positive aspects of the BCEA, the LRA, the EEA and the SDA, which influence job creation and job sustainability, particularly which promote and encourage skills development. However, there are also negative aspects of the BCEA, the LRA, the EEA and the SDA that increase labour costs, in particular the cost of compliance, which threaten or impede job creation and job sustainability.

### **3.9 Need for continued regulation and labour legislation protection**

According Cazes Khatiwada and Malo (2012:36) the emphasis of strategy discussions should be on the effective planning of rules and establishments, not on less regulation as opposed to more regulation. Consequently, the focus should not be on deregulation, but rather on how best to endorse labour laws and policies that best react to individual countries' present growth challenges (McCann and Torm, 2008:428). This view is supported by Harcourt, Wood and Roper (2007:961) who emphasise that legislated employment protection is important for worker commitment, loyalty and mutual obligation. Moreover, social security should be extended to informal sector workers and micro-entrepreneurs that characteristically encounter low incomes and work in vulnerable and dangerous work situations, which are generally not covered in the event of unemployment, accident, illness or old age (Escudero, *et al.*, 2013:110).

Furthermore, Martin and Neugart (2009:44) observe that the consequences of employment protection legislation are indecisive. The authors claim that the presence and abundance of an employment security system does not automatically worsen service operations (Martin and Neugart, 2009:45). Likewise, Scharler and Leibrecht (2009:275) discovered that employment security legislation did not wield a statistically significant influence on foreign direct investment flows from MNCs. Nevertheless, they did find that foreign direct investment flows of MNCs were considerably greater in countries with comparatively low unit labour costs. They, therefore, concluded that labour market inflexibilities only perform a negligible role in justifying foreign direct investment movements of MNCs (Scharler and Leibrecht, 2009:277). Additionally, Martin and Neugart (2009:45) found that association

between the employment security system and the economic situation did have a certain effect.

Smit and Mpedi (2010:172) maintain that social protection is more important than employment protection as employment protection does not address the needs of the weak, the marginalised, the unemployed and the poor. Moreover, the authors claim that social protection and social assistance benefits should be extended to Southern African workers in the informal economy and to their dependants, as well as to the marginalised and to the poor, who are to a large extent completely excluded from social protection schemes (Smit and Mpedi, 2010:182). Consequently, the idea of income support being provided to the unemployed could be beneficial to the local economy as it can mitigate against the decrease in aggregate demand during financial crises (Escudero, *et al.*, 2013:110).

Smit and Mpedi (2010:172) also contend that the various ways of extending social protection and social assistance benefits to workers in the informal economy and to the marginalised and the poor, should be explored. Extending social protection to these vulnerable groups of workers, will contribute to the gradual formalization of employment; whilst simultaneously reducing vulnerability and poverty, and boosting equitable growth (Escudero, *et al.*, 2013:110). Therefore, Smit and Mpedi (2010:182) are supportive of an improved coverage of formal social security arrangements for employees to include atypical employees working in the informal economy, as well as for the expansion and reinforcement of informal social security measures and the extension of the current social grants. Likewise, Hepple cited in Le Roux and Rycroft (2013:8) argues that nations flourish in a global economy not by becoming more alike in their labour laws, but by building their formal advantages on the base of fundamental human rights.

It is clear that the need for the regulation of the labour market will continue as long as unsustainable working conditions and the mismanagement of labour relations exist and persist in South Africa (Young, 2012:2).

### **3.10            The effect of labour legislation on economic growth and job creation**

The concern is that the BCEA's, the LRA's, the EEA's, the B-BEEE's and the SDA's increased regulatory costs (Stähler, 2008:1163) could contribute to or present challenges to job creation and job sustainability, which ultimately could either promote or hinder social justice. Venter, *et al.* (2010:132) contend that the danger is that implementation of the BCEA's and the LRA's presumptions can further stifle job creation (Marneffe and Vereeck, 2011:352). An employer burdened with substantive costs, as well as with direct costs and procedural costs will be less inclined to employ more workers on a permanent basis (Venter, *et al.*, 2010:133).

The EEA's opposition to inequalities and labour distortions (Du Toit, *et al.*, 2015:666) should positively influence job creation and job sustainability. The SDA should also positively influence job creation and job sustainability as it is directly linked thereto through the fulfilment of its aims (Cole and Van der Walt, 2014:525). Of major concern is the B-BBEEA's influence on small enterprises and whether compliance with the B-BBEEA is exceedingly arduous (Venter, *et al.*, 2010:239 and Duffett, Van der Heever and Bell, 2009:91), which may negatively influence job creation and job sustainability.

Furthermore, Rankin, Daroll and Corrigan (2013:1) contend that the objective of the amendments was to address abusive practices and vulnerable work, which they appear to have done. The primary emphasis of the amendments to the BCEA, the LRA and the EEA was to address the phenomenon of "labour brokering" by combatting the growing concern over the "casualisation" of work, which became a characteristic of the South African labour market in the ten years preceding 2013 (Le Roux and Rycroft, 2013:220). This was confirmed by the Labour Department, as was the regulation of contract work; strikes and lockouts; essential services; organisational rights and collective bargaining; amongst others. However, the amendments, instead of appeasing business, appear to have exacerbated negative business sentiment (Donnelly, 2012), which in turn could have an adverse influence on job creation and job sustainability.

Although the Labour Relations Amendment Act, No.6 of 2014 and the Basic Conditions of Employment Amendment Act, No.20 of 2013 dealt mainly with the problem of unrestricted strike action and increasing the speed and effectiveness of mediation, there are other parts of the amendments which are highly contentious (Heinstein, 2012). Business Unity South Africa expressed concern that the amendments will result in serious job losses (City Press, 2012). Rau (2012) confirms their view and claims that some of the amendments to the BCEA and the LRA have had the exact reverse effect through the imposition of further costs on business to employ workers and intensify the inflexibility in the market for temporary employment services (Rau, 2012).

The Democratic Alliance also expressed concern that the amendments will result in further job losses, increased operation costs and exacerbate the unemployment crisis (Anon, 2012). In addition, the South African Chamber of Commerce and Industry (SACCI) are concerned that the changes to the country's labour laws will make it more costly for businesses to employ workers (Makoni, 2012). Thus, the concern is that the amendments will result in increased inflexibility in the market for temporary employment services, as well as an increase in insecurity in the labour market, which can result in several hundred thousand-job losses (Donnelly, 2012) and discourage businesses from employing a larger labour force, which can further contribute to or present challenges to job creation and/or job sustainability and ultimately be an obstacle or hindrance to social justice.

### **3.11 Conclusion**

Even though labour legislation influences job creation and job sustainability, it is necessary for the following reasons: the role of law is to redress, to regulate and to comply with human rights, as well as, to ensure business sustainability and to enhance social equality. While labour legislation is supportive of economic growth and employment, job creation and obtaining employment for the country's inhabitants is not its primary aim.

The primary aim of labour legislation is to regulate and balance rights, and ensure social justice and safety. Consequently, the aim of the BCEA is to set minimum



standards. The aim of the EEA is to target discrimination in the workplace and to provide a structure for the application of affirmative action (Du Toit, Godfrey, *et al.*, 2015:666). The aim of the SDA is to promote training and facilitate the necessary skills acquisition. The aim of the ESA is to assist the unemployed to find employment (Govindjee, Olivier and Dupper, 2011:776). The aim of the B-BBEEA is to de-racialise the economy and to widen involvement in the economy by those who were previously excluded or denied access into the business arena (Kloppers, 2014:58). Only the ETIA is aimed at encouraging private sector employers, through the provision of tax incentives, to employ young workers with limited work experience. All of these aims can contribute to or present challenges to job creation and/or job sustainability and ultimately either promote or be an obstacle to social justice.

Therefore, labour legislation is justified by the following underlying themes: business sustainability; human rights in terms of the Constitution and in terms of the International Labour Organisation in order to fulfil the demand for decent work, as well as the elimination of exploitation and abuse; social equity to redress past wrongs and inequalities through the EEA and the LRA; and regulatory function through the BCEA, the SDA and the SDLA, the OHASA, the COIDA and the UIA.

Globally, businesses have to conform with certain levels of compliance in terms of human rights as there is an expectation in the civilized world that there cannot be slave labour. Nevertheless, regulatory costs, direct and indirect costs (Marneffe and Vereeck, 2011:352) incurred by businesses through the implementation of and compliance with the BCEA, the LRA, the EEA, the SDA and the B-BBEEA can either contribute to or present challenges to job creation and/or job sustainability and either promote or be an obstacle to social justice. Nonetheless, the BCEA and the LRA are perceived by established businesses as being much to blame for restricting job creation. Thus, even if the cost may be high, it is necessary and justified for social justice and social equity.

However, there is no consensus on whether employment protection legislation is beneficial or harmful to the economy (Gwatidzo and Moyo, 2014:300). Feldmann (2009:76); Bassanini, Nunziata and Venn (2009:352); and Bennington and Wein (2000:31) also agree on this point. Thus there is a gap in the literature which needs

to be explored and examined further as to precisely which aspects of labour legislation in particular are beneficial or harmful to job creation and job sustainability and precisely how they influence job creation and job sustainability.

In the next chapter, the research methodology and design employed to conduct the empirical study will be discussed.

## **CHAPTER FOUR: RESEARCH METHODOLOGY AND DESIGN**

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### **4.1 Introduction**

The methodology employed to test the research questions of this study is presented in this chapter. The chapter is organised into five sections: namely 4.2 the design of the study; 4.3 the selection of the participants; 4.4 the instruments; 4.5 data collection; and 4.6 data analysis.

### **4.2 Design of the study**

In this study, the social science theory comprising of different theories found in the social sciences (such as economics, political science and social justice as set out in Chapter Two) is the overarching framework for the mixed-method research design used (Creswell, 2014:69). The mixed-methods research design is progressively being recognised as significant because it has the potential to take advantage of the strengths of both the qualitative and quantitative approaches (Ostlund, Kidd, Wengstrom and Rowa-Dewar, 2009:369). The mixed-methods research design also provides an original method for dealing with contemporary issues (Fetters, Curry and Creswell, 2013:2135). The underlying assumption is that such a mixed-method research design, which includes not only the mixing of two methods but also mixing in all phases of the research, is a useful and appropriate research design and methodology for this study (Creswell and Plano Clark, 2011:7).

The research study is approached primarily from an interpretivist, social constructionist (Tracy, 2013:40) and pragmatic multiple perspective in which there are multiple realities which need to be understood, all of which have an influence on the overall labour relationship, with particular regard to job creation and job sustainability. Social research puts a scientific phenomenon, such as the influence of labour legislation on business decisions to create and sustain jobs, into a broader general category of causal relationships to job creation and job sustainability and is concerned with finding a common pattern of occurrences with some variations (Shively, 2013:2). Thus, this study is located within a mixed-method pragmatist

research paradigm in which qualitative and quantitative techniques, methods, approaches, concepts and language are used.

The mixed-method approach aims to answer research questions that cannot be answered by using only one approach, either qualitative or quantitative, but rather where a combination of both is required (Sekaran and Bougie, 2016:103). It allows for a combination of inductive and deductive thinking, as well as for more than one research method, using different types of data (Sekaran and Bougie, 2016:103). Saunders, Lewis and Thornhill (2007:139) maintain that mixed-method research is helpful as it offers better chances to solve research questions and permits better evaluations and more trustworthy research findings from which inferences can be drawn.

The purpose of the study, the resources available, time constraints and the audience of this thesis determined the chosen method. Whilst it is acknowledged that different research styles are appropriate for different problems, it is believed that in this instance, the most appropriate style for this particular research problem (owing to the exploratory and descriptive nature of this research) is the mixed-method approach. The convergent parallel mixed-methods design in particular, using triangulation (Bloomberg and Volpe, 2012:36) is deemed to be the best method of inquiry for this study as it can provide the best understanding for this research problem (Creswell, 2014:20). It addresses social justice issues relating thereto (Creswell, 2014:27) and answers this study's research questions (Creswell and Plano Clark, 2011:2). The employment of the explorative mixed-method in obtaining qualitative and quantitative contributions and integrating it with prevailing literature is a practical and working methodology (Badenhorst-Weiss and Waugh, 2015:1). The chosen research topic is also likely to stimulate much debate as there is currently very little empirical comprehensive literature thereon. Mixed method research is more appropriate when one data source is insufficient to explain or generalise the results and where the whole research objective is best attended to with several stages or tasks (Creswell and Plano Clark, 2011:8).

Tashakkori and Teddlie (2003), cited in Saunders, Lewis and Thornhill (2007:146) state that the main advantage of using multiple diverse methods for diverse

purposes in the study is that it makes triangulation possible. Ostlund, *et al.* (2009:370) also contend that the use of triangulation as a methodological metaphor enables the integration of qualitative and quantitative discoveries and assists to distinctly portray both the theoretical suggestions and the foundation of the results. Saunders, Lewis and Thornhill (2007:147) agree that triangulation may also provide a better comprehension of the connections between theory and empirical findings, test theoretical postulations and contribute to the advancement of new theory. Furthermore, the authors state that the use of different techniques helps to eliminate the “method effect”.

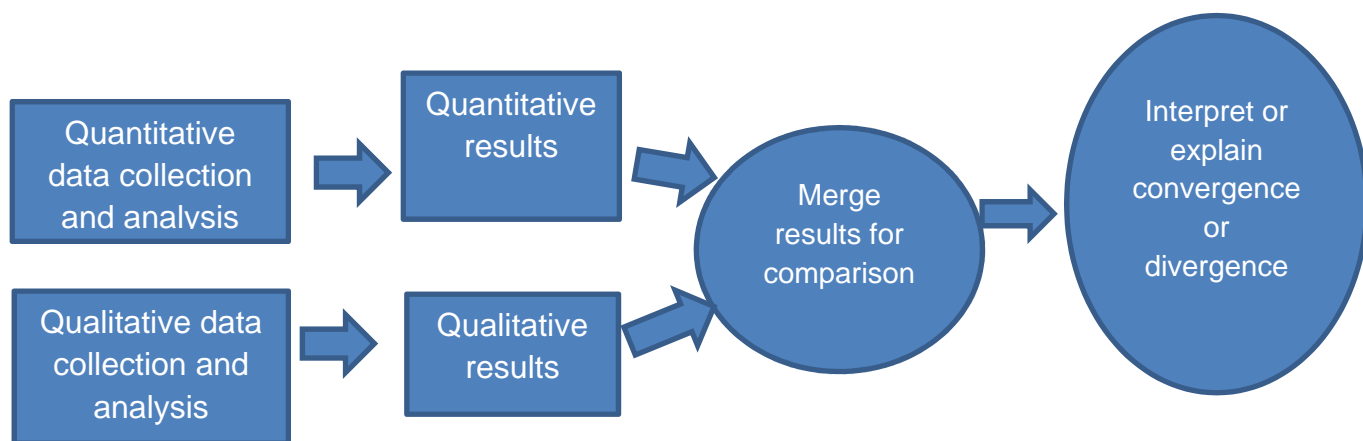
Additionally, Creswell and Plano Clark (2011:12) postulate that mixed-method research offers strengths that correct the weaknesses of qualitative and quantitative research by enabling researchers to use all the data collection tools available, instead of restricting the researcher’s choice as to the types of data collection tools that can be used which are typically associated with certain types of research. Consequently, triangulation is used in this enquiry in both the data collection and data analysis processes. Both quantitative and qualitative methods of presentation are utilised to elucidate the research design and to depict and explain the findings (Bloomberg and Volpe, 2012:38).

This study requires both quantitative and qualitative research approaches to be equally incorporated and integrated (Bloomberg and Volpe, 2012:37). Consequently, an open and flexible mixed-method research strategy is adopted, using survey questionnaires which include open-ended questions, as well as semi-structured interviews as the primary research method techniques. A qualitative study is used to make probing and clarification possible and to determine the importance of labour legislation’s influence on the business environment, as well as to add depth to the research. In addition, a simultaneous qualitative study to obtain richer data and an understanding of labour legislation’s influence on job creation and job sustainability, was conducted. Ethical clearance was obtained prior to the research instruments being administered. Both independent strands were implemented concurrently and the merging of results are of equal priority for attending to the study’s aim, as well as for a more comprehensive insight into the research topic. It also allows for the validation and corroboration of the quantitative scales. Through the identification and

understanding of the relationships between the multiple realities of legislative interference with the employment relationship, the “underlying patterns and order of the social world” (Saunders, Lewis and Thornhill, 2007:115) is revealed, in particular with regard to businesses’ attitudes and decisions to create jobs and/or to sustain jobs.

An open and flexible mixed-method research strategy is adopted as the initial research method technique using self-administered online survey questionnaires containing some open-ended questions in order to collect the quantitative data from business and trade union respondents. The quantitative data is then analysed separately. Semi-structured individual interviews are conducted, primarily telephonically, to collect qualitative data which is then analysed separately for codes and themes in order to add depth to the research and to make probing and clarification possible. Data collection and analysis occurred during the same phase of the research.

**Figure 4.1 Convergent Parallel Design Process**



Source: Creswell (2015:78)

A convergent parallel-mixed methods design was used, comprising of two distinct strands, namely a quantitative strand and a qualitative strand. Sampling for the quantitative (numeric) data and qualitative (text) data occurred separately. Both types of data were collected concurrently but separately. The two data sets were then analysed individually and independently of each other using typical qualitative

and quantitative analytic techniques. Thereafter in the third phase, the results of the quantitative and qualitative data analyses were merged and compared for further analysis (to validate and/or to corroborate the results) and brought together for greater understanding into the problem than would have been realised by analysing either type separately (Creswell and Plano Clark, 2011:154). This process is demonstrated see Figure 4.1.

Mixing involved the integration (or combination) of qualitative and quantitative data through merging, connecting or embedding (Creswell and Zhang, 2009:613) at the data collection, data analysis and interpretation of results stages of the study (Ostlund, *et al.*, 2009:370). In the final stage, the two sets of results are interpreted to ascertain the extent, to which the two groups of results converge, diverge and relate to each other, and/or combine to produce a better understanding to the study's whole purpose (Creswell and Plano Clark, 2011:78).

Integration occurred through linking the techniques of data collection and analysis. The survey data is connected with the qualitative data through the sampling frame. The quantitative data collection procedure and results inform the collection of the qualitative data results. The qualitative data approach is built on the quantitative data. Integration further occurs at the interpreting and reporting stage through narrative, data transformation and joint displays, drawing out new understandings beyond the information acquired from the separate quantitative and qualitative findings (Fetters, Curry and Creswell, 2013:2143). Merging occurs when the two databases are combined for analysis and for comparison. Embedding occurs when data collection and analysis are linked at several themes (Fetters, Curry and Creswell, 2013:2141). The two sets of results were subsequently merged into a general interpretation (Creswell and Plano Clark, 2011:77). Coherence of the quantitative and qualitative findings occurred in three ways through confirmation, expansion and discordance (Fetters, Curry and Creswell, 2013: 2144).

#### **4.2.1. Description and purpose**

The goal of the study is to explore, describe, compare and relate business and trade union perceptions of labour legislation's influence on businesses to create and/or sustain jobs through an empirical study. In addition, the study aims to contribute to an understanding of the extent to which labour legislation actually influences businesses to create and sustain jobs.

The purpose of the study is firstly achieved through conducting a review of local and international literature on the research topic. Thereafter, the purpose is achieved through conducting an empirical study comprising the collection and analysis of both quantitative and qualitative data of businesspersons as well as trade unionists, of their opinions and perceptions on the extent to which labour legislation influences business decisions to create and sustain jobs. In this study, quantitative data is used to test the theory, as well as that labour legislation influences job creation and job sustainability, and predicts that labour legislation (independent variable) will positively or negatively influence job creation (dependent variable) and job sustainability (dependent variable) in South Africa.

#### **4.2.2. Aim and objectives of the study**

The aim of this study is to determine the influence of labour legislation on job creation and job sustainability in South Africa. Consequently the objectives of this study are to:

- describe, explore and understand the need for creating new jobs and for sustaining existing jobs;
- describe, explore and understand through a literature review the regulatory influence of labour legislation on job creation and job sustainability; and
- explore, compare and relate the perspectives of businesses and trade unions on the extent to which selected labour legislation in South Africa, namely the BCEA, the LRA, the EEA, the SDA:
  - fulfills the normative role of labour law, which is to protect workers, promote social equality and economic efficiency;



- influences job creation and the sustainability of jobs, jobs particularly with respect to the manner in which it:
  - Assists with and/or encourages job creation and the sustaining of jobs;
  - Threatens existing jobs and job creation, and
  - Impedes job creation and the sustaining of jobs.

The primary research questions are:

- Is there a need to create and sustain jobs in South Africa and how are jobs created and sustained in South Africa?
- Does labour legislation regulation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation should be amended to enable job creation and job sustainability to occur in South Africa?
- What are the factors, apart from labour legislation, affecting job creation and job sustainability?
- What strategies can businesses, trade unions and government implement to increase/improve job creation and job sustainability?
- To what extent do the qualitative results confirm the quantitative results of the empirical study?

#### **4.3 Target population and sample frame**

Welman, Kruger and Mitchell (2009:53) define a population as “ the full set of cases from which a sample is taken”. The population is the set of possible members of whom one wants to take a broad view of the results of the study. In this instance, the target population of possible participants for the sampling frame for the study will comprise two distinct groups or categories of participants, namely businesspersons (the larger group) and trade unionists (the smaller group), as the collective organisational units.

The researcher identified and drew up a list containing 2,344 businesses who appear to conduct business primarily in South Africa and where possible, included the names and particulars of people in charge of the businesses. The information was obtained from Chambers of Commerce lists, primarily from the Durban Chamber of Commerce list; Bargaining Council lists, primarily from the National Bargaining Council for the Leather Industry; and SETA lists, primarily from the Fibre Processing and Manufacturing SETA. Lists of business names and information were also obtained from various internet websites such as the Yellow Pages and Brabys, as well as from various newspapers listing the top 100 companies, etcetera. The trade union sampling frame was drawn up from a list of registered trade unions and trade union federations, whose members work for businesses situated in various business sectors across South Africa, obtained from the Department of Labour's website.

#### **4.3.1 Quantitative sampling of respondents**

The sampling chosen is a large-scale setting, namely South Africa. There are two organisational settings, namely businesses, comprising small, medium and large enterprises situated in different cities and provinces across the country, and South African trade unions. The events sampling is the period of time over which the surveys and interviews are conducted, from March 2016 to March 2017. There are two group samples, namely businesspersons who are business owners, chief executive officers, entrepreneurs, managing directors and/or senior managers and human resource managers of the businesses operating in South Africa; and senior trade union officials, namely general secretaries, deputy general secretaries, and trade union officials, namely trade union administrators, trade union shop stewards, as well as divisional managers of trade union federations.

The two sample units were chosen because businesspersons and trade unionists have specific qualities or types which will allow a comprehensive investigation and insight into the main themes and questions.

#### **4.3.1.1 Sample size for each category**

As a general rule, the sample size for surveys should be between 25 and 500 units of analysis (Welman, Kruger and Mitchell (2009:71). It was difficult to obtain lists of all members in each of the units of analysis. Therefore, various techniques were used to identify and target the respondents for this study. The researcher could not find a comprehensive list of all types of businesses - small, medium and large enterprises - which included private and public companies, as well as employer organisations. Consequently, the researcher identified and drew up a business sample frame for the survey from a number of different data sources, namely various Chambers of Commerce lists; Bargaining Council lists; Employer Organisation lists; SETA data lists; media publications lists; trade union lists; as well as from various internet websites, including the yellow pages and government websites.

It is important that the sample for each group is as varied as possible as it optimizes the probabilities of classifying the complete array of issues or characteristics connected with the phenomenon under study. It also allows for the investigation of interdependency between different characteristics, to explore impacts and to allow for comparisons (Ritchie, 2014:116-117).

The sample size of each group is unequal, which the business group being the larger of the two groups. The minimum sample size recommended by Onwuegbuzie and Collins (2007:288) for a quantitative correlational research design is 64 participants for one-tailed hypotheses and 82 participants for two-tailed hypotheses. The authors recommend 51 participants per group for one-tailed hypotheses; 64 participants for two-tailed hypotheses for a quantitative causal-comparative research design (Onwuegbuzie and Collins, 2007:288). Consequently, it was envisaged that at least 93 individual businesspersons and 16 trade unionists would participate in the survey (Conroy, 2018:9).

#### **4.3.1.2 Sampling techniques**

Multistage cluster sampling and random sampling is utilised to choose the participants in each group of respondents for the survey (Babbie, Mouton, Vorster

and Prozesky, 2007:194). There are two main kinds of sampling, probability sampling and non-probability sampling. Although probability sampling is capable of better statistical analysis, non-probability sampling is often used for qualitative research for economic reasons and for the sake of convenience (Welman, Kruger and Mitchell, 2009:57). Both sampling techniques are used in this study. Non-probability sampling was used for the surveys, which are the quantitative aspect of this study and convenience purposive non-probability sampling for the semi-structured interviews, the qualitative aspect of this study.

The participants in this study are businesses (represented by business owners, chief executive officers, entrepreneurs, managing directors and/or senior managers) and trade unions (represented by trade unionists). These two groups of individual participants are drawn using random sampling for the survey and purposive convenience sampling for the interviews from the target population of businesspersons working for or employed by the business entities and trade union officials, representing trade unions in South Africa.

For the benefit of this study, non-purposive random sampling is used to draw a sample from each separate stratum for the survey and convenience purposive sampling is used for the semi-structured interviews (Creswell and Plano Clark, 2011:173). The two (quantitative and qualitative) samples will include the same individuals and/or different individuals.

The researcher has to be sure that the sample selected from the business population and the trade unionist population could and would offer an understanding and relevant points of view on the influence of labour legislation on job creation and job sustainability. However, Bell and Waters (2014:14) caution that great care needs to be taken, in the event of a sample population being used to ensure that it is truly representative (Bell and Waters, 2014:14).

Emails were first sent to the Durban Chamber of Commerce, as well as to other chambers of commerce, then to the various SETAs, Bargaining Councils, trade unions and trade union federations. The addressees were informed of the research study and asked for their assistance to obtain information and/or lists of operating

businesses and trade unions relating thereto. From the various information lists received, the researcher drew up a list of the various businesses in order to determine population size and a pool of potential respondents from which study participants could be recruited. All 2,344 businesses and 186 trade unions identified by the researcher were afforded an equal opportunity to participate in the survey.

#### **4.3.1.2.1 Gaining access to survey respondents**

From the end of March 2016 onwards, e-mails were sent to various business sites and identified respondents, enclosing the gatekeeper's letters, letters of information and consent. These were addressed generally to each of the businesses and where identified, to each of the research study participants individually. An e-mail enclosing a covering letter containing information and an explanation about the survey, requesting permission from the relevant authorities (where needed), enclosing a copy of the survey questionnaire and a copy of the interview schedule, inviting potential respondents to participate and incorporating a URL link where the survey questionnaire could be completed online was sent (De Vaus, 2014:138).

To maximise the response rates to the internet surveys, letters were first emailed to each of the identified businesses' e-mail addresses. Some of the addressees in charge of the businesses, business owners, chief executive officers and managing directors wrote back and either granted permission or stated that it was unnecessary. They also informed the researcher that the researcher should correspond with each of the senior managers individually, request their permission and obtain their consent to participate in the research individually. Consequently, an invitation in the form of a covering letter was extended to the entrepreneurs and senior managers of the businesses identified by the researcher to participate in an online survey. The covering letter informed the business owners, entrepreneurs and/or senior managers (CEO's, managing directors) of businesses and trade unionists (trade unions) about the research and invited them to participate in the online survey questionnaire and sought to obtain the relevant consent from the appropriate parties. The covering letters were emailed to the sample of businesses selected across South Africa. A similar invitation was extended to the selected sample of trade unions. A similar process as above was followed addressed to people in charge of the trade unions and trade union federations and the addressees

responses were the same as above. 70 businesses comprising primarily small and medium business enterprises, a few large businesses participated in the study and 17 trade unions participated in the study. There are no similar studies with which to compare the response rate.

#### **4.3.2 Qualitative sampling of participants**

The two groups of interview participants were drawn from the same two sets of target population groups as the online survey respondents, using purposive (Creswell and Poth, 2017:158) convenience and judgmental sampling (Ritchie, 2014:115). For the semi-structured interviews, a sample was drawn from both businesses and trade unions. Convenience purposive sampling was used in the qualitative part of this study so that the group of people that can best inform the researcher about the problem under examination was intentionally selected (Creswell, 2013:147). Further reasons for selecting a purposive sample are to attain symbolic representation and multiplicity (Ritchie, 2014:116-135). Additionally, they can decisively enlighten an interpretation of the research problem and principal phenomenon in the study (Creswell and Poth, 2017:158).

The sample size for the semi-structured interviews is much smaller, comprising sixteen businesspersons (chief executive officers, managing directors, senior managers and entrepreneurs) and six trade unionists (general secretaries, deputy general secretaries and trade union officials in various capacities). The minimum sample size recommended by Onwuegbuzie and Collins (2007:288) for a qualitative phenomenological research design is 10 interviews. The sample size for the survey is larger, ninety three businesspersons and sixteen trade unionists. The difference in sample size is not problematic as the intention of gathering quantitative data is aimed toward generalising, whereas the intention of gathering qualitative data is to develop an in-depth understanding from a few people (Creswell and Plano Clark, 2011:184).

#### **4.3.2.1 Targeting potential interviewees**

The sampling frame used for the semi-structured interviews were the business and trade union respondents who had indicated in their online survey responses that they were also willing to participate in interviews. The sample size for the semi-structured interviews is much smaller, comprising sixteen businesspersons (chief executive officers, managing directors, senior managers and entrepreneurs) and six trade unionists (general secretaries, deputy general secretaries and trade union officials in various capacities). As only a small number of individual respondents also agreed to be interviewed, they ultimately determined the number of interviewees. According to Creswell and Plano Clark (2011:174) and Creswell (2015:77), as a general rule, qualitative studies using purposeful sampling should consider between twenty and thirty units. Consequently, the researcher decided to interview all twenty-two survey respondents who responded positively to being interviewed.

#### **4.3.2.2 Gaining access to interviewees**

An invitation to also participate in an interview was included at the end of the online survey questionnaire. Upon receiving a favourable response that the survey respondent was also willing to participate in an interview, an e-mail enclosing a covering letter together with the interview schedule of questions was e-mailed separately and individually to each group of participants who agreed to be interviewed. The e-mail was subsequently also followed up by a telephone call confirming a suitable date and time. Often, the telephonic interviews took place immediately.

### **4.4 Instrumentation**

A literature review was first conducted to gain insight into whether labour legislation may be influencing job creation and job sustainability. Having defined the labour legislation concepts which may influence job creation and job sustainability, the next step was to develop a measure of those concepts. The researcher developed an online survey questionnaire using Google Forms, as well as a semi-structured interview schedule. The questionnaire design was informed by the literature reviewed. The questionnaire was then duplicated and modified slightly: one for

business and another for trade unions, although the core questions were virtually identical.

#### 4.4.1 Quantitative instrumentation

A self-administered electronic online questionnaire using Google Forms was used. The online survey questionnaires contained 169 items, with a level of measurement at a nominal or an ordinal level. The majority of these used the Likert Scale, based on a rating scale from “very likely” to “very unlikely”. Other questions asked for factual information such as current position, type of entity and business sector. The questionnaire was divided into 39 questions, which measured various themes as reflected in Table 4.1.

Theme		Questions	
1	<b>Social Justice, Human Rights and the right to Decent Work</b>	1a,b,c,d,e,f,g	
2	<b>The role of labour law in general</b>	2a,b,c,d,e,f,g,h	
3	<b>Influence of labour legislation on:</b>	<b>Job creation</b>	<b>Job sustainability</b>
3a	Efficiency, productivity and working conditions	4a,b,c,d,e ; 5a,b BCEA	
3b	Fairness	6a,b,c; 7a,b,c,d LRA	18a,b,c; 19a,b,c,d LRA
3c	Equality	8a,b,c,d,e LRA 9a,b,c,d,e ; 10e EEA	20a,b,c,d,e LRA 21a,b,c,d,e EEA
3d	Job creation schemes (ETIA, ESA, BBBEE)	10a,b,f	
3e	Work security	15,16,17 BCEA	14a,b,c BCEA 25a,b,c,d UIA
3f	Skills development – Training and education	10c SDA 10d UIA	22a,b,c,d SDA 23a,b,c,d; 24a,b LRA 12a,b,c,d
3g	Monitoring and enforcement	4f,g BCEA 6d,e & 8f,g LRA 9f,g EEA	14d,e BCEA 18d,e & 20f,g LRA 21f,g EEA 26b,f,g OHASA 27a,b COIDA

Table 4.1: TABLE OF THEMES

Cognisance was taken of the fact that the length of the survey questionnaire could affect the purpose of the study and the resources available. However, it was decided that the questionnaire could not be shortened, as it would have compromised the



aim of the study. Conscious thereof, the survey questionnaire was constructed to keep the effort required from the respondents at the lowest level. A universal survey instrument was initially prepared, which was then modified slightly for each group of respondents. One online survey questionnaire was developed for business and another adapted for trade unions, although the core questions in both research instruments were virtually identical. The researcher developed both self-administered research instruments which were available online separately to businesses and trade unions, who accessed them separately. Their survey responses were recorded anonymously, automatically coded and available straightaway in Excel.

The online survey questions were drafted from the responses and information obtained from reviewing national and international literature on various aspects of the research topic. Both types of questions were asked, namely those which sought to obtain facts and those which sought to obtain opinions, attitudes, preferences and evaluations. A number of the questions were single-choice responses, which were ordered using the Likert scale (Babbie, 2013:217). The response categories were chosen in advance and characterised in several ways. A space was also left at the end for additional comments. The design of the online survey questionnaire was time consuming and a complex process.

#### **4.4.1.1 Piloting and validation of the survey questionnaire**

Prior to the study being conducted, the draft of the survey questionnaire was reviewed by selected individuals from business, legal fraternity and trade unions and their comments were taken into consideration in refining and revising the questionnaire that read and commented thereon to remove any obvious errors. This questionnaire, superfluous questions were removed and any ambiguity was addressed. Subsequently an on-line survey questionnaire was prepared for each group, using Google Forms on Google Drive (De Vaus, 2014:140) and piloted among 13 business respondents (comprising entrepreneurs and managers) and among three trade union representatives. The piloting of the questionnaires helped to ensure they were reliable and valid (Dahlberg and McCaig, 2010:181).

The pilot respondents were identified using purposive and convenience sampling in order to detect the issues relevant to understanding the situation (Blumberg, Cooper and Schindler, 2005:294) and to refine the survey questionnaires. The draft survey questionnaires and their online responses were also submitted to a statistician for his perusal and comment in order to further refine the survey questionnaires.

#### **4.4.2 Designing the interview schedule**

The researcher decided that the interview guide approach should be semi-structured as the respondents had limited time available to be interviewed. The questions drawn up in advance also needed to be open-ended. An interview schedule of questions was drafted from the information obtained from reviewing national and international literature on various aspects of the research topic, which was then modified for each group.

One interview schedule of questions was developed for businesses and another one for trade unions, although the core questions in both research instruments were virtually identical. The interview guide was divided into sixteen questions (plus sub-questions), which measured various themes namely:

- Factors influencing businesses behaviour towards job creation and job sustainability;
- Reasons for businesses behaviour towards job creation and job sustainability;
- Views of labour legislation;
- Experience of labour legislation;
- Strategies to improve job creation and job sustainability;
- Influence of regulation and compliance with labour legislation on job creation and job sustainability with regard to:
  - Fairness and work security – BCEA & LRA
  - Equity – EEA
  - Skills development – SDA.

Both types of questions were asked, namely those which sought to obtain facts and those which sought to obtain opinions, attitudes, preferences and evaluations.

Topics were listed which seemed to be relevant to the purpose of the study and questions were formulated from these topics.

Cognisance was taken of the fact that the length of the interview could affect the time and the resources available. It was decided that the interview schedule could not be shortened as it would have compromised the aim of the study. Both research instruments were e-mailed separately to the two separate categories of participants, business and trade union, who had indicated in their survey responses that they were also willing to participate in the interviews.

#### **4.4.2.1 Piloting and validation of the interview schedule**

Prior to the interviews being conducted, a draft of the interview schedule was first distributed amongst a convenience sample; colleagues in the business field, legal field and trade union field who read and commented thereon. The purpose thereof was to identify the issues relevant to understanding their responses to the influence of labour legislation on job creation and job sustainability (Blumberg, Cooper and Schindler, 2005:294) and their feedback was used to refine the semi-structured interview schedule.

#### **4.4.3 Ethical clearance**

The gatekeeper's letters, letters of information and consent and the draft survey questionnaire, as well as the draft interview schedule of questions were submitted for ethical clearance in February 2015. Ethical clearance was obtained in March 2015. The survey questionnaires and the interview schedules were piloted in February 2016 and subsequently further refined. Both research instruments were finalised in March 2016. Ethical clearance was obtained prior to the research instruments being administered (Appendix 17 on page 568).

#### **4.5. Data collection strategies**

Data was gathered using the convergent design mixed-method approach. The same concept was used to assess the data collected from multiple sources, primarily from

survey questionnaires and interviews. Multiple businesspersons representing various business entities and a business federation, as well as trade unionists representing various trade unions and trade union federations participated in the study.

The primary data gathering tools used in this study were semi-structured interviews and self-administered online survey questionnaires. The researcher conducted the semi-structured interviews, the majority of which were telephonic. The quantitative and qualitative data were collected from the two independent sources concurrently. As soon as the researcher received the initial survey responses, the researcher commenced with conducting interviews with the respondents who had agreed to also participate in the interviews, whilst waiting for more survey responses. The collection of quantitative and qualitative data occurred over a period of one year, commencing from April 2016 to March 2017. The main technique used for both the quantitative and qualitative approaches was questioning. The researcher started with the quantitative approach, which was done indirectly through the administration of self-completed online survey questionnaires, with open-ended questions; followed by the qualitative approach, which was done directly through semi-structured interviews, conducted by the researcher, primarily telephonically.

#### **4.5.1 Quantitative data collection**

##### **4.5.1.1 Administration of the online survey questionnaire**

The researcher felt that a self-administered online questionnaire, developed on Google forms, wherein the responses are recorded anonymously, automatically coded and available immediately in Excel was the most appropriate method to obtain information and opinions from the survey respondents in this study. It had all the advantages of self-administered postal questionnaires (Saunders, Lewis and Thornhill, 2007:356). In addition, one of the advantages of using internet surveys is the possibility of their distribution across various devices (Fielding, Lee and Blank, 2008:180). The researcher was, however, unable to control the survey data collection environment, as it was completely anonymous.

Furthermore, lower costs are another key advantage of using internet surveys in comparison to other survey modes (Fielding, Lee and Blank: 2017:151). The data obtained from the questionnaire can be used for large-scale surveys when insufficient resources are available for interviews. Furthermore, a large number of people can be contacted at a comparatively low cost (Stone and Harris, 1984, 2:12). The type of questionnaire chosen can also affect response rates and choice is affected by the availability of resources. However, the time needed for data collection is increased through use of electronic online services as the response rate is slow.

The survey strategy is commonly used with the deductive approach in exploratory and descriptive studies (Saunders, Lewis and Thornhill, 2007:121 and 137). Bell and Waters (2014:14) corroborate the aforementioned authors' view that the survey's popularity stems from it being an economical way of collecting large amounts of data, standardising data, making easy comparisons and being perceived as authoritative. The other distinct advantage is that descriptive and inferential statistical data can be easily analysed with software programmes. A further advantage is that interviewer bias can be avoided and sometimes, it might be a better means to obtain sensitive information when sensitive questions are asked about certain topics, as anonymity and privacy of responses are assured (Bryman, Bell, Hirschsohn, du Toit, dos Santos, Wagner, van Aardt and Masenge, 2014:192). Another advantage is that respondents are unlikely to answer to please the researcher. However, the danger is that they can discuss their answers with others, thus contaminating their responses (de Vaus, 2014:128).

Quantitative research includes the collection of facts and the study of the association of one set of facts with another, with the aim of producing quantified generalisable conclusions, whereas qualitative research is more related to comprehending the individuals' perceptions of the world (Bell and Waters, 2014:9). Some argue that quantitative research techniques are more objective, more mathematical and more scientific. However, the argument may not necessarily be true if the only justification is that qualitative techniques are harder to use.

#### **4.5.2 Qualitative data collection**

The interview is another common method used to collect data. Qualitative interviews are necessary when the researcher wants to understand the reasons for the interviewees' attitudes and opinions. Specifically, semi-structured and in-depth interviews enable one to ask the interviewees to explain or elaborate on their answers (Saunders, Lewis and Thornhill, 2007:315). Stone and Harris (1984, 2:6) state that interviews are a useful technique if time and resources are limited. There are three types of interviews, namely structured, semi-structured and unstructured. Each type of interview serves a particular purpose (Saunders, Lewis and Thornhill, 2007:313). The structure of the interview is dependent upon the researcher's ability to determine in advance the precise questions needed to be asked in order to shed light on a particular problem or question in issue (Stone and Harris, 1984, 2:6). The advantage of the more structured interview is that it is easier to analyse and the responses are more comparable, but the disadvantage is that the data collected is more limited (Stone and Harris, 1984, 2:6). Furthermore, insight is gained from interviews conducted with a small sub-sample of businesspersons and trade unionists in order to further examine labour legislation's influence on businesses creating and sustaining jobs. Therefore, the semi-structured interview approach, which focuses on businesspersons' understanding and interpretation of their social environment, is useful (May, 2011:14).

The researcher deemed the semi-structured interview guide approach in which there is a checklist of topics to be covered and which gives the interviewer the freedom to ask questions on the topics in an ordered, appropriate and suitable fashion to be the most suitable interview approach for this study. It strikes a balance between the structured and unstructured interview. The advantage is that all the respondents will answer the same questions, thereby increasing the comparability of responses. Standardisation of the responses will assist with the analysis of data, over which the interviewer will not need to exercise too much discretion. However, the disadvantage is that the standardised wording of the questions could limit the relevance of the questions and answers. Additionally, open-ended responses are also more difficult to analyse.

Stone and Harris (1984, 2:10) state that the interview is a flexible instrument which should reflect the degree of structure required. The use of non-standardised telephonic interviews has the added potential advantage of easier access, especially when presented with the problem of long distance, speed of data collection and lower cost (Sekaran and Bougie, 2016:120). Consequently, the researcher adopted a flexible approach. The majority of the interviews were conducted telephonically. Some were via WhatsApp and two were conducted via Skype. Saunders, Lewis and Thornhill (2007:318) caution that the lack of standardisation may lead to concerns about reliability and whether subsequent researchers can come up with similar findings (Easterby-Smith, 2002 and Healey and Rawlinson, 1994 cited in Saunders, Lewis and Thornhill, 2007:318). Other reliability concerns noted are interviewer bias and interviewee response bias, especially with semi-structured interviews where the researcher's goal is to look at occurrences or search for clarifications for the interview participants' responses (Saunders, Lewis and Thornhill, 2007:319).

A further concern is the question of the generalisability of the findings, which can influence validity. However, the concern may be less significant if one is able to establish the relationship with existing theory (Marshall and Rossman 1999, cited in Saunders *et al.*, 2007:328). Another distinct disadvantage is that with non-standardised telephonic interviews the opportunity to observe non-verbal communication is lost. Although, internet interviewing could have significant advantages in instances when interviewees are geographically dispersed, it requires participants to have software loaded onto their computers, which could lead to problems if the participants do not have such software (Sekaran and Bougie, 2016:121).

Nevertheless, interviews can provide important insights into the situation and in this study they enabled the researcher to ask key respondents for facts, opinions and suggestions of their own insights into a situation, which could form the basis of further enquiry.

#### **4.5.2.1 Protocol for qualitative interviews**

The researcher relied on the business and trade union survey responses from the participants who had denoted their willingness to also participate in an interview to

determine who participated in the interviews. This information was subsequently followed up mainly by emails and telephonically. Individual appointments were subsequently made with each of the respondents who had agreed to be interviewed, at times and on dates which suited them, either telephonically, via Skype, WhatsApp or in person, whichever method they preferred.

#### **4.5.2.2 Interviews conducted**

According to Creswell and Plano Clark (2011:174) and Creswell (2015:77), as a general rule, qualitative studies using purposeful sampling as a general rule should be between twenty units of analysis and thirty units of analysis. In this study the units of analysis were businesses, including employer organisations, trading in South Africa and trade unions, including trade union federations registered in South Africa.

In total there were twenty-two case interviews. Only two face-to-face interviews were conducted, off the business location, in a neutral and non-threatening environment to ensure confidentiality. The researcher generated comprehensive hand written notes during the interview, which were subsequently transcribed onto a Word programme for further data analysis. The majority of the interviews were conducted during working hours at the interviewees' convenience. On average, the duration of the interviews was one and a half hours.

Consequently, the two primary methods of data collection used in this study were online self-administered survey questionnaires and semi-structured interviews. The main difference is that the quantitative technique seeks an objective explanation, whereas the qualitative approach seeks to understand the event or behaviour from the "actor's" perspective (Saunders, Lewis and Thornhill, 2007:121 and 137). Bell and Waters (2014:15) also state that causal relationships can seldom, if ever, be verified by the survey method, as the main emphasis is on fact-finding. Saunders, Lewis and Thornhill (2007:138) highlight the fact that the limitations amid the phenomenon being studied and the setting in which it is being studied is not clearly obvious and that it differs from the survey strategy, which limits the number of variables for data collection (Saunders, Lewis and Thornhill 2007:139). Bell and Waters (2014:9) maintain that the method accepted and the techniques of data



collection selected are contingent on the type of study and the kind of information needed. Thus, Bloomberg and Volpe (2012:38) argue that a combination of data collection techniques can be used to triangulate questionnaire data with semi-structured interview data. Statistical as well as textual analysis is therefore utilised in this study.

## **4.6 Data analysis**

In choosing the previously mentioned data collection techniques, the overall strategy conducted was a convergent parallel mixed-method study using primary data analysis, classified into textual and numeric data. The semi-structured interview with an open-ended questions guide approach was used to achieve an in-depth knowledge of the issues identified from the respondents' perspectives. The approach was suitable to study the broad areas to the problems. The information collected was analysed separately and thereafter, both the combined quantitative and qualitative data results were merged.

### **4.6.1 Quantitative data analysis**

The data collected from the business and trade union responses were analysed separately and then combined using SPSS version 24.0. The quantitative results present the descriptive statistics, including uni-variate and bi-variate statistics, in the form of graphs, cross tabulations and other figures for the quantitative data collected. Inferential techniques include the use of correlations and the chi square test of significance (de Vaus, 2014:233), which are interpreted using the p-values. All information used in the data analysis was derived from the online survey questionnaire data. Concurrent and convergent validity was established through principal component analysis, a multivariate technique, and was found to be at an adequate level. Reliability of the factors was established through co-efficient alpha. Multiple regression and path analysis were also used to analyse the data.

#### **4.6.1.1 Frequency tables**

Descriptive statistics explains the arranging and encapsulating of quantitative data. Univariate and bivariate analysis is most suitable for descriptive statistics (de Vaus,

2014:242). Frequency tables were used to present the data. These were used to begin analysing the data as they provide a quick overview of the findings and enable one to familiarise oneself with the data and also provide a good basis to investigate the data in depth (McCaig and Dahlberg, 2010:206).

#### **4.6.1.2 Cross-tabulations**

Cross-tabulation tables are useful to see where there may be dissimilarities in replies for one variable in comparison to another variable (McCaig and Dahlberg, 2010:206). Thus, cross-tabulation permits the investigation of explanations that fit in to particular groupings on more than one variable. By inspecting these frequencies, relations can be identified between cross-tabulated variables.

#### **4.6.1.3 Pearson's chi-square test**

Inferential statistical analysis is about the testing of hypotheses. The independent t-test is the most suitable parametric test for interval measurement. This tests any meaningful difference between the two variables, namely perceptions of the influence of labour legislation on job creation and job sustainability. Statistical significance is essential because the results are unlikely to have been by chance and they are really reflective of a pattern that exists (McCaig and Dahlberg, 2010:215).

A Pearson correlation matrix indicates the slant, intensity and importance of the bivariate relationships between variables that are calculated at interval or ratio level (Sekaran and Bougie, 2016:286). The Chi-square test is used to decide if the discrete groups into which an interval or ratio variable are classified are statistically meaningfully correlated to another variable, and that the relationship is not brought about by possibility (Welman. Kruger and Mitchell, 2005:231). The Pearson's chi-square ( $\chi^2$ ) test is the most widely accepted of all the chi-square test statistical techniques, whose results are assessed by checking the chi-square distribution (Lind, 2005:431). It tests a null hypothesis that the frequency distribution of certain events witnessed is reliable with a particular theoretical provision. The occurrences measured must be equally exclusive and have a complete probability of 1. A usual

circumstance for this is where the occurrences each include an outcome of a categorical variable (Appendix 13 on pages 555 and 556).

Primary data was ordered and examined and commentaries and final discussion were thereafter based on the results attained.

#### **4.6.2 Qualitative data analysis**

Qualitative data analysis is the process of classifying, arranging and explaining data with reference to a set of codes, concepts, categories or themes (Ritchie, 2014:272). In addition, it goes beyond just dealing with “what” and “how many”. It also looks at “why” and “how” things happen (Miles, Uberman and Saldaña, 2014:11). The data collected from the business and trade union responses were analysed separately and thereafter combined. NVIVO PRO 11 computer software was used to assist with the familiarisation and initial coding of the interview data. The data was analysed further manually.

In this study, a combination of grounded theory, interpretive phenomenological analysis and thematic analysis is utilised to analyse the qualitative data (Ritchie, 2014:271). Three data analysis strategies were used. The analysis process began with the preparing and organising of the interview data for analysis. The qualitative data was then reduced to themes through a process of coding, condensing of codes, describing, classifying and interpreting the data. The qualitative data was finally represented in figures, tables and in the discussion (Creswell and Poth, 2017:183). Consequently, the constant comparative method of data analysis and theoretical sampling of different classes to exploit the connections and dissimilarities of information was used (Bloomberg and Volpe, 2012:33). According to Richie (2014:272), grounded theory and thematic analysis are about encapsulating and understanding the importance of data, concentrating on what the text says. To start with, however, a general analytic strategy is adopted as the final objective is to treat the proof fairly, to create convincing analytic deductions and to exclude other interpretations (Yin, 1994:103).

The data condensation and transformation process continued to occur through the writing of summaries, coding, developing of themes, creating categories and writing of memos (Miles, Uberman and Saldaña, 2014:12). Data display of extended texts was reduced through the use of matrices, graphs and charts to display data. Conclusions and verifications were then drawn from the data, which had previously been interpreted through the noting of patterns, explanations, causal flows and propositions (Miles, Uberman and Saldaña, 2014:13).

#### **4.6.2.1 Unit of analysis**

In this study, there are four units of analysis in total, two groups and two dyads. The first group unit of analysis is businesses (they are the primary group) and the second group unit of analysis is trade unions (secondary group) (Boyatzis, 1998:62). The first dyad unit of analysis is the connection between labour legislation and job creation, and the second dyad unit of analysis is the relationship between labour legislation and job sustainability (Sekaran and Bougie, 2016:103).

#### **4.6.2.2 Unit of coding**

In this study, there are two units of coding, namely business (represented by business owners, chief executive officers, entrepreneurs, managing directors and/or senior managers, and human resource managers) and trade unions (represented by general secretaries, deputy general secretaries, trade union officials, as well as divisional managers of trade union federations). The codes are applied and compared to each interviewee's responses to each question, sentence and paragraph, applying the theoretical justification of each code ultimately resulting in a "codable moment" (Boyatzis, 1998:65).

#### **4.6.2.3 Familiarisation**

Transcribing the semi-structured interviews took place soon after they were conducted (Ritchie, 2014:282). The researcher used NVIVO PRO version 24.1 computer software to assist with the familiarisation and the initial coding of the interview data. Familiarisation was performed by establishing what people were saying that is relevant to the research questions.

#### **4.6.2.4 Initial thematic framework**

Having advanced an inventory of possible topics for inclusion, the researcher then refined and sorted the topics into sets of themes and sub-themes that included the original framework (Ritchie, 2014:282). This framework (Appendix 14 on pages 557 to 559) included a combination of emergent themes originating from the research questions or objectives, as well as those contained in the interview schedule.

#### **4.6.2.5 Coding**

Coding is the active process of identifying data as belonging to, or representing, some type of phenomenon (Tracy, 2013:189). Theoretical coding was utilised in which all categories and concepts were systematically integrated around the central core/category, namely the primary theme of the study (Saldaña, 2016:250). All three coding approaches, namely descriptive coding, topic coding and analytic coding, were used (McCaig and Dahlberg, 2010:154). Information was sorted into different groupings, namely descriptive codes, categories and themes. Codes, also known as labels, were developed from emergent concepts studied, as well as a priori concepts adopted from the literature and the relevant field (Ritchie, 2014:272).

The researcher coded the participants' names for the qualitative part of the study with the letter B for business or TU for trade unions (depending on the group to which they belonged) and a sequential number to ensure their anonymity. Both a deductive and an inductive approach was adopted and combined when coding the data. The codes developed initially were concept-driven (McCaig and Dahlberg, 2010:153). The researcher, however, further developed the set of codes based on indexing and sorting the responses obtained in the interviews.

Consequently, some answers were anticipated from which a partial coding scheme was developed beforehand. However, there were many responses which the researcher was unable to predict. Certain responses were also grouped together as group responses about major problems (for example, economic, environmental, and social) and then specific codes were assigned under each heading (De Vaus, 2014:150). Chunks of data extracts about the same point or belonging together were labelled. The data extracts were then reviewed and the labels were refined further.

Throughout the coding process, the researcher used the constant comparative method to compare the data applicable to each code and modified the codes to fit new data (Tracy, 2013:190).

#### **4.6.2.6 Themes and sub-themes**

According to Ritchie (2014:278) the purpose of indexing, sorting and then labelling data in a more interpretive way is to develop categories and to identify patterns which allow for them to be combined in order to identify a set of themes (Appendix 8 on page 540). The author further contends that this assists in establishing whether there are any dominant themes across all the data, as well as to establish whether these themes emulate what is already known from the literature reviewed about this area (McCaig and Dahlberg, 2010:155). Consequently, the researcher developed categories to encapsulate the fundamental significance of the data; to describe and explain the phenomena (Ritchie, 2014:278) of this study, namely the influence that labour legislation has on job creation and job sustainability; and to address the key research questions.

#### **4.6.2.7 Interpretive phenomenological analysis**

The researcher began the analysis of each interview afresh, developing concepts and themes for each interview, and at a later stage, searched for common meanings and patterns (Ritchie, 2014:273). Theory of qualitative data analysis used herein distinguished between two types of relationships: one based on similarity and the other based on contiguity. Three major types of strategies for analysis: categorising, connecting and causation strategies, were integrated (Maxwell and Chmiel, 2013:3).

#### **4.6.2.8 Thematic analysis**

Thematic analysis is a category strategy (Flick, 2014:27) and a process for the encoding of information (Boyatzis, 1998:4). The goal is to create a significant explanation of the phenomenon that focuses on important features of the research question (Ritchie, 2014:278). Consequently, thematic analysis is used to examine the data obtained from businesses and trade unions to determine what influence, if any, labour legislation has on job creation and job sustainability in South Africa. The

three main approaches used to develop the themes are theory-driven, prior data or prior research-driven and inductive (Boyatzis, 1998:x). In this study, primary data was initially generated deductively from theory and prior research and subsequently inductively from the raw interview data in order to enable the researcher to make a case concerning the research questions, theorizing what might have influenced or explained arrangements in the data (Ritchie, 2014:279). Some analytic comments were made with a view to developing an analytic strategy. Key questions were identified in order for the data to answer the research questions and/or for new research questions to be added, which may have emerged from the data management process (Ritchie, *et al.*, 2014:310). This process is demonstrated in figure 4.3 on page 543. Data abstraction and interpretation then occurred, in which elements and dimensions were detected, then categorised and classified. Simple typologies were constructed, and linkages identified between phenomena and the attachment to groups (Ritchie, *et al.*, 2014:310-328). Units of coding, analysis and the process of interpreting the phenomenon are inter-connected (Boyatzis, 1998:65).

#### **4.6.2.9 A combined approach of cross-sectional analysis and non-sectional analysis strategies**

A cross-sectional analysis is used to compare and contrast all the interview participants' views and experiences across the whole data set in relation to common themes and concepts; and a non-cross sectional approach is adopted for certain themes which are specific to business and to trade unions (Ritchie, 2014:273). Thus, a combination strategy of cross-sectional and non-sectional analysis of the empirical evidence was undertaken, using various analytic techniques such as data summary and display matrix. The researcher summarised what each participant said about each theme and sub-theme (Ritchie, 2014:284).

A matrix of organisational, substantive and theoretical categories was developed, and the evidence was placed within such categories. Organisational categories were developed prior to data collection from topics in the interview schedule (Flick, 2014:26). Substantive descriptive categories result from the interview data. Theoretical categories originating from prior theory or inductive theory placed the coded data into a theoretical framework (Flick, 2014:27). Data displays, such as

matrix tables were created for examining data. The incidence of various occurrences was tabulated. The difficulty of such tabulations and their associations were examined through the calculations of means and variances. Data was placed in a chronological order temporal scheme.

The process of thick description will be the medium for conveying a holistic picture of business and trade union experiences of labour legislation's influence on job creation and job sustainability. The final result will be a construction of the participants' experiences and the meanings they attach to them. This will allow readers to vicariously experience the challenges that businesses are confronted with in complying with labour legislation, and which influence their behaviour and decisions with regard to creating and sustaining jobs. The provision of rich, thick, detailed descriptions was also utilised as a strategy to ensure external validity. Explicit and implicit explanations were used to interpret the nature and interrelationship of different contributory factors in order to understand the meanings of personal intentions, norms and situational influences and to understand "what is going on" (Ritchie, Lewis, Nicholls and Ormston, 2014:275; 329). Yin (1994:110) states that pattern-matching logic is an exclusive kind of pattern matching in which the aim is to examine the study statistics by constructing an account about the instance and to develop ideas for further study.

Ghuri, *et al.* (2002:180) state that one of the ways of analysing data collected from the cases studied is to look for commonalities and differences. Answers can be found in comparing different cases. In some instances, worst and best comparisons are most suitable. The authors also posit that cases that display contrast or extreme situations (performance or failure) are good for analysing or drawing conclusions. Campbell (1975) and Yin (1984) cited by Ghuri, *et al.* (2002: 180), claim that pattern matching can be used to relate information from several cases to a priori assumptions. Ghuri, *et al.* (2002:181) argue that statistical testing is not necessary to come to conclusions if systematic patterns can be found which accept or confirm the researcher's assumptions or propositions.

Yin (1994:118) maintains that programme logic models are a mixture of pattern matching and time-series analysis. According to Richie (2014:274) one needs to



comprehend the patterns, the repetitions and the “whys”. Yin (1994:106) states that pattern-matching logic contrasts an empirically-based pattern with a predicted one and that, if the patterns accord, the results aid to reinforce the study’s internal validity (Yin, 1994:106). In addition, Yin (1994:110) claims that time-series analysis is appropriate for a study concerned with a course of events. However, Becker (1963), cited in Yin (1994:110) indicates that there should be at least three conditions. The author states that time-series analysis is concerned with the fit between a tendency of data facts contrasted with a theoretically meaningful tendency postulated in advance of the start of the investigation against some opposing trend also stated earlier, against any tendency founded on some object or threat to internal validity (Yin, 1994:110). Counting was used to identify different patterns of linkage in order to understand what factors and features may underpin the different connections (Ritchie, Lewis, Nicholls and Ormston, 2014:329).

#### **4.6.2.10 Reflection**

The researcher is an attorney by profession, as well as an academic. The researcher’s perceptions of social justice, the role of labour law’s regulation of the employment contract and its influence on job creation and job sustainability are shaped by her own personal experiences and research. Reflection is critically thinking about the researcher’s lens and mirrored reality of what the researcher is doing and why, as well as confronting and challenging one’s own assumptions - recognising the extent to which one’s own thoughts, actions and decisions influence how one researches and what one sees (researcher’s lens and mirrored reality) (Saldaña, 2014:53).

The researcher has examined her own emotions, relationships, socio-economic values, attitudes and beliefs about social justice; the role of labour law in regulating the employment relationship, and its influence on job creation and job sustainability. The reflexive interviewer observes through an analytical lens at the procedure, setting and conclusions of the research and questions the interpretation of knowledge (Gubrium, Holstein, Marvasti and McKinney, 2012:317). Self-reflexivity is defined as the way of prudently reflecting on the ways in which the researcher’s

background, belief and part influence the researcher's relations within and clarifications of the research setting (Tracy, 2013:19).

Reflection is also about reflecting on the deeper meanings and complex meanings of codes, words and phrases. Thus, the goal is not simply to summarise the data but to reflect and expound on it (Saldaña, 2014:44-45).

#### **4.6.3 Analysis of the mixed data**

The quantitative data using quantitative data methods and the qualitative data using qualitative data methods were initially analysed separately. Once all the quantitative data was collected, the quantitative data was first captured onto the Statistical Program for the Social Sciences (SPSS) statistical software. Thereafter, analysis begins with a Cronbach Alpha test for consistency, using SPSS. Both deductive and inductive data analysis was performed using SPSS (version 24.0). Once all the qualitative data was collected, transcribed and checked for transcription accuracy, it was then captured onto NVIVO PRO version 24.0 statistical software package. Thereafter, the NVIVO PRO version 24.0 statistical software package is used to analyse the qualitative data. The interviews were analysed for codes and themes, which added depth to the study and made probing and clarification possible.

The motive for collecting both quantitative and qualitative data was to join the two forms of data to bring about greater understanding of the problem than would be obtained by either type separately (Creswell and Plano Clark, 2011:154). The mixed-method approach helped the researcher to achieve an in-depth insight into patterns and trends, as well as generate new theories; develop new measurement instruments; study diverse perspectives; and understand the relationship between variables (Creswell, *et al.*, 2007: 261). Further purposes identified were for exemplifying quantitative results with qualitative findings; to synthesise balancing quantitative and qualitative results; to acquire a more comprehensive interpretation of the phenomenon, namely the influence of labour legislation on business decisions to create and sustain jobs; and to compare multiple levels within a system (Creswell and Plano Clark, 2011:77).

Triangulation was used to combine and mutually corroborate quantitative and qualitative data in order to enhance the validity of the research (Creswell and Plano Clark, 2011:62). Triangulation was also used in the analysis of data to provide a more complete, holistic and contextual portrayal of what was being studied (Ghuri *et al.*, 2002:182). The results from the entire study were integrated using exploratory principal component analysis as an information transforming instrument (Baird, 1987:320) during the discussion phase (Creswell, *et al.*, 2007:269) to find patterns in collections of correlations.

The two most important aspects of precision are reliability and validity. Hence, the researcher had to establish both these elements in this study. This was achieved as described below.

#### **4.7 Validity**

A valid measure is one which measures what it is designed to measure (de Vaus, 2014:51). It is important to ensure that the online survey questionnaire measured the particular concept that the researcher had set out to measure. This ensures that important dimensions and elements are not overlooked, or irrelevant ones included when perceptual and attitudinal variables were defined (Sekaran and Bougie, 2016: 220). Several types of validity tests are used. The three ways in which validity is assessed are namely through: content validity, criterion-related validity and construct validity. Correlational analysis and principal component analysis are construct validity statistical techniques used in this study.

Validity was tested to determine whether the measurement methods used actually gauged what they were supposed to be assessing (Bell and Waters, 2014:122). The test for validity establishes whether the instrument actually calculates what it was intended to determine and computes this correctly (Goddard and Melville, 2001:41), as well as what the results actually mean. Validity in mixed-method research will also occur through the strategies employed to attend to possible problems in the data collection, data analysis and interpretation stages that might distort the merging of the quantitative and qualitative threads of the study and the deductions made from the amalgamation (Creswell and Plano Clark, 2011:239).

Strategies implemented for minimizing the threat to validity were:

- that samples were taken from the same population making data comparable;
- separate data collection procedures were used;
- the same question was addressed in parallel;
- the use of a joint display;
- finding quotes that match the statistical results; and
- addressing each research methods question.

#### **4.7.1 Principal component analysis validity test**

In quantitative research, validity is concerned with the quality of the results from the instrument used and the quality of the deductions that can be obtained from the outcomes of the quantitative analysis (Creswell and Plano Clark, 2011:210). The four most significant kinds of validity for quantitative research are: content; criterion-related; construct; and face validity (Bless, Higson-Smith and Kagee, 2006:156). Internal validity is concerned with the degree to which the researcher can conclude that there is a cause and effect between variables. (Sekaran and Bougie, 2016:220). Ensuring external validity, which is concerned with the extent to which the researcher can apply the outcomes to a bigger population, is of paramount importance when conducting surveys (Creswell and Plano Clark, 2011:211). The survey instruments were tested for validity with principal component analysis using SPSS version 24.0.

The main aim of factor analysis is data reduction (de Vaus, 2014:185). Factor analysis is a multi-variate technique which is used to find patterns amongst the differences in significances of several variables (Babbie and Mouton, 2006:473). A characteristic usage of factor analysis in survey research is when the researcher desires to characterise a number of questions with a small number of hypothetical issues (de Vaus, 2014:187). For example, as part of the survey on business and trade union opinions, participants may answer three separate questions regarding the LRA, reflecting fairness requirements which may influence job creation.

Each question, by itself, would be an insufficient assessment of attitude towards the influence of labour legislation on job creation but, jointly, they may offer a better

measure of the attitude. Factor analysis can be utilised to ascertain whether the three measures do, in fact, assess the same thing. If so, they can then be joined to create a new variable, a factor score variable, that has a tally for each respondent on the issue (de Vaus, 2014:186). Factor analysis techniques are appropriate for an assortment of circumstances. One does not need to suppose that the factors really occur in order to do a factor analysis. In practice, the factors are typically understood, afforded names and expressed as real items. The two basic approaches to factor analysis are principal component analysis and common factor analysis. The researcher herein chose to use principal component analysis as it considers the total variance in the data, unlike common factor analysis, and transforms the original variables into a smaller set of linear combinations. The researcher in this case wanted to establish whether labour legislation did indeed influence job creation and job sustainability. In addition, it was necessary to determine which aspects of labour legislation influenced job creation and job sustainability, and in what way.

#### **4.7.2 Qualitative validity**

In qualitative research, the emphasis is more on validity as opposed to reliability in order to determine whether the account is accurate, it can be trusted and it is credible (Lincoln and Guba, 1985, cited in Creswell and Plano Clark, 2011:211). The information collected is assessed by checking for accuracy, trustworthiness, credibility, dependability and transferability through the triangulation of both sets of data drawn from several individuals. The writing of differing evidence will further verify the accuracy of the data analysis. It is generally accepted that using multiple methods of data collection such as semi-structured interviews will result in trustworthiness. Trustworthiness is further enhanced by having the interview questionnaires reviewed by experts, involving several investigators or peer researchers to assist with the interpretation of data and the use of rich descriptions of the participants and contexts to facilitate external validity (Creswell, *et al.*, 2007:80).

## **4.8 Reliability**

Reliability is the degree to which a test or procedure yields similar results under steady conditions at all times (Bell and Walters, 2014:121). This is confirmed by Goddard and Melville (2001:41) who state that the measurements made must be consistent. Reliability is concerned with how accurate and reliable the instrument is, namely, the extent to which the noticeable measures represent a theoretical idea and are accurate and stable when used for the hypothesis in several studies (Bless, Higson-Smith and Kagee, 2006:149). To strengthen reliability and to ensure internal validity, the researcher used the triangulation of data as a strategy. Method triangulation, data triangulation and theory triangulation (Sekaran and Bougie, 2016:106), as well as crystallisation and legitimation (Plano Clark and Creswell, 2008:271), were used to further improve the validity and reliability of the research and the evaluation of the findings.

### **4.8.1 Cronbach Alpha's test of reliability**

The survey instruments were tested for reliability with the Cronbach Alpha test of reliability, using SPSS version 24.0. The Cronbach Alpha coefficient was used to test for internal consistency (Sekaran and Bougie, 2016:224) using SPSS for the quantitative analysis section. Quantitative reliability is concerned with the fact that the tallies obtained from the participants are consistent and stable over time (Creswell and Plano Clark, 2011:211). Not only does the instrument need to be reliable, but so does the measurement of scores. Furthermore, they need to be internally consistent as well.

### **4.8.2 Qualitative reliability**

Qualitative reliability is more concerned with the creditability and quality of the research (Bazeley, 2008:127-128). Reliability is the consistency of judgment that protects against or lessens the contamination of projection (Boyatzis, 1998:146). Triangulation was used to increase the trustworthiness and credibility of the findings (Wagner, Kawulich and Garner, 2012:138).

Triangulation is a multi-method approach to data collection and data analysis (Creswell, 2009:200) in which the same thing can be seen from different perspectives. According to Plano Clark and Creswell (2008:105), quantitative and qualitative methods are mixed for the purposes of triangulation as the strength of the one method counter-balances and offsets the other method's weaknesses. Triangulation is thus able to verify or oppose the findings of one technique with that of another (Bell and Waters, 2014: 120). Triangulation addresses the research from multiple perspectives (Sekaran and Bougie, 2016:106). The accuracy of the qualitative account was checked by corroborating evidence through the triangulation of multiple data sources to shed light on the themes and on different perspectives, through the process of thick description (Creswell and Poth, 2017:260). Consequently, triangulation, crystallisation and legitimation (Plano Clark and Creswell, 2008:271) were used to improve the validity and reliability of this study and the evaluation of the findings. Triangulation was also used extensively for, *inter alia*, the confirmation and generalisation of quantitative research findings (Creswell, *et al.*, 2007: 80).

#### **4.9 Merged data analysis comparisons**

In data analysis, when comparisons are made after the initial quantitative and qualitative analyses, three options exist for comparing the results, namely side-by-side contrasts in a discussion or summary table; joint display associations in the results or interpretation, and the data transformation in the results (Creswell and Plano Clark, 2011:223). The first option was used in this study, wherein the quantitative and qualitative results were presented together in a discussion table, so that they can be effortlessly assessed. This is followed by a commentary specifying how the qualitative quotes either corroborate or refute the quantitative results. The combined results were subsequently interpreted to determine the extent to which the two databases converged and to assess how the analysis answered the mixed-method research question.

The interpretation of the data was equally important to discover meaningful patterns and rules governing the ways that employers and trade unionists related with job creation and job sustainability within the labour legislation framework; as well as to

determine relationships amongst the variables aligned with labour legislation, job creation and job sustainability (Babbie, Mouton, Vorster and Prozesky, 2007:xxiii). Whilst merging the two data sets for the purpose of convergence, the researcher also examined if there were any differences, so that inconsistencies could be addressed. If there were any similarities found, what conclusions could be drawn from the differences and similarities was also established.

#### **4.10 Delimitation**

The study is limited to businesses and trade unions operating in South Africa. The focus of the research relates to the perceptions of businesspersons (owners, directors, managing directors and senior managers, including small and medium enterprises) conducting business in South Africa and the perceptions of trade unionists of the influence of South African labour legislation on job creation and job sustainability.

#### **4.11 Conclusion**

This chapter restates the purpose of this study, its aims and research questions. It provides an overview of the research methodology and the mixed-method research methods used in this study. The selection of the participant sample from the target population is discussed. The survey respondents were chosen through random sampling and the interview participants were purposively selected. In addition, the validity and reliability of the research instruments are discussed, as well as how they were tested. The data collection procedures and response rates were also discussed in this chapter. Finally, the methods of data analysis for each research instrument were discussed, including a discussion of the statistical analyses that were conducted for each data set. The following chapter presents and analyses the findings that emerged from the quantitative empirical study.



## CHAPTER FIVE: PRESENTATION, INTERPRETATION AND ANALYSIS OF DATA FROM SURVEYS

### 5.1 Introduction

Having outlined the methodology used in this study in chapter four, this chapter presents the results, discusses the quantitative data collection and presents findings obtained from the business and trade union online survey questionnaires.

### 5.2 Quantitative data analysis

#### 5.2.1 Descriptive frequency statistics

##### 5.2.1.1 Presentation of results of the demographic and general profile of each group of respondents

##### 5.2.1.1.1 Demographic and general profile of each group of respondents

**Figure 5.1: Respondents' current position in their organisation**

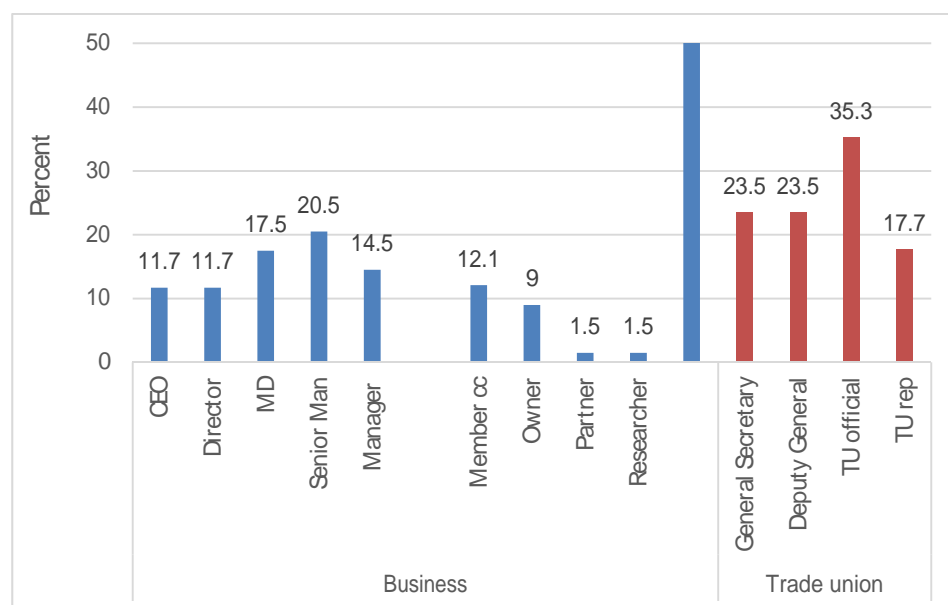


Figure 5.1 indicates the top and senior management of business entities, namely chief executive officers (11.7%); directors (11.7%); managing directors (17.5%);

senior managers (20.5%); and managers (14.5%); as well as members of close corporations (12.1%); owners (9%); partners (1.5%); and researches (1.5%) who represented business in this study.

Figure 5.1 also indicates that top and senior trade union officials, namely general secretary (23.5%); deputy general secretary (23.5%), trade union officials (35.3%), trade union representative (17.7%) represented trade unions in this study.

The trade union group comprised of trade unions and trade union federations of various sectors/industries.

Figure 5.2 shows the small, medium and large enterprises namely sole proprietorships (2.9%); partnerships (2.9%); private companies (43.5%); close corporations (30.5%); as well as a public companies (13%); a multinational corporations (5.8%); and a business federation (1.4%), representative of various sectors/industries, represented business in this study.

**Figure 5.2: Types of business entities and a business federation represented by business respondents**

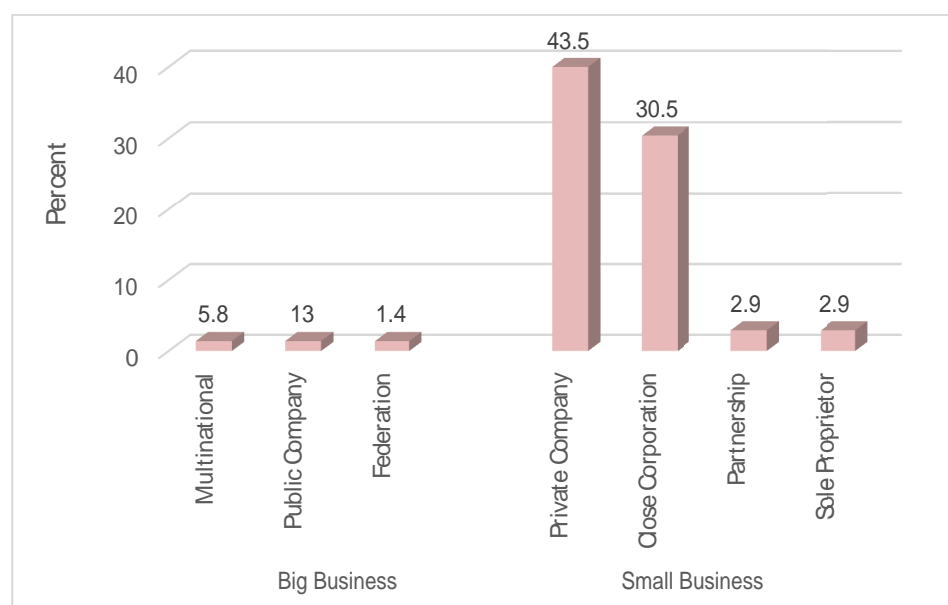
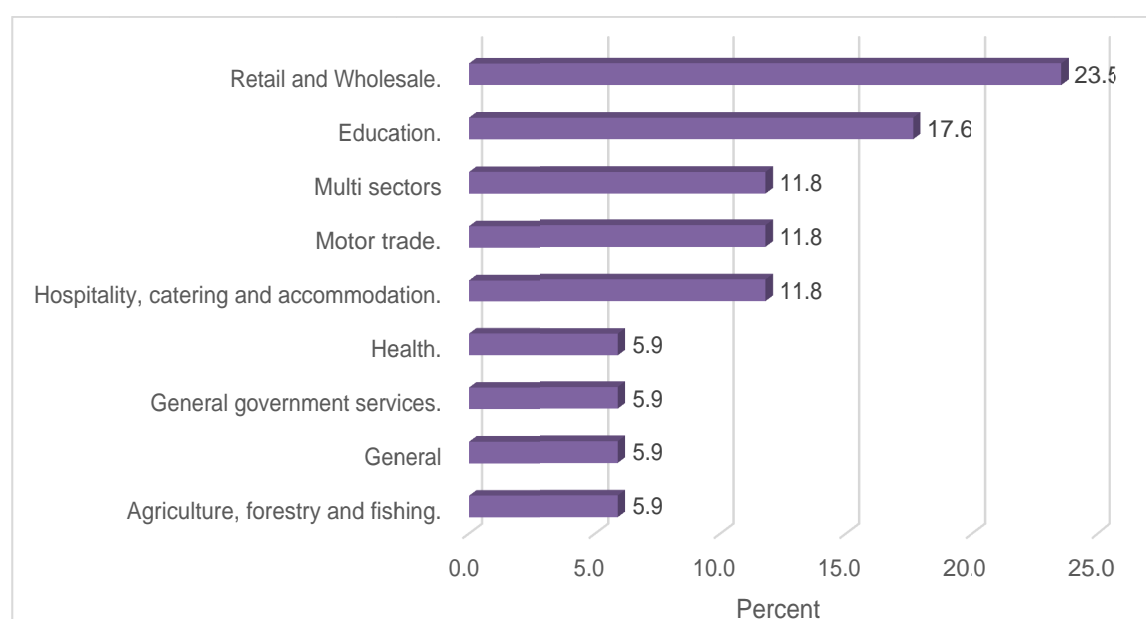


Figure 5.3 reflects the various sectors of which trade union respondents were representative. The largest sector represented by the trade union respondents in this study was the retail and wholesale sector, followed by the education sector, multi-sector trade unions, the motor trade, and the hospitality sectors.

**Figure 5.3: Various sectors represented by trade union respondents**



**Table 5.1: Various sectors represented by businesses and trade unions**

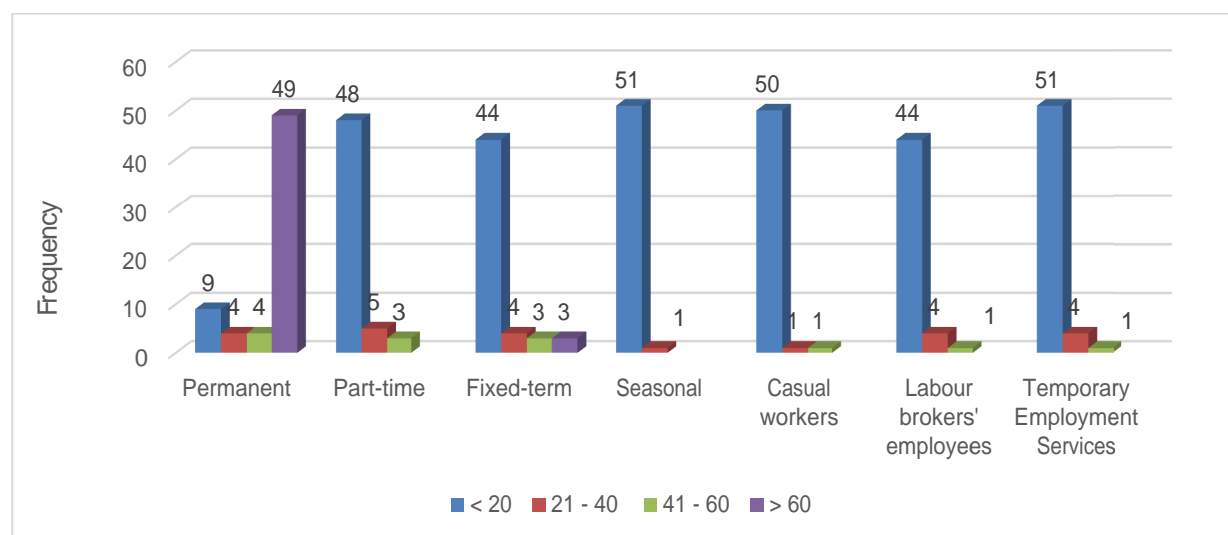
Sectors	Business	Trade union
Agriculture, forestry and fishing	1	1
Manufacturing	21	0
Education	2	3
Hospitality & tourism	5	1
Business & financial services	11	0
Mining and quarrying	2	0
Property related & real estate services	1	0
Building and construction	6	0
Retail and wholesale	2	4
Transport and storage	10	2
ICT and electronics	1	0
Metal & engineering	3	0
Government services	1	2
Legal	1	0
Multi-sector	0	3

Table 5.1 reflects the various sectors which the business and trade union respondents represented. The largest sector represented by business in this study was the manufacturing sector, followed by the business and financial services sector, and the transport and storage sector.

#### 5.2.1.1.2 Percentage of workers employed in each category of work

The business respondents were asked to indicate the percentage of their workforce employed in each category of work. Figure 5.4 demonstrates the results.

**Figure 5.4: Percentage of workers employed in each category of work**



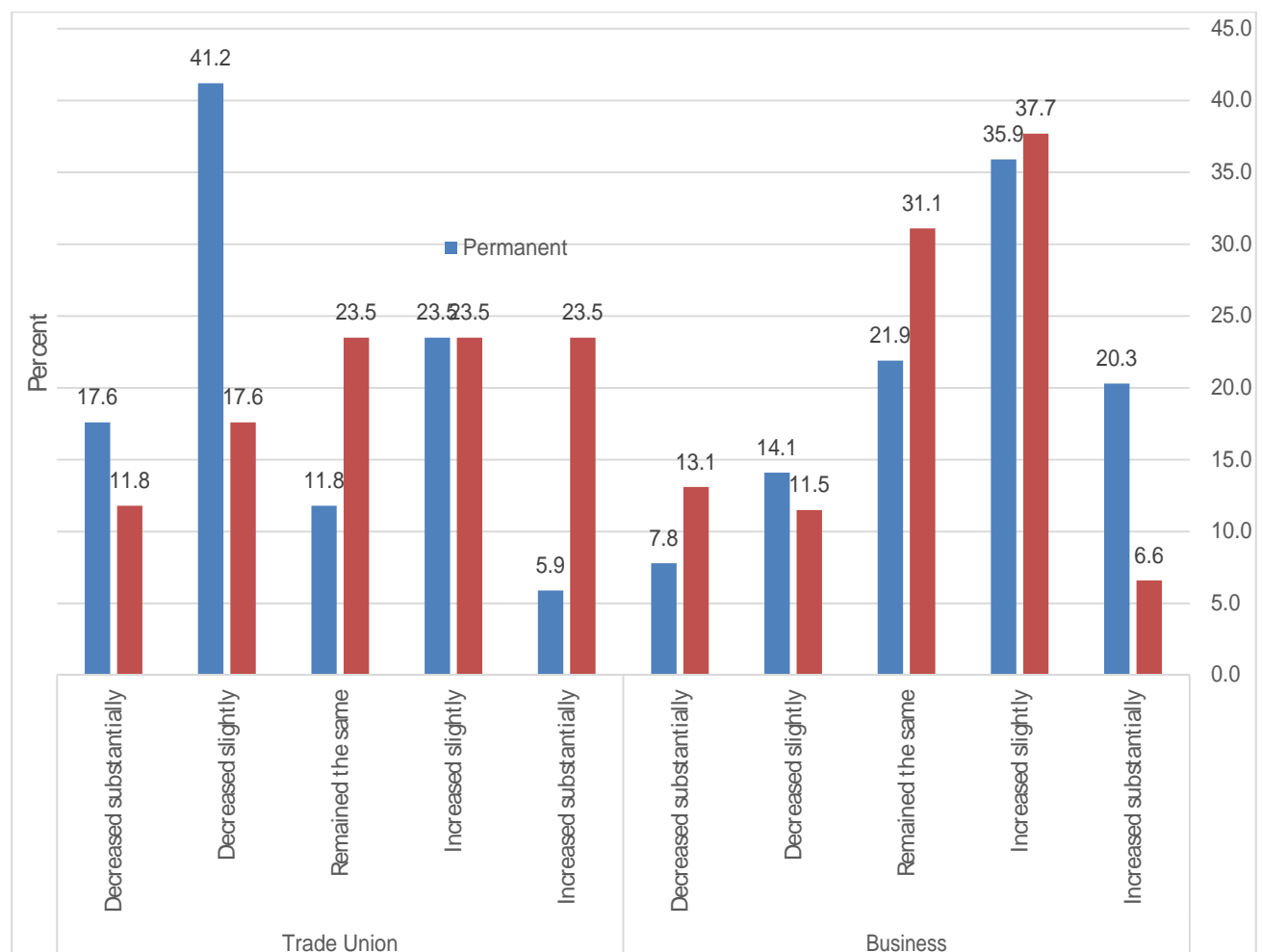
Forty-nine businesses indicated that more than 60% of their workforce comprised permanent employees. Just under half (48%) of the business respondents stated that < 20% of their workforce were part-time workers. Just under half (44%) of the business respondents also confirmed that less than twenty per cent of their workforce were on fixed-term contracts. Half (51%) of the business respondents stated that < 20% of their workforce were seasonal workers. Half (50%) of the business respondents confirmed that less than 20% of their workforce were casual workers. Less than half (44%) of the business respondents indicated that labour brokers supply < 20% of their workforce. Half (51%) of the business respondents indicated that temporary employment services supply less than 20% of their workforce.

Thus, it appears that the business respondents prefer to permanently employ the majority of their workers. Less than 20% of their workforce appears to comprise of each of the other temporary categories of workers.

### 5.2.1.1.3 Percentage increase/decrease of permanent versus temporary jobs

Both business and trade union respondents were asked to indicate the percentage increase/decrease in temporary versus permanent jobs. Figure 5.5 indicates the results of both the business and the trade union responses.

**Figure 5.5 Percentage increase/decrease of permanent versus temporary jobs**



37.7% of the business respondents indicated that the number of permanent jobs had increased slightly, while 35.9% stated that there has been a slight increase in temporary jobs. 20.3% of the business respondents also stated that there was a substantial increase in permanent jobs, compared to 6.6% who that the number of temporary jobs had increased slightly. 21.9% of the business respondents stated that the number of permanent jobs had remained the same, compared to 31.1% who indicated that the number of temporary jobs had had remained the same. 14.11% of the business respondents confirmed that the number of permanent jobs had decreased slightly, while 11.5% of the business respondents stated that the number of temporary jobs had decreased slightly. 7.8% of the business respondents indicated that the number of permanent jobs had decreased substantially, while 11.8% of the respondents stated that the number of temporary jobs have decreased substantially.

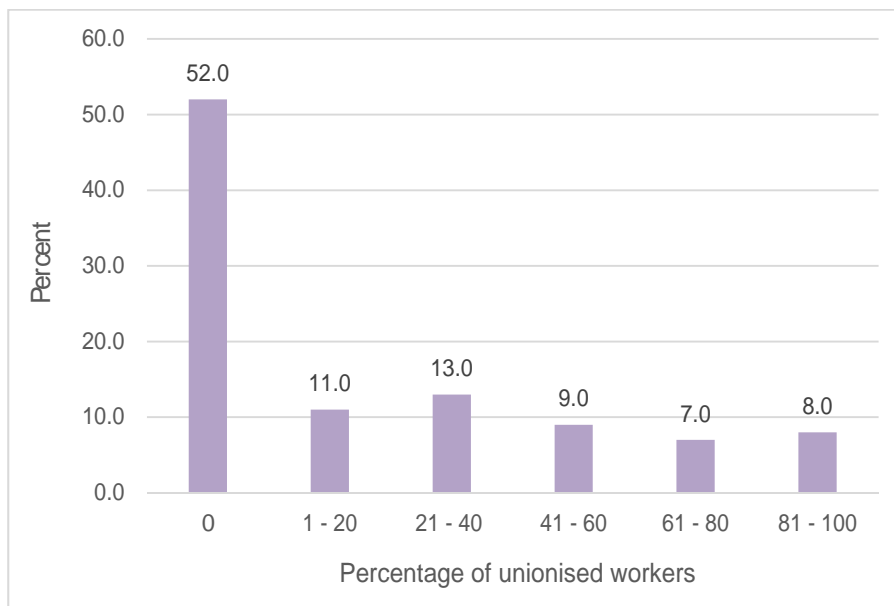
Whereas, 23.5% of the trade union respondents indicated that the number of temporary jobs have increased substantially. Only 5.9% stated that there was a substantial increase in permanent jobs. Approximately 24% of the trade union respondents also stated that there has been a slight increase in both permanent and temporary jobs. Approximately 41% of the trade union respondents confirmed that the number of permanent jobs have decreased slightly, compared to 17.6% of the trade union respondents who stated that the number of temporary jobs had decreased slightly. 17.6% of the trade union respondents indicated that the number of permanent jobs had decreased substantially, while 11.8% of the respondents stated that the number of temporary jobs have decreased substantially.

Therefore, the number of temporary jobs has increased and the number of permanent jobs has decreased.

#### **5.2.1.1.4 Percentage of unionised workforce**

The respondents were asked to indicate the percentage of their workforce that belonged to a trade union. Figure 5.6 shows the results.

**Figure 5.6 Percentage of unionised workforce**



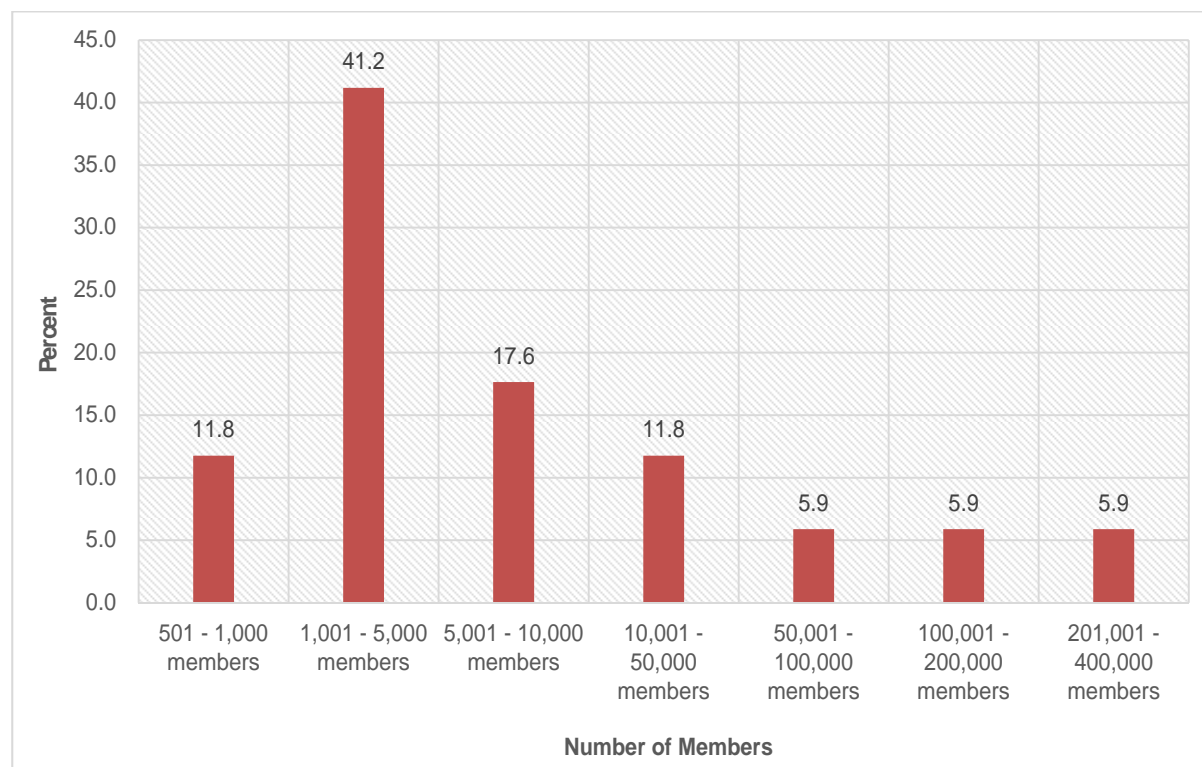
Fifty-two percent of the business respondents indicated that their workers were not unionised. 11% of the business respondents confirmed that up to 20% of their workers were unionised. Another 13% of the business respondents stated that up to 40% of their workers were unionised. A further 9% of the business respondents indicated that up to 60% of their workers were unionised, whilst 7% confirmed that up to 80% of their workers were unionised, and 8% that in excess of 80% of their workers were unionised.

Consequently, 48% of the businesses represented in the study's workforce were unionised. However, workers of other businesses (52%) represented in this study were non-unionised. There is almost an equal distribution between businesses with unionised and non-unionised workforces.

Figure 5.7 demonstrates the results of the percentage of union members represented in this study. 41.2% of the trade unions represented between 1 000 and 5 000 members. A few 17.6% represented between 5 000 and 10 000 members. Others 11.8% represented between 500 and 1 000 members. Yet others (11.8%) represented between 5 000 and 10 000 members. There were three trade unions which each represented large memberships, between 50 000 and 100 000

members; between 100 000 and 200 000 members; and between 200 000 and 400 000 members respectively.

**Figure 5.7 Percentage of union membership represented in this study**



#### **5.2.1.1.5 Bargaining council or statutory council presence**

The respondents were asked to state whether a bargaining council or statutory council had been established for their sector of which they were a member. Figure 5.8 shows that more than half (37) indicated that there was a bargaining council established for their industry/sector. A few (3) stated that there was a statutory council established for their sector. Some (14) stated that there was no bargaining council or statutory council established for their sector. A few other business respondents (13) denoted that they were unsure if a bargaining council or statutory council was established for their sector.



**Figure 5.8: Bargaining council or statutory council presence**

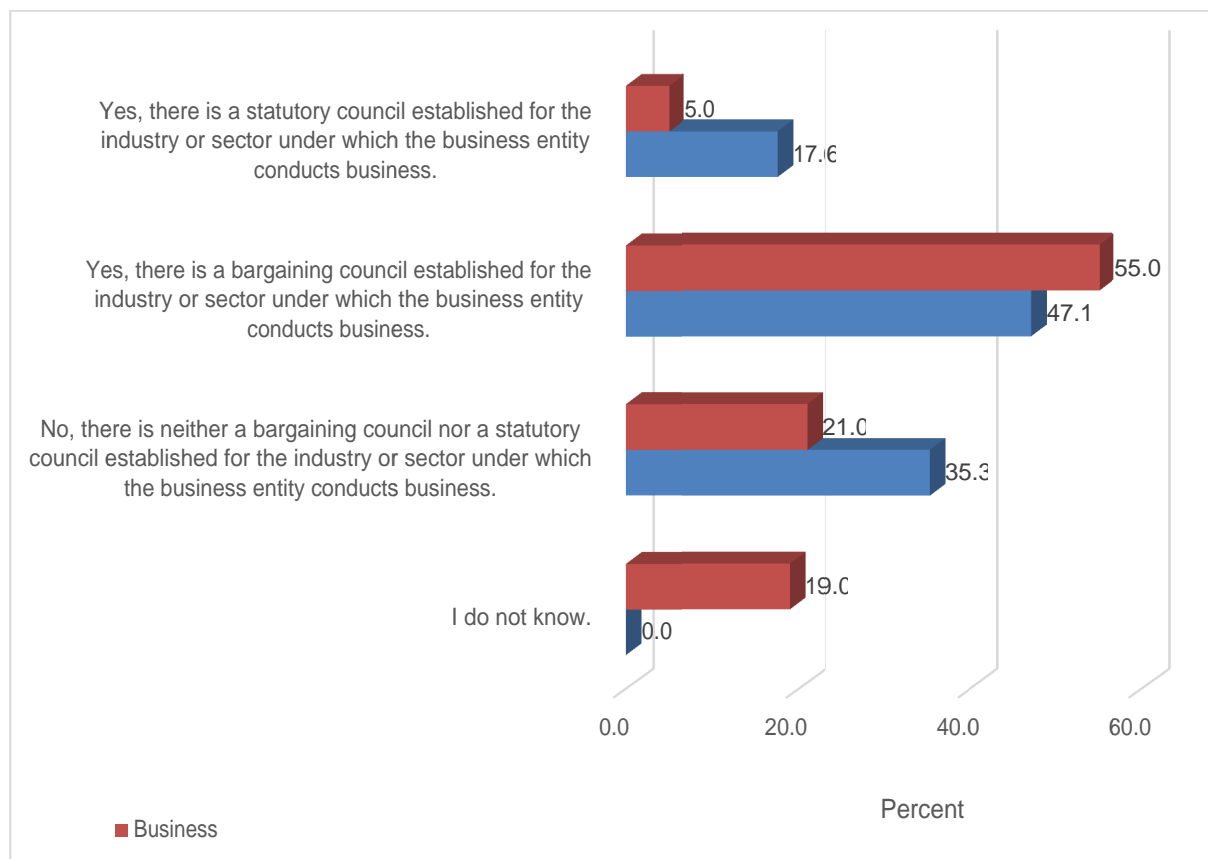


Figure 5.8 indicates that 47.1% of the trade union respondents and 55% of the business respondents confirmed that there was a bargaining council established for the industry/sector under which they fell. Whereas 17.6% of the trade union respondents and 5% of the business respondents demonstrated that there was a statutory council established for their sector. 35.3% of the trade union respondents and 21% of the business respondents stated that there was no bargaining council or statutory council established for their sector. None (0) of trade union respondents and 19% of the business respondents indicated that they were unaware.

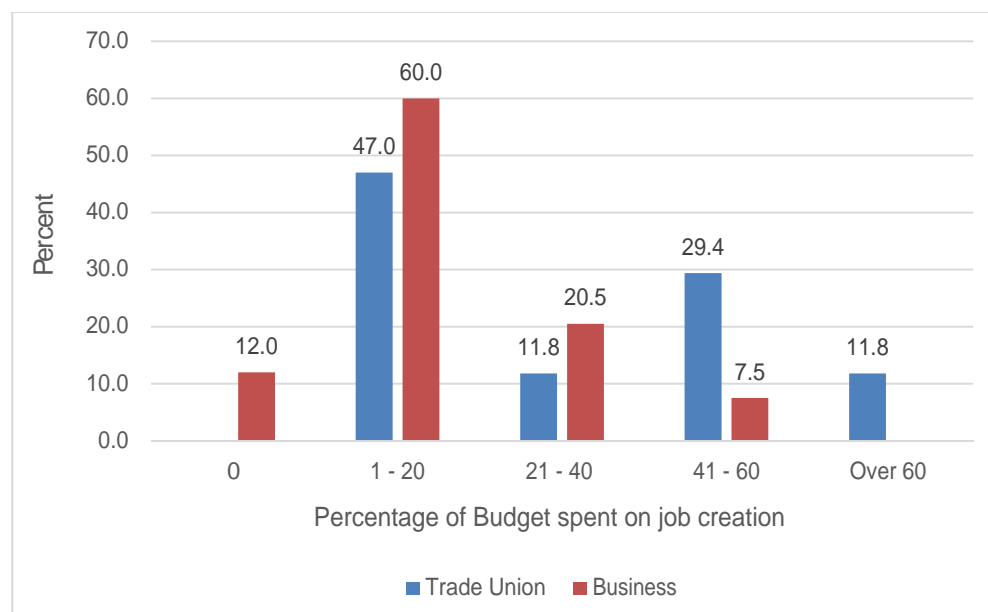
## 5.2.1.2 Presentation of results of budget spent on job creation

### 5.2.1.2.1 Percentage of budget spent on job creation

The respondents were asked to indicate the percentage of the organisation's budget that was spent on job creation, and the cumulative responses of the respondents are

reflected in Figure 5.9. While 12% of the business respondents indicated that there was no budget allocated for job creation. 47% of the businesses indicated that they spent less than 20% of their budget creating jobs, compared to 60% of the trade unions who indicated that businesses spent up to 20% of their budget creating jobs. Approximately 21% of the businesses indicated that they spent up to 40% of their budget on creating jobs, while 18.5% of the trade unions stated that businesses spent up to 40% of their budget creating jobs. Only 7.5% businesses indicated that they spent 60% of their budget creating jobs, compared to 60% of the trade unions who indicated that businesses spent up to 60% of their budget creating jobs. While approximately 12% of the trade union respondents indicated that there was no budget allocated for job creation that businesses spent in excess of 60% of their budget creating jobs.

**Figure 5.9: Percentage of budget that business respondents spent on job creation**



Thus, the majority of business respondents indicated that they spent up to 20% of their budget on creating jobs, compared to the trade union respondents who indicated the opposite.

**Figure 5.10: Percentage of the budget that trade union respondents felt businesses should spend on job creation**

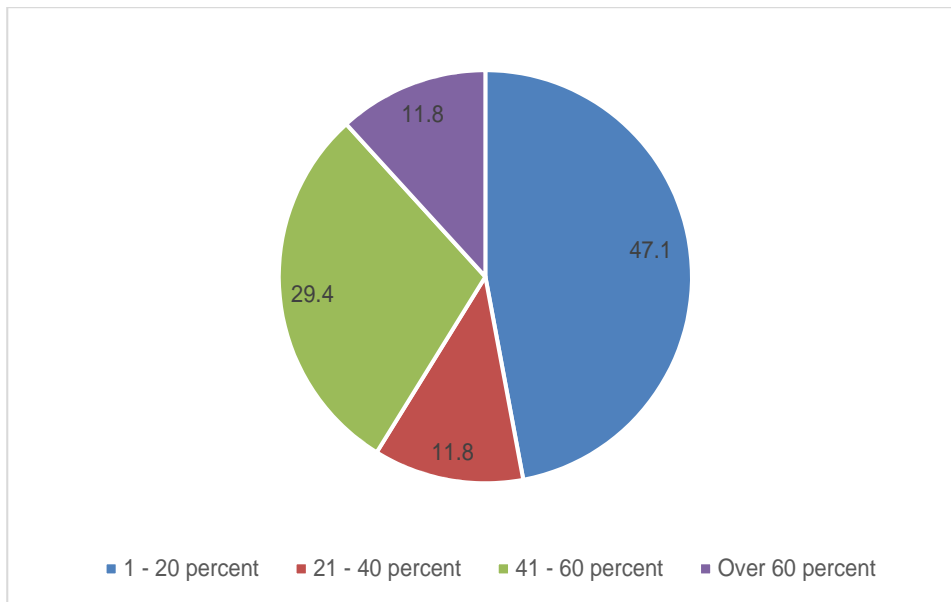


Figure 5.10 demonstrates the results of the trade union respondents' estimation of business budget allocation to job creation. Just under half (47.1%) of the trade union respondents indicated that businesses spend up to 20% of their budget on creating jobs. Almost one-third (29.4%) stated that some businesses spend between 41 – 60% of their budget on creating jobs. A few (11.8%) indicated that some businesses spend between 21% and 40% of their budget on creating jobs, whilst others (11.8%) indicated that some businesses spend over 60% of their budget on creating jobs.

The following section that follows analyses the scoring patterns of the two groups of respondents per variable per section.

#### **5.2.1.3 Presentation of results of parts 1 – 4 of respondents' opinions and perceptions on various issues, inter alia, the influence of labour legislation on job creation and job sustainability in South Africa**

The results are first presented using summarised percentages for the variables that constitute each section, as set out below and in Appendix 13 on page 555. According to McCaig and Dahlberg (2010: 206), the frequency table is a good point of departure to begin analysing data as it provides the researcher with an overview

of the results. This assisted the researcher in familiarising herself with the quantitative data, which provided her with a good basis to explore the quantitative data in greater depth. The frequency tables below look at each question on the various themes and provide the frequency for each possible response in terms of the percentage of respondents that gave a particular response to a particular question. Results are then further analysed according to the importance of the statements.

### **Part 1: The importance of social justice, human rights and decent work**

The survey respondents were asked to rate the importance of several statements which were aligned to social justice, human rights and decent work, and their cumulative responses are reflected in table 5.2.

The results in Table 5.2 reveal that:

- *For creation of job opportunities for work seekers*, the majority (72%) of business respondents thought that it was very important, while 22% saw it as important. Whereas, a vast majority (82.4%) of the trade union respondents believed that it was very important;
- *For freedom from exploitation in the workplace*, most (63.8%) of the business respondents considered it very important, while some (30.4%) saw it as important. Whereas, an overwhelming majority (94.1%) of trade union respondents deemed that it was very important;
- *For protection of workers' rights, ensuring workplace security*, less than half (43.5%) of the business respondents thought that it was very important, while some (37.7%) saw it as important. Whereas, the vast majority (82.4%) of trade union respondents felt that it was very important;
- *For the development of quality education and training systems*, the majority of business respondents (68.1%) considered it very important, while 29% perceived it as important. Whereas, the vast majority (88.2%) of trade union respondents deemed that it was very important;
- *For equality in the workplace*, just over half (52.2%) of business respondents understood that it was very important; while some (34.4%) comprehended it as important. Whereas, the vast majority (88.2%) of trade union respondents thought that it was very important;

- *For freedom from discrimination in the workplace*, 71% of business respondents considered that it was very important, while 24.6% understood it as important. Whereas, the vast majority (88.2%) of trade union respondents thought that it was very important; and
- *For a sustainable living whereby workers are paid a fair income*, less than half (44.9%) of the business respondents understood that it was very important, while approximately a third considered it as important. Whereas, the vast majority (88.2%) of trade union respondents believed that it was very important.

**Table 5.2: The importance of social justice, human rights and decent work**

1	Importance of social justice, human rights and decent work factors	Business					Trade Unions				
		Very important	Important	Neutral	Unimportant	Very unimportant	Very important	Important	Neutral	Unimportant	Very unimportant
a.	Creation of job opportunities for work seekers	72	22	3	1.5	1.5	82.4	5.8	11.8	0	0
b.	Freedom from exploitation in the workplace	63.8	30.4	4.3	0	1.5	94.1	5.9	0	0	0
c.	Protection of workers' rights, ensuring workplace security	43.5	37.7	18.8	0	0	82.4	17.6	0	0	0
d.	The development of quality education and training systems	68.1	29	1.5	0	1.4	88.2	11.8	0	0	0
e.	Equality in the workplace	52.2	34.4	14	0	1.4	88.2	11.8	0	0	0
f.	Freedom from discrimination in the workplace	71	24.6	2.9	0	1.5	88.2	11.8	0	0	0
g.	A sustainable living, whereby workers are paid a fair income	44.9	33.3	18.8	1.5	1.5	88.2	11.8	0	0	0

Both businesses and trade unions agreed that the creation of job opportunities was very important. The vast majority of trade union respondents felt that all seven statements pertaining to social justice, human rights and decent work were very important. However, the business respondents felt that some of statements were more important than others. There was strong agreement between the respondents on freedom from discrimination in the workplace; the development of quality education and training systems; and freedom from exploitation in the workplace. However, the business respondents disagreed with the trade unionists that equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights is very important.

An inspection of the results shown in the cross-tabulation table in Appendix 11 on page 545 show that the p-values for the relationship between the statements relating to social justice, human rights and decent work and all respondents are significant ( $p < 0.001$ ). Both the trade unions and business have strong opinions about the importance of social justice, human rights and decent work factors, the directions of which are seen in table 5.2.

## **Part 2:        The role of labour law**

Survey respondents were asked to indicate whether or not they agreed with eight statements pertaining to the role of labour law.

There is strong agreement between businesses and trade unions on the role of labour law in ensuring conformance with human rights and the regulation of the employment relationship, as well as on balancing the employment relationship. However, they differed on business sustainability; social equality; efficiency and worker security; social justice and efficiency; and economic equality.

The results on the strength of businesses and trade unions' agreement with the eight statements in Table 5.3 reveal that:

- *For balancing the employment relationship*, 21.7% of the business respondents strongly agreed, while less than 46.4% agreed. Whereas, the

- majority (76.54%) of trade union respondents strongly agreed and 23.5% concurred that balancing the employment relationship is the role of labour law;
- *For regulating the employment relationship*, a few (14.5%) of the business respondents strongly agreed, while more than half (58%) agreed. Whereas, more than half (58.8%) of the trade union respondents strongly agreed and approximately 24% concurred that regulating the employment relationship is the role of labour law;
  - *For ensuring conformance with human rights*, 26.1% of the business respondents strongly agreed, while more than half (55.1%) agreed. Whereas, the majority (76.5%) of the trade union respondents strongly agreed and approximately 24% concurred that ensuring conformance with human rights is the role of labour law;
  - *For ensuring business sustainability*, less than half (44.9%) of the business respondents strongly agreed, while a few (18.8%) agreed. Whereas, a majority (64.7%) of the trade union respondents strongly agreed and 29.4% concurred that ensuring business sustainability is the role of labour law;
  - *For enhancing social equality*, a few (17.4%) of the business respondents strongly agreed, while less than half (43.5%) agreed. Whereas, the majority (76.5%) of the trade union respondents strongly agreed and approximately 24% concurred that the role of labour law is to enhance social equality;
  - *For enhancing economic equality*, 20.3% of the business respondents strongly agreed, while 36.2% agreed. More than half (58.8%) of the trade union respondents strongly agreed and 35.3% concurred that the role of labour law is to enhance economic equality;
  - *For finding a balance between social justice and efficiency*, 21.7% business respondents strongly agreed, while 34.8% agreed. More than half (58.8%) of the trade union respondents strongly agreed and approximately 24% concurred that the role of labour law is to find a balance between social justice and efficiency; and
  - *For finding a balance between efficiency and work security*, 20.3% business respondents strongly agreed, while 37.7% agreed. Approximately 65% of the trade union respondents strongly agreed and 23.5% concurred that the role of labour law is to find a balance between efficiency and work security.

**Table 5.3: The role of labour law**

2.	The role of labour law is to:	Business					Trade Unions				
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
a.	Balance the employment relationship.	21.7	46.4	11.6	17.4	2.9	76.5	23.5	0	0	0
b.	Regulate (control, legalize and standardise) the employment relationship.	14.5	58.0	11.6	8.7	7.2	58.8	41.2	0	0	0
c.	Ensure conformance with human rights.	26.1	55.1	17.4	0	1.4	76.5	23.5	0	0	0
d.	Ensure business sustainability.	44.9	18.8	17.5	11.6	7.2	64.7	29.4	5.9	0	0
e.	Enhance social equality.	17.4	43.5	23.2	10.1	5.8	76.5	23.5	0	0	0
f.	Enhance economic equality.	20.3	36.2	27.5	8.7	7.3	58.8	35.3	5.9	0	0
g.	Find a balance between social justice and efficiency.	21.7	34.8	21.7	15.9	5.9	58.8	23.5	11.8	5.9	0
h.	Find a balance between efficiency and worker security.	20.3	37.7	20.3	18.8	2.9	64.7	23.5	11.8	0	0

Additional comments made by the business respondents on the role of labour law are as follows:

**Legislation:**

- “I support all the initiatives by government to ensure that there is fair labour practice. Therefore, any legislation is welcomed to try to change the past”.
- “Legislation focuses too much on protecting labour and structurally changing the economy along racial lines”.



**Socio-economic and political factors:**

- Government policies lack real foresight and an understanding of the implications to the economy as a whole, and business specifically. The current state of the economy and the value of the South African rand is reflective of policy failure.
- Both government and the unions view business or the West (Capitalism) as the enemy. Their communist/socialist ideology continues to dominate, even though the Soviet Union/Cuba/Zimbabwe are key failures in this regard. Yet, there is a continued belief that this will cure South Africa's ills.
- As an investor, why would one want to invest in an economically unstable country where business is constrained in its ability to flourish?

A trade union survey respondent commented that:

- Government should continue to respect the tripartite alliance with business and labour and employers and labour must respect the laws of the country.

The results shown in the cross-tabulation table in Appendix 11 on page 545 show that there is a highly significant ( $p < 0.001$ ) relationship between all eight statements pertaining to the role of labour law and all respondents (trade unions and business) the directions of which are seen in table 5.3.

**PART 3: Influence of labour legislation on job creation****5.2.1.3.1 Basic Conditions of Employment, 75 of 1997 (BCEA)**

In this section, both businesses and trade unions were asked to state how likely the regulation of working hours, work-time flexibility, labour inspectors monitoring and enforcing of the BCEA influences job creation.

#### **5.2.1.3.1.1 The influence of the BCEA's regulation of working hours on job creation**

The survey respondents were asked to state how likely the statements on the BCEA's regulation of working hours influence job creation, and their cumulative responses are reflected in Table 5.4.

The results in Table 5.4 on the influence of working hours on job creation indicate that:

- *Ordinary hours of work:* 36.2% of the business respondents indicated that it was very likely, while others (29.0%) denoted that it was quite likely to influence job creation. Less than half (41.2%) of the trade union respondents signified that it was very likely, while approximately 30% suggested that it was quite likely that ordinary hours of work influences job creation;
- *Overtime:* 23.2% of the business respondents indicate that it was very likely, while approximately 40% suggested that it was quite likely to influence job creation. Approximately 30% trade union respondents showed that it was very likely, while 41.2% implied that it was quite likely that overtime influences job creation;
- *Sundays:* Approximately 25% of the business respondents signified that it was very likely, while 29.0% showed that it was quite likely that it influences job creation. On the other hand, 35.3% of the trade union respondents indicated that it was very likely, while 35.3% implied that it was quite likely that the regulation of work on Sundays influences job creation;
- *Night work:* 20.3% of the business respondents suggested that it was very likely, while a few (15.9%) suggested that it was quite likely that it influences job creation. 23.5% trade union respondents revealed that it was very likely, while 41.2% indicated that it was quite likely that the regulation of night work influences job creation;
- *Public holidays:* 21.7% of the business respondents designated that it was very likely, while 23.2% implied that it was quite likely that it influences job creation. On the other hand, a few (17.6%) of the trade union respondents suggested that it was very likely, while 47.1% signified that it was quite likely that the regulation of work on public holidays influences job creation.

**Table 5.4: The influence of the BCEA's regulation of working hours on job creation**

4.	Influence of working hour categories on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Ordinary hours of work (Section 9).	36.2	29.0	14.5	15.9	4.4	41.2	29.4	17.6	5.9	5.9
b.	Overtime hours (Section 10).	23.2	39.1	17.4	15.9	4.4	29.4	41.2	11.8	17.6	0
c.	Working on Sundays (Section 16).	24.6	29.0	23.2	15.9	7.3	35.3	35.3	11.8	17.6	0
d.	Night work (Section 17).	20.3	15.9	34.8	18.8	10.2	23.5	41.2	29.40	5.9	0
e.	Work on Public holidays (Section 18).	21.7	23.2	24.6	18.8	11.7	17.6	47.1	17.7	17.6	0

Consequently, with regard to working hours, the majority (70.6%) of the trade union respondents concurred that the regulation of ordinary hours of work; overtime and work on Sundays; night work, and work on public holidays are likely to influence job creation. A majority (62.3) of the business respondents agree that the regulation of ordinary hours of work and overtime influenced job creation, but they disagreed on work on Sundays, public holidays and night work influencing job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 546 indicate that there is a highly significant ( $p < 0.001$ ) relationship between the statements relating to ordinary hours, overtime hours and night work on the BCEA's regulation of working hours influence on job creation by both groupings (trade unions and business combined). Thirty-six percent of the business respondents reckoned that the regulation of night work is likely to influence job creation. There is no significant relationship between the statements on work on public holidays and working on Sundays and all the respondents' combined p-values. Fifty-four percent of the respondents deemed it likely that the regulation of work on Sunday's influences job creation. Forty-five percent supposed that the regulation of work on public holidays is likely to influence job creation.

### 5.2.1.3.1.2 The influence of BCEA's work-time flexibility provisions on job creation

The survey respondents were asked to state how likely the statements in this section on the BCEA's regulation of work-time flexibility influencing job creation, and their cumulative responses are reflected in Table 5.5.

The results shown in Table 5.5 on the influence of work-time flexibility reveal that:

- *Regulation of compressed week:* Approximately one quarter (24.6%) of the business respondents indicated that it is very likely, while 29.0% denoted that it is quite likely to influence job creation. On the other hand, 29.4% of the trade union respondents indicated that it was very likely, while 23.5% revealed that the provision relating to a compressed working week is quite likely to influence job creation.
- *Averaging of hours:* 26.1% of the business respondents implied that it is very likely, while 30.4% indicated that it is quite likely to influence job creation. 29.4% of the trade union respondents indicated that it is very likely, while 29.42% denoted that the provision relating to the averaging of working hours is quite likely to influence job creation.

**Table 5.5: The influence of the BCEA's regulation of working time flexibility on job creation**

5.	Influence of work time flexibility on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Compressed working week (Section 11).	24.6	29.0	23.2	15.9	7.3	29.4	23.5	35.3	5.9	5.9
b.	Averaging of hours worked (Section 12).	26.1	30.4	26.1	14.5	2.9	29.4	29.4	35.3	0	5.9

Thus, on work-time flexibility, at least half of the respondents in each of the groups agreed that work-time flexibility influenced job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 546 for this section indicate that there is a significant ( $p < 0.007$ ) relationship between both statements on work-time flexibility influencing job creation and by all respondents (trade union and business) combined p-values. There is a highly significant relationship between the provision relating to the averaging of hours worked ( $p < 0.001$ ) and by business.

#### **5.2.1.3.1.3 The influence of labour inspectors' monitoring and enforcing compliance with the BCEA on job creation**

The survey respondents were asked to state how likely the statements on labour inspectors' monitoring and enforcement of compliance with the BCEA influencing job creation are.

The results shown in Table 5.6 pertaining to the influence of monitoring and enforcement of compliance with BCEA by labour inspectors reveal that:

- *Monitoring compliance with the BCEA by labour inspectors:* A few (17.4%) business respondents suggested that it was very likely, while 20.3% implied that it was quite likely to influence job creation. On the other hand, 29.4% of the trade union respondents indicated that it was very likely, while approximately a third (35.3%) signified that the labour inspectors' monitoring of compliance with BCEA was quite likely to influence job creation.
- *Enforcing compliance with the BCEA by labour inspectors:* A few (18.8%) business respondents showed that it was very likely, while 23.2% revealed that it was quite likely to influence job creation. 35.3% of the trade union respondents indicated that it was very likely, while 29.42% indicated that the labour inspectors' monitoring of compliance with BCEA was quite likely to influence job creation.

**Table 5.6: The influence of labour inspectors monitoring and enforcement of compliance with the BCEA on job creation**

		Business					Trade Unions				
4.	Influence of labour inspectors monitoring and enforcing compliance with BCEA on job creation	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring compliance (Sections 63 - 84).	17.4	20.3	27.5	21.7	13.0	29.4	35.3	23.5	5.9	5.9
g.	Enforcing compliance (Sections 63 - 84).	18.8	23.2	26.1	8.8	13.0	35.3	29.4	23.5	5.9	5.9

An additional comment made by one of the business respondents was:

- “Consider the influence of the legislation and compliance thereto in terms of SME's that may not fully understand all these requirements”.

The results in the cross-tabulation table in Appendix 11 on page 546 for this section show that there no significant ( $p = 0.239$ ) relationship between the statements on the monitoring and enforcement of the BCEA by labour inspectors (Sections 63 - 84) and all respondents (combined p-value) ( $p > 0.05$ ).

#### **5.2.1.3.2 The Labour Relations Act, No.66 of 1995 (LRA)**

The survey respondents were asked to state the likelihood that the LRA's equity and fairness requirements, as well as the monitoring and enforcement of compliance thereof influenced job creation.

#### 5.2.1.3.2.1 Influence of LRA's fairness requirements on job creation

The survey respondents were asked to state the likelihood of the LRA's general fairness requirements influence on job creation, and their cumulative responses are reflected in Table 5.7.

There is strong agreement between the businesses and trade unions on two of the statements relating to the regulation of alternative employment contracts and industrial action as having a likely influence on job creation. However, they disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation.

The results shown in Table 5.7 on the influence of the LRA's fairness requirements in general on job creation reveal that:

- *Regulation of the use of alternative employment contracts:* 54% of the business respondents indicated that it was very likely, while 24% denoted that it was quite likely to improve job creation. However, approximately a third (35%) of the trade union respondents indicated that it was very likely, while 42% denoted that the regulation of the use of alternative employment contracts was quite likely to improve job creation.
- *Protection of workers affected by mergers, takeovers or transfers:* 19% of the business respondents indicated that it was very likely while 26% denoted that it was quite likely to improve job creation. On the other hand, a few (17.6%) of the trade union respondents indicated that it was very likely, while 47.1% denoted that Section 197's protection of workers affected by mergers, takeovers or transfers was quite likely to improve job creation.
- *Regulation of industrial action promotes labour peace in the workplace:* 39% of the business respondents indicated that it was very likely, while 25% denoted that it was quite likely to influence job creation. 41.2% of the trade union respondents indicated that it was very likely, while 41.2% denoted that it was quite likely that the regulation of industrial action to promote labour peace in the workplace influences job creation.

**Table 5.7: The influence of the LRA's fairness requirements on job creation**

		Business					Trade Unions				
6.	Influence of the LRA's fairness requirements on job creation	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Regulation of the use of "alternative" employment contracts to improve job creation (Sections 198 and 200A)	54	24	10	6	6	35	42	11.5	0	11.5
b.	Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	19	26	32	16	7	17.6	47.1	11.8	17.6	5.9
c.	Regulation of industrial action to promote labour peace in the workplace (Sections 64 and 65)	39	25	16	11	9	41.2	41.2	11.8	0	5.8

The results in the cross-tabulation table in Appendix 11 on page 546 suggest that there is a highly significant relationship ( $p < 0.001$ ) between both statements in this section on the influence of the LRA's fairness requirements on job creation relating to the regulation of alternative employment contracts, as well as the regulation of industrial action and by all respondents (combined p-value). The relationship between the statement on the protection of workers in terms of Section 197 and by both groupings of respondents (combined p-value) is also significant ( $p < 0.002$ ).

#### **5.2.1.3.2.2 The influence of the LRA's fair dismissal requirements on job creation**

The survey respondents were asked to state how likely the statements on the LRA's requirements for fair dismissals influencing job creation, and their cumulative responses are reflected in Table 5.8.



**Table 5.8: The influence of the LRA's fair dismissals requirements on job creation**

7	Influence of fair dismissal requirements on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	General requirements for fair dismissals (Section 188)	26	32	26	13.5	2.5	52.9	35.3	5.9	5.9	0
b.	Fairness requirements minor retrenchments (Section 189)	26	34	24	13	3	41.2	41.2	11.8	0	5.8
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	25	37	16	16	6	35.3	35.3	11.8	11.8	5.8
d.	Fairness retrenchment requirements for mergers, takeovers or transfers (Section 197)	22	34	25	13	6	35.3	35.3	23.5	0	5.9

The results shown in Table 5.8 on the influence of the LRA's fair dismissal requirements on job creation reveal that:

- *General requirements for a fair dismissal:* 26% of the business respondents revealed that it is very likely, while 32% suggested that it was quite likely to influence job creation. On the other hand, 52.9% of the trade union respondents indicated that it is very likely, while 35.3% suggested that the general requirements for a fair dismissal are quite likely to influence job creation.
- *Minor retrenchments:* 26% of the business respondents implied that it was very likely, while approximately a third (34%) suggested that it is quite likely to influence job creation. However, 41.2% of the trade union respondents indicated that it is very likely, while an equal number (41.2%) indicated that

the fairness requirements for minor retrenchments are quite likely to influence job creation.

- *Major retrenchments:* Approximately a quarter (25%) of the business respondents showed that it was very likely, while 37% denoted that it is quite likely to influence job creation. 35.3% of the trade union respondents revealed that it is very likely, while an equal number (35.3%) indicated that the fairness requirements for major retrenchments are quite likely to influence job creation.
- *Mergers, take overs or transfer retrenchments:* 22% of the business respondents implied that it is very likely, while 34% indicated that it is quite likely to influence job creation. On the other hand, 35.3% of the trade union respondents felt that it is very likely, while an equal number (35.3%) revealed that the fairness requirements in terms of Section 197 are quite likely to influence job creation.

Although the business and trade union respondents agreed with the statements pertaining to influence the LRA's fair dismissals requirements on job creation, they differed on how likely the influence was. The majority of the trade union respondents indicated a stronger likelihood that the LRA's requirements for fair dismissals will influence job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 546 for this section reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to the LRA's fair dismissal requirements influence on job creation and by all respondents (combined p-value).

#### **5.2.1.3.2.3 The influence of the LRA's provisions for equality and equal treatment in the workplace on job creation**

The survey respondents were asked to state how likely the statements on the LRA's regulation of equality and equal treatment in the workplace influenced job creation, and their cumulative responses are reflected in Table 5.9.

There is agreement between the businesses and trade unions on two of the statements relating to the regulation of alternative employment contracts and standardisation of income as likely to influence job creation. However, they disagreed on the right not to discriminate, the regulation of unfair labour practices and automatically unfair dismissals influencing job creation.

**Table 5.9: Survey responses to the LRA's provisions on equality and equal treatment in the workplace influencing job creation**

8.	Influence of the LRA's requirement for equality and equal treatment in the workplace on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Standardisation of income and employment conditions (Section 198A (4A-F))	41	24	20	13	2	58.8	11.8	11.8	0	17.6
b.	Control of alternative "employment" contracts (Sections 198 and 200A)	32	36	18	12	2	35.3	29.4	11.8	5.9	17.6
c.	Not to discriminate unfairly in recruitment and selection (Sections 186 and 187)	28	28	29	12	3	47.1	29.4	23.5	0	0
d.	Regulation of unfair labour practices (Section 186 (2))	26	21	38	10	5	47	23.5	11.8	5.9	11.8
e.	Automatically unfair dismissals (Section 187)	24	26	31	13	6	35.3	23.5	11.8	11.8	17.6

The results shown in Table 5.9 on the influence of the LRA's regulation of equality and equal treatment in the workplace on job creation reveal that:

- *Standardisation of income and employment conditions:* 41% of the business respondents felt that it was very likely, while 24% showed that it was quite likely to influence job creation. 58.8% of the trade union respondents indicated that it was very likely, while a few (11.8%) revealed that standardisation of income and employment conditions was quite likely to influence job creation.

- *Control of alternative employment contracts:* 32% of the business respondents implied that it was very likely, while 36% indicated that it was quite likely to influence job creation. On the other hand, 35.3% trade union respondents signified that it was very likely, while 29.4% suggested that the control of alternative employment contracts was quite likely to influence job creation.
- *Not to discriminate unfairly in selection and recruitment:* 28% of the business respondents denoted that it was very likely while, equally, 28% revealed that it was quite likely to influence job creation. 47.1% of the trade union respondents indicated that it was very likely, while 29.4% implied that the requirement not to discriminate unfairly in selection and recruitment was quite likely to influence job creation.
- *Regulation of unfair labour practices:* 26% of the business respondents revealed that it was very likely, while 21% showed that it was quite likely to influence job creation. 47% of the trade union respondents indicated that it was very likely, while 23.5% denoted that the regulation of unfair labour practices was quite likely to influence job creation.
- *Automatically unfair dismissals:* 24% of the business respondents suggested that it was very likely, while 26% implied that it was quite likely to influence job creation. 35.3% of the trade union respondents indicated that it was very likely, while 23.5% showed that automatically unfair dismissals were quite likely to influence job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 547 reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to the LRA's provisions on equity and equal treatment requirements in the workplace influencing job creation and by all the respondents (combined p-value), except for automatically unfair dismissals ( $p < 0.011$ ).

#### 5.2.1.3.2.4 The influence of monitoring and enforcement of compliance with the LRA on job creation

The survey respondents were asked to state how likely the statements pertaining to the monitoring and enforcement of compliance with the LRA are influencing job creation, and their cumulative responses are reflected in Table 5.10 and Table 5.11.

##### 5.2.1.3.2.4.1 The influence of bargaining council agents' monitoring and enforcement of compliance with collective agreements on job creation

The survey respondents were asked to state how likely the statements pertaining to the bargaining council agents' monitoring and enforcement of compliance with collective agreements are influencing job creation, and their cumulative responses are reflected in Table 5.10.

**Table 5.10: The influence of bargaining council agents' monitoring and enforcement of compliance with the LRA collective agreements on job creation**

6.	Influence of bargaining council agents' monitoring and enforcing compliance on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements to ensure that workers are treated fairly (Section 33)	25	24	26	19	6	35.3	47	11.8	5.9	0
e.	Enforcement of collective agreements to ensure that workers are treated fairly (Section 33)	25	21	29	18	7	41.2	29.4	23.5	5.9	0

The results shown in Table 5.10 reveal that:

- *Monitoring of collective agreements:* A quarter (25%) of the business respondents suggested that it was very likely, while (24%) implied that it was

quite likely to influence job creation. 35.3% of the trade union respondents indicated that it was very likely, while 47% felt that bargaining council agents' monitoring of collective agreements was quite likely to influence job creation.

- *Enforcement of collective agreements:* A quarter (25%) of the business respondents showed that it was very likely, while 21% denoted that it was quite likely to influence job creation. On the other hand, 41.2% of the trade union respondents signified that it was very likely, while 29.4% revealed that bargaining council agents' enforcing of collective agreements was quite likely to influence job creation.

There is significant disagreement between businesses and trade unions on the influence of the monitoring and enforcement of collective agreement by bargaining council agents on job creation. Less than half of the business respondents denoted that it was likely to influence job creation, whereas the majority of trade union respondents indicated that the monitoring and enforcement of collective agreements by bargaining council agents is likely to influence job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 547 for this section on the influence of bargaining council agents monitoring and enforcing compliance with the LRA collective agreements on job creation reveal that there is a significant ( $p < 0.004$ ) relationship between both statements and all the respondents (combined p-value).

One of the business respondents, in the additional comments section, elaborated on this issue:

- “The bargaining council is selective in terms of which businesses they enforce compliance. It severely affects the sustainability of compliant factories trying to compete with non-compliant factories”.

#### 5.2.1.3.2.4.2 The influence of labour inspectors' monitoring and enforcing compliance with the LRA on job creation

The survey respondents were asked to state how likely the statements pertaining to the labour inspectors' monitoring and enforcement of compliance with the LRA are influencing job creation, and their cumulative responses are reflected in Table 5.11 .

**Table 5.11: The influence of labour inspectors' monitoring and enforcing compliance with the LRA on job creation**

8.	Influence of labour inspectors' monitoring and enforcing compliance on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring (Sections 33 and 84)	16	18	35	18	13	29.4	35.3	5.9	11.8	17.6
g.	Enforcement (Sections 33 and 84)	22	18	31	17.4	11.6	29.4	29.4	11.8	11.8	17.6

The results shown in Table 5.11 reveal that:

- *Monitoring:* 16% of the business respondents suggested that it was very likely, while 18% implied that it was quite likely to influence job creation. However, 29.4% trade union respondents denoted that it was very likely, while 35.3% indicated that it was quite likely that labour inspectors' monitoring of compliance with the LRA influences job creation.
- *Enforcement:* 22% of the business respondents denoted that it was very likely, while 18% suggested that it was quite likely to influence job creation. 29.4% of the trade union respondents revealed that it was very likely, while equally 29.4% implied that it was quite likely that labour inspectors' enforcement of compliance with the LRA influences job creation.

Thus the results in Table 5.11 reveal that monitoring and enforcement of the LRA by labour inspectors is unlikely to influence business in terms of job creation. The possible reason is that inspections do not occur on a regular basis.

Approximately a third (34%) of the business respondents indicated that it was likely to influence job creation, whereas approximately two-thirds (64.7%) of the trade union respondents indicated that monitoring and enforcement of the LRA by labour inspectors was likely to influence job creation. However, the results shown in the cross-tabulation table in Appendix 11 on page 547 for this section on the influence of labour inspectors monitoring and enforcing compliance with the LRA on job creation reveal that there no significant relationship between both statements and all the respondents (combined p-value).

### 5.2.1.3.3 The Employment Equity Act, No.55 of 1998 (EEA)

#### 5.2.1.3.3.1 The influence of the promotion of equality and equal treatment in the workplace on job creation

**Table 5.12: The influence of the EEA's promotion of equality and equal treatment in the workplace on job creation**

9.	EEA's promotion of equality and equal treatment and its influence on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Prohibition of unfair discrimination (Section 6)	16	25	34	20	5	47.1	29.4	17.6	5.9	0
b.	Removal of unfair discrimination (Section 9 (3) & (4))	18	23	35	19	5	52.9	23.5	11.8	11.8	0
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	31	25	24	13	7	59	23.5	17.5	0	0
d.	Regulation of unfair labour practices (Section 186 (2))	18	24	40	12	6	52.9	35.3	11.8	0	0
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	36	24	16	16	8	41.2	35.3	11.8	11.7	0
10e	Affirmative action (Sections 12-27)	32	31	13	18	6	41.2	17.6	35.3	0	5.9



The survey respondents were asked to indicate how likely the statements pertaining to the EEA's promotion of equality and equal treatment are influencing job creation, and their cumulative responses are reflected in Table 5.12.

The results shown in Table 5.12 of the influence of the EEA's regulation of promotion of equality and equal treatment in the workplace on job creation reveal that:

- *Prohibition of unfair discrimination:* Only 16% of business respondents implied that it was very likely, while a quarter 25% suggested that it was quite likely to influence job creation. 47.1% of the trade union respondents signified that it was very likely, while 29.4% denoted that the prohibition of unfair discrimination was quite likely to influence job creation.
- *Removal of unfair discrimination:* 18% of the business respondents revealed that it was very likely, while 23% showed that it was quite likely to influence job creation. 52.9% of the trade union respondents signified that it was very likely, while 23.5% suggested that the removal of unfair discrimination was quite likely to influence job creation.
- *Right to equal income distribution:* 31% of the business respondents felt that it was very likely, while a quarter (25%) indicated that it was quite likely to influence job creation. However, 59% of the trade union respondents indicated that it was very likely, while 23.5% implied that the right to equal income distribution was quite likely to influence job creation.
- *Regulation of unfair labour practices:* 18% of the business respondents revealed that it was very likely, while 24% suggested that it was quite likely to influence job creation. 52.9% of the trade union respondents indicated that it was very likely, while 35.3% implied that the regulation of unfair labour practices was quite likely to influence job creation.
- *Promotion of affirmative action in selection and recruitment:* 36% of the business respondents indicated that it was very likely, while 24% showed that it was quite likely to influence job creation. 41.2% of the trade union respondents indicated that it was very likely, while 35.3% implied that the promotion of affirmative action in selection and recruitment was quite likely to influence job creation.

- *Affirmative action:* Approximately a third (32%) of the business respondents showed that it was very likely, while 31% revealed that it was quite likely to influence job creation. However, 41.2% of the trade union respondents indicated that it was very likely, while 17.6% showed that affirmative action was quite likely to influence job creation.

The business responses in Table 5.12 reveals that the EEA's provisions on the prohibition of discrimination, removal of unfair discrimination and unfair labour practices are less likely to influence them to create jobs. The EEA's provisions, however, on equal income distribution and the promotion of affirmative action are more likely to influence them in terms of job creation. The trade unions indicated that there is a greater likelihood that all the statements pertaining to the EEA's provisions on the prohibition of discrimination, removal of unfair discrimination and unfair labour practices will influence job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 547 for this section on the influence of EEA's promotion of equality and equal treatment and its influence on job creation reveal that there is a significant ( $p < 0.005$ ) relationship between all the statements in this section and all the respondents (combined p-value).

#### **5.2.1.3.3.2 The influence of labour inspectors' monitoring and enforcement of compliance with the EEA on job creation**

The survey respondents were asked to state how likely the statements pertaining to the labour inspectors' monitoring and enforcement of compliance with the EEA are influencing job creation, and their cumulative responses are reflected in Table 5.12.

The results shown in Table 5.13 reveal that:

- *Monitoring:* 22% of the business respondents implied that it was very likely, while 16% suggested that it was quite likely to influence job creation. On the other hand, 35.3% of the trade union respondents indicated that it was very

likely, while 29.4% indicated that labour inspectors' monitoring of compliance with the EEA influences job creation.

- *Enforcement:* 22% of the business respondents suggested that it was quite likely, while 19% revealed that it was very likely to influence job creation. 29.4% of the trade union respondents indicated that it was quite likely, while equally 29.4% indicated that labour inspectors' enforcing of compliance with the EEA influences job creation.

**Table 5.13: The influence of labour inspectors' monitoring and enforcement of compliance with the EEA on job creation**

9.	Influence of labour inspectors' enforcing compliance with EEA on job creation	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of EEA's provisions (Section 34)	22	16	28	22	12	35.3	29.4	23.5	5.9	5.9
g.	Enforcement of EEA's provisions (Sections 35 - 45)	22	19	29	19	11	29.4	29.4	29.4	5.9	5.9

Thus, the results shown in Table 5.13 reveal that monitoring and enforcement by labour inspectors is not likely to influence job creation. The possible reason is that inspections do not occur on a regular basis. The results shown in the cross-tabulation in Appendix 11 on page 548 reveal that there is no significant relationship between both the statements in this section on the influence of labour inspectors monitoring and enforcing compliance with the EEA on job creation and all respondents (combined p-value).

#### **5.2.1.3.4. Ancillary legislation likely to influence job creation**

The respondents were asked to state how likely the statements pertaining to various ancillary legislation are likely to influence job creation, and their cumulative responses are reflected in the Table 5.14.

The results in Table 5.14 reveal that:

- *Job creation schemes:* In terms of the ESA, 20% of the business respondents denoted that it was very likely, while 35% indicated that it was quite likely to influence job creation. 47.1% of the trade union respondents indicated that it was very likely, while 23.5% revealed that job creation schemes in terms of ESA was quite likely to influence job creation.
- *Tax incentive schemes:* In terms of the ETIA, approximately a third (34%) of the business respondents signified that it was very likely, while 38% noted that it was quite likely to influence job creation. Approximately 41% of the trade union respondents indicated that it was very likely, while 29.4% felt that tax incentive schemes in terms of ETIA were quite likely to influence job creation.
- *Employment services offices:* In terms of the SDA, some 29% of the business respondents suggested that it was very likely, while 21% implied that it was quite likely to influence job creation. Approximately 41% of the trade union respondents signified that it was very likely, while 17.6% implied that employment services offices in terms of the SDA were quite likely to influence job creation.
- *Training the unemployed:* In terms of UIA, 30% of the business respondents denoted that it was very likely, while 32% indicated that it was quite likely to influence job creation. 41.2% of the trade union respondents indicated that it was very likely, while 47% stated that it was quite likely that training the unemployed, in terms of the UIA's influences job creation.
- *Black ownership, corporate advancement and involvement of black people in terms of the B-BBEEA:* 39% of the business respondents indicated that it was very likely, while 24% denoted that it was quite likely to influence job creation. 29.4% of the trade union respondents revealed that it was very likely, while 23.5% suggested that black ownership, corporate advancement and the involvement of black people in business in terms of the B-BBEEA were quite likely to influence job creation.

**Table 5.14: Survey responses on the influence of ancillary legislation on job creation**

		Business					Trade Unions				
10.	Influence of ancillary legislation on job creation	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	ESA job creation schemes (Sections 5 & 6)	20	35	23	19	3	47.1	23.5	23.5	0	5.9
b.	ETIA tax incentive schemes (Sections 2 & 3)	34	38	18	8	2	41.2	29.4	23.5	0	5.9
c.	SDA employment services offices (Sections 23 & 24)	29	21	35	13	2	41.2	17.6	35.3	0	5.9
d.	UIA training of unemployed workers (Sections 18 & 19)	30	32	18	15	5	41.2	47	11.8	0	0
f.	B-BBEE black ownership, corporate advancement and involvement of black people (Section 2)	39	24	13	15	9	29.4	23.5	41.2	0	5.9

Hence, the majority of both businesses and trade unions indicated that tax incentive schemes are likely to influence job creation. The majority of the trade union respondents also indicated that training of the unemployed and job creation schemes are likely to influence job creation. The two groups of respondents disagreed on the employment services offices and B-BBEEA influencing job creation.

The results shown in the cross-tabulation table in Appendix 11 on page 548 reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the respondents (combined p-value) and the four statements that job creation schemes, tax incentive schemes, employment services offices, training of the unemployed workers and Black ownership, corporate advancement and involvement of black people are likely to influence job creation.

## **PART 4: The influence of labour legislation on job sustainability**

### **5.2.1.3.5 The Basic Conditions of Employment Act, No.75 of 1997 (BCEA)**

The survey respondents were asked to state how likely the statements pertaining to the BCEA's provisions on work security and the labour inspectors' monitoring and enforcement of compliance with the BCEA are to influence job sustainability.

#### **5.2.1.3.5.1 The BCEA's work security provisions' influence on job sustainability**

The survey respondents were asked to state how likely the statements pertaining to the BCEA's work security provisions, the regulation of overtime, sick leave, maternity leave, minimum wages, notice periods and severance pay are influencing job sustainability, and their cumulative responses are reflected in Table 5.15.

**Table 5.15: Survey responses to work security influencing job sustainability**

	Influence of the BCEA's work security provisions on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
14.a.	Control of the number of overtime hours worked (Section 10)	28	32	23	13	4	41.2	47.1	5.9	5.8	0
14.b.	Regulation of sick leave (Sections 22 to 24)	28	37	16	16	3	29.4	41.2	11.8	11.8	5.8
14.c.	Regulation of maternity leave (Section 25 and 26)	30	34	19	15	2	17.6	35.3	23.5	17.6	6
15.	Notice periods (Section 17)	23	26	33	14	4	5.9	29.4	52.9	0	11.8
16.	Minimum wages (Section 51-58)	40.1	27.1	22.7	7.2	2.9	17.6	41.2	23.5	5.9	11.8
17.	Severance pay (Section 12)	25	33	31	11	0	23.5	11.8	41.2	17.6	5.9

The results shown in Table 5.15 on the influence of work security on job sustainability show that:

- *Control of overtime:* 28% of the business respondents suggested that it was very likely, while 32% indicated that it was quite likely that it influences job sustainability. Approximately 41% of the trade union respondents suggested that it was very likely, while 47.1% signified that it was quite likely that the control of overtime hours influenced job retention.
- *Regulation of sick leave:* 28% of the business respondents implied that it was very likely, while 37% indicated that it was quite likely that it influences job sustainability. On the other hand, 29.4.2% of trade union respondents revealed that it was very likely, while approximately 41% revealed that it was quite likely that the regulation of sick leave influenced job retention.
- *Regulation of maternity leave:* 30% of the business respondents showed that it was very likely, while approximately a third (34%) noted that it was quite likely that it influences job sustainability. 17.6% of the trade union respondents indicated that it was very likely, while 35.3% indicated that it was quite likely that the regulation of maternity leave influenced job sustainability.
- *Notice periods:* 23% of the business respondents noted that it was very likely, while 26% revealed that it was quite likely that it influences job sustainability. Only 5.9% of trade union respondents suggested that it was very likely, while 29.4% implied that it was quite likely that notice periods influenced job sustainability.
- *Minimum wages:* 40% of the business respondents revealed that it was very likely, while 27% suggested that it was quite likely that it influences job sustainability. A few (17.6%) of the trade union respondents implied that it was very likely, while 41.2% indicated that it was quite likely that minimum wages influenced job sustainability.
- *Severance pay:* A quarter (25%) of the business respondents indicated that it was very likely, while approximately a third (32%) noted that it was quite likely that it influences job sustainability. 23.5% of the trade union respondents revealed that it was very likely, while 11.8% showed that it was quite likely that severance pay influenced job sustainability.

There is agreement amongst the survey respondents that the BCEA's provisions for work security through the regulation of overtime, sick leave, maternity leave, minimum wages, notice periods and severance pay is likely to influence job sustainability. The majority of the respondents indicated that the regulation of sick leave and maternity leave is likely to influence the retention of jobs. There is close agreement between the two groups' responses on the regulation of minimum wages as likely to influence sustaining jobs. There is a marked difference, however, between the two groups on the control of overtime hours and the regulation of severance pay influencing job retention and sustainability. In addition, the agreement on the likelihood of the regulation of notice periods influencing job sustainability is low.

Two of the business respondents made additional comments on working hours, minimum wages and sick leave as follows:

**Technology:**

- "We have moved so far with technology, yet there is no change in this subject." (B6)

**Governed by big business rules:**

- "We really need to consider small businesses and the people who are also just willing to work to earn a daily living. Small business is struggling to make it, yet is being governed by the rules of big business. We need to help people who are unskilled labour but we are being prevented by rules. Just ask a man who cannot feed himself or his family and ask a small business how expensive it is to employ someone unskilled at a high minimum rate. I employ people in the road freight industry and simply cannot understand why we need to pay over sick leave to the bargaining council for all employees, even though they may not be sick; and we still pay staff sick leave when they do not come to work. At the end of it all, the employee still gets all sick leave back as a bonus. Total nonsense. These are the things preventing me from employing people." (B6)



The results shown in the cross-tabulation table in Appendix 11 on page 548 reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to the BCEA's work security provisions to retain jobs influencing job sustainability and by all respondents (combined p-value).

#### 5.2.1.3.5.2 Labour inspectors' monitoring and enforcement of compliance with the BCEA

The survey respondents were asked to state how likely the monitoring and enforcement of compliance with the BCEA by the labour inspectors influenced job sustainability, and their cumulative responses are reflected in Table 5.16.

**Table 5.16: The influence of labour inspectors' monitoring and enforcement of compliance with the BCEA on job sustainability**

14.	Influence of labour inspectors' monitoring and enforcing of compliance with the BCEA on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring compliance (Sections 63 - 84)	15	22	36	16	11	17.6	35.3	23.5	17.6	6
e.	Enforcing compliance (Sections 63 - 84)	15	24	33	15	13	23.5	41.2	23.5	5.9	5.9

The results shown in Table 5.16 reveal that:

- *Monitoring*: 15% of the business respondents implied that it was very likely, while 22% indicated that it was quite likely to influence job sustainability. 17.6% of the trade union respondents suggested that it was very likely, while 35.3% revealed that labour inspectors' monitoring of compliance with the BCEA was quite likely to influence job sustainability.

- *Enforcing*: 15% of the business respondents revealed that it was very likely, while 24% indicated that it was quite likely to influence job sustainability. 23.5% of the trade union respondents indicated that it was very likely, while 41.2% signified that it was quite likely that labour inspectors' enforcing compliance with the BCEA influences job sustainability.

The results shown in Table 5.16 reveal that there is agreement amongst the business and trade union respondents that labour inspectors' monitoring of compliance with the BCEA's provisions does not influence job sustainability. However, there is a considerable difference between businesses and trade unions on the influence of labour inspectors' enforcing compliance on job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 548 reveal that the business survey responses indicated that there is a significant ( $p < 0.05$ ) relationship between both statements in this section relating to the labour inspectors' monitoring and enforcing compliance with the BCEA influencing job sustainability and all respondents (combined p-value).

#### **5.2.1.3.6 The Labour Relations Act, No.66 of 1995 (LRA)**

The survey respondents were asked to indicate how likely the statements pertaining to the LRA's regulations on fairness, equity, job security, monitoring and enforcement of compliance with the LRA influenced job sustainability.

##### **5.2.1.3.6.1 Do the LRA's fairness regulations promoting job security influence job sustainability?**

The survey respondents were asked to state how likely the statements pertaining to the regulation of alternative employment contracts, industrial action and the protection of workers in terms of Section 197 were to influence job sustainability, and their responses are reflected in Table 5.17.

**Table 5.17: The LRA's fairness regulations promoting job security's influence on job sustainability**

18.	Influence of the LRA's job security requirements of fairness on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Regulation of "alternative" employment contracts to improving job security (Sections 198 and 200A)	36	34	17	11	2	29.4	41.2	17.6	5.9	5.9
b.	Protection of workers in mergers, takeovers or transfers in improving job security (Section 197)	22	28	31	19	0	41.2	29.4	17.6	11.8	0
c.	Regulation of industrial action to promote labour peace in the workplace (Sections 64 and 65)	38	24	23	11	4	35.3	35.3	17.6	5.9	5.9

The results shown in Table 5.17 reveal that:

- *Regulation of the use of alternative employment contracts:* Over a third (36%) of the business respondents indicated that it was very likely, while 34% noted that it was quite likely to improve job security. 29.4% of the trade union respondents revealed that it was very likely, while 41.2% indicated that it was quite likely that regulation of the use of alternative employment contracts will improve job security.
- *Protection of workers affected by mergers, takeovers or transfers:* 22% of the business respondents suggested that it was very likely, while 28% revealed that it was quite likely to improve job security. However, 41.2% of the trade union respondents signified that it was very likely, while 29.4% noted that Section 197's protection of workers affected by mergers, takeovers or transfers was quite likely to improve job security.
- *Regulation of industrial action promotes labour peace in the workplace:* 38% of the business respondents implied that it was very likely, while 24%

suggested that it was quite likely to influence job sustainability. Over a third (35.3%) of the trade union respondents indicated that it was very likely, while an equal number (35.3%) noted that it was quite likely that the regulation of industrial action to promote labour peace in the workplace influences job sustainability.

The majority of the responses from both businesses and trade unions indicated that the regulation of alternative employment contracts and the regulation of industrial action to promote labour peace in the workplace are likely to influence job sustainability. However, there is a considerable difference in opinions between businesses and trade unions that Section 197's protection of workers, affected by mergers, takeovers or transfers was a likely influence on job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 549 reveal that there is a highly significant ( $p < 0.001$ ) relationship between both statements in this section on the LRA's fairness regulations promoting job security's influence on job sustainability relating to the regulation of alternative employment contracts and industrial action and by all respondents (trade unions and business combined). However, there is no significant relationship between the statement on the protection of workers in terms of Section 197 and by all respondents (combined p-value).

#### **5.2.1.3.6.2 The influence of the LRA's fair dismissal requirements on job sustainability**

The survey respondents were asked to state how likely the statements pertaining to the LRA's requirements for fair dismissals are to influence job sustainability and their cumulative responses are reflected in Table 5.18.

The majority of trade union responses indicated that all the statements pertaining to the LRA's requirements for fair dismissals influence job sustainability. However, there is a considerable difference in business and trade union responses to the three statements on the fairness requirements pertaining to the different types of retrenchments influencing job sustainability.

**Table 5.18: The influence of the LRA's fair dismissal requirements on job sustainability**

19	Influence of fair dismissal requirements on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	General requirements of fairness (Section 188)	22	31	30	13	4	41.2	35.3	17.6	5.9	0
b.	Fairness requirements minor retrenchments (Section 189)	13	34	32	14	7	41.2	29.4	17.6	11.8	0
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	27	27	24	15	7	41.2	23.5	29.4	5.9	0
d.	Fairness retrenchment requirements for mergers, takeovers or transfers (Section 197)	24.5	24.5	30	17	4	41.2	29.4	23.5	5.9	0

The results shown in Table 5.18 reveal that:

- *General requirements for a fair dismissal:* 22% of the business respondents suggested that it was very likely, while 31% indicated that it was quite likely to influence job sustainability. 41.2% of the trade union respondents signified that it was very likely, while 35.3% revealed that the general requirements for a fair dismissal were quite likely to influence job sustainability.
- *Minor retrenchments:* 13% of the business respondents implied that it was very likely, while 34% denoted that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while 29.4% implied that the fairness requirements for minor retrenchments were quite likely to influence job sustainability.
- *Major retrenchments:* 27% of the business respondents noted that it was very likely, while an equal number 27% showed that it was quite likely to influence job sustainability. 41.5% of the trade union respondents indicated that it was

very likely, while 23.5% showed that the fairness requirements in terms of Section 197 were quite likely to influence job sustainability.

- *Mergers, take-overs or transfer retrenchments*: Approximately a quarter (24.5%) of the business respondents suggested that it was very likely, while an equal number (24.5%) implied that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while 29.4% denoted that the fairness requirements in terms of Section 197 were quite likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 549 reveal that there is a highly significant relationship ( $p < 0.001$ ) between all the statements in this section on the LRA's regulation of fair dismissals influence on job sustainability and with all respondents (combined p-value).

#### **5.2.1.3.6.3 The LRA's equality and equal treatment in the workplace influence on job sustainability**

The survey respondents were asked how likely were the statements relating to the LRA's equality and equal treatment in the workplace to influence job sustainability, and their cumulative responses are reflected in Table 5.19.

The majority of trade union responses indicated that all the statements relating to the LRA's equality and equal treatment in the workplace are likely to influence job sustainability. There was, however, a considerable difference in responses from the two groups on the fairness requirements for all three statements relating to non-discrimination, unfair labour practices and automatically unfair dismissals as likely to influence job sustainability.

**Table 5.19: The influence of the LRA's equality and equal treatment in the workplace requirements on job sustainability**

		Business					Trade Unions				
20.	Influence of the LRA's requirement for equal treatment and equality in the workplace on job sustainability	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Standardisation of income and employment conditions (Section 198A (4A-F))	34	27	19	20	0	29.4	35.3	17.6	11.8	5.9
b.	Control of alternative "employment" contracts (Sections 198 and 200A)	31	29	20	17	3	29.4	41.2	17.6	11.8	0
c.	Not to discriminate unfairly in recruitment and selection (Sections 186 and 187)	15	30	34	19	2	41.2	29.4	23.5	5.9	0
d.	Regulation of unfair labour practices (Section 186 (2))	15	31	31	20	3	41.2	29.4	29.4	0	0
e.	Automatically unfair dismissals (Section 187)	13	32	29	23	3	29.4	35.3	29.4	5.9	0

The results shown in Table 5.19 reveal that:

- *Standardisation of income and employment conditions:* Approximately a third (34%) of the business respondents revealed that standardisation of income and employment conditions was very likely, while 27% implied that it was quite likely to influence job sustainability. 29.4% of the trade union respondents suggested that it was very likely, while 35.3% noted that the standardisation of income and employment conditions was quite likely to influence job sustainability.
- *Control of alternative employment contracts:* 31% of the business respondents indicated that the control of alternative employment contracts was very likely, while 29% noted that it was quite likely to influence job sustainability. 29.4% of the trade union respondents implied that it was very

likely, while 41.2% indicated that the control of alternative employment contracts was quite likely to influence job sustainability.

- *Not to discriminate unfairly in selection and recruitment:* 15% of the business respondents suggested that it was very likely, while 30% indicated that the requirement for non-discrimination during selection and recruitment was quite likely to influence job sustainability. 41.2% of the trade union respondents revealed that it was very likely, while 29.4% showed that the requirement not to discriminate unfairly in selection and recruitment was quite likely to influence job sustainability.
- *Regulation of unfair labour practices:* Approximately 15% of the business respondents implied that the regulation of unfair labour practices was very likely, while 31% noted that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that the regulation of unfair labour practices was very likely, while 29.4% suggested that the regulation of unfair labour practices was quite likely to influence job sustainability.
- *Automatically unfair dismissals:* 13% of the business respondents designated that automatically unfair dismissals was very likely, while 32% noted that it was quite likely to influence job sustainability. 29.4% of the trade union respondents implied that automatically unfair dismissals was very likely, while 35.3% signified that automatically unfair dismissals were quite likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 550 reveal that there is a highly significant ( $p < 0.001$ ) relationship between the statements in this section on the LRA's equality and equal treatment requirements influence on job sustainability and by all the respondents (combined p-value).

#### **5.2.1.3.6.4 The influence of monitoring and enforcement of compliance on job sustainability**

The survey respondents were asked to state how likely the statements relating to bargaining council agents' and the labour inspectors' influence on job sustainability, and their cumulative responses are reflected in Table 5.19 and Table 5.20.



#### 5.2.1.3.6.4.1 Influence of bargaining council agents' monitoring and enforcing compliance on job sustainability

The survey respondents were asked to state how likely the statements pertaining to the influence of bargaining council agents' monitoring and enforcing compliance were on job sustainability, and their cumulative responses are reflected in Table 5.20.

**Table 5.20: The influence of bargaining council agents' monitoring and enforcing compliance on job sustainability**

18.	Influence of bargaining council agents' monitoring and enforcing compliance on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements to ensure that workers are treated fairly (Section 33)	24	23	31	17	5	41.2	29.4	23.5	5.9	0
e.	Enforcement of collective agreements to ensure that workers are treated fairly (Section 33)	27	21	28	17	7	41.2	29.4	23.5	5.9	0

The results shown in Table 5.20 reveal that:

- *Monitoring of collective agreements:* Approximately a quarter (24%) of the business respondents indicated that it was very likely, while (23%) noted that bargaining council agents' monitoring of collective agreements was quite likely to influence job sustainability. 41.2% of the trade union respondents felt that it was very likely, while 29.4% revealed that bargaining council agents' monitoring of collective agreements was quite likely to influence job sustainability.
- *Enforcing collective agreements:* 27% of the business respondents suggested that bargaining council agents' enforcing collective agreements was very

likely, while 21% implied that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while 29.4% noted that bargaining council agents' enforcing collective agreements was quite likely to influence job sustainability.

Although both businesses and trade unions agreed that monitoring and enforcement by bargaining council agents influenced job sustainability, the trade unions felt more strongly that the monitoring and enforcement by bargaining council agents was more likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 549 reveal that there is a highly significant ( $p < 0.001$ ) relationship between both statements in this section on the LRA's monitoring and enforcement by bargaining council agents' influence on job sustainability and by all respondents (combined p-value).

#### **5.2.1.3.6.4.1 The influence of labour inspectors' monitoring and enforcing compliance with the LRA on job sustainability**

The survey respondents were asked to state how likely the statements relating to the monitoring and enforcing of compliance by labour inspectors with the LRA were to influence job sustainability, and the responses are reflected in Table 5.21.

**Table 5.21: The influence of labour inspectors' monitoring and enforcing compliance with the LRA on job sustainability**

20.	Influence of labour inspectors' monitoring and enforcing compliance on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring (Sections 33 and 84)	14	21	36	21	8	17.6	41.2	23.5	11.8	5.9
g.	Enforcement (Sections 33 and 84)	15	23	30	23	9	35.3	29.4	17.6	11.8	5.9

The results shown in Table 5.21 reveal that:

- *Monitoring:* 14% of the business respondents implied that it was very likely, while 21% noted that monitoring was quite likely to influence job sustainability. 17.6% of the trade union respondents suggested that it was very likely, while some 41.2% indicated that it was quite likely that labour inspectors' monitoring of compliance with the LRA influences job sustainability.
- *Enforcement:* 15% of the business respondents revealed that it was very likely, while 23% indicated that labour inspectors' enforcement of compliance with the LRA was quite likely to influence sustainability. 35.3% of the trade union respondents indicated that it was very likely, while 29.4% noted that it was quite likely that labour inspectors' enforcement of compliance with the LRA influences job sustainability.

Thus, the results shown in Table 5.21 reveal that monitoring and enforcing of the LRA by labour inspectors does not influence job sustainability. The possible reason is that inspections do not occur on a regular basis. However, there is a considerable difference in the trade union responses, as opposed to the business responses.

The results shown in the cross-tabulation table in Appendix 11 on page 549 reveal that there is a significant ( $p < 0.039$ ) relationship between both statements in this section on the LRA's monitoring and enforcement by labour inspectors influence on job sustainability and by all the respondents (combined p-value).

#### **5.2.1.3.7      Employment Equity Act, No.55 of 1998 (EEA)**

Survey respondents were asked to state how likely the EEA's provisions on promoting equality, equal treatment in the workplace and monitoring and enforcement of the EEA by labour inspectors were to influence job sustainability.

### 5.2.1.3.7.1 The influence of the promotion of equality and equal treatment in the workplace on job sustainability

The survey respondents were asked to rate the likelihood of the EEA's provisions, and promoting equality and equal treatment in the workplace influencing job sustainability, and the cumulative responses are reflected in Table 5.22.

**Table 5.22: EEA's influence of the promotion of equality and equal treatment in the workplace on job sustainability**

21.	EEA's promotion of equality and equal treatment's influence on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Prohibition of unfair discrimination (Section 6)	15	27	36	17	5	41.2	35.3	11.8	11.7	0
b.	Removal of unfair discrimination (Section 9 (3) & (4))	12	28	37	18	5	35.3	23.5	29.4	11.8	0
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	23	34	21	20	2	58.8	11.8	23.5	5.9	0
d.	Regulation of unfair labour practices (Section 186 (2))	12	31	33	20	4	47.1	23.5	23.5	5.9	0
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	38	23	17	18	4	35.3	29.4	23.5	5.9	5.9

The results shown in Table 5.22 reveal that:

- *Prohibition of unfair discrimination:* 15% of the business respondents suggested that it was very likely, while 27% noted that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while 35.3% indicated that the prohibition of unfair discrimination as quite likely to influence job sustainability.

- *Removal of unfair discrimination:* 12% of the business respondents implied that it was very likely, while 28% felt that it was quite likely to influence job sustainability. 35.3% of the trade union respondents revealed that it was very likely, while 23.5% indicated that the removal of unfair discrimination was quite likely to influence job sustainability.
- *Right to equal income distribution:* 23% of the business respondents revealed that it was very likely, while 34% indicated that it was quite likely to influence job sustainability. 58.8% of the trade union respondents indicated that it was very likely, while 11.8% suggested that right to equal income distribution was quite likely to influence job sustainability.
- *Regulation of unfair labour practices:* 12% of the business respondents implied that it was very likely, while 31% noted that it was quite likely to influence job sustainability. 47.1% of the trade union respondents revealed that it was very likely, while 23.5% indicated that the regulation of unfair labour practices was quite likely to influence job sustainability.
- *Promotion of affirmative action in recruitment and selection:* 38% of the business respondents indicated that it was very likely, while 23% revealed that the promotion of affirmative action in selection and recruitment was quite likely to influence job sustainability. 35.3% of the trade union respondents showed that it was very likely, while 29.4% noted that the promotion of affirmative action in selection and recruitment was quite likely to influence job sustainability.

An analysis of the responses reveals that businesses and trade unions agreed that the EEA provisions on equal income distribution and the promotion of affirmative action were more likely to influence them in sustaining jobs. However, they differed considerably on the influence of the prohibition of discrimination, removal of unfair discrimination and unfair labour practices' on job sustainability. The business respondents indicated that the prohibition of discrimination, removal of unfair discrimination and unfair labour practices were less likely to influence them to sustain jobs. The majority of the trade union responses signified a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability. They also noted that the promotion of

affirmative action and removal of discrimination as being less likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 550 reveal that there is a highly significant ( $p < 0.001$ ) relationship between the statements in this section on the influence of the EEA's provisions promoting equality and equal treatment in the workplace on job sustainability and by the business respondents. There is no significant relationship between the statements pertaining to the EEA's provisions, and promoting equality and equal treatment in the workplace and by the trade union respondents, other than the statement relating to the right to equal income distribution ( $p = 0.009$ ).

#### **5.2.1.3.7.2 Monitoring and enforcement of compliance with the EEA by labour inspectors**

Survey respondents were asked to state how likely the statements relating to the monitoring and enforcement of compliance by labour inspectors with the EEA were to influence job sustainability, and the responses are reflected in Table 5.23.

**Table 5.23: The influence of labour inspectors' monitoring and enforcing compliance with the EEA on job sustainability**

		Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
21.	Labour inspectors monitoring and enforcement of compliance with EEA's influence on job sustainability										
f.	Monitoring of EEA's provisions (Section 34).	17	25	30	20	8	17.6	47.1	29.4	0	5.9
g.	Enforcement of EEA's provisions (Sections 35 - 45).	21	18	32	21	8	23.5	41.2	29.4	0	5.9

The results shown in Table 5.23 revealed that:

- *Monitoring:* Approximately 17% of the business respondents implied that labour inspectors' monitoring of compliance with the EEA was very likely, while a quarter (25%) noted that it was quite likely to influence job sustainability. 17.6% of the trade union respondents suggested that it was very likely, while 47.1% indicated that labour inspectors' monitoring of compliance with the EEA influences job sustainability.
- *Enforcement:* Approximately 21% of the business respondents revealed that it was quite likely, while 18% suggested that labour inspectors' enforcing compliance with the EEA was very likely to influence job sustainability. 23.5% of the trade union respondents indicated that it was quite likely, while 41.24% indicated that labour inspectors' enforcing compliance with the EEA influences job sustainability.

An analysis of this section reveals that the business respondents indicated that monitoring and enforcement by labour inspectors is likely to influence them to sustain jobs. A possible reason is that inspections may be occurring on an irregular basis. Nevertheless, the trade union responses indicated a stronger likelihood that monitoring and enforcement of compliance with the EEA by labour inspectors was likely to influence businesses to sustain jobs.

The results shown in the cross-tabulation table in Appendix 11 on page 551 reveal that there is a significant relationship between both statements are significant ( $p = 0.011$ ) on monitoring and enforcement by labour inspectors and by all respondents (combined p-value).

#### **5.2.1.3.8 The influence of skills development on job sustainability**

Survey respondents were asked to state the likelihood of education and training in general, as well as education and training in terms of both the LRA and the SDA influencing job sustainability, and the cumulative responses are reflected in Table 5.24 and Table 5.25.

#### 5.2.1.3.8.1 The influence of education and training in general on job sustainability

Survey respondents were asked to state the likelihood of education and training in general influencing job sustainability, and the cumulative responses are reflected in Table 5.2.

An analysis of the results in Table 5.24 reveals that there is overwhelming agreement between both businesses and trade unions that education and training improves a business's competitiveness and increases workers' productivity. The results shown in the cross-tabulation table in Appendix 11 on page 549 reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the statements in this section on education and training's influence on job sustainability and all respondents (combined p-value).

**Table 5.24: The influence of education and training on job sustainability**

12.	Influence of education and training on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Education improving the business's competitiveness	45	44	3	8	0	52.9	47.1	0	0	0
b.	Training improving the business's competitiveness	48	41	3	8	0	47.1	47.1	0	5.8	0
c.	Education increasing workers' productivity	51	36.2	6	5	1.8	35.3	64.7	0	0	0
d.	Training increasing workers' productivity	51	37	5	5	2	35.3	64.7	0	0	0



The results shown in Table 5.24 reveal that:

- *Education improves business competitiveness:* 45% of the business respondents indicated that it was very likely, while 44% noted that education's improving business competitiveness was quite likely to influence job sustainability. 52.9% of the trade union respondents signified that it was very likely, while 47.1% revealed that education's improving business competitiveness was quite likely to influence job sustainability.
- *Training improves business competitiveness:* 48% of the business respondents implied that it was very likely, while 41% noted that education's improving business competitiveness was quite likely to influence job sustainability. 47.1% of the trade union respondents also signified that it was very likely, while an equal number 47.1% suggested that education improves business competitiveness and is quite likely to influence job sustainability.
- *Education increases worker productivity:* 51% of the business respondents revealed that it was very likely, while 36.2% indicated that education increasing workers' productivity was quite likely to influence job sustainability. 35.3% of the trade union respondents indicated that it was very likely, while 64.7% noted that education increasing workers' productivity was quite likely to influence job sustainability.
- *Training increases worker productivity:* 51% of the business respondents indicated that it was very likely, while 37% felt that training increasing workers' productivity was quite likely to influence job sustainability. 35.3% of the trade union respondents showed that it was very likely, while 64.7% indicated that training increasing workers' productivity was quite likely to influence job sustainability.

#### **5.2.1.3.8.2 The SDA's influence on job sustainability**

The survey respondents were asked to state the likelihood of the SDA influencing job sustainability, and the cumulative responses are reflected in Table 5.25.

The results shown in the cross-tabulation in Appendix 11 on page 551 revealed that there is a highly significant ( $p < 0.001$ ) relationship between all the statements

relating to the SDA's provisions concerning education, training, re-training and learnership programmes' influence on job sustainability and by all of the respondents (combined p-value).

**Table 5.25: The influence of the SDA's provisions on education and training on job sustainability**

		Business					Trade Unions				
22.	Influence of SDA on job sustainability	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Education ensuring that workers are equipped with the necessary skills (Section 22)	36	32	14	14	4	35.3	52.9	11.8	0	0
b.	Training programmes ensuring that workers are equipped with the necessary skills to perform work competently (Section 20)	40	34	13	11	2	41.2	41.2	17.6	0	0
c.	Re-training through skills programmes providing new skills to perform different work (Section 20)	35	30	22	9	4	41.2	41.2	17.6	0	0
d.	Learnership agreements ensuring workers are equipped with the relevant vocational skills to perform work competently (Sections 16-19)	37	31	19	11	2	47.1	41.2	11.7	0	0

The results showed in Table 5.25 revealed that:

- *Education (Section 22):* 36% of business respondents indicated that it was very likely, while 32% revealed that it was quite likely to influence job sustainability. 35.3% of the trade union respondents implied that it was very likely, while 52.9% indicated that education's ensuring workers are equipped with the necessary skills was quite likely to influence job sustainability.

- *Training programmes (Section 20)*: 40% of the business respondents revealed that it was very likely, while 34% suggested that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while an equal number (41.2%) noted that training programmes' ensuring workers are equipped with the necessary skills to perform work competently was quite likely to influence job sustainability.
- *Re-training through skills programmes (Section 20)*: 35% of the business respondents showed that it was very likely, while 30% indicated that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while an equal number (41.2%) of others indicated that retraining through skills programmes was quite likely to influence job sustainability.
- *Learnership agreements (Sections 16--19)*: 37% of the business respondents implied that it was very likely, while 31% noted that it was quite likely to influence job sustainability. 47.1% of the trade union respondents suggested that it was very likely, while 41.2% revealed that retraining through skills programmes was quite likely to influence job sustainability.

An overwhelming majority of the trade unions and a majority of the businesses indicated that education and training programmes' ensuring workers were equipped with the necessary skills, re-training through skills programmes and learnership agreements were all likely to influence job sustainability.

However, under the additional comments section one of the business respondents commented that:

- "The SETA system is dysfunctional and does not deliver training into the workplace".

### 5.2.1.3.8.3 The LRA's provisions on education and training's influence on job sustainability

The survey respondents were asked to state how likely the LRA's provisions on education and training were to influence job sustainability, and the cumulative responses are reflected in Table 5.26.

**Table 5.26: Influence of LRA's provisions on education and training on job sustainability**

	Influence of LRA on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
12a	Educating workers who lack skills.	26	39	16	15	4	47.1	17.6	35.3	0	0
12b	Training workers who lack skills (Sections 28, 43 and 84)	30	35	17	14	4	53	23.5	23.5	0	0
12c	Re-training workers with new skills to perform different work (Sections 28, 43 and 84)	29	36	17	13	5	47.1	17.6	35.3	0	0
12d	Ensuring that workers, through learnership agreements, acquire the relevant vocational skills needed to perform their work competently (Sections 28, 43 and 84)	33	37	13	13	4	41.2	41.2	17.6	0	0
24a	Training underperforming workers who lack skills thereby ensuring that jobs are maintained (Section 187)	21	44	16	14	5	47.1	29.4	17.6	5.9	0
24b	Retraining workers, instead of retrenching, to help them to retain their jobs (Sections 189, 189A and 197)	21	35	20	17	7	41.2	35.3	17.6	5.9	0

The results shown in Table 5.26 on the LRA's influence on job sustainability reveal that:

- *Educating workers who lack skills:* 26 of the business respondents implied that it was very likely, while 39% indicated that it was quite likely to influence job sustainability. 47.1% of the trade union respondents suggested that it is very likely and 17.6% disclosed that educating workers that lack skills was quite likely to influence job sustainability.
- *Training workers who lack skills:* 30% of the business respondents indicated that it was very likely, while 35% revealed that it was quite likely to influence job sustainability. Whereas, 53% of the trade union respondents felt that it is very likely, while 23.5% noted that training workers who lack skills was quite likely to influence job sustainability.
- *Re-training workers with new skills to perform different work:* 29% of the business respondents implied that it was very likely, while 36% noted that it was quite likely to influence job sustainability. 47.1% of the trade union respondents indicated that it is very likely, while 17.6% suggested that re-training workers with new skills to perform different work was quite likely to influence job sustainability.
- *Ensuring relevant vocational skills are acquired through learnership agreements:* Approximately a third (33%) of the business respondents implied that it was very likely, while 37% revealed that it was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it is very likely and an equal number (41.2%) noted that ensuring that workers acquire relevant vocational skills through learnership agreements to perform their jobs competently was quite likely to influence job sustainability.
- *Training underperforming workers:* 21% of the business respondents suggested that it was very likely, while approximately 44% indicated that it was quite likely to influence job sustainability. 47.1% of the trade union respondents indicated that it is very likely, while 29.4% noted that training under-performing workers was quite likely to influence job sustainability.
- *Re-training workers instead of retrenching them:* 21% of the business respondents implied that it was very likely, while 35% revealed that it was quite likely to influence job sustainability. 41.2% of the trade union

respondents indicated that it is very likely, while 35.3% disclosed that re-training workers instead of retrenching them was quite likely to influence the sustainability of jobs.

The majority of both businesses and trade unions indicated that retraining workers, instead of retrenching them; training workers who lacked skills; and re-training workers with new skills to perform different work are likely to influence job sustainability. Both businesses and trade unions indicated that learnership agreements were most likely to influence job creation. The business respondents disclosed that the re-training of retrenched workers were least likely to influence job sustainability.

Thus, there is agreement between businesses and trade unions' responses that the LRA's provisions on education and training were likely influence job sustainability. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes to ensure workers are equipped with the necessary skills, re-training through skills programmes and learnership agreements were all likely to influence job sustainability. The trade union responses, however, indicated a stronger likelihood that education, training and re-training were likely to influence businesses to sustain jobs.

The business respondents, in their additional comments, commented on the influence of skills on productivity and the need to improve the education system in South Africa:

- “Job creation is a balance between the costs of employees measured against workers' skills and productivity. Ultimately, job creation will improve when there is a pool of skilled, productive labour available. This will only happen when the education system produces graduates who are well-versed in the core skills required for a twenty-first century economy. Employers can develop these employees' skills in line with their specific job requirements”.
- “The economy of this country has failed to use its competent human resources effectively because of over-regulation a resultant lack of freedom and self-development that humans thrive on. A good education is key but

beyond that, people need to take more self-responsibility for themselves and what they achieve for the country.”

Two trade union respondents also expanded on the influence of skills development on job sustainability. They commented that:

- “Employers should fulfil their duty to further train people whom they have promoted in order to ensure their success.”
- “Employers have an obligation to train employees who are promoted to higher levels in managerial status to enable them to be competent and not set them up to fail and then dismiss them”.
- “Employers are very lazy to train newly promoted workers during their probation period and, when the employee does not perform after the probation period, employers unfairly dismiss them”.

The results shown in the cross-tabulation table in Appendix 11 on page 551 reveal that there is a highly significant ( $p < 0.001$ ) relationship between all the statements in this section relating to the LRA’s provisions on education and training’s influence on job sustainability and by all the respondents (combined p-value).

#### **5.2.1.3.9 Ancillary legislation likely to influence job sustainability**

The survey respondents were asked to state the likelihood of the UIA, OHASA and COIDA influencing job sustainability.

##### **5.2.1.3.9.1 The UIA’s influence on job sustainability**

Survey respondents were asked to state how likely the statements relating to the UIA’s provisions were to influence job sustainability, and the cumulative responses are reflected in Table 5.27.

The results shown in Table 5.27 reveal that:

- *Illness benefits*: 20% of the business respondents suggested that it was very likely, while 29% noted that illness benefits was quite likely to influence job sustainability. 47.1% of the trade union respondents indicated that it was very

likely, while 17.6% noted that illness benefits were quite likely to influence job sustainability.

- *Maternity benefits:* 17% of the business respondents indicated that it was very likely, while 31% implied that maternity was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely, while 35.3% noted that maternity benefits were quite likely to influence job sustainability.
- *Adoption benefits:* 15% of the business respondents revealed that it was very likely, while 23% showed that adoption benefits was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely and 17.6% noted that adoption benefits were quite likely to influence job sustainability.

**Table 5.27: The UIA's influence on job sustainability**

25.	UIA's influence on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Illness benefits helping sick workers to retain their jobs, while they are on unpaid sick leave (Section 19)	20	29	29	17	5	47.1	17.6	29.4	0	5.9
b.	Maternity benefits helping pregnant workers to retain their jobs, while they are on unpaid maternity leave (Section 24)	17	31	31	17	4	41.2	35.3	11.8	5.9	5.8
c.	Adoption benefits helping adoptive parents, adopting a child under the age of 2, to retain their jobs, while they are on unpaid leave (Section 27)	15	23	29	23	10	41.2	17.6	29.4	0	11.8



Thus, there is agreement between businesses and trade unions' responses that maternity benefits are likely to influence job sustainability. The businesses and trade unions, however, disagree on the influence of illness and adoption benefits on job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 552 reveal that there is highly significant ( $p < 0.001$ ) between both statements on illness benefits and maternity benefits in this section on the UIA's influence on job sustainability and by all respondents (combined p-value). Whereas, there is no significant relationship between the statement on adoption benefits and all respondents (combined p-value).

#### **5.2.1.3.9.2 The OHASA's influence on job sustainability**

The survey respondents were asked to state the likelihood of the relating to the OHASA provisions on creating a safe working environment, monitoring and enforcement influencing job sustainability.

##### **5.2.1.3.9.2.1 The OHASA's influence of creating a safe working environment on job sustainability**

Survey respondents were asked to state how likely the statement relating to the OHASA provision of creating a safe working environment influenced job sustainability, and the responses are reflected in Table 5.28.

**Table 5.28: The OHASA's influence in creating a safe working environment on job sustainability**

		Business					Trade Unions				
26.	OHASA's influence on job sustainability	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Creating a safe working environment	28	33	24	12	3	41.2	35.3	17.6	5.9	0

The results shown in Table 5.28 revealed that 28% of the business respondents indicated that it was very likely, while approximately a third (33%) noted that creating a safe working environment was quite likely to influence job sustainability. 41.2% of the trade union respondents indicated that it was very likely and 35.3% noted that creating a safe working environment was quite likely to influence job sustainability.

There is agreement between businesses and trade unions that the creation of a safe working environment was likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 552 reveal that there is a highly significant relationship between the statement in this section on the OHASA's influence in creating a safe working environment on job sustainability and by all respondents (combined p-value).

#### **5.2.1.3.9.2.2 The influence of monitoring and enforcing compliance with the OHASA on job sustainability**

Survey respondents were asked to state how likely the statements relating to the monitoring and enforcement of compliance by safety representatives in terms of the OHASA was to influence job sustainability, and the cumulative responses are reflected in Table 5.29.

The results shown in Table 5.29 that:

- *Monitoring by health and safety representatives:* A quarter (25%) of the business respondents implied that it was very likely, while (31%) indicated that the monitoring of compliance by health and safety representatives was quite likely to influence job sustainability. 41.2% of the trade union respondents felt that it is very likely and 35.3% noted that the monitoring of compliance by health and safety representatives was quite likely to influence job sustainability.
- *Monitoring by labour inspectors:* 21% of the business respondents suggested that it was very likely, while 19% indicated that the monitoring of compliance by the labour inspectors was quite likely to influence job sustainability. 41.2%

trade union respondents indicated that it is very likely and 35.3% revealed that the monitoring of compliance by the labour inspectors was quite likely to influence job sustainability.

- *Enforcement by labour inspectors:* 19% of the business respondents implied that it was very likely, while 20% revealed that enforcement by labour inspectors was quite likely to influence job sustainability. 23.5% of the trade union respondents indicated that it is very likely and 47.1% noted that the enforcement of compliance with the OHASA by labour inspectors was quite likely to influence job sustainability.

**Table 5.29: The influence of monitoring and enforcing compliance with OHASA on job sustainability**

26.	Monitoring and enforcing of compliance with OHASA on job sustainability	Business					Trade Unions				
		Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Monitoring by health and safety representatives (Sections 18 & 22)	25	31	28	12	4	41.2	35.3	17.6	5.9	0
c.	Monitoring of health and safety by labour inspectors (Sections 24 & 25)	21	19	36	18	6	41.2	35.3	17.6	0	5.9
d.	Enforcement of health and safety by the labour inspectors (Sections 30-38)	19	20	38	17	6	23.5	47.1	23.5	0	5.9

Consequently, there is agreement between businesses and trade unions that monitoring of compliance with the OHASA by health and safety representatives was likely to influence job sustainability. However, they disagreed on the likely influence of monitoring and enforcing of health and safety by labour inspectors on job sustainability. The majority of the business respondents indicated that monitoring and enforcing of health and safety by labour inspectors were unlikely to influence them to sustain jobs. However, the majority of trade union respondents indicated that

monitoring and enforcing of health and safety by labour inspectors were likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 552 reveal that there is a highly significant relationship ( $p < 0.001$ ) between all three statements in this section on OHASA's monitoring and enforcement of compliance by safety representatives and labour inspectors on job sustainability and by all the respondents (combined p-value).

### 5.2.1.3.9.3 COIDA's influence on job sustainability

Survey respondents were asked to state the likelihood of the monitoring of compliance with the COIDA's provisions of holding inquiries and the enforcement of compliance influencing job sustainability.

#### 5.2.1.3.9.3.1 COIDA's influence of holding inquiries on job sustainability

Survey respondents were asked to state how likely the provisions of holding inquiries and enforcing compliance with the COIDA influenced job sustainability, and the cumulative responses are reflected in Table 5.30.

**Table 5.30: The influence of monitoring and enforcing compliance with COIDA on job sustainability**

		Business					Trade Unions				
27.	Influence of COIDA on job sustainability	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
a.	Compensation Commissioner holding inquiries into accidents sustains jobs (Section 40)	15	31	34	13	7	29.4	35.3	35.3	0	0
b.	Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 & 99)	15	28	35	17	5	29.4	35.3	29.4	5.9	0

The results shown in Table 5.30 reveal that:

- *Holding of enquiries into accidents:* 15% of the business respondents suggested that it was very likely, while 31% indicated that the compensation commissioner holding enquiries into accidents was quite likely to influence job sustainability. 29.4% of the trade union respondents indicated that it was very likely and 35.3% noted that the compensation commissioner holding enquiries into accidents was quite likely to influence job sustainability.
- *Enforcement by the compensation commissioner:* 15% of the business respondents implied that it was very likely, while 28% revealed that enforcement by the compensation commissioner was quite likely to influence job sustainability. 29.4% of the trade union respondents indicated that it was very likely and 35.3% indicated that enforcement by the compensation commissioner was quite likely to influence job sustainability.

The business and trade union respondents disagreed on how likely the influence the of the compensation commissioner holding enquiries into accidents and enforcing compliance would be on job sustainability. Approximately 43% of the business respondents indicated that they were likely to be influenced by the compensation commissioner holding enquiries into accidents and enforcing compliance to sustain jobs. Whereas, almost two-thirds (64.7) of the trade union respondents indicated that the compensation commissioner holding enquiries into accidents and enforcing compliance were likely to influence job sustainability.

The results shown in the cross-tabulation table in Appendix 11 on page 552 reveal that there is a highly significant ( $p < 0.001$ ) relationship between the statements in this section on COIDA's influence on job sustainability and by all the respondents (combined p-value).

### **5.2.2 Reliability statistics**

Cronbach Alpha was used to measure the reliability of the questionnaire (Table 5.31). Reliability is computed by taking several measurements on the same subjects. A reliability coefficient of 0.70 or higher is considered as "acceptable". The reliability

scores for all sections in Table 5.3 exceed the recommended Cronbach's alpha value. This indicates a degree of acceptable, consistent scoring for these sections of the study.

**Table 5.31: CHRONBACH'S ALPHA SCORES**

Section	Number of Items	Cronbach's Alpha
Social justice, human rights and decent work	7	0.8736
Labour law	8	0.9036
Working hours in terms of BCEA on job creation	7	0.8638
Monitoring & enforcement in terms of BCEA on job creation	2	0.9776
Fairness in terms of LRA on job creation	3	0.7334
Monitoring & enforcement of LRA on job creation	2	0.9161
Dismissals in terms of LRA on job creation	4	0.9047
LRA Equality in terms of LRA on job creation	5	0.8279
Monitoring & enforcement of equality through LRA on job creation	2	0.9420
Equal Treatment in terms of EEA on job creation	5	0.8755
Monitoring & enforcement of EEA on job creation	3	0.8115
Alternate legislation on job creation	5	0.8540
Work security in terms of BCEA on job sustainability	3	0.8666
Monitoring & enforcement in terms of BCEA on Job Sustainability	5	0.7334
Fairness in terms of LRA on job sustainability	3	0.7476
Monitoring & enforcement of LRA on job sustainability	2	0.9751
Fair dismissals in terms of LRA on job sustainability	4	0.9348
Equality in terms of LRA on job sustainability	5	0.8502
Monitoring & enforcement equality through LRA on job sustainability	2	0.9640
Skills development factors influencing education and training	4	0.9515
Skills improvement in terms of LRA on job sustainability	2	0.9230
Equal Treatment in terms of EEA on job sustainability	5	0.8832
Monitoring & enforcement of EEA on job sustainability	2	0.9798
Skills development in terms of SDA on job sustainability	4	0.9105
Education and training of workers through LRA on job sustainability	4	0.9405
UIA benefits on job sustainability	3	0.8961
Monitoring & enforcement of OHASA on job sustainability	3	0.9320
COIDA on job sustainability	2	0.9582

### **5.2.3 Principal component analysis**

The factor analysis technique was applied to reduce data (de Vaus, 2014:185). The researcher in this case wanted to establish whether labour legislation did indeed influence job creation and job sustainability. In addition, it was necessary to determine which aspects of labour legislation influenced job creation and job sustainability, and in what way.

#### **5.2.3.1 Kaiser-Meyer-Olkin (KMO) and Bartlett's Test**

The matrix tables are preceded by a summarised table that reflects the results of the KMO and Bartlett's Test, reflected in Table 5.32.

Items of questions that loaded similarly imply measurement along a similar factor. The requirement is that Kaiser-Meyer-Olkin Measure of Sampling Adequacy should be  $> 0.50$  and Bartlett's Test of Sphericity  $< 0.05$ . An examination of the content of items loading at or above 0.5 (and using the higher or highest loading in instances where items cross-loaded at greater than this value) effectively measured along the various components. In all instances, the conditions are satisfied which allows for the factor analysis procedure.

With reference to the factor analysis rotated component matrix tables in Appendix 15 on pages 560 to 571:

- The principal component analysis was used as the extraction method (de Vaus, 2014:189) and the rotation method was Varimax with Kaiser Normalization. This orthogonal rotation method minimizes the number of variables that have high loadings on each factor. It simplifies the interpretation of the factors.
- Factor analysis/loading shows inter-correlations between variables.

**Table 5.32: KMO and BARTLETT'S TESTS**

	Kaiser-Meyer-Olkin Measure of Sampling Adequacy	Bartlett's Test of Sphericity		
		Approx. Chi-Square	df	Sig.
Q1a Q1b Q1c Q1d Q1e Q1f Q1g	0.851	310.813	21	0.000
Q2a Q2b Q2c Q2d Q2e Q2f Q2g Q2h	0.864	498.679	28	0.000
Q4a Q4b Q5a Q5b Q4c Q4d Q4e	0.763	388.776	21	0.000
Q4f Q4g	0.500	205.354	1	0.000
Q6a Q6b Q6c	0.665	54.056	3	0.000
Q6d Q6e	0.500	103.469	1	0.000
Q7a Q7b Q7c Q7d	0.735	244.448	6	0.000
Q8a Q8b Q8c Q8d Q8e	0.735	176.181	10	0.000
Q8f Q8g	0.500	129.999	1	0.000
Q9a Q9b Q9c Q9d Q9e	0.727	347.900	10	0.000
Q9f Q9g Q10e	0.589	166.867	3	0.000
Q10a Q10b Q10c Q10d Q10f	0.850	190.684	10	0.000
Q14a Q14b Q14c	0.657	136.824	3	0.000
Q14d Q14e Q15 Q16 Q17	0.615	159.505	10	0.000
Q18a Q18b Q18c	0.689	54.929	3	0.000
Q18d Q18e	0.500	191.170	1	0.000
Q19a Q19b Q19c Q19d	0.666	317.248	6	0.000
Q20a Q20b Q20c Q20d Q20e	0.750	216.968	10	0.000
Q20f Q20g	0.500	161.504	1	0.000
Q23a Q23b Q23c Q23d	0.820	382.443	6	0.000
Q24a Q24b	0.500	106.160	1	0.000
Q21a Q21b Q21c Q21d Q21e	0.802	266.851	10	0.000
Q21f Q21g	0.500	207.897	1	0.000
Q12a Q12b Q12c Q12d	0.657	287.083	6	0.000
Q22a Q22b Q22c Q22d	0.776	307.936	6	0.000
Q25a Q25b Q25c	0.745	145.434	3	0.000
Q26b Q26c Q27	0.699	266.118	3	0.000
Q28a Q28b	0.500	152.471	1	0.000

Principal component analysis was done only for the Likert scale items. Certain components divided into finer components. This is explained below in the rotated component matrices.



### **5.2.3.2 Rotated Component Matrices**

The component matrix shows the rotated loadings of each of the items on two components (Pallant, 2010:184). The factor analysis rotation method allows the researcher to select the method of factor rotation (Pallant, 2010:184). In this study, the *varimax method*, an orthogonal rotation method, minimizes the number of variables that have high loadings on each factor (Pallant, 2010:185). This method simplifies the interpretation of the factors. The display allows one to include output on the rotated solution, as well as loading plots for the first two or three factors. The rotation method was selected to obtain a rotated solution. The limitation however is the risk of oversimplification although this limitation can be overcome through the use of structural equation modelling (Allen, 2018: 508). For orthogonal rotations, the rotated pattern matrix and factor transformation matrix are displayed in Appendix 15 on pages 560 to 571.

The tables in Appendix 15 on pages 560 to 571 show that most of the items load quite strongly. The factors with the highest values,  $> 0.50$ , are chosen as belonging to a component. In essence, it is analogous to correlation: the closer to 1, the stronger the loading on that component. Where there are a few items that load on components 1 and 2, these suggest that a two-factor solution is likely to be more appropriate.

It is noted that the variables that constituted other sections loaded along two components (sub-themes), such as job creation, worker protection, flexibility, fairness and equity. This means that the respondents identified different trends within each of the sections, such as the creation of job opportunities and the development of quality education; fairness and flexibility; fairness and equity; no unfair discrimination; and equal treatment. Within each section, the splits are colour-coded.

## **5.3 Introspection of results**

The traditional hypothesis approach in reporting a result requires a statement of statistical significance (de Vaus, 2014: 233). A p-value is generated from a test

statistic. A significant result is indicated with " $p < 0.05$ ". These values are highlighted in Appendix 11 on pages 545 to 552.

### 5.3.1 Fisher tests

Through fisher tests what the researcher is trying to detect from the association between the two variables in cross-tabulation is the comparison of businesses and trade unions in terms of their characteristics on the dependent variable. Legislation is the independent variable and the attitudes of each group (i.e. businesses and trade unions) towards labour legislation's influence on job creation and job sustainability are the dependent variables. If the groups (or categories) differ in terms of their characteristics on the dependent variable (i.e. if they have different attitudes), one would say that business attitudes towards labour legislation and job creation and/or job sustainability are associated. If there is no difference between the groups, the two variables are not associated (de Vaus, 2014: 245).

The results are found in Appendix 15 on pages 560 to 571. All the significant relationships are highlighted.

The results indicate the following patterns:

- There is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to social justice, human rights and decent work factors and by all respondents (combined p-value).
- There is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to the role of labour law and by all respondents (combined p-value).
- There is a significant ( $p = 0.007$ ) relationship between business respondents and both statements on the increase in the number of permanent and temporary jobs in the past five years, whereas there is no significant relationship between these statements and by the trade union respondents.
- There is a significant relationship between various aspects of the BCEA, the LRA, the EEA and the SDA influencing job creation and job sustainability and all the respondents (combined p-value).

As can be seen from Table 5.33, there is significant agreement amongst the respondents on the working hours, work-time flexibility, work security, monitoring and enforcement of the BCEA's influence on job creation and job sustainability.

The influence of labour legislation on job creation and job sustainability is also demonstrated in the schematic diagram figure 5.11 in Appendix 10 on page 544.

**Table 5.33 Significant agreement amongst respondents on the BCEA**

Labour legislation's influence on :		Job creation	Job sustainability
BCEA	Working hours / work-time flexibility/ work security	<p><b>Working hours</b></p> <p>There is a highly significant (<math>p &lt; 0.001</math>) relationship between the statements relating to ordinary hours, overtime hours and night work and by both groupings (trade unions and business combined). There is no significant relationship between all the respondents (combined) and the statements on work on public holidays and working on Sundays.</p> <p><b>Work-time flexibility</b></p> <p>There is a significant (<math>p = 0.007</math>) relationship between all respondents (combined trade union and business) and compressed working week. There is a highly significant (<math>p &lt; 0.001</math>) relationship between business and the provision relating to the averaging of hours worked.</p>	<p><b>Work security</b></p> <p>There is a highly significant (<math>p &lt; 0.001</math>) relationship between all respondents (combined) and all the statements relating to overtime hours, sick leave, maternity leave, notice periods, minimum wages and severance pay influencing job sustainability.</p>
	Monitoring & Enforcement	<p>There is no significant (<math>p = 0.239</math>) relationship between and all respondents (combined). And the statements on the monitoring and enforcement of the BCEA by labour inspectors (Sections 63 - 84).</p>	<p>There is a significant (<math>p &lt; 0.003</math>) relationship between all respondents (combined) and both statements in this section relating to the labour inspectors' monitoring and enforcing compliance with the BCEA influencing job sustainability.</p>

As can also be seen from Table 5.34, there is significant agreement amongst the respondents on the general fairness requirements, requirements for fair dismissals, monitoring and enforcement of the LRA's influence on job creation and job sustainability.

**Table 5.34: Significant agreement amongst respondents on the LRA**

Labour legislation's influence on:		Job creation	Job sustainability
LRA	General fairness requirements	There is a highly significant relationship ( $p < 0.001$ ) between all respondents (combined) and both statements in this section on the regulation of alternative employment contracts and the regulation of industrial action. The relationship between both groupings of respondents (combined) and the statement on the protection of workers in terms of Section 197 is also significant ( $p < 0.002$ ).	There is a highly significant ( $p < 0.001$ ) relationship between and by all respondents (trade unions and business combined) and both statements relating to the regulation of alternative employment contracts and industrial action. However, there is no significant relationship between the statement on the protection of workers in terms of Section 197 and by all respondents (combined).
	Fair dismissals	There is a highly significant ( $p < 0.001$ ) relationship between all respondents (combined) and all the statements relating to the LRA's fair dismissal requirements influence on job creation.	There is a highly significant relationship ( $p < 0.001$ ) relationship between all the respondents (combined) and all the statements on the LRA's regulation of fair dismissals influence on job sustainability.
	Monitoring and enforcement	There is a significant ( $p < 0.004$ ) relationship between both statements on monitoring and enforcement by bargaining agents on job creation and by all the respondents (combined).  There is no significant ( $p = 0.258$ ) relationship between all the respondents (combined) on both statements on monitoring and enforcement by labour inspectors influence on job creation.	There is a highly significant ( $p < 0.001$ ) relationship between by all respondents (combined) and both statements on the LRA's monitoring and enforcement by bargaining council agents' influence on job sustainability.  There is a significant ( $p < 0.039$ ) relationship between all the respondents (combined) and both statements on the LRA's monitoring and enforcement by labour inspectors influence on job sustainability.
	Equality and equal treatment	There is a highly significant ( $p < 0.001$ ) relationship between all the statements relating to the LRA's provisions on equity and equal treatment requirements in the workplace influencing job creation and by all the respondents (combined), except for the statement on automatically unfair dismissals which is also significant ( $p = 0.011$ ).	There is a highly significant ( $p < 0.001$ ) relationship between all the respondents (combined) and the statements on the LRA's equality and equal treatment requirements influence on job sustainability.

As can be seen from Table 5.35, there is significant agreement amongst the respondents on the requirements for equality and equal treatment and monitoring and enforcement of the EEA's influence on job creation and job sustainability.

**Table 5.35: Significant agreement amongst respondents on the EEA**

Labour legislation's influence on :		Job creation	Job sustainability
EEA	Equality and equal treatment	There is significant agreement by the business respondents on all the statements relating to the EEA's promotion of equality and equal treatment's influence on job creation ( $p < 0.001$ ). There is also significant agreement by the trade union respondents on the first three statements relating to the prohibition and removal of unfair discrimination and the right to equal income distribution ( $p = 0.08$ ).	There is a highly significant ( $p < 0.001$ ) relationship between the business respondents and the statements in this section on the influence of the EEA's provisions promoting equality and equal treatment in the workplace on job sustainability. There is no significant relationship between the trade union respondents and the statements in this section, other than the statement on the right to equal income distribution ( $p = 0.009$ ).
	Monitoring and enforcement	There is a significant ( $p < 0.005$ ) relationship between both statements in this section on the monitoring and enforcement of the EEA by labour inspectors and all the respondents (combined).	There is a significant ( $p = 0.011$ ) relationship between both statements on monitoring and enforcement by labour inspectors and by all respondents (combined).

As can be seen from Table 5.36 there is significant agreement amongst the respondents on the additional legislation's influence on job creation and job sustainability, with regard to job creation and work security.

**Table 5.36: Significant agreement amongst respondents on additional legislation**

Labour legislation's influence on :	Job creation	Job sustainability
Additional legislation on job creation	There is a highly significant ( $p < 0.001$ ) relationship between and all the respondents (combined) and the statements for this section on the influence of job creation schemes, tax incentive schemes, employment services offices, training of the unemployed workers and Black ownership, corporate advancement and involvement of black people on job creation.	
Education and training		There is a highly significant ( $p < 0.001$ ) relationship between all the statements on education and training's influence on job sustainability and all the respondents (combined).
Skills improvement in terms of the LRA		There is a highly significant ( $p < 0.001$ ) relationship between all the respondents (combined) and all the statements relating to the LRA's provisions on education and training's influence on job sustainability.
Skills development in terms of the SDA		There is a highly significant ( $p < 0.001$ ) relationship between by all of the respondents (combined) and all the statements relating to education, training, re-training and learnership programmes' influence on job sustainability.
UIA benefits and job sustainability		There is highly significant ( $p < 0.001$ ) relationship between all respondents (combined) and both statements on illness benefits and maternity benefits in this section on the UIA's influence on job sustainability. Whereas, there is no significant relationship between the statement on adoption benefits and all respondents (combined).
Ensuring a safe working environment in terms of the OHASA		There is a highly significant relationship between the statement on the OHASA's influence in creating a safe working environment on job sustainability and by all respondents (combined).
Monitoring and enforcement in terms of the OHASA		There is a highly significant relationship ( $p < 0.001$ ) between all the respondents (combined) and all three statements on OHASA's monitoring and enforcement of compliance by safety representatives and labour inspectors on job sustainability.
Compensation commissioner conducting enquires in terms of the COIDA		There is a highly significant ( $p < 0.001$ ) relationship between the statement on the Compensation Commissioner holding enquiries influence on job sustainability and by all the respondents (combined).
Monitoring and enforcement of the COIDA		There is a highly significant ( $p < 0.001$ ) relationship between the statement on the Compensation Commissioner's enforcement on job sustainability and by all the respondents (combined).

## 5.4 Summary of results

As per the summary of the statistics:-

- The two groups of respondents were representative of the target population studied.
- On the importance of social justice, human rights and decent work, both the business and trade union respondents agreed that the creation of job opportunities is very important. Although the vast majority of trade union respondents felt that all seven statements in this section were very important, the business respondents felt that some of statements were more important than others.
- On the role of labour law, both the business and trade union respondents agreed that labour law played a role. There is strong agreement between the respondents that freedom from discrimination in the workplace; the development of quality education and training systems; and freedom from exploitation in the workplace is very important. The business respondents, however, disagreed and differed on the importance of the role that labour law played in ensuring equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights.
- There is significant agreement amongst the business and trade union respondents that labour legislation does influence job creation and job sustainability.
- There was significant agreement amongst the two groups of respondents on various aspects of the BCEA's influence job creation and job sustainability on:
  - Working hours: The majority of the trade union respondents and a majority of the business respondents agreed that the regulation of ordinary hours of work and overtime influenced job creation, but they disagreed on work on Sundays, public holidays and night work influencing job creation.
  - Work time flexibility: At least half of the respondents in each of the groups agreed that work time flexibility influenced job creation.
  - The influence of labour inspectors in monitoring and enforcing the BCEA: The respondents differed. A majority of the trade union respondents agreed that they influence job creation, whereas the business respondents

disagreed. A possible reason could be their failure to conduct regular inspections and/or to enforce the provisions of the BCEA.

- There is significant agreement amongst the two groups of respondents that various aspects of the LRA influenced job creation and job sustainability:
  - On the general requirements for fairness: There was strong agreement between the business and the trade union responses on the regulation of alternative employment contracts and industrial action as having a likely influence job creation. However, businesses and trade unions disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation.
  - The majority of the trade union respondents indicated a much stronger likelihood that the LRA's requirements for fair dismissals would influence job creation.
  - On the equality and equal treatment requirements: There was agreement between the business and trade union respondents on the regulation of alternative employment contracts and standardisation of income as likely to influence job creation. The businesses and trade unions, however, disagreed on the right not to discriminate, the regulation of unfair labour practices and automatically unfair dismissals influencing job creation.
  - There is overwhelming agreement between businesses and trade unions that education and training improves a business's competitiveness and increases workers' productivity.
  - On the influence of the monitoring and enforcement of collective agreements by the bargaining council agents on job creation: There was significant variance between businesses and trade unions. Less than half of the business respondents indicated that it is likely to influence them, whereas the majority of the trade union respondents signified that it is likely to influence job creation.
  - There is disagreement amongst the two groups of respondents with regard to labour inspectors' monitoring and enforcing compliance with the LRA and its influence on job creation. Only some of the business respondents indicated that it was likely to influence them, whereas the majority of trade union respondents indicated that the monitoring and enforcement of



collective agreement by bargaining council agents was likely to influence job creation.

- There is significant agreement amongst the two groups of respondents that various aspects of the EEA influence job creation and job sustainability:
  - On the promotion of equality and equal treatment: An investigation of the responses for this section reveals that both business and trade union respondents agree that the EEA provisions on equal income distribution and the promotion of affirmative action are more likely to influence them in sustaining jobs. Although they differ considerably on the influence of the prohibition of discrimination; removal of unfair discrimination; and unfair labour practices on job sustainability, the business respondents indicated that the prohibition of discrimination, removal of unfair discrimination and unfair labour practices was less likely to influence them to sustain jobs. The majority of the trade union responses indicated a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability. They also indicated that the promotion of affirmative action and removal of discrimination was less likely to influence job sustainability.
  - On the monitoring and enforcement of the EEA by labour inspectors: The respondents differed in their opinions of their influence on job creation. The majority of the business respondents indicated that monitoring and enforcement by labour inspectors was unlikely to influence them to sustain jobs. A possible reason is that inspections may be occurring on a regular basis. The majority of the trade union responses, however, indicated a stronger likelihood that the monitoring and enforcement of compliance with the EEA by labour inspectors was likely to influence businesses to sustain jobs.
- There is significant agreement amongst the two groups of respondents that skills development influences job creation and job sustainability:
  - On training and education in general: There was overwhelming agreement between both businesses and trade unions that education and training improves a business's competitiveness and increases workers' productivity.

- On the SDA's training and education provisions: There was agreement between businesses and trade unions' responses on all the statements in this section. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes ensuring workers are equipped with the necessary skills, re-training through skills programmes and learnership agreements were all likely to influence job sustainability. The trade union responses, however, indicated a stronger likelihood that education, training and re-training workers were likely to influence businesses to sustain jobs.
- On the LRA's training and education provisions: There is agreement between the business and trade union responses on all the statements in this section. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes ensuring workers are equipped with the necessary skills, re-training through skills programmes and learnership agreements are all likely to influence job sustainability. The trade union responses indicated a stronger likelihood that education, training and re-training workers is likely to influence businesses to sustain jobs.
- There was agreement amongst the respondents that the UIA benefits influence job sustainability. The businesses and trade unions, however, disagreed on the influence of illness and adoption benefits on job sustainability.
- There was agreement amongst the respondents that the OHASA influenced job sustainability:
  - On creating a safe working environment: Between the business and trade union respondents, there is agreement that it was likely to influence job sustainability.
  - On the monitoring health and safety by safety representatives: The both groups of respondents also agreed that it is likely to influence job sustainability.
  - On the monitoring and enforcement of health and safety by the labour inspectors: There was disagreement between the two groups of

respondents. The majority of the business respondents indicated that they are unlikely to influence them to sustain jobs.

- There was agreement amongst the respondents that COIDA influences job sustainability:
  - On the Compensation Commissioner's holding of inquiries into accidents and the enforcement of compliance: The respondents agree that they are likely to influence job sustainability. Both groups of respondents, however, disagreed on how the likely that influence was on job sustainability. The majority of the business respondents indicated that they were unlikely to be influenced thereby to sustain jobs. The majority of the trade union respondents indicated that the Compensation Commissioner's holding of inquiries into accidents and the enforcement of compliance was likely to influence job sustainability.

## **5.5 Limitations of the quantitative study**

Online survey questionnaires were used but once sent out, no subsequent follow up was possible. The researcher, nevertheless, sent follow up emails to all respondents thanking them for having participated and imploring them if they had not participated to consider participating. In addition, the researcher did not specify geographical areas as one of the variables and only business sectors. Once the online survey data was collected, the responses were automatically recorded electronically and assigned a number, with no reference to who had participated. The positive aspect was that it assured the respondents of complete anonymity. The negative aspect was that there was no way of knowing which of the target population had answered the survey questionnaire, unless they had agreed to participate in the interview as well in which case, they included their contact details. Consequently, it was not possible to determine from which geographical areas data was collected, although invitations were sent to businesses in all geographical areas in South Africa. Geographical areas were, however, obtained from the respondents who also agreed to participate in the semi-structured interviews.

The complete anonymity also made it very difficult to follow up to determine who had participated and who had not. Consequently, reminders were sent to the entire target population thanking the respondents if they had participated and imploring them to participate if they had not. It was feared that the respondents' motivation to complete the questionnaire might be low due to their busy heavy workloads and pressures.

It was also a concern that the survey questionnaire might appear to be too long and off-putting, which was overcome by the electronic format that limited the presentation of information to sections. Another concern was that, as the survey questionnaire was emailed, it may not have reached the targeted respondents and it could have arrived at times when it would be inconvenient for the respondents to deal with. Consequently, it might be put aside, and in some instances, even forgotten about. Some respondents also indicated that they felt that the semi-structured interview would be more effective than the self-completed questionnaire, especially in instances where clarification of concepts, questions or instructions might have been needed. Semi-structured interviews were also conducted with respondents who agreed to also participate in them.

## **5.6 Conclusion**

This chapter has provided an overview of the quantitative data collection and data analysis results of the business and trade union survey questionnaires. It has revealed that labour legislation does influence on job creation and job sustainability. It does not reveal, however, whether the influence is positive or negative and to what extent it influences job creation and job sustainability. The following chapter presents and provides a detailed discussion of the qualitative study's findings and greater insight into the significance and the extent to which labour legislation influences job creation and job sustainability. It also provides insight into which aspects of labour legislation have a positive influence, which aspects have a negative influence and which aspects have no influence at all on job creation and job sustainability.

## **CHAPTER SIX: PRESENTATION, INTERPRETATION AND ANALYSIS OF THE QUALITATIVE DATA FROM INTERVIEWS**

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### **6.1 Introduction**

Chapter four outlined the methodology used in this study, including the quantitative data collection and analysis. This chapter presents the results and discusses the qualitative data collection and findings obtained from the semi-structured interviews conducted with the business and trade union respondents in this study. It is hoped that a better understanding of the perceptions of business, as well as of trade unions of labour legislation's influence on job creation and job sustainability will provide insight into how labour legislation does or can be amended to, to better encourage and support job creation and sustainability.

This study used a naturalistic inquiry to collect qualitative data by conducting semi-structured interviews. Participants in the study comprised twenty-two interviewees, which included sixteen business interviews and six trade union interviews. The data were coded, analysed and organized first by research question and then by categories and sub-categories guided by the conceptual framework, as depicted in Chapter Two. The study was based on the following nine research questions:

- Question 1: Who creates and sustains jobs, and how?
- Question 2: How did the participants perceive labour legislation's influence on job creation and job sustainability?
- Question 3: How do the participants' perceptions about labour legislation influence businesses to create and/or sustain jobs?
- Question 4: Which labour legislative factors did the participants perceive as helpful to creating and sustaining jobs?
- Question 5: What labour legislative factors did the participants perceive as impeding or threatening job creation and job sustainability?
- Question 6: What suggested changes, if any, should be made to labour legislation to improve job creation and/or job sustainability?
- Question 7: What are the factors (apart from labour legislation) affecting job creation and job sustainability?

- Question 8: What are the strategies to increase and/or improve job creation and job sustainability?
- Question 9: To what extent do the qualitative results confirm the quantitative results of the empirical study?

Analytical categories are directly aligned with each of this study's research questions. These same analytical categories were used to code the data and present the findings. The researcher searched primarily for connecting patterns within the analytic categories, as well as for the connections or themes that emerged among the various categories. At a secondary level of analysis, the relevant theory and research was tied in, as the themes were compared and contrasted to issues raised in the literature.

This chapter presents the qualitative findings of this study by organising data from various sources into categories to produce a readable narrative. This chapter will attempt to split apart and separate pieces of data to tell the research story (Bloomberg and Volpe, 2016:253). Consequently, the aim of the qualitative research aspect of this study is to gain an understanding of the nature and form of the phenomena, in this instance the influence that labour legislation has on job creation and job sustainability, in order to unpack meanings, to develop explanations or to generate ideas, concepts and theories (Ritchie, 2014:116). In addition, the collection and analysis of qualitative data goes beyond just dealing with "what"? and "how many"? It goes further and looks at why and how things happen (Miles, Uberman and Saldaña, 2014:11).

The chapter will provide interpretive insights into these findings in an attempt to construct a more holistic understanding. The analysis intends for a layered synthesis to emerge in order to depict a more integrated picture (Bloomberg and Volpe, 2016: 253). The discussion takes into account the literature on the influence that labour legislation has on job creation and job sustainability. The implications of these findings are intended to augment the understanding of the perceptions of labour legislation's influence on job creation and job sustainability. This chapter concludes with a re-examination of the researcher's assumptions, which were identified in the

first chapter, as well as a summary that incorporates a note regarding the effect of possible researcher bias in interpreting the findings.

## **6.2 Qualitative data collection**

As the study conducted is exploratory in nature, the researcher decided that the use of a semi-structured interview guide is the most flexible approach to follow. It was also felt that there would be a greater opportunity for the researcher to explain the purpose of the study; gain the participants' confidence and interest; and provide the participant with an opportunity to schedule a convenient time to participate in the study. Thus, the benefits outweighed the disadvantages of using semi-structured interviews, which were primarily telephonic.

### **6.3. The semi-structured interview guide research instrument**

The semi-structured interview guide was the primary tool used to collect qualitative data from the two separate groups of interview participants.

Both interview guides were developed by the researcher and were piloted before the semi-structured interviews were conducted. Both interview schedules contained sixteen primary questions, containing sub-questions which were broken up into two parts, one for job creation and the other job sustainability. Factual information questions, such as current position, type of entity and business sector were also asked. Sixteen business and six trade union interviews were conducted, which were deemed sufficient for analysis.

The interview guide was divided into sixteen questions (plus sub-questions), which measured various themes as reflected in Table 6.1.

### 6.3.1 Themes of the influence of labour legislation on job creation and job sustainability

**Table 6.1: Table of themes of the influence of labour legislation on Job Creation and Job Sustainability:**

<b>Table of themes of the influence of labour legislation on Job Creation and Job Sustainability:</b>				
<b>Themes</b>	<b>Job Creation</b>		<b>Job sustainability</b>	
Participants opinions on	Q1		Q9	
Factors influencing	Q10		Q10	
Business's behaviour towards	Q2,3,4		Q11 & 12	
Reasons for their behaviour	Q2		Q13	
Views of labour legislation	Q5		Q13	
Experience of labour legislation	Q6		Q14	
Suggested strategies to improve	Q8		Q16	
<b>Influence of labour legislation</b>	<b>Regulation</b>	<b>Compliance</b>	<b>Regulation</b>	<b>Compliance</b>
Fairness & work security BCEA	Q7.1 a-d	Q7.1 e	Q15.1 a-d	Q15.1 e
Fairness & work security LRA	Q7.2 a-e	Q7.2 f	Q15.2 a-e	Q15.2 f
Equity - EEA	Q7.3 a-d	Q7.3 e	Q15.3 a-d	Q15.3 e
Skills development - SDA			Q15	Q15

## 6.4 Qualitative data analysis

Two groups of interviewees, namely business participants and trade union participants, took part in this study. The results present the descriptive statistics in the form of figures and tables for the collected qualitative data. The researcher used NVIVO PRO version 24.1 computer software to assist with the familiarisation and initial coding of the interview data. Thereafter, the data was further analysed manually.

First level codes were generated from the data by NVIVO PRO version 24.1, which were then used together with interpretive creativity and theoretical knowledge to generate analytical second-level codes manually (Tracy, 2013:195). The researcher constructed an initial thematic framework to index and organise the data (Ritchie, Lewis, Nicholls and Ormston, 2014:298) and subsequently, to locate where particular



topics would be discussed (Ritchie, *et al.*, 2014: 300). A data summary was then compiled, which contained key terms and phrases with minimal interpretation of the data. A framework of matrices to make comparisons between the separate parts of the thematic framework was also constructed (Ritchie, *et al.*, 2014:304). The results are presented in a narrative descriptive form.

#### **6.4.1 Brief case background and discussion**

The purpose of this multi-case study was to explore, with a sample of businesspersons and trade union officials, perceptions of how and which labour legislation influences job creation and job sustainability. The researcher believed that a better understanding of this phenomenon would allow stakeholders and policy makers to proceed from a more informed perspective when amending and implementing labour legislation to facilitate an increase in job creation and job sustainability. This chapter presents the key findings obtained from twenty-two semi-structured interviews held with sixteen businesspersons and six trade union officials.

The following is a discussion of the major key findings, with details that support and explain each finding. In this study, there are two sets of cases, namely business cases and trade union cases. The phenomenon studied is reactions and behaviour towards labour legislation in terms of how it influences decisions to create jobs and to sustain jobs (Miles, Huberman and Saldaña, 2014:28).

#### **6.4.2 Qualitative semi-structured interview profiles**

With reference to Table 6.2 in Appendix 12 on page 553, which exhibits a brief profile of the business interviewees and Table 6.3 in Appendix 12 on page 554, which shows a brief profile of the trade union interviewees, it can be seen that most interviews were conducted telephonically. Three were face-to-face interviews and two were Skype interviews. It can also be seen that the participants are representative of the populations studied.

## **6.5 Statement of findings, interpretation and discussion of primary qualitative data**

Initially, the study describes the various descriptive demographic statistics that make up the population group. This data is summarised at the end of the graphics displayed below.

### **6.5.1 Descriptive statistics**

The descriptive statistics provide insight into the perception and composition of the population studied. The following descriptive statistical methods were used in this study:

- Descriptive frequency statistics
- Comparison of descriptive statistics of the two groups, namely businesses and trade unions.

#### **6.5.1.1 Descriptive frequency statistics**

##### **6.5.1.1.1 Presentation of results of the demographic and general profile of each group of participants**

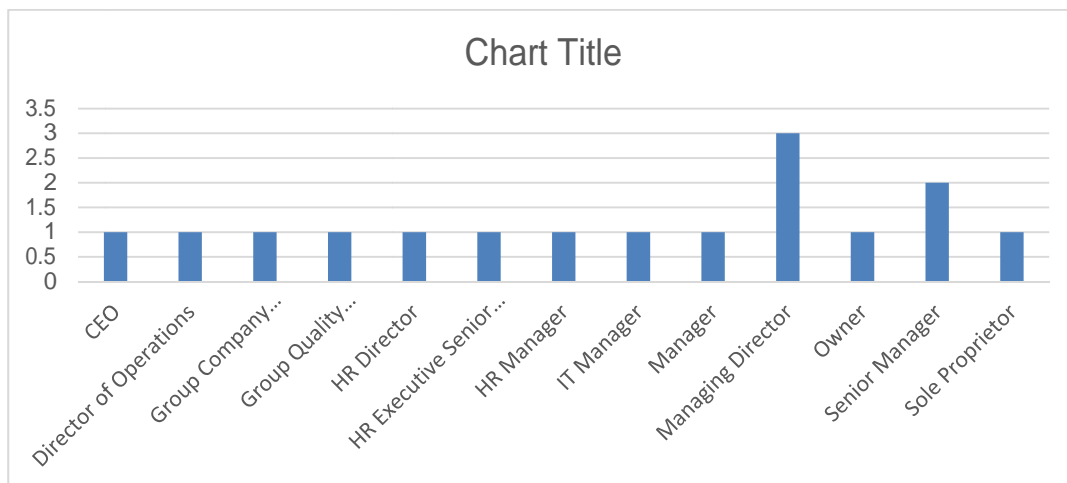
This section summarises the biographical characteristics of the two groups of interview participants. At the start of the interview, five initial demographic and profile questions were asked and answered, which captured the general particulars of the semi-structured interview population studied. The questions defined the population studied in terms of business entities; business owners and managerial seniority; the gender of the participants; the business sectors; and the geographical areas in which they were situated. These same general questions were also asked of the interviewees (all of whom had also previously participated in the survey).

##### **6.5.1.1.1.1 Position of the interviewees in their organisations**

Figure 6.1 shows the biographical data distribution of the positions held by the business population interviewed in the study.

The majority of the business interviewees held top and senior managerial positions in their organisations. One business participant was a chief executive officer. One company secretary, three managing directors, two directors, three senior managers, four managers and two entrepreneurs participated in the study.

**Figure 6.1 Positions held by business interviewees in their business organisations**



**Figure 6.2 Positions held by trade union interviewees in the trade unions**

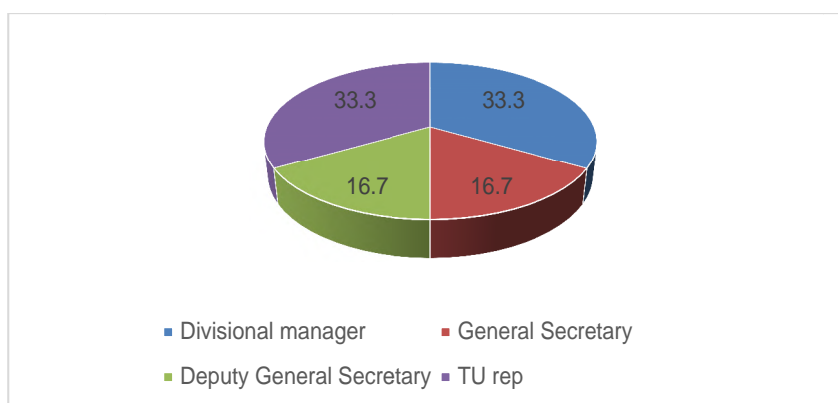


Figure 6.2 shows the biographical data distribution of the positions held by the trade union population interviewed in this study. Top and senior trade union officials represented trade unions in this study. Two (33.3%) divisional managers, one secretary general (16.7%), one deputy secretary general and two (16.7%) trade union representatives participated in this study.

#### 6.5.1.1.1.2 Geographical areas in which the interviewees are situated

**Table 6.2: Geographical areas in which business participants are situated**

	Frequency	Per cent	Valid Per cent	Cumulative Per cent
Valid	1	6.3	6.3	6.3
Ballito	1	6.3	6.3	12.5
Cape Town	2	12.5	12.5	25.0
Durban	1	6.3	6.3	31.3
Durban North	2	12.5	12.5	43.8
Johannesburg	5	31.3	31.3	75.0
Ladysmith	1	6.3	6.3	81.3
Pinetown	3	18.8	18.8	100.0
Total	16	100.0	100.0	

Table 6.2 reflects that the nine business participants were primarily representative of the greater Durban area. There were five participants from Johannesburg and two participants from Cape Town.

**Figure 6.3 Geographical areas in which trade union participants are situated**



Figure 6.3 reflects that the trade union participants were primarily situated in Johannesburg (66.7%) and, to a lesser extent, in Durban (33.3%).

#### 6.5.1.1.1.3 The gender distribution of the interview participants

Figure 6.4 reflects that the majority of the interview participants in both groups were male.

**Figure 6.4 Gender distributions of participants**

**The business group**

**The trade union group**

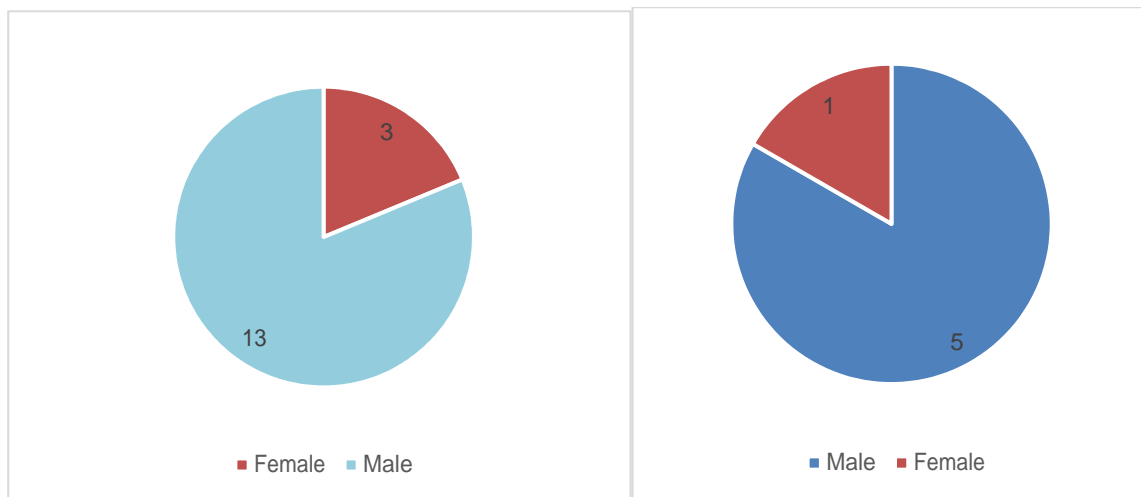


Figure 6.4 reveals that the business group comprised thirteen males (81%) and three (19%) females. The trade union group comprised five male (83%) and one female (7%) participants.

#### 6.5.1.1.1.4 Types of entities represented by the participants

Figure 6.5 reflects that the business group of participants comprised primarily of small, medium and large enterprises, as well as, a business federation of various sectors/industries.

**Figure 6.5 Types of business entities that business participants are representative of**

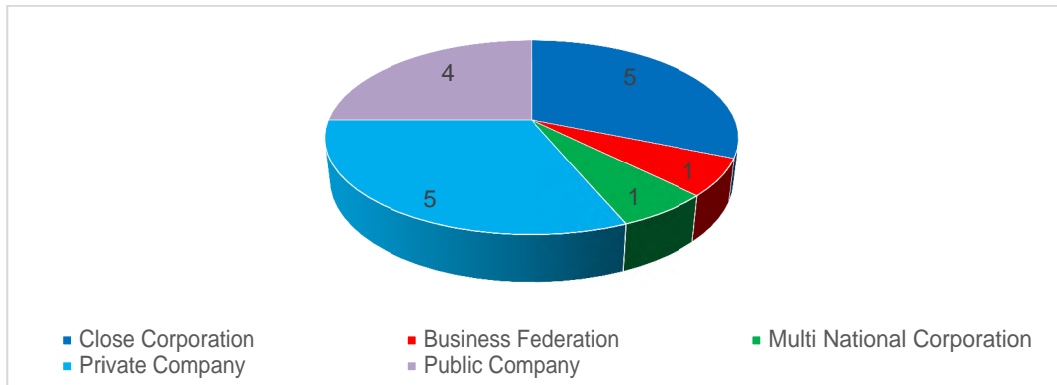
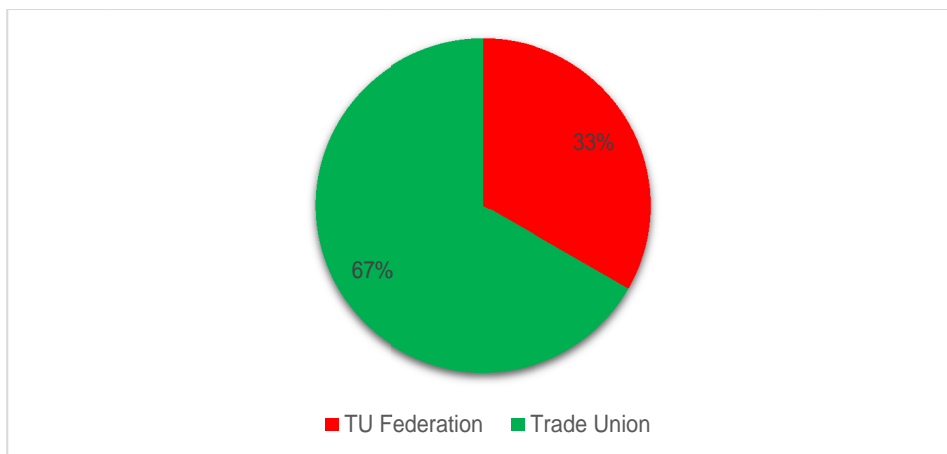


Figure 6.6 reflects that the majority (67%) of the trade union group comprised trade unions. However, there were a few participants (33%) who represented trade union federations as well.

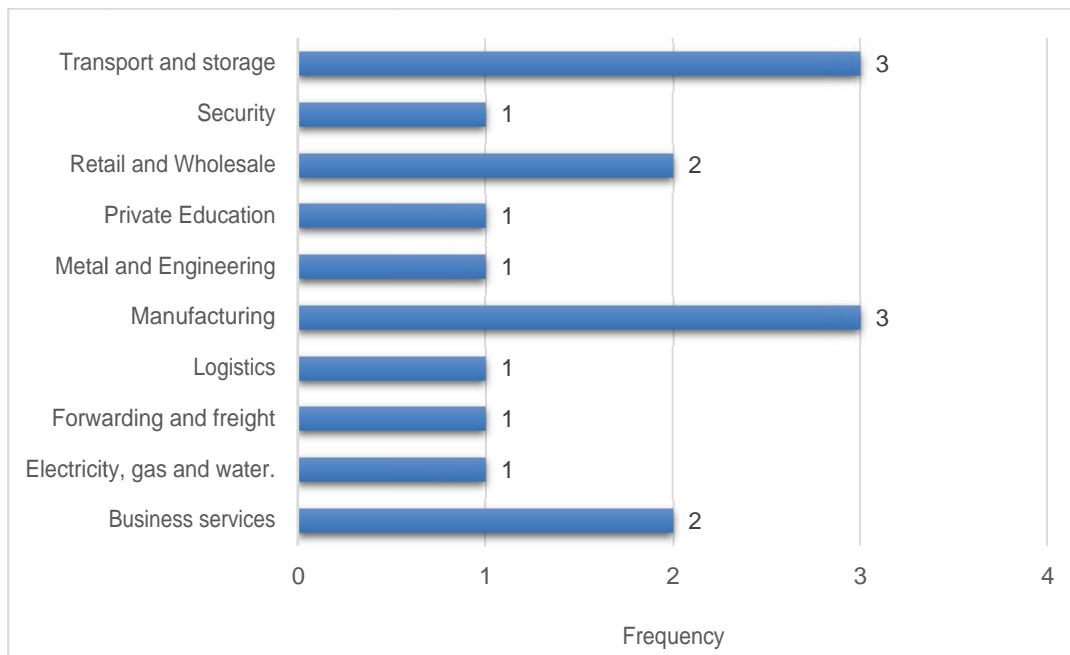
**Figure 6.6 Types of entities trade union participants are representative of**



#### **6.5.1.1.1.5 The various sectors represented by the participants**

Figure 6.7 reflects the various sectors of which the business participants are representative. Five (31%) business participants were from the transport, logistics, forwarding and freight sectors; another three (18%) business participants were from the manufacturing sector; and one was from the metal and engineering sector (6%).

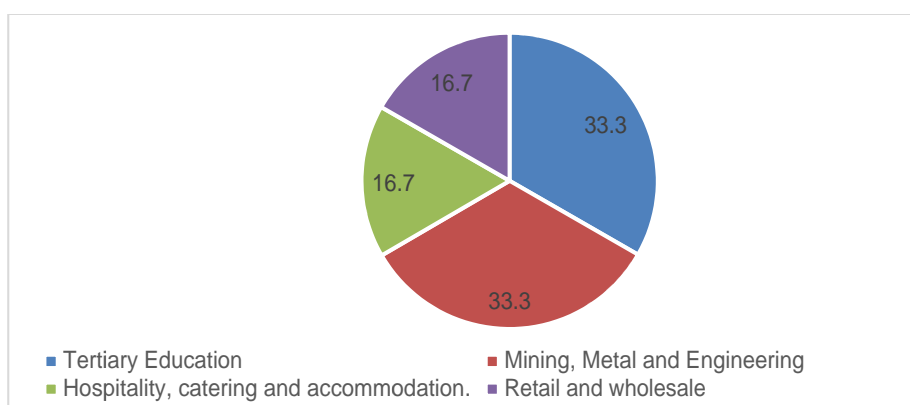
**Figure 6.7 Sectors represented by business participants**



Two (12%) business participants were from the retail and wholesale sector and another two (12%) were from the business services sector. The remaining sectors: - security (6%), private education (6%), and electricity, gas and water (6%) - were represented by one business participant each.

Figure 6.8 reflects that the trade unions primarily represented the mining, metal and engineering sectors (33.3%) and the tertiary education sector (33.3%), followed by the hospitality (16.7%) and retail sectors (16.7%).

**Figure 6.8 Sectors which the trade union participants represent**



In summary, the population studied included:-

- A business group comprising small, medium and large enterprises, as well as a business federation of various sectors/industries.
- Top and senior management who represented business.
- A trade union group comprising trade unions and trade union federations of various sectors/industries.
- Top and senior trade union officials who represented trade unions in the study.
- Men and women who represented businesses and trade unions in the study.
- Businesses and trade unions participants in this study who represented various South African business sectors.

#### **6.5.2            Presentation of results of interview participants' opinions and perceptions on various issues, *inter alia* the regulatory influence of labour legislation on job creation and job sustainability in South Africa**

Twenty-two semi-structured, primarily telephonic interviews were conducted in total. To ensure anonymity, the participants' names for this qualitative case study were coded numerically with the prefix B (business) or TU (trade union). Codes B1 to B16 and TU1 to TU6 were used to distinguish between the two groups.

##### **6.5.2.1            Labour legislation fulfilling the normative role of labour law**

The theme or area covered in this section is the regulatory influence of labour legislation in fulfilling labour law's normative role. Labour law's normative foundations are based on social justice and efficiency (Tzehainesh, 2010:4). The purpose of labour law is to provide legal protection through the promotion of safe and productive workplaces; the prevention of exploitation; and equality in the workplace; freedom from bias and discrimination; and job security (Benjamin cited in Le Roux and Rycroft, 2013:29). In South Africa, the need to balance equality with efficiency considerations finds expression in the Constitution, as well as in labour legislation.



Four participants agreed that labour legislation fulfils its normative role in that it regulates the employment relationship; and it guides and controls the way jobs are created and how workers are employed. It also acts as a guide and it helps resolve disputes. Labour laws are flexible and avert industrial action. Their comments were as follows:

- The BCEA and the LRA have normalised the employment relationship and bargaining agents help resolve labour queries (B2).
- The BCEA is a process to put minimum fair mechanisms in place. If an employer cannot afford the minimum provisions, it can approach the Department of Labour to relax the provisions in terms of section 50. (TU4).
- It is a standard used throughout the world which is driven by the International Labour Organisation (TU3).

#### **6.5.2.2      The influence of labour legislation and labour legislative factors on job creation and job sustainability**

The majority of the business participants and two trade union participants concurred that labour legislation is necessary and mostly justified. It is not enough to stimulate jobs. There is also a need to protect jobs. It is essential for legislation to protect both the employers and the employees. Consequently, the majority of participants indicated that overall, the labour legislation in regulating the employment relationship and the enforcement of compliance by labour inspectors does not influence them to create jobs. The participants' opinions differed, however, on labour legislation's influence on job sustainability.

Four business participants commented generally on labour legislation's influence on job sustainability. They felt that there is more than enough legislation and that both labour legislation and the economic climate are equally significant. The comments by the business participants included the following:

- The LRA and the BCEA process is a guide as it is not hampering businesses (B5).
- Legislation is worthwhile and it helps job sustainability by making it difficult to dismiss somebody (B7), (B8), (B10 and (B11).
- The whole of the LRA creates barriers to abusing people (B15).

The majority of trade union participants thought that labour legislation primarily has a positive influence on job creation and job sustainability.

- There are enough mechanisms in place, if businesses properly comply with the legislative tools to address their concerns (TU4).
- Government, however, is not doing enough in terms of the LRA and the BCEA to avoid casualization in this country. Workers do not have decent work and they are losing their jobs, which affects job sustainability. OHASA helps to keep people alive, as there are fewer accidents (TU5).

A few business participants agree that the legislation is fair, but they conceded that the parties need to have a fair amount of knowledge about labour legislation and that business has to invest a large amount of time and resources to comply with labour legislation. Nevertheless, one business participant and two trade union participants differed and stated that labour legislation does not influence job creation. They consider that the BCEA is a process to put fair mechanisms in place. However, one business participant declared that industrial action and skills shortages; foreign exchange fluctuations; and inflation do have a direct influence on job creation. Two business participants agreed that, at times, labour legislation has a positive influence, while at other times, it has a negative influence. One business participant commented that something is seldom either negative or positive and that one needs to look at the overall result. The net result is that labour legislation creates opportunities and sustains those jobs created.

Six of the business participants disclosed that the B-BBEEA; the BCEA; the LRA; the SDA and the ETIA influenced them both positively and negatively. The reasons they gave was that it provided certainty while simultaneously restricted freedom to give financial incentives to retain skills and experience. The EEA is not representative. Furthermore, the business participants add that the EEA operates in a silo as other arms of government do not sufficiently support it. Additionally, educational institutions need to improve primary, secondary and tertiary education legislation. The business participants remarked that the B-BBEEA does not really create jobs. The business participants added that it helps smaller companies and Black businesses to thrive but more needs to be done to educate Black business to thrive.

They stated that the B-BBEEA can cripple and cause existing businesses to close down for not meeting its criteria.

Three of the trade union participants confirm that labour legislation might influence job creation if employers see it as a costly exercise. Nonetheless, they observed that people are easily dismissed and that employers have the funds to obtain the services of lawyers and labour specialists to assist and guide them. They add that employers are also not concerned about arbitration awards, judgments and their enforcement. The trade union participants added that employers continue to use labour brokers regardless of the amendments to the labour legislation.

The business participants stated that the SDA has not really encouraged job creation. They remarked that rather, it is a cost to company which they try to recover by developing skills. They stated that businesses are limited to only recovering a maximum of twenty-five per cent of what they have spent on training. The business participants criticised the SDA in that although it is designed to enhance job creation, it is poorly executed and the SETAs waste money on meetings and parties. One business participant disclosed that skills improvement legislation, other than the youth tax incentives, has not influenced him to sustain jobs. He conceded that initially, the ETIA youth tax incentive helped him to consider taking on youths for training. However, he has since stopped, as he considers the youth to be more of a burden than a benefit. He also believes that the youth are unsettled; that they lack integrity and skills; and their militant and demanding attitude discourages him from employing them.

Four business participants concur that the ETIA has a negative influence on job creation. The reasons they gave were that, although a tax incentive initially encouraged them to create jobs and to employ the youth, they have become disillusioned and discouraged with employing the youth, whom they consider to be more of a burden than a benefit. This has resulted in higher staff turnover. They also believe that the youth are unsettled; they lack integrity and skills; and they are only willing to do the job and nothing more. They concede that the youth have the energy but it is their attitude which discourages businesses as they do not think things through; they resist before they adhere; and there is a violent and destructive

element amongst the youth, whom the participants found to be quite militant and demanding.

Consequently, some business participants indicated that they would prefer to employ people within the age category of thirty to forty years old, who have families. They felt that the tax incentive scheme should be extended to cover this age category as well. In addition, some businesses perceived the ETIA to be a punitive incentive to create jobs as it costs money to create jobs and they felt that the financial incentives do not adequately cover the cost of employing and training the youth. None of the business participants commented on the ESA influencing job creation. Only one trade union participant commented generally thereon that the intention was good. She disclosed, however, that she was unaware of any government employment agencies and that she did not have a positive view of private employment agencies, which she thought deprived prospective workers of a decent salary. She remarked that the union is totally against employment agencies, which do the unemployment situation a dis-service.

Labour legislation and its regulatory influence are divided below into three sub-themes: namely equity; fairness, and fair favourable working conditions; and job security, including skills development and social security.

#### **6.5.2.2.1 Fairness – fair favourable working conditions:**

Fair favourable working conditions increase efficiency and productivity. In order to create fair favourable working conditions, the BCEA guarantees certain minimum standards of employment.

##### **6.5.2.2.1.1 Basic Conditions of Employment Act, No. 75 of 1997 (BCEA)**

The participants expressed their opinion on various sections of the BCEA ensuring fairness, efficiency and productivity, which influenced their decisions to create and sustain jobs. The sub-theme of fairness and efficiency is divided further below into four sub-themes, namely staffing contracts; working conditions; notice periods and severance pay; and minimum wages.

**Staffing contracts:** The majority of the business participants, twelve out of sixteen, and one trade union participant, agreed that the provisions on staffing contracts did not influence businesses to create jobs. Five business participants and one trade union participant were in accord that the same provisions on staffing contracts did not influence them to sustain jobs. Seven business participants stated that they are unaffected or uninfluenced by the amended provisions, as there is enough of a window in the legislation if they have justifiable reasons. Two others confirmed that they use fixed-term contracts as a form of probation and thereafter made permanent appointments. Five of the business participants are regulated by bargaining council agreements, which gazette wages and working conditions. They comply with the provisions and align their contracts with the BCEA. One of the business participants thought that the ethical thing to do is to treat the workers fairly and not to exploit them.

Staffing contracts were seen as unfair in the following respects: five of the business participants and the majority (four) of the trade union participants agreed that the BCEA's provisions on staffing contracts, especially the legislative amendment limiting the use of fixed-term contracts to three months and the restrictions on the use of casual labour, have negatively influenced businesses and discouraged them from creating jobs. Three business participants concurred that the BCEA's regulations to ensure fair staffing contracts negatively influences job sustainability. They remarked that the provisions of the Act could also inhibit building capacity in advance of obtaining a contract. They add that the main reason is that the BCEA lacks flexibility. They stated that it might help some employees to be employed permanently, but it could also serve as a deterrent to employ more staff. They commented that employers also get around the amendments by replacing workers or rotating them and their jobs. They felt that the amendments have actually fuelled unemployment. One of them remarked that businesses will keep on going and that they will simply get more resolve.

The BCEA also heavily regulates the employment relationship; it increases the cost to existing staff; and it infringes on the employer's freedom to employ and the right to select, which has a negative influence on job creation. The comments by the business participants included the following:

- The nature of the transport industry is such that one cannot shrink and expand the labour force (B11).
- The hour-based limits on casual labour are likely to result in the decreased use of casual labour (B3).
- The BCEA and the LRA are pro the employees and employers have a rather difficult time working around these Acts. The industry is not highly skilled, so it is easy to replace people. I keep a person for three months, then terminate his or her services and take on a new person. I never use the same person twice, so it has had a detrimental effect and it has fuelled unemployment (B10).
- Employers should have the right to make use of more temporary types of employment and be granted greater leeway for the use of fixed-term contracts, labour brokers and part-time workers to manage and harness the type of work that the business needs (B7).

Two trade union participants and one business participant concurred that the regulation of staffing contracts, as well as the amendments thereto, have a positive influence on job creation and job sustainability, especially when using someone on a contract basis for probation and thereafter creating full-time, permanent quality jobs. The comments by the business participants included the following:

- There is enough of a window in the legislation, which allows the employer to employ after three months if they have justifiable reasons. As long as they follow the law, there is no problem. The amended provisions are aimed at rogue employers, who have no legitimate reasons (B16).
- The probation process is simple. The employer must have a standard and a measure. One is dealing with people; they need to be given reasons and provided with an opportunity (TU4).
- There are specific procedures that employers must follow with probation to ensure that there is no abuse of authority in the workplace (TU6).

One business participant commented that when one looks after workers emotionally and physically, they work better and that it also prevents employers from abusing their authority (B12). One trade union participant also commented that it helps workers to be permanently employed, although he conceded that it can deter some

employers who choose to do without workers, especially with the current difficult economic climate that places employers under pressure (TU2). On the other hand, staffing contracts were seen as fair in the following respects: one of the trade union participants remarked that the BCEA is a process to put fair mechanisms in place that it is in accordance with international standards and employers can apply for exemptions if they cannot afford the minimum provisions (TU3).

**Working conditions:** The majority of the business participants, eleven out of sixteen, agreed that the BCEA's provisions to ensure fair working conditions did not influence them to create jobs. Three business participants and one trade union participant concurred that the same provisions did not influence job sustainability either. The common reasons given were that they comply with the law. Three business participants are subject to bargaining councils, which regulate their industry, and in which they participate. They add that bargaining council agents ensure that workers are treated well and further that the businesses' representatives represent their interests and negotiate the working conditions for their industry and they comply with the bargaining council collective agreements. One business participant remarked that the only issue he has with bargaining councils is the selective enforcement of compliance.

Working conditions were seen as unfair in the following circumstances: One of the trade union participants stated that it is difficult for certain industries who work a seven-day week, for example, supermarkets, and those smaller employers, who are unable to comply are forced to go out of business. Four business participants and four trade union participants agreed that the negative experiences and perceptions of the BCEA's provisions on public holidays, overtime, night work and work on Sundays, as being inflexible and negatively influencing job creation.

Three business participants were in accord that the restrictions imposed by the BCEA on overtime and sick leave negatively influences job sustainability as well. Some of the reasons given were the ad hoc presidential declarations of additional public holidays; the payment of overtime, particularly when employers become aware of employees abusing overtime pay; the regulation of night work; and the payment for work on Sundays, especially in the transport industry where businesses

are unable to deliver at night or on Sundays. Their comments on the fairness/unfairness of working conditions included:

- The unforeseen 27 December 2016 declared as a public holiday resulted in an unforeseen additional labour cost of R87 000 in overtime wages, for which the company had not budgeted and catered for in advance, and which had to come directly off the company's bottom-line (B8).
- An employer objects to workers who deliberately work slowly throughout the day so that they can work overtime at night to receive extra pay to meet their daily targets. This has a negative influence on operations, especially in a fast moving goods industry which operates on the just-in-time principle (B10).

Two of the business participants noted that the employers in these sectors must be able to compromise, otherwise it is operationally impossible. The comments by the business participants included the following:

- The regulation of minimum wages and working conditions in the security industry is controlled by a sectoral determination. When the annual increase is in line with inflation it is fine, however business is threatened when the increase is set above inflation, as it hurts the bottom line (B8).
- The laws are inflexible; I cannot predict when the next load is going to be, as we work on a just-in-time basis (B2).

One of the business participants mentioned that sick leave is open to abuse, which results in additional costs and affects pricing (B8).

A trade union participant added that the provision also affects certain industries, for example supermarkets and sectors which operate on all seven days, as well as the security and the gambling sectors. His comments included the following:

- It was not really a deterrent but a difficult one, especially with the changing world that we are living in affects certain industries for example supermarkets and sectors, which operate all seven days (TU2).

On the other hand, the provisions on working conditions were seen as fair by the participants in the following respects: The standardisation of working hours in terms



of the BCEA ensures that workers work reasonable hours and keeps the workforce happy (Du Toit, *et al.*, 2011: 597). Business participants abide by the rules and ensure that their workers are treated well. Two of the business participants who need workers to work twenty-four hours per day, use shift work to create more jobs by making working hours more flexible and reducing the hours of work of existing employees.

However, one business participant and two trade union participants agree that the BCEA's regulations ensuring fair working conditions have a positive influence on job sustainability. The reasons they gave are that it provides guidelines; if workers are emotionally and physically looked after they will work better; and that all the social partners should form a social pact, act differently and work together for the good of the country.

**Notice periods and severance pay:** The majority of the business participants, twelve out of sixteen, agreed that the BCEA's provisions on notice periods and severance pay did not influence them to create jobs. Three business participants and two trade union participants agreed that the same provisions also did not influence job sustainability. The reasons they gave are that the provisions are fair; they have little or no effect; these provisions are a necessary cost of doing business; the business participants comply with the legislative requirements; and they relocate retrenched workers.

Notice periods and severance pay were seen as unfair in the following respects: Two business participants agreed that the BCEA's regulations ensuring fair notice periods and severance pay negatively influenced job creation and job sustainability, especially when the dismissal procedure and the notice of termination, only protects the employee. Only the employee can give notice, and does not have to pay a month's notice pay when he/she fails to give proper notice. The comments by the business participants included the following:

- I resent being “persuaded” to pay a dismissed employee who had committed a misdemeanour “nuisance pay” (B2).

- The whole dismissal process is very costly, tedious and time-consuming (B10).

On the other hand, notice periods and severance pay were seen as fair in the following respects: Two trade union participants are in agreement that the BCEA's provisions on notice periods and severance pay have a positive influence on job creation. They stated that the legislative intention is to ensure that parties give notice which allows for planning and preparing for retrenchment and severance pay is only paid when people are retrenched.

**Minimum wage:** The majority of the business participants, eleven out of sixteen, agreed that the BCEA's regulation of minimum wages and sectoral determinations do not influence them to create jobs. Three business participants were in agreement that the regulation of minimum wages also does not influence job sustainability. Some commented that bargaining councils guide and regulate minimum wages in their industry; that the regulations are good; they create certainty and act as a guide; and they pay above the minimum wage set for their industry. However, three business participants raised concerns that it might have a detrimental effect on job creation. One conceded, however, that they could apply for an exemption if they are unable to cope with minimum provisions. The comments by the business participants included the following:

- The business is threatened when the annual increase is set above inflation as it hurts the bottom line (B8).
- If the national minimum wage is set too high, it will have an adverse effect on food manufacturing, the agricultural sector and wholesalers (B10).

Minimum wage was seen as unfair in the following respects: Three business participants and one trade union participant concurred that the BCEA's regulation of minimum wages negatively influenced job sustainability. The reasons they gave are the bargaining council's selective enforcement of compliance; that minimum wages are exacerbating unemployment; and destroying job opportunities; and salary increases over and above inflation results in greater job losses. They further stated

that if the labour supply becomes too expensive, minimum wages are unaffordable and people will lose their jobs, which actually exacerbates unemployment.

Two business participants and one trade union participant agreed that the regulation of minimum wages and sectoral determinations are too bureaucratic and unwieldy. They highlighted issues about staff incompetence and wasteful expenditure. The comments by the business participants included the following:

- There is such a lot of wasteful bureaucratic expenditure and the staff are incompetent. It is unwieldy like the Titanic (B7).
- It poses a problem for smaller companies who cannot afford to pay minimum wages, it is not cost effective (B12).

The trade union participants agreed with the business participants that an employer also has to be knowledgeable on minimum standards or hire someone who can advise on costs (TU1).

On the other hand, the minimum wage provisions were seen as fair in the following respects: Two trade union participants concurred that the BCEA's minimum wage regulations positively influence job sustainability in terms of qualitative work and, if the employer believes costs can be managed and are sustainable, jobs are sustained.

**Enforcement of compliance with the BCEA by bargaining councils:** Five business participants agreed that the bargaining council agents' inflexible approach towards small businesses and the manner in which they and the trade unions are enforcing compliance negatively influences job creation. The reasons they gave were that the bargaining council agents and trade unions are unfairly targeting and victimising them; there is competitive jealousy in the industry and the union is encouraged to lay complaints with the bargaining council; and compliance should be enforced more uniformly. One trade union participant remarked that the regulations would have more influence but the problem is with the implementation by the Department of Labour. This participant added that the officials will not compel or enforce compliance and there is massive corruption amongst the inspectors.

However, four business participants and two trade union participants concurred that the enforcement of compliance with the BCEA by labour inspectors does not influence job sustainability, as the inspectors have not conducted inspections recently and the inspectors defer to the bargaining councils. They added that it is very important that labour inspectors work within the parameters to ensure that workers have some kind of protection and security and that the labour inspectors strongly encourage safe working practices.

Thus, the aspects of the BCEA which negatively influence job creation and job sustainability are: staffing contracts, primarily the legislative amendment limiting the use of fixed-term contracts to three months; hours of work; the perceived inflexibility of payment for work on public holidays, overtime, night work and work on Sundays; the bureaucracy, and the number of time-consuming and costly administrative duties; corrupt officials abusing power and wanting to be paid bribes; and the inflexible rigid and selective enforcement of compliance by the agents of the bargaining council.

#### **6.5.2.2.2 Equity**

In South Africa, the need to balance equality with efficiency considerations finds expression in the Constitution, as well as in labour legislation (Du Toit, Godfrey, *et al.*, 2015: 35). The LRA and the EEA promote and regulate equality and the equal treatment of workers in the workplace.

##### **6.5.2.2.2.1 The Employment Equity Act, No.55 of 1998 (EEA)**

The majority of the business participants, eleven out of sixteen, agreed that the provisions of the EEA regulating equity did not influence them to create jobs. What is interesting to note is that seven of them disclosed that their workforce is primarily from disadvantaged groups.

A few of the participants commented that recruitment practices, affirmative action, equal pay for equal value and income differentials did not influence job sustainability. However, one business participant remarked that he was not influenced at all by the

EEA to sustain jobs. He declared that the Act has good intentions, although he found it very difficult to employ persons with suitable skills, as the EEA operates in isolation from the support structure that feeds into business, namely primary, secondary and tertiary educational institutions, which he felt government needed to improve. A few of the participants agreed that the EEA's provisions on recruitment practices and equal pay for equal value have a positive influence on job creation.

The sub-theme of equity and the EEA is further divided below into four sub-themes, namely recruitment practices; affirmative action; equal pay for equal value; and income differentials.

**Recruitment practices:** The majority of the business participants, eleven out of sixteen, and four out of six trade union participants concurred that the EEA's regulation of recruitment practices did not influence them to create jobs. Two business participants and two trade union participants concurred that the same provisions also do not influence job sustainability. Some of the reasons given are that it has aligned business with legislation; it is used as a guide; and it influences businesses to employ more disadvantaged persons. One business participant remarked that all his labour is Black, Coloured, Indian or Malay and there are no white people employed.

The EEA's regulation of recruitment practices was seen to promote equity in the following ways: The EEA regulates the employment relationship heavily; measures are put in place to give preference to disadvantaged groups; it ensures equality and no discrimination; and bigger businesses will comply. One business and two trade union participants agreed that the EEA's provisions on recruitment practices have a positive influence on job creation and job sustainability as it causes business to employ more disadvantaged people; it provides guidelines on how to create jobs; and it ensures equal treatment, no discrimination and skills retention.

On the other hand, the following views were expressed as to why the EEA's regulation of recruitment practices did not promote equity: Two trade union participants agreed with the business participants that affirmative action has the opposite effect on job sustainability and compliance makes it difficult to fill positions

with the correct people. They added that it overlaps with the bargaining council agreements and disability, rather than race, is influencing job sustainability. One business participant remarked that he has had a negative experience with employing disabled persons. Another business participant, however, admitted that he puts skills first. Yet another business participant acknowledged that she looked at qualifications, skills and experience but she felt that it could stifle entrepreneurs. Yet another business participant objected to the provisions and said that it was unfair to be obliged to take on disadvantaged people who were not right for the job. Some of the comments from these participants included:

- Companies have had eighteen years to implement affirmative action (B9).
- The majority we employ are Africans. The company, however, is not representative of other minority race groups, especially Indians and Whites, in the lower skills category as they do not want to work at the lower levels (B8).
- People who want to work should be allowed to work. (B12).
- I have lost a lot of money and I am struggling to dismiss them. I should have the right to employ who I believe is the right person for the job (B14).
- The EEA is not effective legislation. Instead of employing the right person for the job, you have to fulfil the employment equity plan and the affirmative action goals set out in the employment equity plan. There is a high turnover of “Black diamonds” so no long-term planning is possible (TU1).

**Affirmative action:** The majority of business participants (eleven) agreed that the EEA’s regulation of affirmative action does not influence them to create jobs. What is interesting to note is that three of them disclosed that the majority of their staff were Black. However, two other business participants and one trade union participant agreed that the equity plans influence business participants. Another trade union participant remarked that the provisions are necessary to ensure fairness and equity and to address past inequalities. The business participants’ comments on affirmative action’s influence included the following:

- There is a need for a B-BBEE partner, who is prepared to roll up his/her sleeves (B11).
- We do not base appointments on colour, gender or anything else, only on qualifications, experience and the position in the company (B12).

- The company does have equity plans and conducts its own in-house training programmes to support affirmative action, but there is not enough people coming through the system (B4).

Three business participants and one trade union participant also agreed that the EEA's regulation of recruitment practices does not influence job sustainability as long as affirmative action is complied with in a manner prescribed by legislation, although there are issues with succession, poor education and a lack of skills. One of the business participants commented as follows:

- There is no one with managerial skills to take over my business when I retire (B11).

On the other hand, the following views were expressed as to why the EEA's regulation of affirmative action did not promote equity: One business participant remarked that affirmative action is having a negative influence on job sustainability as the employment equity plan requires them to have targets. However, the problem is with minority groups, such as Coloured persons, who are very difficult to find with the required skills in a small town like Ladysmith. One of the trade union participants conceded that there needs to be a sunset clause for affirmative action, as the regulation of affirmative action was negatively influencing job sustainability.

**Equal pay for equal value on income and benefits:** Overall, it would appear that this provision on "no wage discrimination" does not really influence job creation. More than half (nine) of the business participants are of the same mind that the EEA's regulations on pay equality did not influence job creation. Three of them disclosed that they are regulated by bargaining councils; they comply with the gazetted income and benefits; and that it is essential to ensure fairness. However, three business participants admitted that they drew a distinction based on extra effort, skills and experience, which they felt was fair. The comments by the business participants included the following:

- It ensures that full-time and part-time workers all receive the same benefits (B6).

- The company has a salary banding system. The classification is based on experience; time with the company; training; and intrinsic value to the company (B1).
- It protects both sides. Businesses must ensure that there is equity and fairness in the workplace (B9).

Four business participants were in agreement that the EEA's provisions relating to pay equality also did not influence job sustainability. One remarked that his business employs mainly female workers and that the bargaining council controls their job descriptions.

The EEA's regulations on equal pay for equal value on income and benefits were seen to promote equity in the following ways: Two trade union participants concurred that the EEA's provisions on no wage discrimination have a positive influence on job creation and job sustainability as it ensures equality, fairness and the payment of a living wage. There should not be any discrepancies in income and benefits and employees doing the same work should be paid the same.

**Reduction of “disproportionate” income differentials:** An overwhelming majority of the business participants (thirteen) agreed that the EEA's regulations on reducing “disproportionate” income differentials did not influence them to create jobs. The majority of them stated that they complied with the bargaining council's regulations and adhered to their company's salary banding systems. Two business participants revealed that they follow the gazetted distinctions, but they admitted that they pay experienced workers more. Another felt that the legislators had obtained this idea from their bargaining council. Yet another stated that they rectify the problem immediately. The comments by the business participants included the following:

- It can be a challenge in certain instances (B14).
- If there is a proper scheme, it is easy to identify and rectify the unequal treatment immediately (B9).

Two business participants concur that the EEA's regulations on income differentials do not influence job sustainability. The only problem they foresee is with paying all workers the same rate as it will increase their labour costs.



The EEA's provisions on the reduction of disproportionate income differentials were seen to promote equity and fairness in the following ways: Two trade union participants agree that they have a positive influence on job creation and job sustainability on the overall aspect of equity and fairness. It is a process in which businesses have to identify the differences and put a plan in place to reduce the disparities. Workers want fairness. There cannot be discrepancies and discrimination otherwise there will be chaos and labour turnover. People will leave and this will mean that there will be no job sustainability.

### **Labour inspectors' enforcement of compliance with EEA**

The majority (nine) of the business participants were in agreement that the enforcement of compliance with the EEA by labour inspectors did not influence their decisions to create jobs. Three business participants agreed that enforcement of compliance by labour inspectors with EEA also did not influence job sustainability. The reasons they gave is that inspections have not occurred in the past; labour inspectors are more active now in coming round to checking on whether the firm is complying with employment equity; labour inspectors do an in-depth audit on the employment equity; and they compare it with the company's employment equity plan, and advise the firms. They added that the labour inspectors have not been very strict and have only guided them. Business participants stated that they had to justify how they have tried to overcome the challenges that they faced with minority representations and the fear of penalties ensured that businesses adhered to their employment equity plans. One trade union participant confirmed that the labour inspectors were enforcing compliance and that they conducted ad hoc visits. However, this participant thought that the old penalties were ineffective on bigger companies who would rather budget for the penalty.

Thus, the most important aspects of the EEA negatively influencing job creation are: business participants experienced problems with complying with affirmative action and employment equity plans; and the local demographics and the available labour pool skill restricts businesses from meeting their equity targets. They stated further that poor education and a lack of or inadequate skills was causing a duplication of

positions and roles. They added that White owned businesses are struggling to meet their equity targets; that the no wage discrimination provisions; and the enforcement of compliance negatively influence job creation to a lesser extent.

**6.5.2.2.2 Broad-Based Black Economic Empowerment Act, No.53 of 2003 (B-BBEEA):**

Four business participants share the opinion that the B-BBEEA's regulation of equity did not influence them to create jobs. Only one business participant mentioned that the change in the B-BBEEA scorecard was not a problem for him, as his is a fully Black-owned company, so it did not influence him to sustain jobs. This participant added that the B-BBEEA's regulation of equity helps small companies and businesses to thrive but more entrepreneurial skills are needed. Other business participants added that the B-BBEEA's regulation of equity does not really create jobs and more should be done to educate Black businesses. The business participants stated further that the B-BBEEA's regulation of equity does not have a major effect on their businesses unless they tout for government contracts or for major business. Some of them admitted that they use the B-BBEEA as a balancing guide when making selections and appointments. They added that those businesses that are B-BBEE score-rated have to be B-BBEE compliant.

Five business participants and two trade union participants agreed that the B-BBEEA negative influences job creation and job sustainability, especially if they perceive the B-BBEE to be in a bureaucratic industry. The business participants expressed the following views as to why the B-BBEEA did not promote equity and threatened job creation and job sustainability. They stated that as the B-BBEEA scales tip, the B-BBEEA threatens businesses and deters new businesses, if they do not qualify. They stated that this affected, specifically the predominately White-owned and smaller businesses who had to find equity partners. The business participant added that for these businesses equity is not a priority, as much as legislation demands. He stated that the way in which the legislature has structured the B-BBEE scoring system could cripple and cause existing businesses to close down for not meeting the B-BBEE scorecard criteria.

The business participants stated that businesses that have to comply with the

B-BBEE scorecard criteria to get government contracts and tenders are under threat when the criteria changed. They remarked that the B-BBEEA could deter a business from employing people if businesses do not qualify. In addition, they stated that the new B-BBEE scorecard requirements threaten business sustainability and discourage expansion and growth, especially where businesses do not meet the new criteria or where skills are needed or experience is required. They claim it limits employers' freedom to select and employ and it does not help the people that need it. Some business participants admitted that they overcame some of the difficulties they encountered through skills training. Furthermore, the business participants added that the amendments were broad but were not ideal, and more work needed to be done to improve them. Their comments on the B-BBEEA's influence on job creation and job sustainability were as follows:

- The company is predominantly White-owned, so we created a twenty-five per cent Black shareholding (B4).
- It does not make business sense to find equity partners with whom to share the business. I am prepared to give workers a profit share, but not equity. I want to retain control over my business (B7).
- The moment legislation starts being punitive, it takes away job opportunities (B12).
- It is getting worse for the business as the B-BBEEA scales tip. No matter how compliant we are, we are going backwards as we are not fifty-one per cent Black-owned (B8).
- Our employees are all White: We are in the training environment, where we are constrained by time. Equity is not a priority for us, as much as legislation wants it to be (B13).

On the other hand, the B-BBEEA was seen to influence job creation and job sustainability by promoting equity through training and development. Four business participants and one trade union participant agreed that the B-BBEEA has a positive influence on job sustainability. The reasons they gave are that the business B-BBEE scorecard and the status level are improved through training, which has made it attractive for their businesses to invest in training, develop and train staff, as well as, the unemployed.

#### **6.5.2.2.3 Job security**

Job security is primarily addressed through the LRA, although other labour legislation such as the BCEA, the SDA and the UIA also contain aspects that ensure and promote job security (Barker, 1999:30-39). The LRA nevertheless binds all the other pieces of labour legislation together (Du Toit, *et al.*, 2011:39). It therefore seeks to promote job creation and job sustainability through job security by removing the BCEA's rigidities and inefficiencies and promoting flexibility and sound labour relations through collective bargaining, dispute resolution and workplace forums (Du Plessis and Fouche, 2012:50).

Consequently, the LRA contains provisions which promote and regulate fairness and equity in the workplace, as well as, fair labour practices and skills development to ensure job security (Van der Walt, Le Roux and Govindjee, 2012:39).

##### **6.5.2.2.3.1 The Labour Relations Act, No.66 of 1995 (LRA)**

The sub-theme of job security and the LRA are divided below into five sub-themes, namely: staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes; and dispute resolution.

**Staffing contracts:** Just over half of the business participants, nine out of sixteen, are in agreement that limiting the various types of staffing contracts does not influence their decision to create jobs. Two business participants agreed that the provisions also did not influence job sustainability. A common reason given was that they comply with the bargaining council specifications which guide the employment contracts for the whole industry and that they were in accordance with the law. The business participants added that the legislative amendments limiting fixed-term contracts to three months simply made them decide faster. The participants added that there was enough of a window in the legislation which allowed them to employ after three months if they had to and if there were justifiable reasons, as long as they followed the law. They stated that they did not see the benefit of a labour broker as

they were still liable. Furthermore, they indicated that they only used labour brokers to source low-level employees, tested them and then offered them a permanent position.

The regulation of staffing contracts were seen as promoting job security in the following ways: Three trade union participants agreed that it has a positive influence on job creation, as it deters employers from offering insecure jobs and denying employees certain benefits. Three business participants and one trade union participant were in one accord that the restrictions placed on staffing contracts also have a positive influence on job sustainability. They were of the view that the amendments have enhanced flexibility. They added that Section 198 allows for three-month contracts to be rolled over. The business participants stated that it allowed employers to use somebody on a contract basis but not to abuse it. One of the trade union participants remarked that employers are more mindful of their employees because of the restrictions that the LRA placed on staffing contracts. The participant added that she hoped that businesses would “do the right thing” and create a few more jobs. She added that the regulation protects the employee, as the worker can feel secure about the job and after three months, he/she becomes permanent, which helps to sustain jobs. The trade union participant added further that it also ensured that a person receives a retrenchment benefit.

On the other hand, the following views were expressed as to why the regulation of staffing contracts did not promote job security. Three trade union participants concurred that the LRA’s regulations ensuring job security through staffing contracts have a negative influence on job sustainability. The reasons they gave are that the amendments caused workers to be dismissed rather than appointed full time; fixed-term contracts do not need to be renewed; fixed-term contracts are open to abuse as externally funded employers can manipulate the system to keep employees on a contract basis; and if smaller businesses cannot afford the services, it stifles job creation as employers try to avoid employing.

**Dismissals and probation processes:** The majority of the business participants, eleven out of sixteen, and an overwhelming majority of the trade union participants , four out of five, concur that the dismissal and probation provisions do not influence

businesses with job creation. Two business participants and one trade union participant concurred that the provisions also did not influence job sustainability. The participants share the opinion that the LRA dismissals and probation processes did not influence job creation and sustainability as they are fair process guides for organisational collective bargaining and fair labour practices. Some of the reasons given by the business participants are that businesses complied; the LRA's procedures are beneficial, fair and protect both parties; they follow the law; the code of conduct creates certainty; they have been very lenient; and they employ experts to assist. They strongly support the provisions as it is important to be seen to be acting ethically and fairly. The business participants added that they follow retrenchment procedures and keep records. One of the business participants remarked that the legislation, although it appeared to be onerous to businesses, was relatively easy to comply with.

One of the trade union participants added that the LRA dismissals and probation processes was in line with international labour organisation standards. The trade union participant also confirmed that employers are dismissing people relatively easily by drafting the correct documentation; by being procedurally correct and substantively fair; and that reducing probation to three months helps to assess business performance. The business participants' comments on the fairness of the LRA dismissals and probation processes influence on job creation and job sustainability included:

- Employers have to be careful to ensure that they employ the right person to fit into the company and its environment. The business world has to be adaptive. If staff cannot adapt, it makes it very difficult for a business to survive in an economic downturn (B13).
- The only time the company "pulls the plug" is when the business contract with the client is threatened. The company will dismiss the employee and settle at the CCMA (B8).
- One is dealing with people who need to be given reasons and provided with an opportunity to state their case (TU4).
- Ninety percent of the time, workers opt for compensation (TU5).

- Employers are not concerned about the judgments. The union frequently has to go to the labour court to enforce arbitration awards (TU1).
- The LRA ensures that the employer does not abuse the workers' rights; that there is no abuse of authority; and that there is fairness in the workplace (TU6).

Three business participants and one trade union participant agreed that the LRA provisions on dismissals and probation have a negative influence on job sustainability. The following views were expressed as to why the regulation of dismissals and probation did not promote job security: the business participants have cut down their probationary period to three months in accordance with the statutory amendments; the dismissal process at the CCMA is time-consuming and places employers under unnecessary emotional stress; the staff aggravate and tire out their employers, knowing it is not easy for the employer to dismiss them, which in the long-term has a detrimental effect on the employer's future. One business participant remarked that he cannot simply dismiss an employee for poor work performance, as poor work performance dismissals are more difficult to deal with. He stated further that the amendments have had a significant effect on sustainability and employability because the employers will dismiss contract workers after three months, rather than appoint them full-time. The trade union participants confirm that it has had the opposite effect, as contracts are not being renewed. They add that the odd contract is converted to a permanent position, if such is available.

On the other hand, the regulation of staffing contracts was seen by a few as promoting job security through securing jobs. Two trade union participants concurred that the LRA's regulations ensuring job security through the fair dismissals and probation processes have a positive influence on job sustainability. The reasons they gave is that if a job is secured, there is security and sustainability.

**Bargaining councils and collective agreements:** Two business participants conceded that the LRA's regulation of bargaining councils and collective agreements did not influence them to create jobs as they are not part of a bargaining council and it does not apply to their businesses. Two business participants who are not part of a bargaining council are in agreement that bargaining councils and collective

agreements do not influence them to sustain jobs. Another business participant, however, felt that the bargaining council is unfair in advising an employer that he cannot demand notice pay from an employee; and in “wasting everybody’s time” in trying to extract a settlement from the employer. The business participants were divided on the bargaining council’s influence on job creation.

Bargaining councils and collective agreements were seen by some as promoting job security. Seven business participants and one trade union participant agreed that bargaining councils and collective agreements have a positive influence on job creation. Two business participants and one trade union participant also agreed that they have a positive influence on job sustainability, and supported this view with the following reasons:

- they level the playing fields, create balance and certainty, so that businesses can budget and do their costing properly;
- they provide for social security;
- assist parties with labour issues;
- they ensure labour peace; and
- they prevent “cowboys and fly-by-nights”;
- the bargaining council is representative of the people in the industry and ensures equal representation of employers and trade unions on the bargaining council.
- They ensure standardisation and provide uniformity as to what the conditions of employment are.
- They avoid unfairness and abuse of salaries throughout the sectors, and
- The bargaining council agents help with labour queries, they are more disciplined and they care for staff welfare.

Some business participants disclosed that they are part of a bargaining council and that their companies either have their own representatives on employer associations on the bargaining council, which represent their interests and has helped with not having to retrench workers. One trade union participant agreed that bargaining councils ensure standardisation throughout the sectors and they help to avoid



unfairness and abuse of salaries. Their comments in support of this contention include:

- There are more pros than cons with bargaining councils (B15);
- Everybody is accounted for, big and small (B9);
- It has helped not to retrench people (B6);
- Overall, it is a good thing, but if enforced inconsistently, it becomes a bad thing (B11);
- A nationally-based centralised bargaining council is inconvenient. It should be regionally based (B11).

On the other hand, the following views were expressed as to why bargaining councils and collective agreements did not promote job security. Two business participants and two trade union participants agreed that bargaining councils and collective agreements negatively influence job sustainability. The reasons they gave for the negative influence on job sustainability were: the ineffectiveness of collective bargaining and bargaining councils; that these are poor at dispute resolution. They added that the rigorous selective enforcement of regulations by bargaining council agents in Cape Town and their non-enforcement of compliance with the regulations in the KwaZulu-Natal Midlands and the Free State had a negative influence on job sustainability. One of the business participants stated that this rigorous selective enforcement of compliance has had a negative influence on job sustainability, especially when bargaining council agents have caused compliant businesses in Cape Town to close down.

**Industrial action – strikes:** Six business participants concurred that the LRA's regulations with regard to industrial action and strikes do not influence them with regard to job creation. The reasons they gave were that they complied with the legislation. One participant commented that the business is compliant and that they have not had a strike for the past twenty-six years. Another acknowledged that strikes do affect his business but that he uses scab labour. Yet another business participant stated that industrial action does not necessarily influence him negatively. He just needed to ensure that when he employed people, they understood the employment contract and what was expected of them. One trade union participant

acknowledged that industrial action and strikes is a power play which, if not properly regulated in terms of Section 64, will create situations of wildcat strikes. Nevertheless, he said that the section is absolutely necessary.

Industrial action – strikes was seen by a few as promoting job security. One trade union participant remarked that industrial action has a positive influence on job creation and job sustainability, as it is the only power that workers have to ensure fairness. The same trade union participant stated that business's power is money, which it uses to influence the decisions it makes. She stated further that the right to strike is a very important right and so it must remain, as it influences business decisions to be circumspect on how and what jobs to create. The trade union participant also remarked that strikes protect workers and ensure that “management does not abuse them.” She stated further that through strikes, jobs are sustained.

On the other hand, the following views were expressed as to why the LRA's regulations with regard to industrial action and strikes did not promote job security. Three business participants and two trade union participants were in one accord that industrial action and strikes negatively influence job sustainability. The reasons they gave were that the LRA's regulations with regard to industrial action and strikes do not protect them. They stated that clients are unsympathetic and despite strikes, they want service; businesses are ransacked and looted and the violence that takes place results in job losses and loss of lives; and industrial action causes foreign companies to move their business volumes elsewhere. Furthermore, they added that the rise of militant trade unionism and the failure of collective bargaining will deter employers and the economy from sustaining jobs.

**Dispute resolution:** Eight of the business participants and two trade union participants are in accord that the LRA's regulations with regard to dispute resolution do not influence job creation. The reasons they gave were that the Commission for Conciliation Mediation and Arbitration (CCMA) is a good system; it creates fairness; it protects; and it is a procedural path to resolve disputes.

However, one business participant and one trade union participant indicated that the LRA's regulations with regard to dispute resolution influences job creation when

commissioners favour employees although it is counter-balanced by the advice that employers receive from labour specialists. The comments from the participants on the LRA's regulations with regard to dispute resolution influence on job creation included:

- The CCMA is one of the most successful institutions of its type in the world. Arbitration may have an influence, however they do not think it is a major influence. Bargaining councils also deal with disputes, the same as the CCMA (B14).
- The CCMA is accessible, quick and efficient. However, the commissioner generally sides with the worker and gives the worker the benefit, even if the company could win. With the CCMA, the perception is that the employee leaves with something, whereas in court proceedings, the lawyers make the money and it takes a lot of time (B11).
- The Labour Court is more costly and time-consuming (B7).

One trade union participant stated that the LRA's regulations on dispute resolution negatively influenced job creation and job sustainability as the bargaining councils are ineffective and poor. He nevertheless confirmed that the CCMA is expedient as it provides speedy resolution for disputes, but he felt that the CCMA is over-burdened and that there is a need for effective legislation to be promulgated.

On the other hand, dispute resolution was seen as promoting job security in the following ways: Two trade union participants agreed that the LRA's regulations on dispute resolution positively influence job creation and job sustainability as they ensure fairness by giving workers an avenue to lodge disputes and grievances, if treated unfairly. It causes businesses to create jobs in a qualitative and not just a quantitative manner. Businesses are also aware of the repercussions when jobs are lost as employees will go to the CCMA if there is abuse.

**Enforcement of compliance with the LRA by labour inspectors:** The majority of business participants (twelve) and four trade union participants share the same opinion that it does not influence job creation, as there is very little enforcement of compliance by labour inspectors. Three business participants and four trade union

participants (the majority) are in one accord that they also do not influence job sustainability, as labour inspectors have a history of being ineffective. The reasons they gave are that business participants comply; labour inspectors are not very active; they do not conduct regular inspections; they focus mainly on employment equity; they do not investigate small companies very often and when they do, they give companies time to rectify; they are reluctant to enforce compliance; they fear that if they enforce compliance, it may cause smaller businesses to close down; and bargaining councils and trade unions are more active in enforcing compliance. They stated that non-compliance is usually dealt with on the shop-floor and conducted internally, rather than by labour inspectors. Labour inspectors would be more effective if trade unions reported employer's non-compliance to the Department of Labour.

Enforcement of compliance with the LRA by labour inspectors promote job security in the following ways: One business participant and two trade union participants agree that it has a positive influence on job creation as it causes employers to operate within the LRA's guidelines and regulations; that it ensures that workers are paid fairly; and that they have a quality of life and a job. In addition, if the enforcement of compliance is privatised, it will create an opportunity to create jobs. Thus, the aspects of the LRA which negatively influence job creation are: problems that the business participants experienced with industrial action; strikes adversely affecting businesses, which deter them from starting up new businesses, thereby preventing them from employing and creating jobs; dispute resolution; CCMA commissioners behave unethically, they are biased in favour of employees and focus on procedural unfairness; bargaining councils are bureaucratic, ineffective and follow the majoritarian principle; bargaining councils set wage increases too high, which smaller businesses cannot afford; bargaining councils and bargaining council agents enforcing compliance act arbitrarily in strictly and selectively enforcing compliance; dismissals and probationary periods are tedious, time-consuming, costly and expensive; staffing contracts increase the cost of existing staff and limits the employer's right to engage and disengage, which discourages the use of the same contract person twice; and enforcement of compliance by labour inspectors threaten small business.

#### **6.5.2.2.3.2 The Skills Development Act, No.97 of 1998 (SDA)**

Seven business participants and all six trade union participants agree that the SDA and the B-BBEEA positively influence job sustainability, as training and developing workers' capacities empowers them. This improves their skills and training has also caused businesses to expand and sustain jobs. The reasons they gave in support of this view were that: training was essential for business growth and ensured that the business ran smoothly. They added that SETAs offer training grants which encourage businesses to invest in skilling and up-skilling their workers. Some business participants indicated that they have expanded their businesses through skills development by starting up a company to train their own workers, as well as workers of other companies and further that they conduct both in-house and external training. They also stated that they engage in on-going training to up-skill and develop their workers. Training also ensures that workers receive the proper skills before an employer can decide whether the worker has the ability to work, which helps to sustain jobs.

On the whole, the trade union participants agree that the SDA has a positive influence on job sustainability. The trade union participants acknowledge, however, that the bureaucracy surrounding its implementation is problematic. Three trade union participants also felt that the ETIA, youth tax incentives have had a positive influence on job sustainability. However, five business participants indicated that the administrative burden, bureaucracy and perceived wastage of money surrounding the implementation of the SDA have also negatively influenced them not to train and sustain jobs.

Four business participants and two trade union participants concurred that the SDA and SDL's regulation of skills development had a negative influence on job creation because of the cost implications and administrative burdens placed on businesses to comply. Five business participants and one trade union participant also agreed that the SDA negatively influences job sustainability. The reason participants gave is that the SDA heavily regulates the employment relationship. The business participants acknowledged that they benefited from training people. However, they stated that the problem is with the bureaucracy surrounding the implementation of skills

development as government, through the SETAs, has made it cumbersome for businesses to train and to claim their money back for training. The business participants added that the SETAs are too bureaucratic instead of being enabling and supportive. Furthermore, they stated that there was too much administration that they were required to do, which they found burdensome.

The business participants added that the SDA's provisions restrict the employer's freedom to engage and disengage through the skills training plan. They added that the Department of Labour might force people onto a business if it accepts subsidies, which had a negative influence on job creation. The business participants remarked that skills development is incredibly expensive to finance. Consequently, it is perceived by some business participants to simply be another form of tax which had a negative influence on job creation. The business participants added that the quality of the training courses is also not being policed. They stated that some of the courses were too expensive and those within the price range were inferior. They added that the SETAs' failure to implement and the perceived wastage of money surrounding the implementation of skills development is discouraging businesses from training which had a negative influence on job creation. The trade union participants agreed that the SETAs were run inefficiently and that the levies could be better utilised. Only one business participant confirmed that the skills improvement legislation and the youth tax incentive legislation did not influence him to sustain jobs.

Consequently, the administration surrounding the SDA and the skills development levies documentation is laborious, onerous and time-consuming. Businesses have to go through extensive bureaucratic red tape to obtain approval and to access funds. The business participants found it a major administrative burden to obtain a training grant and to conduct skills training programmes for the poor which had a negative influence on job creation. Some business participants were being limited to recovering a maximum of only twenty-five per cent of what they had spent on training, which has discouraged them from training and creating jobs. Other business participants were also finding it difficult to get their training programs accredited, which was causing them to stop applying for funding which had a negative influence on job creation and job sustainability. Therefore, many businesses perceived the

skills development levy to simply be another form of tax. Thus, the participants perceived the SETAs to be bureaucratic and dysfunctional and they felt that the SETAs should be streamlined. Although the participants acknowledged that the SETAs had created jobs in the bureaucracy, they felt that the SETAs had not delivered on training, especially the smaller SETAs. The participants added that the SETAs administered the funds poorly; the SETAs were not spending training monies efficiently; and SETAs were wasting money on parties and meetings. The participants' comments on the SDA and SETAs' negative influence on job creation and job sustainability included:

- I could not do it all myself so I had to bring in someone to do it for me. It is a nightmare to obtain SETA accreditation. I have tried to get funding for training but I have now given up and stopped applying for funding. There are twenty SETAs, which is far too many. Government should dissolve all the SETAs. There should be one communal home for all SETAs. The bargaining councils are duplicating the SETAs' functions concerning training and development (B7).
- Various SETAs are very dysfunctional. They have created a big bureaucratic institution which does not deliver training on the shop floor (B11).

#### **6.5.2.2.3.3 Occupational Health and Safety Act, No.85 of 1993 (OHASA)**

One trade union participant observed that the OHASA's influence on job creation is positive. It is important to comply with the Act, as it keeps businesses within legislative boundaries, as well as it ensures that they focus on the quality of jobs and not just on quantity, which is beneficial to both the employer and the employee.

#### **6.5.2.2.3.4 The Unemployment Insurance Act, No.63 of 2001 (UIA)**

The majority of the trade union participants (four) agreed that the UIA has a positive influence on job sustainability. The reasons given are that it serves a purpose, there is much good; workers need a financial social security net; it provides security, such as the training lay-off scheme; it provides income benefits, which have increased; and it gives important assistance to the unemployed to find jobs.

In summing up the influence of labour legislation and labour legislative factors on job creation and job sustainability the majority of participants concur that the BCEA's provisions ensuring fairness, efficiency and productivity through the regulation of staffing contracts, working conditions, notice periods and severance pay and minimum wages does not influence job creation, primarily because they complied and a number of them are regulated by bargaining councils. The majority of the participants also are of the same mind that the LRA's provisions ensuring fairness, efficiency and productivity through the regulation of staffing contracts; dismissals and probation; bargaining councils; industrial action; strikes; dispute resolution; and the enforcement of compliance do not influence job creation, primarily because they complied; a number of them are regulated by bargaining councils; the procedures are fair and protects both parties; and there is very little enforcement of compliance by labour inspectors.

The majority of participants further concur that the EEA's equity provisions regulating recruitment practices; affirmative action; equal pay for equal value; reduction of income differentials; and enforcement by labour inspectors did not influence job creation, primarily because they complied, a number of them are regulated by bargaining councils and their workforce is mainly from disadvantaged groups. However, only a few businesses were not influenced by the B-BBEEA to create jobs, as they are not reliant on government contracts or major businesses for work; although they acknowledge that they nevertheless use the B-BBEEA as a balancing guide.

Consequently, the majority of the participants agree that labour legislation fulfils its normative role in the BCEA, the LRA and the EEA, regulating the employment relationship to ensure equity, fairness, fair favourable working conditions and job security by acting as a guide. Labour law provides for minimum employment standards, created flexibility, fair mechanisms and processes to resolve disputes and avert industrial action.



#### **6.5.2.2.4 Positive aspects of labour legislation promoting job creation**

Three business participants and all six trade union participants are of the same opinion that the B-BBEEA and the SDA, through skills development training, through the provision of SETA grants, youth tax incentives and the UIA, promote job security and have a positive influence on job creation.

They commented that the SDA and SDL influence businesses to focus on skills development and training because it is a legislative requirement, otherwise they would neglect training. They stated that the SDA encourages businesses to train workers and to use the workplace as a training ground. They felt that the legislation provides both guidance and penalties for non-compliance. They remarked that the SETAs, by giving businesses two types of training grants, namely a mandatory grant for in-house training and a discretionary grant for learnerships, have encouraged and incentivized businesses to train people. They felt that this has empowered workers and made workers more marketable and self-sustainable. The participants felt that the training courses are also very motivating for the workforce. The only problem they noted, however, is that companies are prepared to give opportunity but not a permanent position. Another problem they pointed out is that the SETAs are not working well. One of the business participants suggested that the SETAs should be streamlined.

The participants commented that the UIA provides assistance for the unemployed worker to secure employment. They remarked that the B-BBEEA also influences businesses in employing, skilling and training previously disadvantaged groups. They were concerned that the B-BBEEA is not helping the people who need it. They conceded that Employment Equity legislation has caused them to employ more disadvantaged people. They acknowledged that they might, however, have had to compromise in not acquiring the degree of skills they require to meet their business targets.

Seven business participants and two trade union participants concurred that the ETIA's financial incentives have positively influenced them to create jobs and to employ young people through learnerships and apprenticeships. The ETIA helped

them to employ additional people, but it is also a punitive incentive to create jobs as the tax rebate does not cover the cost of the salary. The ETIA is good for job creation. However, it can lead to the abuse of young people and create a problem for people earning higher salaries, which is not sustainable. Four other business participants, however, expressed a reluctance to employ the youth. A few of them have abandoned employing the youth because they become a burden and lead to a higher staff turnover. Although they were initially financially incentivized to employ the youth, they have since stopped as they consider the youth to be more of a burden than a benefit. They also believe the youth to be unsettled; to lack integrity and skills; and they have militant and demanding attitudes, which discourage businesses from employing them.

Four business participants and two trade union participants agreed that labour legislation has a positive influence on job sustainability. The reasons they gave are that labour legislation is effective; it is not easy to dismiss employees; it protects workers; it helps to sustain jobs; the business participants' businesses are doing well; they are recovering monies for the training of workers; and they are happy to comply. The comments by the trade union participants included the following:

- The OHASA, the COIDA and the UIA ensure that the employee is protected in the workplace (TU6).
- Each piece of legislation is critical and very important to ensure regulation in the workplace, as there are unscrupulous employers. Laws ensure that workers are fairly dismissed and that there is job retention (TU3).

#### **6.5.2.2.5 Negative influence, hampering and/or impeding job creation**

The majority of the business participants (ten) agree that there are aspects of the BCEA, the LRA and the SDA which negatively influence job creation. Start-up businesses and businesses in general perceive labour legislation to be difficult, inflexible and a minefield to navigate and comply with. Two business participants confirmed that knowledge of the legislation is essential, but it is time-consuming to go through the legislation, which can be costly. This may influence smaller businesses that do not have the experience and the confidence to understand what is required of them. Businesses also have major issues with bureaucracy and compliance surrounding the implementation of labour legislation. The new legislative

amendments limiting fixed-term contracts to three months is discouraging job creation, inhibiting them from employing, training and building up capacity in advance.

Two other business participants and three trade union participants agreed that there are aspects of the B-BBEEA and the EEA which deter them, especially those which did not qualify, namely predominantly White-owned entities. These participants also claimed that affirmative action is not working and that it needs to be balanced. The administrative burden of employing persons and completing reports on affirmative action and skills development could also deter smaller employers. The current legislation influenced job creation negatively in comparison with other countries such as China.

Four business participants and two trade union participants concurred that there are aspects of labour legislation which negatively influence job sustainability. The reasons they gave are that some of the legislation is cumbersome; compliance is extremely onerous, time-consuming and costly and can be punitive. The LRA's amendments limiting fixed-term contracts to three months and the proposed national minimum wage can deter the start-up of new businesses or business expansion. Over-regulation is a hurdle to job sustainability. However, employers have become enlightened. The comments by the participants included the following:

- There is some legislation in place which does not make business sense. Labour legislation needs to be amended. Parliament should streamline all seven Acts (B7).
- For businesses, the sustainability of the business is more important than maintaining employment (TU1).
- Labour legislation assists employers as it provides them with a way to deal with processes, thus making it easier to retrench employees (TU2).

**Bureaucracy, inflexibility, onerous and over-regulation's influence on job creation:** Six business participants and one trade union participant agreed that a bureaucratic, over-regulated, inflexible, too onerous labour environment, with too many stringent rules negatively influences job creation. The reasons they gave are

that there are too many stringent rules and that it is becoming too onerous for smaller companies to deal with. Furthermore, government should simplify the rules. Labour legislation lacks flexibility and there is excessive legislative bureaucracy, which adds to the cost of doing business. Businesses in general find it time-consuming to understand everything and to deal with all of the paperwork, instead of focusing on expanding their businesses. Legislative prescription hampers flexibility, while compliance impedes the growth of small businesses. The trade union participant confirmed that businesses are operating in a hostile over-regulated environment, wherein it is difficult to manage staff. Furthermore, they felt that greater flexibility is required. One trade union participant remarked that labour legislation poses a challenge for a new business owner to manage all aspects. He acknowledged that it is alarming that a small business owner must take all of this into account in order to manage all the legislative aspects and still make a profit.

Thus, it is not the legislation itself which appears to be the problem, but the implementation thereof.

#### **6.5.2.2.6 Legislative amendments needed to increase or improve job creation and job sustainability**

It does not appear that the legislation itself is the problem, but the implementation thereof. The administrative burden, bureaucracy and perceived wastage of money surrounding implementation have negatively influenced some businesses not to create and/or to sustain jobs.

Five business participants agreed that the B-BBEEA, the BCEA, the EEA, the ETIA, the LRA and the SDA influence them positively sometimes, while at other times negatively. Two of them confirmed that the B-BBEEA is positive and good, although one of them felt that more needed to be done to educate Black business, whilst the other was concerned that it could cripple and cause existing businesses to close down for not meeting the B-BBEEA scorecard criteria.

Three of the business participants agreed that the EEA, the B-BBEEA and the LRA have caused more disadvantaged people to be employed. However, in doing so businesses may have had to compromise in not acquiring the degree of skills that they required to meet their business targets. Some of them also felt restricted in that they do not have the freedom to give financial incentives to retain skills and experience. Three other business participants agreed that the ETIA is good for job creation as it has helped additional people to be employed. However, one of them was concerned that it could lead to the abuse of young people and create a problem for people earning higher salaries, which he thought was not sustainable. Furthermore, they perceive employing the youth to be a burden that causes increased staff turnover.

**Bureaucracy and legislative prescription:** Seven business and two trade union participants agreed that bureaucracy; legislative prescription negatively influenced businesses not to create and/or sustain jobs. The reasons they gave were that legislative prescription as to whom they could employ and engage with on the shop-floor; over-regulation; a hostile business environment where there is a lack of incentives negatively influenced job creation and job sustainability. They added that small business enterprises were ineffective and poorly trained because government was not creating enough opportunity for small and medium businesses negatively influenced job creation and job sustainability. The participants stated that the inconsistent selective enforcement of compliance by bargaining council agents and inspectors with the law negatively influenced job creation and job sustainability. The business participants added that the lack of skills were onerous, costly and negatively influenced the growth of their businesses, as well as discouraged businesses, especially small businesses, from creating jobs.

The administrative burden, bureaucracy and perceived wastage of money surrounding the implementation of the SDA have negatively influenced some businesses not to train and sustain jobs. Five business participants commented that the administrative burden; bureaucracy created by the SETAs; their failure to implement; and their perceived wastage of money surrounding the implementation of skills development have negatively influenced job sustainability. Only one of the

business participants commented that the skills improvement legislation and the youth tax incentive legislation did not influence him to sustain jobs.

The trade union interviewees focused primarily on the SDA and on the SETAs influencing job sustainability. On the whole, they felt that the SDA had a positive influence on job sustainability, although they acknowledged that the bureaucracy surrounding its implementation was problematic. They also commented that the SETAs were run inefficiently and that the levies could be better utilised.

**Financial impact of increased labour costs:** Six business participants and all six trade union participants agreed that increased labour costs have a negative influence on job creation. The reasons given are that extra payment for work on Sundays; night work; additional unforeseen public holidays; additional benefits; unrealistic minimum wage increases; time-consuming and expensive dismissal nuisance pay settlements and training costs, which they are unable to recover, adds to their labour costs. All of these payments eat into their profit margins, which negatively influences job creation and could result in job losses. Furthermore, the payments made in terms of the EEA and the UIA, as well as the skills development levies in terms of the SDA are perceived as a secondary form of tax. In addition, businesses which are forced to employ additional staff increase their businesses' costs of existing staff. Two of the business participants agreed that if the proposed national minimum wage is set too high, it can affect business sustainability and deter start-up businesses and businesses from expanding as it affects their overheads and minimum requirements.

**Administrative burden of compliance:** Four business participants agreed that the administrative burden of compliance negatively influences job creation. They felt that there is quite a lot of administration involved in order to comply with legislation, which has a detrimental effect on job creation. They found the completion and submission of annual returns to be very onerous. The administrative burden of employing persons and completing reports on affirmative action and skills development deter smaller employers. They remarked that government should not "kill" small businesses with all the documentation. Government should rather ensure that

businesses are treated fairly; reduce the business requirements; and provide them with a small checklist to ensure compliance.

One of the business participants commented that the completion of the annual returns and BCEA documentation is onerous. He delays the completion until he gets threatening letters, when he then attends to matters.

**Cost of compliance:** Two business participants and one trade union participant agreed that the cost of compliance has a negative influence on job creation. The reasons they gave are that it is very onerous, costly and time-consuming to comply with legislation; that it adds to the cost of doing business; and it has become difficult for small business to flourish. In addition, businesses have had to employ additional people to deal with the administrative documentation. Dismissals are onerous and expensive. The comments by the business participants included the following:

- I have contracted with someone to relieve me of the administrative burden, but it is costing me an extra twenty thousand rand per annum to take care of the administration (B11).
- I now have a manager who does the administrative compliance work for me (B2).
- I settle outside of the CCMA, regardless of the merits of the case, which adds to the cost of doing business (B6).

**Enforcement of compliance by bargaining council agents:** Three business participants agreed that the enforcement of compliance by bargaining council agents and trade unions is more active, as opposed to labour inspectors. This affects small businesses more than big business, especially when bargaining council agents and trade unions selectively enforce compliance.

**Dysfunctional SETAs and difficulties in accessing SETA funding for training:** Two business participants and four trade union participants agreed that the SETAs should be abandoned as they are bureaucratic; dysfunctional; are not spending money efficiently; they are wasting money; and are not delivering on training. SETAs need to be focused. Furthermore, the high training costs and the difficulties in

accessing funding also negatively influence job creation. The comments by the business participants included the following:

- SETA bureaucracy has made it extremely difficult for businesses to access funding for training, which is not getting to the shop-floor, where training ideally should take place (B11).
- Big businesses get grants and do the training, whilst small businesses have given up trying to access funds for training (B2).

The majority of the business participants (ten out of sixteen) felt that overall labour legislation did not influence job sustainability. They confirmed that they complied with the legislation. The reasons they gave is that the spirit of the legislation is good, as it helped to protect the worker and to sustain jobs. Some business participants perceived labour legislation to influence job sustainability positively, whilst others perceived its influence to be negative. However, one of the participants commented that one cannot generalise that all labour legislation is either positive or negative.

Some of the participants commented that certain labour legislation such as the SDA, the ETIA and the B-BBEEA have a positive influence on job sustainability. Whilst others commented that the administrative burdens and the costs surrounding compliance with labour legislation negatively influence job sustainability. In addition, there appear to be certain aspects of labour legislation, such as dismissals and fixed-term contracts in terms of the LRA and B-BBEEA levels and scores, which negatively influence businesses not to sustain jobs. Concerns were also expressed about the proposed national minimum wage, which if set too high might also have a negative influence on job sustainability.

Consequently, bureaucracy; legislative prescription; the financial impact of increased labour costs; the B-BBEE scorecard criteria; the administrative burden of compliance with legislation; the cost of compliance; employing the youth; the enforcement of compliance by bargaining council agents; dysfunctional SETAs; and the difficulties experienced in accessing SETA funding for training negatively influence job creation and job sustainability which needs to be addressed.



From the responses of the participants the problem appears to be with implementation, the bureaucracy surrounding compliance with the legislation and the enforcement of compliance, creating the impression amongst some of the participants that the labour legislation is inflexible. Thus, it is not the legislation itself which appears to be the problem but the implementation thereof. One of the business participants remarked that government should streamline labour legislation. However, a far more pressing challenge appears to be with primary, secondary and tertiary education, which government needs to improve.

#### **6.5.2.3 Other factors influencing job creation and job sustainability:**

The participants confirm that there are a number of macro and micro factors, other than labour legislation, which appear to have had a far greater influence on businesses' decisions to create and to sustain jobs, namely the economy; the political and social environment; what is happening in South Africa, and business viability. Two business participants were in agreement that business sustainability is dependent on a combination of factors, namely the economy; foreign exchange fluctuations; international ownership; the ability to secure international contracts; visionary leaders; always looking for opportunities to increase revenue and to counter inflationary environment; and keep control of overhead costs; localization; technology; skills; and the sentiment of the South African labour market. The participants added that all these factors have influenced job creation and job sustainability some to a greater extent and others to a lesser extent.

- **The business and economic environment:** Four business participants agreed that the poor economic climate and restrictive business environment negatively influenced job creation. Businesses need an environment that is conducive to business and which provides entrepreneurial support. Businesses are relying on outsourcing and bringing in labour from elsewhere to reduce their labour costs. Businesses object to being dictated to about whom they should employ, what and for how long they should employ. Businesses feel that they should be allowed to manage their staff in a way that they can sustain their businesses.

Eight business participants and three trade union participants agreed that the economic climate, the state of the economy, economic growth, government's reckless actions, foreign exchange fluctuations and the constant threat of downgrades, petrol increases, inflation, poor infrastructure, financial aid and tax incentives influence job sustainability. Other external economic factors influencing job sustainability are the opening of South African borders to international trade; international competition, both overseas and Southern African Development Community (SADAC) and countries of the African Union; local competition, as well as unfair competition by non-compliant businesses within the same industry; small businesses competing with big business; dependency of some businesses on the success of other businesses and on government contracts, and the non-payment thereof; consumer confidence; and the way that labour policies are implemented in the country are adversely affecting businesses, which in turn negatively influence job sustainability.

- **Political factors:** One business participant and two trade union participants concurred that businesses also look at the political climate when deciding whether to grow their businesses, which in turn influences their decisions on whether to sustain jobs. Issues of corruption, political disturbances, instability, recklessness and uncertainty in the country destroy confidence and influences business and job sustainability. Other factors such as inflexible prescriptive legislation, poor education and skills shortage in South Africa all influence business decisions to sustain jobs. One of the trade union participants also remarked that government's failure to address the high unemployment rate, which is the highest it has been in thirteen years, contributes to poverty and social inequality, leading to crime and civil unrest in South Africa, thereby influencing job sustainability.
- **Shortage of skilled labour:** Twelve business participants agreed that one of the primary labour factors affecting job creation is the lack of suitably qualified staff. The majority of the participants agreed that skills, specialisation and entrepreneurial skills are very important to run a business. The business

participants remarked that they needed better-qualified staff in order to grow their businesses and that there is also a need for generic skills. There is a shortage of artisans and people with maintenance skills. The participants confirmed that the lack of entrepreneurial skills and support, as well as the skills shortage in South Africa, are affecting businesses' ability to grow and to create jobs.

Five business participants identified the important factors affecting job creation as: the skills mismatch between education and the workplace; the mismatch between higher education and training; the mismatch between tertiary education degree content and workplace needs; and literacy and language issues. Three of the business participants were also highly critical of the current level of education in South Africa, which they maintained is of a very poor standard, especially the poor literacy and numeracy skills. They agree that job applicants need to have a basic competence level and mechanical comprehension; and that mathematics and language are essential. Some of them also remarked that English is essential, as it is the business language of the country.

Two business participants agreed that the skills shortage and skills mismatch influenced job sustainability; that they need better qualified staff in order to grow; jobs need to meet the requirements of business; and that the content of university degrees need to match workplace needs.

- **Youth unemployment and the lack of workplace experience:** Four business participants and one trade union participant agreed that another important labour factor influencing job creation is that the youth are unable to find work and/or qualify without work experience. They agreed that the lack of available opportunities for work seekers to gain workplace experience affected the youth's employability. They also agreed that the skills development training levies, subsidies and youth tax incentives have encouraged some of them to employ the youth and first-time work-seekers. However, four of the business participants, were discouraged from creating

jobs and employing people because of people being unpredictable, especially the youth whose loyalty and work ethic are different.

One of the trade union participants commented that the government's education system is not channelling the youth correctly. He felt that it should be pointing out to the youth that there are opportunities available in agriculture and that there is a shortage of artisans in the country, areas to which the youth should be channelled. The participants felt that the youth need more education and skills, including entrepreneurial skills, and that they should be taught how to start up, manage and run their own businesses successfully.

- **Internal factors:** Four business participants and one trade union participant agreed that internal factors influence job sustainability and that it is essential that the board of a company keeps the business sustainable. They were in accord that the financial drivers of their businesses are business volumes, certainty and investment. In addition, they concurred that they must take strategic notice of opportunity; look for new market opportunities; offer new products and value-added services; keep abreast of industry changes, innovation and specialisation; use of and staying ahead of technology and robotics; limitations imposed by clients; operational requirements; increase revenue; and reduce risk. They acknowledged that businesses need to look at their internal controls; have good operational procedures and processes for workers and resource controls; meet customer demands and customer satisfaction; and have a satisfied client base and offer value-added services; focus on efficiency and micro-manage expenses to ensure job sustainability.
- **Industrial action, strength and influence of trade unions:** One of the business participants and all six trade union participants agreed that the strength and influence of trade unions in South Africa could have a negative influence on job creation. Some of the business participants expressed concern over the crippling effect that trade unions are having on the country and the economy. Some of them acknowledged that their fear of industrial action and militant trade unions crippling their businesses, the economy, the

country and the country's sentiment have negatively influenced job creation. Furthermore, they indicated that if businesses are coerced, they will relocate.

All six trade union participants maintained that some businesses perceive staff to be a major obstacle that threatens their livelihood. Furthermore, business is scared of labour and unreasonable wage demands, which are influencing some businesses to replace labour with automation and mechanisation. Furthermore, businesses are reluctant to employ more people because of labour unrest and the strength of trade unions.

Five business participants and two trade union participants agreed that government's failure to support small businesses, salary increases, over-regulation, profitability, productivity, skills, technology and industrial action influence job sustainability. Some businesses also expressed concern about the strength and crippling effect of unions on the country and the economy, as having an adverse effect on job sustainability.

- **Employment equity and the B-BBEEA:** One business participant remarked that employment equity, the B-BBEEA and political instability are influencing job sustainability. In addition, government is not really addressing poverty and unemployment with employment equity and the B-BBEEA. All it is doing is simply re-allocating work from one component to another component, but the unemployment rate remains the same. The administrative processes are time consuming. Environmental legislation also places constraints on private developers by stifling their projects, which also affects job sustainability.

Thus, although the participants' opinions varied on the influence of labour legislation on job creation, overall it appears that the business participants agreed that business's needs and their clients are the primary drivers for job creation, as well as the types of jobs created. Businesses must focus on the clients and the services they represent. Having a viable business influences job sustainability. The dependency on clients' businesses, government contracts and tenders can influence job sustainability. Businesses need to constantly look for new market opportunities in order to remain sustainable. Job sustainability is also dependent on the market

needs of the country, as well as on having a favourable business environment. These provide entrepreneurial support; balance international trade; regulate fair exchange rates (Belke and Kaas, 2004:247); affect imports and exports; eliminate unfair competition; reduce bureaucracy; and will eliminate corruption. Some small businesses perceive bureaucracy and legislative prescription as to whom they can employ and engage with on the shop-floor influence the growth of small businesses. Consequently, although the labour legislation has an influence on job sustainability in South Africa, it is not the only factor.

Productivity and skills are essential to ensure business and job sustainability. One of the primary factors positively influencing businesses' decisions to sustain jobs is training and education. Poor education and the shortage of skilled labour in South Africa have had an adverse effect as they affect businesses' ability to grow and to sustain jobs. The lack of suitably qualified staff, the current poor level of education, inferior literacy and numeracy skills cause the skills mismatch between education and the workplace, another important factor affecting job sustainability as skills need to match the requirements of business. Furthermore, the mismatch between tertiary education degree content and the workplace is yet another important factor affecting job sustainability. University degree content must match workplace needs. It is also equally important to ascertain whether jobs are meeting business requirements. The nature of employment and jobs is changing. The lack of available opportunities to gain workplace experience affects youth employability. Disproportionate salaries are also affecting job sustainability.

#### **6.5.2.4      How jobs are created**

The participants agreed that jobs are created primarily through skills development and that businesses which are financially incentivized to train are motivated to expand, grow, employ and create jobs; and that there needs to be a healthy economy.

**Skills development:** The participants all concur that skills and knowledge are essential for job creation. Two business participants are of the same mind that

B-BBEE legislation has created jobs through skills development. Three of the business participants also indicated that the SETAs and skills development levies have encouraged them to train, which has had a positive influence on job creation.

**The economic and political environment in which businesses operate:** Five business participants and two trade union participants are in agreement that jobs will be created when the economy improves, as well as when there are positive economic policies and economic growth. The comments by the participants included the following:

- The economy has made it difficult do business (B9).
- There needs to be economic growth, investor confidence and political stability to facilitate job creation (TU2).
- Jobs will be created when the economy is healthy. There are good economic policies, economic growth and local and overseas investors are encouraged to invest in companies operating in South Africa (TU4).

**Financially incentivise businesses:** Six business participants and one trade union participant are of the same opinion that the provision of government financial incentives through ETIA employment tax incentives, Department of Trade and Industry's subsidies and SETA refunding of skills development levies to promote employment, skills development and training has a positive influence on job creation.

**The implementation and investment in strategic projects:** Two business participants and one trade participant concur that government implementation, involvement, investment and intervention in strategic projects through the expansion of public works are necessary for job creation.

**Business volumes and work volumes:** Three business participants indicate that job creation is dependent on the needs of the country and that the market demand for goods; clients' needs; business volumes and work volumes; and clients drive employment and job creation.

**Business expansion, growth, innovation, efficiency and enhancement:** Six business participants are of the same mind that jobs are created through business

innovation, efficiency and enhancement of their businesses, as well as the localization of raw materials through organic growth, business expansion and restructuring.

**Entrepreneurship and entrepreneurial activity:** Five business participants and four trade union participants share the opinion that entrepreneurship, entrepreneurial activity, the start-up of new businesses and small businesses create jobs. They also highlighted that entrepreneurial skills and support were essential to ensure success. Two trade union participants remarked that the youth tax incentive has encouraged job creation, but that it was not enough to combat youth unemployment. They suggested that government should encourage the youth to be more entrepreneurial by assisting with educating, skilling, training and providing the youth with the necessary support to start up and maintain their own businesses, which in turn can lead to job creation for others.

**State-owned enterprises:** A trade union participant remarked that state-owned enterprises could be used to create jobs, as in the Apartheid era, as well as to alleviate poverty and unemployment. Another trade union participant also commented on the strength of trade unions having a significant influence on job creation.

**Conflicting views on who is creating jobs:** It is interesting that some participants' views conflicted on who is creating jobs. Two of the business participants, one of which is from larger business, and one trade union participant concur that entrepreneurship and small businesses create jobs; that it is unlikely that big business will provide jobs for the country; and that the focus should be on small business enterprises, as well as equipping the workforce to become independent and to earn their own income. However, three trade union participants disagreed with them. They are of the opinion that small and medium businesses are not creating job opportunities. One of them maintained that only larger industries are.

**Conflicting views on where job creation is occurring:** Also interesting is that some participants' views conflicted on where they perceive job creation in general to be occurring. One trade union participant felt that most jobs created in the last two years were actually within government or state owned institutions, whereas one of



the business participants thought the opposite that not many jobs are being created in the public sector, and that jobs are, in fact, being reduced.

The theme or area covered in this section is job creation in general. The theme 'job creation' is further divided into four sub-themes: namely how jobs are created; factors influencing job creation; labour legislation's influence on job creation; and possible strategies business, government and trade unions can implement to increase job creation.

#### **6.5.2.4.1 Likelihood of future job creation**

Ten business participants agreed that they are likely to create jobs in the near future, especially those businesses that were growing and expanding and that were receiving government incentives and subsidies to develop skills for training and employment. One business participant remarked that the potential for job creation lies in the skills development platform, through learnerships and apprenticeships, the strategic integrated projects in terms of the National Infrastructure Development Plan of 2012, as well as through the ETIA the tax incentive scheme to employ and train the youth.

Three trade union participants were also optimistic that jobs are likely to be created in the future to fulfil clients' demands and to service institutions' needs. New shopping malls and the tourism industry are creating jobs. In addition, the service sector, namely the insurance industry and the financial sector, have created quite a number of jobs through tax incentives. However, another business participant pointed out that business is limited in that it can only accommodate a certain number of people and that others had created sufficient capacity to meet demand. Two business participants and one trade union participant were uncertain as to whether jobs would be created in the future and whether the jobs being created are for long-term or only for short-term employment.

**The reasons why job creation is unlikely in the future:** Six business participants disclosed that they were unlikely to create jobs in the future. Three trade union participants are in agreement with them and doubted whether any significant number

of jobs would be created in the future due to economic, political uncertainty and corruption issues. Some of the business participants felt discouraged by the current political and economic climate and uncertainty in South Africa; insufficient financial incentives, as the tax rebate does not cover the cost of training or the salary of employees undergoing training; and downsizing, employing additional staff is a risk and it is difficult to replace inadequate staff. They also maintained that the lack of managerial skills and the inability to employ the necessary management to run the business is constraining business. The comments by the participants included the following:

- Business has not created jobs. It had actually retrenched 20 000 people due to poor economic climate and uncertainty (B15).
- Business is not creating jobs, and is only replacing people who resign or only employing people for specific projects (B5).
- Government is not delivering on its promises to create five million jobs. There are more jobs being lost than jobs being created (TU6).
- Three million jobs have been shed (TU1).
- Job creation is very slow and sluggish in South Africa and they confirmed that there have been retrenchments (TU6).

**The types of businesses that are likely to create jobs:** Two trade union participants conflicted on which types of businesses they thought were more likely to create jobs. One thought that big businesses are unlikely to provide jobs for the country, whereas another reasoned the opposite that small and medium businesses were unlikely to create jobs and that job creation lies with larger industries.

#### **6.5.2.4.2 Jobs created in the previous year**

Ten business participants confirmed that they had created jobs in the previous year, others to a lesser extent. Their responses indicated that those businesses that were financially incentivised to create jobs did actually create more jobs.

**Types of jobs created:** An overwhelming majority of the business participants, fourteen out of sixteen, disclosed that they preferred to employ workers permanently.

Seven of them acknowledged that they created a mixture of permanent and fixed-term contracts, as well as some temporary jobs, depending on the scope of work required. Three of them revealed that they take on interns, trained them and then used them to fill positions which they either created or where positions had become vacant, for similar reasons.

**The largest job creation** amongst the business participants appears to have been in the clothing industry. One business participant confirmed that her firm created three hundred permanent skilled machine operator jobs, as they had received funding from the Department of Trade and Industry and the KZN Clothing and Textile and Fabric, Processing and Manufacturing SETA (Sector Education and Training Authority), which had enabled them to train and create jobs.

**Financial incentives:** The participants further revealed that those businesses that are financially incentivised to create jobs did in fact create more jobs. One business participant disclosed that he created temporary jobs because of the subsidy that he received for training the unemployed, and that he appoints them on a permanent basis if a permanent position became available.

**Number of jobs:** The overall number of jobs that the business participants created, however, is small. The largest number created by one business participant is three hundred permanent jobs and the smallest number created was two jobs. Other jobs created were: seventy to eighty jobs because of the financial incentives provided; fifty-five jobs; thirty permanent specialised-skilled jobs; five new positions, four permanent and one temporary job; and three new jobs. Some business participants disclosed that they started off with fixed-term contracts whilst the workers are on probation, which are later converted into permanent jobs.

Four trade union participants confirmed that not many and no real substantive jobs were created in the past year. Furthermore, the jobs being created were of a temporary nature. Nevertheless, two of them are optimistic that jobs are likely to be created in the future because of the new shopping malls; the tourism industry; the service sector; the insurance industry; and the financial sector which are creating a number of jobs through tax incentives.

**Reasons why no jobs were created:** The reasons provided for not creating jobs were: the current poor economic climate; some businesses are experiencing stagnant growth; some are going backwards, or are stable; whilst others are not really looking to create jobs. One trade union participant confirmed that the hostile business environment, too much taxation, over-regulation and a lack of incentives are not favourable for job creation, especially for small enterprises. He said that the problem is that staff is perceived to be a huge obstacle, especially if they are ineffective and poorly trained. Businesses are also not incentivized to expand their operations and it is easier for them to downsize.

The majority of the business participants stated that they preferred to employ workers on a permanent basis. However, the poor economic climate seems to be largely to blame for more jobs not being created. The majority of the participants agreed that most of the job creation taking place is through skills development and through financial incentives provided for training workers. However, the trade unions expressed concern that the jobs being created through skills development are more of a temporary nature.

#### **6.5.2.5 Job sustainability**

The theme or area covered in this section is job sustainability in general. The theme 'job sustainability' is divided into four sub-themes namely: how jobs are sustained; factors influencing job sustainability; labour legislation's influence on job sustainability; and the possible strategies that business, government and trade unions can implement to increase job sustainability.

The majority of the business participants (eleven) agreed that job sustainability and business sustainability are interconnected, and that job sustainability is dependent on businesses remaining sustainable and viable. They commented that if businesses prosper, they can sustain jobs. The business participants concurred that their businesses prospered when they expanded, grew and operated their business ethically. They were in accord that business leaders need to be aware of market conditions, as well as local and global sentiment. They also agreed that better-

managed businesses prospered and survived. The business participants concurred that in order to prosper, their businesses needed to:

- have visionary leadership;
- be managed well;
- be forward-looking;
- be positive and capable of adapting to change;
- seek new markets and new opportunities;
- create new business and grow their business;
- be able to do things smartly;
- make greater use of technology;
- create value;
- have good products or services;
- continuously improve themselves;
- engage in creating value and value adding activities along the value chain;
- be profitable;
- pay their expenses;
- be efficient in their operations;
- keep control of overhead costs;
- cut costs;
- focus on labour efficiency;
- watch their bottom-line;
- implement lean management principles and multi-tasking;
- retain good talent;
- replicate good skills;
- train and motivate their workforce to increase productivity;
- remain sustainable; and be viable.

Four business participants agreed that in order to sustain employment, people must be well trained and productive and that training is an integral part of running a successful business. They concurred that their businesses should not only invest in technology, but also in human capital. There was agreement that multi-tasking, education, training, re-training, skilling and up-skilling workers would help their businesses to sustain jobs. Some business participants revealed that they had

placed workers on short-time as an interim measure to try to avoid retrenchment or they had tried to minimise retrenchments by employing them in different capacities, in different divisions or in new start-up businesses. They also identified where else their workers could be utilised and whether they could be trained and up-skilled. Two business participants concurred that in order for their businesses to prosper, grow, expand, be profitable and sustain jobs, there needed to be economic growth, a healthy economy, an efficient government, low inflation, rebates on imports and the proper regulation of industries, as well as fair and equitable enforcement of compliance.

#### **6.5.2.5.1 Likelihood of jobs being sustained**

Eight business participants and three trade union participants were in one accord that jobs are likely to be sustained in the future, primarily through constant training and skills development. They agreed that to sustain employment, people need to be well-trained and productive. The business participants confirmed that they have saved jobs by placing workers on short-time, by finding them alternative positions or employing them in new start-up businesses. One trade union participant remarked that no sector has sustained jobs and that the jobs that have been created are short-term.

An overwhelming majority of the business participants, fourteen out of sixteen, confirmed that they are likely to sustain jobs. Seven were confident that they are likely to sustain jobs. Some of the reasons given are that the business is stable; it is going through a growth phase; currently the business is doing well; it has good government contracts; the three-year bargaining council agreement provides certainty and industrial peace; and business trends indicate as such. Two business participants confirmed that they will not retrench and that they will remain the same. One business is presently at optimal size and another has fifty families dependent on him.

Three business participants and all the trade union participants expressed uncertainty as to whether jobs will be sustained. The reasons they gave were that job sustainability is under threat because of political uncertainty; the poor economic

conditions in South Africa; ineffective collective bargaining; it is expensive to belong to bargaining councils; it is less time-consuming and cheaper to have strikes or to retrench and deal with consequences; the need for a change in policy and progressive leadership; and possibly a change in government in South Africa. All of these factors influence job sustainability.

Three business participants commented that job sustainability would depend on whether their businesses will regain growth; government's stance in controlling the industry; and on the socio-economic and political climate in South Africa. One business participant was unsure but optimistic through prayer, hard work and effort that jobs in her business would be sustained. Only one business participant strongly stated that it was unlikely that he would sustain any jobs in the near future as he had no confidence in the government, in the South African economy, in labour legislation, in labour and especially in trade unions.

#### **6.5.2.5.2      Jobs sustained in 2016**

The participants confirmed that a small number of jobs were sustained in 2016, primarily through training, retraining and up-skilling workers. Only one business participant did not save any jobs in 2016. One business participant verified that they had retrenched twenty thousand people in the previous year, but that they had managed to save some jobs. However, they had just retrenched another hundred and five workers. Five trade union participants agreed that more jobs have been lost than sustained and that there has been a rise in unemployment. The trade union participants also confirmed that a number of jobs have been lost in the mining, metal and engineering industry due to companies closing down, downsizing and going into liquidation.

The types of jobs sustained were primarily skilled and semi-skilled jobs. Restructuring appears to be threatening some managerial positions. A number of low-level and unskilled jobs were either lost or are at risk. These are being replaced by automation, machinery and technology. This was validated by one business participant who confirmed that the jobs of twenty low-skilled workers were saved

when a division closed down by transferring them to another division. Furthermore, eight workers who were affected by automation were saved by re-training them. Delays in securing future contracts, government contracts and tenders are potentially threatening jobs. Others mentioned that some jobs were under threat, but that they had saved them. Nine business participants confirmed that although they had retrenched, they were able to save jobs by training or re-training workers and finding them alternative positions.

#### **6.5.2.6 Strategies suggested to increase and/or improve job creation and job sustainability**

The participants suggested various strategies that each of the three major stakeholders - business, government and trade unions - could implement to increase job creation and job sustainability.

##### **6.5.2.6.1 Business strategies to increase job creation and job sustainability**

Twelve business participants and five trade union participants suggested various strategies that business could implement to increase job creation. Ten business participants and five trade union participants suggested similar strategies to increase job sustainability.

The business participants suggested that businesspersons should be more confident and positive about South Africa and its economy and focus their energies on exploring, discovering and exploiting opportunities for the localization of technology. Two business and two trade union participants suggested that business should be outward-looking, identify opportunities, produce a product or service that adds value and set strategic objectives to develop skills to achieve localization.

The business participants added that businesses need to understand the markets, be ethical, manage their finances, manage their internal and external environments, analyse and be efficient in their business processes, market their businesses, plan strategically where they want to be in five years' time, be adaptable to change and have a positive mindset. Three business and three trade union participants suggested that business should be inward-looking; focus on efficiency and improving



internal mechanisms and processes; and chief executive officers and managing directors should become more involved in the business and not simply delegate and have productive staff.

The business participants stated that all businesses should invest in people, give workers skills and provide capacity and facilities. They added that they should ensure that they have a healthy and fit workforce, implement and support the greater use of electronics and technology. They stated that they should set strategic objectives to develop skills to achieve localization, as well as capitalise more on local resources that exist both in South Africa and on the African continent, to grow and prosper their businesses. Two business participants suggested that business should limit the influence of trade unions; be more influential in a number of the business forums and chambers of commerce; and be more aggressive in their approach to unions and government, in order not to be dictated to by trade unions. One trade union participant suggested that businesses should openly accept trade unions at their workplaces and establish good relationships with them. This would lead to a better relationship between employers and employees. Another trade union participant suggested that all the stakeholders should form a social pact and work together as social partners and do something different and new for the good of the country.

Four other business participants and three trade union participants suggested the formation of private and public partnerships with government. South Africa produces and has good business leaders. There should also be greater assistance and co-operation by big business with small business. Businesses should contribute to training overall, over and above their individual requirements. Big business should assist with funding and pay for small businesses to develop; give entrepreneurs access and opportunity; educate small business; and assist with training and skills development, facilities and capacity. They should fund training and development, engage in and conduct their own training programmes and in-house training and workplace mentoring. Businesses should produce good business leaders and set strategic objectives. One business participant also suggested that business owners should pray constantly for their business success.

Consequently, the business strategies suggested by participants to increase job creation and job sustainability are:

- Focus on running a well-managed organisation in an orderly, disciplined and efficient manner;
- They must revolutionise how they do business;
- Identify opportunities and be more innovative for growth and expansion; as well as set strategic objectives for skills development;
- Big business can and should help small business; and give entrepreneurs access and opportunity;
- Business should be more influential and aggressive in their approach to unions and government and limit the influence of trade unions; and
- Business persons need to constantly commit their businesses to prayer.

The trade union participants agreed and, on the whole, made similar suggestions. Four trade union participants also suggested that business should form a partnership with government; that all stakeholders should form a social partnership similar to the German model; that they should all work together for the greater good of the country; that businesses should be incentivised further to employ and train more people; that businesses should find alternatives to retrenchments; that businesses must ensure that they comply with equity and affirmative action policies; and that businesses should implement proper work procedures to ensure that workers are treated fairly.

#### **6.5.2.6.2 Government strategies to increase job creation and job sustainability**

All the participants suggested various strategies that government should implement in order to increase job creation. A majority of the business participants (eleven) and all six trade union participants on the whole agreed with or shared similar suggestions that government can implement to help sustain jobs. Government strategies suggested by the participants to increase job creation and job sustainability are:

- Government should:
  - Operate its administration in accordance with the same business ethics, guidelines and rules as private businesses;
  - Employ business orientated people, with the same qualifications, the right background and industry experience required to run a business;
  - Fill positions with the correct people, as would be required in the private sector;
  - Ensure that there is a performance policy or performance criteria for government employees; and
  - Ensure that government departments are expenditure compliant.
  
- Government needs to:
  - Create a business-friendly environment, wherein there is economic certainty and long-term political stability.
  - Increase investor confidence in the South African economy by ensuring that the economy is run in a more investor-friendly way.
  - Deal decisively with corruption as this is chasing investors away.
  - The presidency should properly consult with and implement business suggestions.
  - Also look at and deal with foreign policy correctly, as well as deal with unregistered businesses which are not paying taxes.
  - Stimulate the economy, help workers get internships and start infrastructure development programs to create jobs.
  - Cut back on excessive spending and utilise taxpayers' money more wisely.
  - Spend more money on pre-tertiary education and training, and improve language skills, to create and sustain jobs.
  
- With regard to education, government should:
  - Empower workers with the necessary skills to make them more proficient and productive.
  - Increase and develop the national skills pool to match supply with demand in order to sustain jobs.

- Improve the support structure that feeds into business by focusing on the quality of education and not the quantity of education.
  - The quality of primary, secondary and tertiary education needs to be improved.
  - Change the education system to fit the economy, which is market related, and properly channel the youth into avenues where opportunities lay, such as addressing the shortage of artisans in South Africa.
  - Encourage and equip the youth in basic education in order to plan to succeed and cope with the challenges of self-employment.
  - Align courses and degrees with the job market so that their qualifications are market-oriented.
  - Focus on youth development by creating opportunities for them and university graduates who are unemployed to become self-employed;
  - Provide more government-sponsored internship programmes.
  - Fairly distribute funding, resources and skills in terms of the employment system.
  - Broaden training and education to non-designated groups.
  - Encourage the Departments of Labour, Higher Education and Trade and Industry to talk to each other to improve on the skills development needs of the workplace.
- With regard to small businesses, government should:
    - Play a more active role in assisting small businesses.
    - Stimulate small businesses by equipping them with business skills and business measures to make them sustainable.
    - Focus on entrepreneurial skills and sustainability.
    - Ensure that entrepreneurs get greater access and business opportunities, and that all businesses are incentivized.
    - Provide funding and grants, not only to some but to all.
    - Reduce bureaucracy, make administrative compliance easier and reduce the cost of compliance, especially for start-up companies and small businesses, through the creation and use of more electronic media and online technology systems.

- Cut the red tape; provide funding through NGOs for people who do not qualify for access to funding, assist and fund micro-vendors.
  - Make funds available to small business; provide more financial incentives to employ and train people; train the youth and the unskilled labour force; and extend the youth development programme to include people in their thirties and forties.
  - Encourage big business to support small businesses to grow.
  - Look at assisting the informal sector to grow and sustain itself so that it can contribute to job creation.
  - Focus on encouraging South African businesses to export to other countries.
- Overall, government should be business-friendly, not just provide tax incentives. It should also make it easier for business to do business.
- With regard to employment, job creation and job sustainability, government should:
    - Have policies that encourage employers to create qualitative and secure jobs which provide workers with a better lifestyle.
    - Ensure that there are employment opportunities and create employment opportunities in the parastatals and semi-parastatals.
    - Encourage big business to employ more local people, imposing a quota of seventy percent local people and thirty percent foreigners in the mines.
    - Set a national goal for everyone to follow in order to make the country work.
- With regard to labour legislation and bureaucracy:
    - Government should not make any drastic changes to labour legislation, as it is an international benchmark.
    - Where there are problems, government should amend the legislation so that it is fair to all parties.

- Government should streamline the labour legislation, create a minimum legislative framework and reduce bureaucracy.
- The BCEA and the LRA should be streamlined into one.
- The SDA and the SDL should also be streamlined into one.
- The twenty-one SETAs should be merged into one.
- Government should reduce the cost of compliance with legislation in general, although there should be a certain level of compliance.
- It would be helpful if industries were able to be more flexible about collecting and accepting deliveries as night. It would be better for trucks to drive on the roads after working hours when it is quiet, as they do in New York. We then could be more efficient and cost effective (B6).
- Ensure that bargaining council agents do not selectively enforce compliance; that non-compliant businesses comply; and that the law is enforced fairly and evenly throughout the country.
- The CCMA should have a vetting process, such as a pre-conciliation process when a commissioner can decide whether a case has merit in order to deal with frivolous cases.
- Set the minimum wage regionally and be industry-specific, not nationally.
- Limit the strength of trade unions.
- Reduce import duty costs on fabrics to assist with diminishing international competitiveness in order to help sustain jobs in the clothing industry.
- Relax the B-BBEEA scorecard requirements and reduce the levels of compliance for smaller businesses.
- There should be a sunset clause to EEA, so that “we can settle down to a normal society”.

One trade union participant disagreed about making any drastic changes to the labour legislation. He thought that the only amendments that should be made to labour legislation are those that are fair to both parties.

#### **6.5.2.6.3 Trade union strategies to increase job creation and job sustainability**

Fifteen business participants and five trade union participants suggested various strategies that trade unions can implement to increase job creation. Nine business participants suggested similar strategies which trade unions could implement in order to increase job sustainability.

Five business participants and one trade union participant suggested that trade unions should:

- Co-operate and work with management. There should be greater communication and co-operation between businesses and trade unions.
- Co-ordinate more with businesses, whose workforce they represent.
- Also have a clear understanding of business as a whole. They should know how to assist in keeping businesses successful and sustainable.
- Help smaller businesses to employ more people and help companies to grow.
- Help to reduce absenteeism and conflict.
- Focus on labour stability, have realistic expectations and make reasonable demands and compromises.
- Educate their members on the challenges faced by small businesses and focus on ensuring labour stability.
- Make realistic and reasonable demands about wage increases.
- Balance union satisfaction, earnings and business survival.

Two business participants also suggested that trade unions should:

- Focus on representing employees' interests and not their political agenda.
- De-politicise and assist the Department of Labour to ensure that industries are completely compliant with worker-related legislation.
- Play a more active role in representing their members' interests, especially on bargaining councils.

One trade union participant agreed that the whole future depends on keeping employers and employees satisfied and that it is the only way to retain and sustain jobs.

Three business participants suggested that trade unions should:

- Focus on the bigger picture and not just the employed.
- Take a wider view, consider and include the unemployed in the negotiation process.
- Re-look at their model and take cognisance of how the nature of work has changed.
- Be more flexible and technological.

Six other business participants and one trade union participant suggested that trade unions should:

- Co-operate and work with management to tackle the big problem of non-compliant companies.
- Enforce compliance of non-compliant businesses equally and fairly across the entire industry and not do so selectively, as there are many Chinese and non-compliant factories in Northern KwaZulu-Natal, especially in Newcastle.
- Be whistle-blowers: They could use cellphone technology to enforce compliance by sending sms' and videos to the chief inspector or inspectors to enforce compliance.
- Ensure that all businesses comply with the legislation and that all industries are completely compliant with labour legislation.
- Exercise more leniencies, depending on the size of the business.

All of the trade union participants made similar suggestions. One trade union participant also suggested that trade unions need to work on the administrative aspects of the trade union.

Therefore, all the participants agreed that knowledge and skills were essential, and that jobs were created primarily through skills development. Furthermore, business participants stated that they were financially incentivized by the ETIA, Department of



Trade and Industry's subsidies and the SDA to train. They added that these helped businesses to expand and grow, which caused them to employ and create more jobs. One of the participants stated that the largest job creation had occurred in the clothing industry was as a result of the financial incentives that they had received for skills development and training.

The majority of the business participants agreed that labour legislation did not influence job creation. However, some business participants agreed that certain aspects of labour legislation had a positive influence on job creation, such as skills development; whilst other aspects such as affirmative action, the B-BBEEA, bureaucracy, the administrative burden and the cost of compliance had a negative influence on job creation. Nevertheless, labour legislation was not the overriding factor. The primary factors negatively influencing job creation were the skills shortage; youth unemployment; the political and economic uncertainty in South Africa; the B-BBEEA scorecard criteria; affirmative action; and employment equity in terms of the EEA.

The business participants stated that start-up of new businesses; expansion and growth caused businesses to create jobs. They added that the types of jobs created were primarily permanent, skilled jobs. Although, they acknowledged that some temporary, fixed-term and part-time jobs were also created. There were conflicting views amongst the participants as to where job creation was taking place; whether it was the public sector or the private sector and whether it was big business or small business creating the most jobs. In addition, the majority of the participants agreed that job sustainability and business sustainability are inter-connected and that training is integral to a sustainable business. The participants indicated that the primary factors negatively influencing job sustainability were poor education, the skills shortage, the poor economic and political climate, labour issues and labour costs.

The general consensus, amongst the participants is that more jobs are being lost than created. Nevertheless, the majority of participants indicated that they were likely to create and sustain jobs in the future, provided that they continued to be financially incentivised to train. They added that the economic and political environment has

had a negative influence on job creation and job sustainability. The business participants stated that job creation and job sustainability would depend on the demand for their goods and services, as well as on the economic and political climate. Nevertheless, an overwhelming majority of the business participants indicated that they were likely to sustain jobs in the future, again stating that it would depend on whether there would be political and economic certainty. The participants confirmed that a small number of jobs were sustained in 2016 through training, which were primarily skilled and semi-skilled jobs. They stated that businesses had saved jobs by placing workers on short-time and by training and re-training them to fill alternative or new positions.

The participants felt that legislation on the whole was good as the LRA made it difficult to dismiss people and created barriers to abusing people, which had a positive influence on job sustainability. The B-BBEEA, the EEA and the SDA contributed to job creation through encouraging and promoting skills development. Once again, the participants agreed that there were aspects of labour legislation which had a positive influence, such as skills development. They agreed that the LRA, the SDA and the UIA contributed to job sustainability through encouraging and promoting skills development. Other aspects of labour legislation had a negative influence such as the EEA, the B-BBEEA, bureaucracy, administrative burden and the cost of compliance on job creation and job sustainability.

The primary factors negatively influencing job sustainability were the skills shortage, youth unemployment, the political and economic uncertainty in South Africa, the B-BBEEA and the EEA.

## **6.6 Limitations of the qualitative study**

The sample of volunteers can potentially contaminate the study. However, the potential contamination is limited by the fact that the volunteers originate from a random sample of respondents who had participated in the survey questionnaire.

## **6.7 Conclusions**

This chapter has provided an overview of the data qualitative data collection and data analysis results of the business and trade union interviews. Data revealed study participants' perspectives and experiences of labour legislation's influence on job creation and job sustainability. As is typical of qualitative research, extensive examples are included in this chapter. By using the participants' own words, the researcher herein aimed to build the reader's confidence by accurately representing the reality of the business and trade union persons and situations studied. This revealed that labour legislation does/does not influence job creation and job sustainability and that the recent legislative amendments to the labour legislation further interfere and positively/negatively influence job creation and job sustainability.

The following chapter presents and provides a detailed discussion of the analysis, interpretation and synthesis of the qualitative and quantitative study's findings.

## **CHAPTER SEVEN: DISCUSSION OF RESULTS AND FINDINGS**

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### **7.1 Introduction**

In the preceding chapters, five and six respectively, the quantitative and qualitative results were presented and analysed. This chapter provides a summary of the study; discussion of the results and findings; implications for practice.

### **7.2 Discussion of the findings**

Previous researchers and authors commented on various aspects of the phenomena influencing job creation and job sustainability. The goal of this study was to explore and determine what labour legislative factors were statistically significant and the extent to which they influenced job creation and job sustainability. This section discusses the implications of the findings for each of the nine research questions.

#### **7.2.1 The importance of social justice, human rights and decent work**

The findings that emerged from the quantitative study's questions on social justice, human rights and decent work indicate that both businesses and trade unions agreed with the statement that the creation of job opportunities was very important. The findings that emerged from the quantitative study aligned with Miller's (2012:8) claim that there is a chronic shortage of decent jobs in South Africa, which needs to be addressed. There was also strong agreement amongst the business respondents on three statements; namely, freedom from discrimination in the workplace; the development of quality education and training systems; and freedom from exploitation in the workplace as being very important. Therefore, it would appear that the respondents upheld the values of equity, justice and fairness and recognized that these values cannot be sacrificed for greater efficiency (Santos, 2009:51).

The respondents also appear to agree with Winston's (2011:33) assertion that social justice is the underlying ethical value of sustainable business practices, to treat others fairly and to respect employees' labour rights. For this reason, they are in agreement with Winston's (2011:34) contention that businesses are responsible for avoiding the unjust exploitation of human and natural capital. However, they

disagreed on the other three statements on labour law's purpose, namely the importance of equality in the workplace; paying a fair income for sustainable living, and the protection of workers' rights.

The responses of both businesses and trade unions differed with Patel and Mushonga's (2014:55) argument that business has to play a key role in promoting social, economic and environmental development, as well as having a socio-economic responsibility towards their workers and to wider society. Thus, there needs to be a balance between economic imperatives and social transformation. The vast majority of trade union respondents felt that all seven statements pertaining to social justice, human rights and decent work were very important. The Keynes' objective, however, is not only to create jobs (Tcherneva, 2012:64), but to create stable and good jobs. This is in line with fulfilling the aims of social justice (Tcherneva, 2012:78).

The above-mentioned findings speak to the recognition of social justice, human rights and decent work as important, which is in agreement with the literature reviewed that decent work is concerned with the opportunity to work; the right to freedom of association; social protection (Le Roux, 2013:512); sustainability and security of work (Muthethwa, 2013:12); equality; creating jobs; guaranteeing rights at work; extending social protection; promoting social dialogue; protecting the dignity of workers (Wheeler, Klaas and Mahoney, 2004:1), and promoting human rights at work (Collins, 2011:142), as entrenched in the Constitution. Business and human rights are inextricably linked (Ramlall, 2012: 271).

The findings that emerged from the quantitative study also agree with Kloppers' (2014:63) contention that businesses have a responsibility towards the societies within which they operate. The findings from the quantitative study further align with Botha's (2015:63) argument that a strong nexus exists between corporate social responsibility, corporate governance, and sustainable business development. Thus, business has an ethical, legal and moral obligation to create jobs, to sustain them and not to destroy them.

### 7.2.2 The role of labour Law

Social justice is entrenched in the Constitution, which includes the principles of equality, fairness and economic justice. Furthermore, labour law's normative foundations are based on social justice and efficiency (Collins, 2011:137). Consequently, the findings resulting from the survey questions on the role of labour law indicate that both businesses and trade unions confirm that labour law plays an important role.

There was also strong agreement between both businesses and trade unions that freedom from discrimination in the workplace and the development of quality education and training systems are very important. This is in line with labour law's purpose to provide legal protection to employees and employers through the promotion of safe and productive workplaces; the prevention of exploitation; equality in the workplace; job security, and freedom from bias and discrimination (Benjamin, cited in Le Roux and Rycroft, 2013:29). However, the findings that emerged from the quantitative study also indicated that the business respondents disagreed on the importance of labour laws ensuring equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights.

The findings that emerged from the qualitative study indicate that the interview participants supplement the survey respondents' opinion on labour legislation's fulfilling its normative role in regulating, guiding and controlling job creation and how workers are employed. Their consensus that it normalises the employment relationship; acts as a guide in setting minimum provisions, and provides for fair mechanisms and processes, which help to resolve disputes, is in agreement with Botero, *et al.*'s (2004:1339) contention that labour law governs the individual contract of employment.

The majority of business participants considered labour legislation to be necessary and mostly justified. They agreed with Kettledas (2013:3) that legislation was primarily concerned with providing the employed with basic protections against unfair labour practices, unsafe working conditions, and a decent living wage. Berg and Kucera (2008:27) also maintained that labour laws and policies play an influential part in improving social justice for workers by levelling and limiting bargaining through laws that protect freedom of association and collective bargaining, as well as

mandating standards on conditions of work, many of which are not subject to international agreements.

The findings that emerged from the qualitative study indicate that the labour legislation is fair, but that the parties needed to have a fair amount of knowledge about labour legislation. The findings from the qualitative study indicate that business has to invest a large amount of time and resources to comply with labour legislation, which confirm Almeida and Carneiro's (2009:28-29), as well as Ayanda and Laraba's (2011:200) view that smaller firms experience greater problems in dealing with compliance. However, the findings from the qualitative study contradict the findings of a similar study undertaken by Bennington and Wein (2000:31) in 1999 among businesses in London, those employers did not experience any major difficulties in complying with legislation. Only one business participant found labour laws to be flexible and averting industrial action, which confirms Venter, *et al.*'s (2010:130) claim that there is no such thing as a perfectly flexible labour market, neither is it socially desirable. The majority of the trade union participants thought that labour legislation primarily has a positive influence on job creation.

The responses from the interview participants further indicate that labour legislation also influenced job sustainability, sometimes positively - by creating opportunities; sustaining the jobs created; making it difficult to dismiss an employee, and creating barriers against abusing people; and at other times, negatively. This finding supports Deakin, Malmberg and Sarkar's (2014:6) argument that labour laws can have a number of positive and negative effects on efficiency, depending on the context. The business participants affirmed that legislation protects employees and thus is needed.

Nevertheless, it is not good enough to just stimulate job creation. There is also a need to protect jobs. In addition, the EEA was found not to be representative and that educational institutions do not sufficiently support it. This finding that the EEA was found and that educational institutions do not sufficiently support it is consistent with and supports Cole and Van der Walt's (2014:525), Rasool and Botha's (2011:2) and Venter, *et al.*'s (2010:139) claim that primary, secondary and tertiary educational institutions need to be improved in order to support the EEA. Thus, labour legislation is necessary to balance all these rights, to ensure social justice and safety.

### **7.2.3 Research Question One**

#### **How are jobs created and sustained in South Africa?**

The findings that emerged from the empirical study for research question one indicate that jobs are created through skills development, as well as when businesses are incentivized and motivated to expand, grow and create jobs within a healthy economy. The findings from the qualitative study confirm Miller's (2012:20) view that jobs were created when the economy improved and when there were positive economic policies and economic growth. The findings that emerged from the quantitative study also indicate that economic growth, good economic policies, and political stability encouraged local and overseas investors to invest in companies operating in South Africa, thereby creating jobs.

The findings that emerged from the qualitative study also confirm Tzehainesh's (2010:21) averment that economic growth was necessary to create and sustain jobs in order to reduce poverty. This study also indicated that job creation was dependent on the country's needs and market demand for the goods. The findings that emerged from the quantitative study confirm Tzehainesh's (2010:21) argument that trade liberalization, globalization, global competitiveness, decentralization of production and technological innovation are important megatrends driving current economic policy, which are affecting economic growth, job creation and job sustainability.

Jobs are also created through business innovation, efficiency and business enhancement; localization of raw materials; organic growth, and business expansion through restructuring (Wilhelm and Wilhelm, 2012:63). The findings that emerged from the quantitative study indicate that the provision of employment tax incentives, the Department of Trade and Industry's subsidies and the SETAs' refunding of skills development levies have encouraged businesses to develop skills and training, which in turn have led to jobs being created.

The results also indicate that jobs are primarily being sustained through skills development; when there is economic growth; a healthy economy; a healthy government; a properly regulated industry in which compliance is enforced, and when businesses do well. The findings further indicate that jobs are sustained when a company is well-managed; forward-looking; can adapt to change; seeks out



opportunities; creates new business; is profitable, remains sustainable, and is viable. In addition, the findings indicate that businesses sustain jobs through education, training, re-training, skilling and up-skilling workers and placing them on short time to avoid retrenchments. Business sustainability is ensured through skills development, which helps to increase the efficiency and productivity of the worker. Skills improvement helps to preserve jobs.

The findings that emerged from the quantitative study indicate that there are conflicting views on whether small and medium business enterprises or large businesses are creating jobs. The weight of the literature reviewed appeared to favour small business for example, Nkosi, Bounds, and Goldman (2013:1); Van Loggerenberg and Ferreira (2012:212); Heitmann (2009:3), and Cray, *et al.* (2011:5) all identify small businesses as the vehicles for job creation. The findings that emerged from the qualitative study also indicate that there are conflicting views as to whether the public sector is creating or reducing jobs. Nonetheless, the findings from the empirical study are aligned with McGrath and Akoojee's (2007:427) and Le Roux and Rycroft's (2013:35) contention that the restructuring and the privatisation of the public sector has resulted in job losses. The findings that emerged from the qualitative study are in agreement with the sentiments expressed by Ianchovichina, *et al.* (2013:2016); Goldberg (2012:45), and Islam and Mageres (2001:279) that investment in infrastructure has the potential to create jobs quickly and provide a foundation for future growth. According to the participants, if businesses prosper, they can sustain jobs.

### **7.2.3.1 The likelihood of jobs being created and/or sustained**

#### **7.2.3.1.1 Businesses are likely to create and sustain jobs:**

The findings that emerged from the empirical study indicate that the majority of business participants are likely to create jobs in the near future, especially businesses that are doing well, growing and expanding; are receiving government incentives and/or subsidies to develop skills for training and employment; have good government contracts, and have certainty and industrial peace. The findings that emerged from the qualitative study indicate that jobs are likely to be created in order to fulfil clients' demands, to service institutions' needs, to staff new shopping malls

and to operate the tourism industry. In addition, the findings from the qualitative study indicate that the services sector has created a number of jobs through tax incentives. There are fewer secure permanent employees and the jobs being created appear to be short-term, which is not sustainable. The findings that emerged from the quantitative study further indicate that jobs will be sustained in the future, primarily through training. Jobs are also being saved through placing workers on short-time, finding them alternative positions or employing them in new start-up businesses.

Thus, businesses are likely to create jobs in the near future provided they continue to receive financial incentives to train, and are growing. However, the threat of economic and political uncertainty, and corruption and labour unrest has an adverse effect on job creation and job sustainability.

#### **7.2.3.1.2 Some businesses are unlikely to create and sustain jobs:**

The findings that emerged from the quantitative study also indicate that some businesses are unlikely to create jobs in the near future, mainly because of the poor economic climate and political uncertainty; government's stance in controlling industry; the lack of managerial skills; inadequate financial incentives; ineffective collective bargaining; and businesses' perception of employing additional staff as a significant risk. The results that emerged from the qualitative study further align with Venter, *et al.*'s (2010:146) view that there is a serious shortage of sound managerial expertise in South Africa. Three trade union participants agreed with the business participants that businesses are unlikely to create jobs due to economic and political uncertainty and government corruption issues. They confirmed that job creation is slow and that more jobs are being lost than are being created. This is in agreement with Pieters' (2013:23) view that a lot more jobs have been and are being destroyed than jobs being created.

### **7.2.3.2 Jobs created and/or sustained in the previous year**

#### **7.2.3.2.1 Jobs were created and/or sustained**

The findings that emerged from the quantitative study indicate that the majority of the business participants, some to a large extent, and others to a lesser extent, had created jobs in the previous year. Those businesses that were financially incentivised to train and create jobs did in fact create more jobs. The findings that emerged from the quantitative study indicate that the largest job creation that took place amongst the business respondents was in the clothing industry. Nevertheless, the number of jobs created overall appeared to be small. There were over three hundred and thirty-five new permanent jobs and seventy to eighty temporary jobs. The findings that emerged from the quantitative study also suggest that no real substantive jobs are being created and those jobs being created are of a temporary nature. The findings that emerged from the qualitative study indicate that the majority of business participants, although some of them had retrenched workers, jobs were saved through training and re-training and finding the workers alternative positions.

#### **7.2.3.2.2 The types of jobs created**

The findings that emerged from the quantitative study denote that an overwhelming majority of the business participants permanently employ workers and are in agreement with Goldberg's (1997:302) contention that the benefits of employing permanent staff outweigh the costs. This is contrary to what McCann, Lee and Belser (2014:7); Pieters (2013:8); Miller (2012:12); Tzehainesh (2010:21), and Luis (1999:15) claim, that informal and precarious employment is growing and that businesses are creating more temporary jobs. A possible reason may be the implementation of the amendments to the BCEA and the LRA to curtail the use of temporary employment contracts, which appear to have had a positive influence on job creation.

Nevertheless, the findings that emerged from the empirical study also demonstrate that some of the business participants created a mixture of permanent and fixed-term contracts, as well as some temporary jobs, depending on the scope of work required. A few took on interns, trained them and then used them to fill positions -

either created or which had become vacant - for similar reasons. Some participants created temporary jobs because of the subsidy that they received for training the unemployed. They would subsequently appoint them on a permanent basis if a permanent position became available. This finding confirms Kloppers' (2014:78), Bronstein's (2009:69) and Berg and Kucera's (2008:12) averment that financial incentives encourage businesses to train their workers, which has a positive influence on job creation.

#### **7.2.3.2.3 A few businesses did not create or sustain jobs**

The findings that emerged from the empirical study indicate that a few business participants did not create jobs because of the poor economic climate, stagnant business growth and business instability.

Consequently, the findings that emerged from the empirical study confirm that:

- The majority of the business participants are creating jobs through skills development and through governmental financial incentives provided to businesses for training workers. However, the trade unions are concerned that the jobs being created through skills development are temporary, which were in agreement with Cahuc and Postel-Vinay's (2002:63) warning that temporary jobs intensify job destruction.
- Growth has fallen continuously in former years, which the OECD (2017:20) attributes to weak investment due to persistent policy uncertainty and continued low business confidence.
- Business confidence is low because the domestic economy has not been growing at rates high enough to effectively tackle unemployment and poverty.
- South Africa's economy is growing at a slower rate than was projected by government, which has caused slow employment growth; increased unemployment and under-employment. The changing nature of work; casualization and productive decentralization also impact economic growth.
- A small number of jobs were similarly sustained in 2016, primarily through training, re-training and up-skilling workers.
- The SDA has a direct positive link to job sustainability and to job creation.
- The types of jobs sustained were primarily skilled and semi-skilled jobs.

- A more skilled labour force is required.
- Restructuring appears to be threatening some managerial positions.
- A number of low-level and unskilled jobs were either lost or at risk, confirming that employment in the semi-skilled and less skilled occupations have decreased.
- Machinery and technology are threatening and replacing some of the lower level jobs.
- Delays in securing future contracts, government contracts and tenders are potentially threatening jobs.

The findings that emerged from the qualitative study confirm that there is an increased need for tertiary qualifications in the job market, that the demand for managers and professional workers had increased and that employment in the semi-skilled and less skilled occupations had decreased.

#### **7.2.4 Research Question Two**

##### **How does labour legislation influence job creation and job sustainability in South Africa?**

The findings that emerged from research question two indicate that there was significant agreement amongst businesses and trade unions that has both a positive and negative influence on job creation and job sustainability.

##### **7.2.4.1 Negative influence on job creation**

The findings that emerged from the empirical study indicate that the majority of the business participants felt that the BCEA, the LRA and the SDL have a negative influence on job creation. Some of their perceptions are that labour legislation is difficult, inflexible and a minefield to navigate. The findings that emerged from the qualitative study also indicate that knowledge of the legislation is essential, that compliance is time-consuming and costly. There are also aspects of the B-BBEEA, the EEA and the SDA which negatively influence job creation. It is interesting to note that the findings that emerged from the qualitative study confirm that the EEA and the B-BBEEA could be a deterrent for businesses that do not qualify for BBEE,

namely White-owned entities. The findings that emerged from the qualitative study further show that although employment equity might have a positive influence in addressing inequality, the majority of the participants feel that affirmative action was not working. They indicated that affirmative action needed to be balanced. The findings that emerged from the qualitative study revealed even further that the administrative burden of employing additional staff, completing reports on affirmative action and skills development act as a deterrent for smaller employers.

Additionally, the findings that emerged from the qualitative study signify that some of the business participants considered the labour environment to be hostile, over-regulated, excessively bureaucratic, inflexible and too onerous, which has a negative influence on job creation. The findings that emerged from the qualitative study revealed that businesses were noticing that it was difficult to manage staff; that there were too many stringent rules; and excessive legislative bureaucracy and compliance which added to the cost of doing business, thus impeding the growth of small businesses. However, Bronstein (2009: 40) contends that labour flexibility rarely creates new and authentic jobs. The findings that emerged from the qualitative study showed that young start-up businesses and businesses in general were remarking that it was time-consuming to understand what was required of them and to deal with all of the documentation, instead of focusing on expanding their businesses. This confirms Darrol's observation (2013:15) that small businesses are concerned about the regulatory burden. Hence, the participants maintained that government should simplify and streamline the legislation.

#### **7.2.4.2. Positive influence on job sustainability**

This study's results indicate that labour legislation influences some of the businesses with regard to job sustainability. Legislation helps job sustainability because it makes it difficult to dismiss somebody, which is a positive factor for workers. The findings that emerged from the qualitative study reveal that there is adequate legislation and that both labour legislation and the economic climate are equally significant. The trade unions perceived labour legislation to be a guide and not to hamper businesses. Thus, the findings that emerged from the qualitative study revealed that labour legislation had both a positive and negative influence on job creation and job

sustainability. On the whole, however, labour legislation created opportunities and sustained the jobs created.

#### **7.2.4.3 Justifications for legislative interference**

The discussion below on the different pieces of legislation will refer to the five sub-themes: fairness, equity, job security, skills development and social security.

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

The discussion of the findings below on aspects of the BCEA will refer to the themes relating to fairness, equity and job security. The discussion is further divided into four sub-themes, namely, staffing contracts; working conditions; notice periods and severance pay, and minimum wages.

- **Staffing contracts:** The findings that emerged from the qualitative study indicate that the majority of business participants agreed that they were not influenced by the BCEA's provisions on regulating and limiting staffing contracts to create jobs and that they were unaffected by the amendments. In addition, the finding of the qualitative study was that a number of business participants were regulated by bargaining council agreements. They remarked that it was the ethical thing to do, whilst some participants used fixed-term contracts as a form of probation and thereafter made permanent appointments. The findings confirm that the BCEA is a process which puts fair mechanisms in place (Berg and Kucera, 2008:23 and Guest, 1997:349); that it is in accordance with international standards (Bhattacharjee and Roy, 2012:70, Du Plessis and Fouche, 2012:67 and Hofmeyer, 2013:24), and that employers can apply for exemptions if they cannot afford the minimum provisions (Cheadle, 2006:668).

The results from the qualitative study also reveal that some business participants are uninfluenced by the legislative limitations imposed on staffing contracts to sustain jobs as they are compliant and they are part of collective bargaining council agreements. In addition, the findings confirm that there is

enough of a window in the legislation to extend the three months if they have justifiable reasons (Cohen and Moodley, 2012:331 and du Plessis and Fouche, 2012:226). The findings also indicate that some business participants did not feel the need to exploit workers (Brand, 2010:1). However, the findings also indicate that the participants have an issue with the Department of Labour's enforcement of compliance, and in particular with their perception of massive corruption amongst the labour inspectors.

- **Hours of work and working conditions:** The results from the qualitative study confirm that the majority of business participants prefer to comply with the law (McCann, Lee and Belser, 2014:163) and with collective agreements. Consequently, they are uninfluenced by the provisions regulating the hours of work and working conditions to create or sustain jobs as the bargaining councils guide and regulate them and ensure that workers are treated well. In addition, the findings indicate that a few of the participants also participate in and negotiate the working conditions for their industry.

The findings from the qualitative study suggest that the BCEA ensures business sustainability through a healthy and productive labour force (Parker, 2012:1) by controlling the various categories of rest periods to ensure that workers have adequate time off in order to remain healthy and to attend to their needs.

- **Minimum wages and sectoral determinations:** The results from the qualitative study indicate that the majority (eleven out of sixteen) of business participants are uninfluenced by the provisions regulating minimum wages and sectoral determinations to create jobs as the bargaining councils guide and regulate them and they use the regulations as a guide. They also confirmed that they pay their workers above the minimum wage set for their industry.

The findings that emerged from the qualitative study also indicate that the minimum wage and sectoral determination provisions did not influence a few of the business interviewees to sustain jobs. These research participants



stated that they are regulated by bargaining council agreements and they pay above minimum wages. This confirms Rogers' (2014:1544) contention that there is significant empirical evidence supporting the claim that past minimum wage increases have not lead to job losses (Rogers, 2014:1544).

- **Notice periods and severance pay:** The results from the qualitative study indicate that the majority (twelve out of sixteen) of business participants are uninfluenced by the BCEA's provisions on notice periods and severance pay to create jobs. The reasons they advanced were that the provisions are fair; that they accept the rule and comply, and that it is beneficial in that it allows for a period in which they can bring in a new person. However, one trade union participant disagreed and remarked that the regulation of notice periods is important.

In addition, the findings indicate that a few (three) of the business interviewees, as well as two trade union participants perceived the notice periods and severance pay provisions of the BCEA was not influencing job sustainability. They advanced the same reasons, namely, that they comply; that the provisions are fair; that they have little or no effect, and that it is a necessary cost of doing business.

- **Enforcement of compliance:** Results indicate that business and trade union respondents differed on the influence of labour inspectors in monitoring and enforcing compliance with the BCEA. The majority of the trade union respondents agreed that they influence job creation, whilst the business respondents disagreed. The results from the qualitative study reveal that labour inspectors have not conducted regular inspections. The trade unions stated that labour inspectors strongly encourage safe working practices. They confirm that the inspectorate co-opts the bargaining councils to enforce compliance.

#### 7.2.4.3.2 The Labour Relations Act No. 66 of 1995 (LRA)

The discussion of the findings below on aspects of the LRA will refer to the themes relating to fairness, equity and job security. The discussion is further divided into six sub-themes, namely: staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes; dispute resolution; and enforcement of compliance.

- **Staffing contracts:** The findings that emerged from the qualitative study indicate that the LRA's provisions on staffing contracts did not influence the majority of business participants to create jobs. A common reason given is that they already complied with bargaining council specifications, which were in line with the law. A number of them confirmed that they are regulated by bargaining council agreements. One participant perceived it as the ethical thing to do. However, some conceded that they use fixed-term contracts as a form of probation and thereafter make a permanent appointment. In addition, the findings indicate that a few (two) business participants were negatively influenced by the provisions (that is, not to create jobs or to employ) and that they did not use the same person twice, which confirms the Organisation for Economic Cooperation and Development (OECD)'s (2014: 142) contention that contract workers face a higher degree of job insecurity.

The findings from the qualitative study also indicated that the LRA's restrictions on types of staffing contracts did not influence a few of the business participants with regard to job sustainability, as they are compliant and there is enough of a window in the legislation to extend the three months if they have justifiable reasons, which has resulted in increased security of employment for vulnerable workers (Kettledas, 2013:4).

- **Dismissals and probationary periods:** The findings from the qualitative study indicate that the LRA provisions on dismissals and probationary periods did not influence the majority of the business participants to create jobs. Some of the reasons advanced were that the LRA's procedures are fair and beneficial to both parties; they are compliant and they follow the law; the code

of conduct creates certainty; it is important to be seen to be acting ethically and fairly; they have been very lenient, and they employ experts to assist them. Furthermore, their perception is that the LRA is a fair process guide for organisational collective bargaining and fair labour practices and that the law is in line with International Labour Organisation standards. However, the results from the qualitative study indicate that employers are dismissing people relatively easily by drafting the correct documentation, and by being procedurally correct and substantively fair. Reducing the probation to three months helps businesses to assess their performance.

The findings from the qualitative study also indicate that the LRA's provisions do not influence a few of the business participants on job sustainability. They stated that they strongly support the provisions; they have been very lenient; they treat workers fairly; they follow the retrenchment procedure, and they keep records. In addition, the findings indicated that although the legislation appears to be onerous, it is relatively easy. Employers simply need to act strictly in accordance with it; be correct; substantively and procedurally fair; and draft the correct documentation.

A few business participants are in agreement with Bronstein (209:69) that protection against dismissals may deter or prevent employers from creating jobs. They confirm the criticism levied against the LRA that it makes it difficult for employers to dismiss and retrench workers. The findings also confirm the author's contention that employers fear that they will be unable to retrench workers when there is a reduction in demand for their goods or services. The findings further confirm his claim that the protection of workers against unfair dismissal is a highly sensitive and controversial issue, as security of employment remains an important trade union negotiating issue.

The findings also reveal that a few of the trade union participants are in agreement with Berg and Kucera's (2008:14) contention that by making dismissal more difficult workers benefit, as it provides businesses with greater incentives to train their workers.

- ***Bargaining councils and collective agreements:*** The findings from the qualitative study indicate that business participants who are not part of a bargaining council or where it does not apply to their businesses, were uninfluenced by them to create and to sustain jobs. The findings also reveal that bureaucratic, ineffective bargaining councils which set wage increases too high, as well as the majoritarian principle, negatively influence job creation. The findings confirm Barker's (1999:30-39) contention that bargaining councils and sectoral determinations affect the labour market directly and indirectly, and that issues such as wage flexibility, non-wage labour costs and job security all add to labour market rigidity. The findings further confirm Badenhorst-Weiss and Waugh's (2014:289) claim that the actions of some of the trade unions and bargaining councils were questionable.
- ***Industrial action:*** The findings from the qualitative study indicate that some business participants were uninfluenced by industrial action to create jobs. The reason they gave was they were compliant. One of them stated that her business has not experienced strikes for the past twenty six years. Another research participant conceded that strikes do affect his business, but that he uses scab labour. One of the trade union participants stated that Section 64 regulates industrial action and that it is absolutely necessary. Nevertheless, the finding is that the majority of the business participants and two trade union participants agree that strikes negatively influence job creation because it deters employers and the economy from creating jobs.

The findings from the qualitative study also revealed that only one business participant commented on industrial action's influence on job sustainability - that it did not necessarily influence him to sustain jobs. He stated that he simply needs to ensure that when he employs people, they understand their employment contract and what he expects of them.
- ***Dispute resolution:*** The findings from the qualitative study indicate that half (eight) of the business participants were not influenced by the LRA's provisions on dispute resolution to create jobs. The findings confirm that the

participants consider the CCMA to be a good system as a procedural path to resolve disputes and it creates fairness and protects (Cohen, 2014:27). The findings also reveal that employers are not deterred when they obtain advice on how to handle disputes from labour specialists.

- ***Enforcement of compliance by labour inspectors:*** The findings from the qualitative study indicate that the enforcement of compliance with the LRA by labour inspectors did not influence the majority (twelve out of sixteen) of the business participants to create jobs because they complied with the law and the labour inspectors have a history of being ineffective. The findings reveal their perception that labour inspectors are reactive rather than proactive and do not conduct regular inspections and when they do, they give companies time to rectify issues. These findings confirm Botha's (2015:34) contention that minimum labour standards are not being enforced.

The findings from the qualitative study likewise indicate that a few of the business participants were uninfluenced by labour inspectors enforcing compliance to sustain jobs. The remaining business participants were silent on this point. The findings reveal that labour inspectors strongly encourage safe working practices. The findings also indicate that the inspectorate have delegated the conducting of inspections to the bargaining council agents. Nevertheless, it is very important that businesses work within the legislative parameters to ensure that workers have some kind of protection and security (Du Toit, *et al.*, 2011:639).

#### **7.2.4.3.3 The Employment Equity Act, No.55 of 1998 (EEA)**

The findings from the qualitative study indicate that the provisions on employment equity do not influence the majority (eleven out of sixteen) of the business participants to create jobs. Seven of the participants indicated that their workforce is already representative of the disadvantaged groups. The aim of the EEA is to oppose inequalities and labour distortions (Du Toit, *et al.*, 2011:666). Discrimination based on race and gender through job reservation, unequal education and training

opportunities needed to be addressed (Venter, Levy, *et al.*, 2010:139). Nevertheless, the findings show that seven other business participants and one trade union participant agreed that affirmative action and equity plans negatively influence job creation and job sustainability because poor education and the lack of/or inadequate skills have caused some businesses to duplicate positions and roles resulting in increased labour costs and production inefficiencies. The findings show that only one business participant was not influenced by the EEA to sustain jobs.

The discussion below on aspects of the EEA will refer to the themes relating to fairness, equity and job security. The findings relating thereto are further divided into five sub-themes, namely recruitment practices; affirmative action; equal pay for equal value; income differentials, and enforcement of compliance.

- **Recruitment practices:** The findings that emerged from the qualitative study indicate that the EEA's regulation of recruitment practices did not influence the majority (eleven) of business participants to create jobs. The reasons given are that the Act has aligned business with legislation; it is used as a guide, and that it influences businesses to employ more disadvantaged persons. However, some participants acknowledged that it could stifle entrepreneurs. The findings support Du Toit, *et al.*'s (2011:726) contention that when employers invest in their workforce and treat their workers with fairness and equity, their actions can result in increased productivity, motivation and resourcefulness in the work-place. Nevertheless, the findings indicate that a few business participants regarded skills, qualifications and experience as the priority.

One business participant thought it unfair that he is obliged to take on disadvantaged people who were "not right" for the job. The findings of the majority (four out of six) of trade union participants confirm that the EEA is fulfilling its purpose in regulating discriminatory conduct and providing a framework for the implementation of affirmative action (Le Roux and Rycroft, 2013:244). The findings also indicate that the EEA heavily regulates the employment relationship and puts measures in place to give preference to disadvantaged groups (Hofmeyer, 2013:26). It also ensures equality and no

discrimination and that bigger businesses will comply (Du Plessis and Fouche, 2012:67 and Hofmeyer, 2013:24).

Nevertheless, the findings of the qualitative study further indicate that the EEA's regulation of recruitment practices did not influence a few (two) of the business participants to sustain jobs. Their perception is that big business will comply and that it overlaps with the bargaining council agreements. However, one of the business participants remarked that his business is affected by disability not by colour. This finding confirms Du Toit, *et al.*'s (2011: 36) contention that the main aim of the EEA is to achieve equitable representation not only of Black people and women, but also of people with disabilities in all occupational categories.

- **Affirmative action:** The findings that emerged from the qualitative study indicate that the EEA's regulation of affirmative action did not influence the majority (eleven out of sixteen) of the business participants to create jobs, as the majority of their staff is Black and they comply. In addition, the findings indicate that affirmative action did not influence a few (three) of the business participants to sustain jobs, as they had problems with succession planning, poor education and a lack of skills. Whereas, the trade union participant stated that as long as affirmative action is complied with in a manner as prescribed by government, the person still qualified for and is able to do the job (Dapper and Garbers in Le Roux and Rycroft, 2013:253).
- **Equal pay for equal value on income and benefits:** The findings of the qualitative study indicate that the EEA's provisions on the promotion of equal income distribution did not influence more than half (nine out of sixteen) of the business participants to create jobs. Some of the reasons given are that the provisions are essential to ensure fairness, businesses are regulated by bargaining councils and they comply with the gazetted income and benefits. However, a few participants admitted that they distinguished pay differentials on the basis of extra effort, skills and experience, which they felt was fair.

- **Reducing “disproportionate” income differentials:** The findings that emerged from the qualitative study reveal that the overwhelming majority (thirteen out of sixteen) of business participants were not influenced by the EEA’s provisions on reducing income differentials to create jobs. The findings indicate that they complied with the bargaining council’s regulations; they followed the gazetted distinctions, and they adhered to their company’s salary banding systems. They admitted, however, that they paid experienced workers more, and they rectified the problem as soon as they were notified of it. The trade union participants’ findings differed as two of them perceived the EEA’s provision relating to reducing “disproportionate” income differentials as influencing job creation on the overall aspect of equity and fairness. The findings confirm that reducing “disproportionate” income differentials is a process in which businesses have to identify the difference and put a plan into place to reduce the income differentials (Hlongwane, 2007:76).
- **Enforcement of compliance with the EEA by labour inspectors:** The findings confirm that labour inspectors have the power to enforce compliance with all employment laws during a single visit to the employer’s premises (Du Toit, *et al.*, 2011:639). Nevertheless, the findings of the qualitative study indicate that a few of the business participants were uninfluenced by labour inspectors’ enforcement of compliance with the EEA to sustain jobs, as labour inspectors have been to them a number of times to check on compliance and they have had no problems. However, the amendments have significantly increased the penalties for non-compliance, especially with regard to affirmative action and employment equity plan provisions of the Act (Hofmeyer, 2013:26 and Du Plessis and Fouche, 2012:67).

All of these aspects of the EEA relating to recruitment practices; affirmative action; equal pay for equal value; income differentials, and enforcement of compliance ultimately promote social justice, contributing to job creation and to job sustainability. However, the findings confirm that the employment of foreign nationals or foreigners, who became citizens after April 1994, is not to be taken into account for employers to meet their affirmative action targets (Hofmeyer, 2013:26). The discussion below



on the SDA will refer to the themes relating to equity, skills development, job security and social security.

#### **7.2.4.3.4 The Skills Development Act, No.97 of 1998 (SDA)**

The findings indicate that the SDA promotes and facilitates productive employment and helps to preserve jobs. Nevertheless, the SDA overlaps with the LRA's provisions, which deal with the regulation of industrial and sectoral training and education through bargaining councils, collective agreements and workplace forums. The SDA attempts to connect the emphasis on equity in the LRA, the BCEA and the EEA. The findings confirm Rasool and Botha's (2011:2) contention that skills development, through education and training, helps to increase the efficiency and productivity of the worker sectors.

#### **7.2.5 Research Question Three**

##### **Which aspects of labour legislation influence job creation and job sustainability in South Africa?**

The findings from research question three indicate that there is agreement amongst the business and trade union survey respondents that there are aspects of labour legislation which at times influence job creation and job sustainability positively and at other times negatively, and in a number of instances not at all. The findings confirm Bennington and Wein's (2000:31) conclusion that employers who participated in their study do not strongly support the economists' view that legislation creates inefficiencies and interferes with market mechanisms. In fact, there is evidence to the contrary. This study's findings also indicate that legislation had little or no influence on efficiency, and legislation does not affect the cost of recruitment and selection, other than with regard to affirmative action.

In addition, the findings confirm that very few of the employers had any major difficulty with complying with the legislation, except for the administrative burden and bureaucracy relating thereto. Martin and Neugart (2009:44) also found the effects of employment protection legislation to be inconclusive. The authors found that the

employment protection system, on average, does not necessarily harm employment performance and that the interaction between the employment protection system and the economic environment did have some effect (Martin and Neugart, 2009:45).

#### **7.2.5.1 The Basic Conditions of Employment Act, No.75 of 1997 (BCEA)**

The findings indicate that there is significant agreement amongst the businesses and trade unions, as well as amongst both groups of interview participants that various aspects of the BCEA influence job creation and job sustainability. However, in the business and trade union research participants differed on the extent to which the various aspects of the BCEA influenced job creation and job sustainability.

Nevertheless, the findings of the qualitative study reveal that the majority of the business participants were not influenced by the BCEA's provisions to create jobs. The responses of a few of the trade union participants were in conformance with Bronstein's (2009:77) assertion that the provisions of the BCEA are positive for job creation, especially when using someone on a contract basis for probation and for the creation of permanent quality jobs. In addition, the findings from the qualitative study reveal that a few research participants were in agreement with Du Plessis and Fouche's (2012:225) contention that the provisions positively influence job sustainability as a whole. The trade union responses confirmed that workers who are looked after emotionally and physically work better; that the provisions of the BCEA prevent employers from abusing their authority, and they help employees to be employed permanently. However, the findings also aligned with Cohen and Moodley's (2012:331) concern that it can deter employers.

The discussion below on aspects of the BCEA influencing job creation and job sustainability refer to the themes relating to fairness, equity and job security. The findings relating thereto are divided into four sub-themes, namely staffing contracts; working conditions; notice periods and severance pay, and minimum wages.

- **Staffing contracts:** The findings that emerged from the qualitative study reveal that the participants who indicated that they are influenced by the BCEA's provisions on staffing contracts show that the negative influence is

greater than the positive influence on job creation and job sustainability. The findings denote that some business participants are discouraged from creating jobs because of the limitations imposed on them with regard to fixed-term contracts being limited to three months, and the restrictions placed on using casual labour. Their perceptions are that the provisions lack flexibility; they infringe on their freedom to employ and the right to select; they increase the cost to their existing staff; and they inhibit the building up of capacity in advance.

The above-mentioned findings are supported by Cohen (2014:27), who contends that the legislative restrictions imposed on staffing contracts could serve as a deterrent to creating new jobs and to employing additional staff. The findings suggest that a few of the business participants were also discouraged as far as sustaining jobs were concerned because of the nature of the industry they are in; the hourly-based limits that are imposed on the use of casual labour; the limitations and restrictions placed on fixed-term contracts, and the ease with which unskilled workers can be replaced and rotated.

The findings confirm that only a few trade union participants perceive the staffing contract provisions and the legislative amendments in respect thereof to have a positive influence on job creation, which is in agreement with Du Plessis and Fouche's (2012:225) contention that, it protects workers against discrimination. Only one business participant and two trade union participants agreed with Bronstein (2009:77) that the influence on job sustainability would be positive, as a whole, when workers are better looked after and that the legislative restrictions prevent the abuse and exploitation of vulnerable workers.

- ***Hours of work and working conditions:*** The findings emerged from the quantitative study indicate that the majority of business respondents agreed that the regulation of ordinary hours of work and overtime influenced job creation. However, they disagreed on whether work on Sundays, public holidays and night work influenced job creation. The findings of the majority of

the trade union respondents support Du Plessis and Fouche's (2012:49) contention that the regulation of ordinary hours of work, overtime and work on Sundays, night work and work on public holidays is likely to influence job creation. It is interesting to note that half of the survey respondents in each group support Du Toit, *et al.*'s (2011:35) and Bronstein's (2009:248) claims that work time flexibility influences job creation.

The findings from the qualitative study of a few business participants confirm Du Toit, *et al.*'s (2011:597) and Benjamin's claim, cited in Le Roux and Rycroft (2013:29), that the use of overtime and shift work can be used creatively to create jobs. However, the findings reveal that a few of the business participants are also negatively influenced by the regulation of working hours, especially with regard to public holidays, overtime, night work and work on Sundays, which they perceive to be inflexible. These findings are in agreement with Hepple, cited in Le Roux and Rycroft, 2013:6. In addition, the findings indicate that the ad hoc presidential declarations of additional public holidays; the payment of overtime in instances where employees are abusing overtime for extra pay; the regulation of night work; and work on Sundays, especially in the transport industry where businesses are unable to deliver at night or on Sundays, have a negative influence on job creation.

The majority of the trade union participants agreed that the regulation of working hours affects certain industries that work a seven-day week, depending on the kind of employer and the nature of the business. Smaller employers who are unable to comply may be forced to go out of business. Furthermore, the findings that emerged from the qualitative study confirm Du Plessis and Fouche's (2012:49) claim that the restrictions imposed by the BCEA on overtime and sick leave provisions can also negatively influence job sustainability as it is open to abuse, results in additional costs and affects pricing.

Nevertheless, the findings agree with the claim made by both Benjamin, cited in Le Roux and Rycroft (2013:29), as well as Du Toit, *et al.* (2011:597) that the regulation of working hours and working conditions can positively

influence job creation when businesses use shift work instead of overtime to create more jobs. The findings also confirm Du Plessis and Fouche's (2012:49) contention that the Act provides guidelines and by looking after workers emotionally and physically sustains jobs.

- ***Minimum wages and sectoral determinations:*** The findings that emerged from the qualitative study agree with Barker's (1999:30-39) contention that sectoral determinations have a negative influence on job creation because they are too bureaucratic and unwieldy, especially because of staff incompetence and wasteful expenditure. The findings from the qualitative study also confirm that if the national minimum wage is set too high, it could have a detrimental effect on businesses to create jobs (Escudero, *et al.*, 2013:109 and Clover and Darroch, 2005:248). One of the suggestions is that the minimum wage should be set regionally and be industry specific, not nationally. In addition, these findings are in agreement with Greene, *et al.*'s (2007:85) views that if the national minimum wage is set too high, it could have a detrimental effect on job sustainability as it will result in greater job losses when labour becomes too expensive and is unaffordable, which will actually exacerbate unemployment.

The responses of a few of the research participants (businesses and trade unions) were aligned with Venter, *et al.*'s (2010:143) contention that the difference between labour earnings and productivity growth, as well as the disproportionately high rise in labour costs, threaten job creation and job sustainability. The few research participants' responses were also aligned with Greene, *et al.*'s (2007:87) claim that a minimum wage can stifle employment and job creation. In addition, the findings agree with Greene, *et al.*'s (2007:85) statement that minimum wages can be significantly detrimental, as they can contribute to unemployment through pay scales being artificially kept at levels higher than worker productivity, thereby pricing workers out of the labour market.

Moreover, the responses of a few of the research participants (businesses and trade unions) were aligned with Noelke (2011:1) and Barker's (1999:30-

39) contentions that the two groups most negatively affected by minimum wage regulations are the poor and the youth. Furthermore, the findings confirm Venter, *et al.*'s (2010:138) contention that regulation and minimum wage fixing result in increased direct and indirect labour costs.

- **Notice periods and severance pay:** The findings that emerged from the qualitative study of a few of the business participants confirm that they are influenced by the BCEA's provisions on notice pay and severance pay (Bronstein, 2009:69 and Feldmann, 2009:76). The findings also reveal that, especially when employers are obliged to pay notice pay for misconduct dismissals even though the employee was fairly dismissed, they consider this to be very costly, tedious, time-consuming and unfair. This has a negative influence on job creation and job sustainability.

Furthermore, the findings that emerged from the qualitative study of a few of the business participants agree with Noelke's (2011:1) assertion that the required notice of termination and dismissal procedure negatively influenced them not to sustain jobs. It is interesting to note that the responses of only two trade union participants was aligned with Hepple, cited in Le Roux and Rycroft (2013:7), that the requisite notice period has a positive influence on job creation and job sustainability as it allows for planning. Furthermore, the findings agree with the author that severance pay is only paid when people are retrenched and that South Africa has the shortest notice period and lowest severance pay for a retrenchment dismissal in the world.

- **Enforcement of compliance:** The findings that emerged from the quantitative study confirm Boeri and Jimeno's (2005:2057) contention that enforcement is inconsistently applied. The findings indicate that the business and trade union survey respondents differed on the influence of labour inspectors in monitoring and enforcing compliance with the BCEA. In addition, the findings that emerged from the interviews conducted among businesses are in conformance with Hofmeyer's (2013:24) averment that inspectors' visits are infrequent. The findings that emerged from the quantitative study reveal

that there is disagreement between the majority of the trade union respondents about labour inspectors' enforcement of compliance influencing job creation, whereas, business respondents disagreed with them. The trade union participants agree that the inspectorate defer to the bargaining councils.

The findings that emerged from the qualitative study are in agreement with Badenhorst-Weiss and Waugh's (2014:289) views that the inflexible, rigid and selective manner in which bargaining councils and trade unions are enforcing compliance, especially with small businesses, were negatively influencing job creation. In addition, the findings from the qualitative study are in agreement with Solidarity Trade Union's cited in the Solidarity Research Institute Report (2012:4) contention that there is too much bureaucracy, which has created a number of time consuming administrative duties, compounded by the problem of corrupt officials.

This is in accordance with Godfrey's (2014:2587) contention that enforcement of compliance negatively influences businesses. Conversely, the findings indicate that some of the trade union participants perceive the provisions on staffing contracts and notice periods to have a positive influence on job creation.

#### **7.2.5.2      The Labour Relations Act No. 66 of 1995 (LRA)**

The findings that emerged from the quantitative study indicate that there is significant agreement amongst the business and trade union respondents, the business respondents in particular, that various aspects of the LRA influence job creation and job sustainability.

The discussion below on aspects of the LRA influencing job creation and job sustainability refer to the themes relating to fairness, equity and job security. The findings relating thereto are divided below into six sub-themes, namely staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes; dispute resolution; and enforcement of compliance.

- **Staffing contracts:** The findings that emerged from the quantitative study on the general requirements for fairness indicate that there is strong agreement between the business and trade union respondents on the regulation of alternative employment contracts, which support Brand's (2010:1) contention that regulation is likely to influence job creation. The findings from the quantitative study also indicated that there was agreement between businesses and trade unions on the equality and equal treatment requirements, as well as that the regulation of alternative employment contracts and the standardisation of income were likely to influence job creation. They confirmed Goldberg and Wilkinson's (2014) contention that jobs may be lost as a result of the implementation of the regulations.

The findings that emerged from the qualitative study indicate that only half (three out of six) of the trade union participants perceived the regulation of staffing contracts to have a positive influence on job creation because the regulation of staffing contracts deters employers from offering insecure jobs and from denying employees certain benefits. Although it allows employers to use employees on a contract basis, this should not be abused. In addition, the amendments to the regulation of staffing contracts have enhanced flexibility as Section 198 allows for three-month contracts to be rolled over, which ensures that a person gets a retrenchment benefit. Consequently, trade unionists were in agreement with Kettledas' (2013:4) assertion that the regulation of non-standard employment or labour broking had resulted in increased security of employment for vulnerable workers, which may have had a positive influence on job creation. The findings aligned with the author's contention that the LRA's restrictions on staffing contracts had a positive influence on job sustainability.

Furthermore, the findings revealed that the regulation of staffing contracts protecting employees influenced three business participants to sustain jobs. One trade union participant agreed that employers as a result of the aforesaid regulation were more mindful of treating their employees correctly and created



a few more jobs. She remarked that at least the employee felt more secure about the job as after three months, he or she might become permanent.

The findings that emerged from the qualitative study were in agreement with OECD's (2014:142) views that the LRA's restrictions on staffing contracts had a negative influence, as the increased restrictions had discouraged two business participants from creating jobs. One business participant admitted that he never uses the same person twice. Another stated that where she previously hired someone on a fixed-term contract, she now hesitated to employ. In addition, two trade union participants agreed that the restrictions placed by the LRA on staffing contracts increased their labour cost to existing staff and limited the employer's right to employ and dismiss workers, which stifles job creation, especially if smaller employers cannot afford the services. Moreover, the responses of three trade unions participants agreed with OECD's (2014:142) contention that the amendments had a negative influence on job sustainability as it had caused some workers to be dismissed, rather than to be appointed full time. Fixed-term contracts were not being renewed and they were open to abuse, as the employers could manipulate the system.

Thus, the overall findings were in agreement with Kettledas' (2013:4) observation that the LRA's provisions on staffing contracts had some influence on job creation and, to a lesser extent, on job sustainability. Furthermore, the findings aligned with Gwatidzo and Moyo's (2014:300) claim that there is no consensus on whether employment protection legislation is beneficial or harmful to the economy. It is interesting to note that only the trade unions perceive the LRA's restrictions on staffing contracts to have a positive influence on job creation, while some businesses did perceive it to have a positive influence on job sustainability.

Furthermore, the business participants' responses were in agreement with Cahuc and Postel-Vinay's (2002:63) contention that an important benefit of employment protection is that it limited job destruction, whereas temporary jobs intensified it. The findings that emerged from the qualitative study aligned with Bronstein's (2009:70) assertion that although employment protection legislation protected existing jobs, it simultaneously made it more difficult for

job-seekers to enter the job market. Thus, the findings are in agreement with OECD's (2014:142) view that there is a risk that the LRA's provisions limiting the use of certain types of staffing contracts can negatively influence job creation and job sustainability.

- ***Dismissals and probationary periods:*** The findings that emerged from the quantitative study indicate that there was strong agreement between business and trade union survey respondents on the general requirements for fairness, being likely to influence job creation. However, the findings supported Botha (2015: 33) and Kettledas' (2013:3) contention that there is disagreement on employment protection improving job creation. The findings indicate that the business and trade union respondents disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation. In addition, the findings from the quantitative study denote that although they agreed on fair dismissal requirements having an influence, they differed on how likely that influence would be on job creation. Moreover, the trade union findings suggested a much stronger likelihood that the LRA's requirements for fair dismissals influence job creation. The findings that emerged from the quantitative study reveal that the business and trade union survey respondents also disagreed on the likelihood of the right not to discriminate, the regulation of unfair labour practices and automatically unfair dismissals influencing job creation.

The responses of two of the trade union participants were in agreement with Berg and Kucera's (2008:14) contention that the regulation of dismissals and probationary periods could have a positive influence on job sustainability. If a job was secured, then it was sustained. The findings supported Berg and Kucera's (2008:14) contention that by making dismissal more difficult provides businesses with greater incentives to train their workers.

On the other hand, the responses of three of the business participants aligned with Noelke's (2011:1) and Bronstein's (2009:69) contention that the regulation of dismissals and probation negatively influenced job creation. The perception was that government regulations were very tedious and expensive

to comply with, and that it had become increasingly more difficult to dismiss workers for misconduct and poor work performance. In addition, the findings that emerged from the qualitative study suggest that smaller businesses were reluctant to go to the CCMA, as they perceived the commissioners to be biased in favour of the dismissed employees.

The findings that emerged from the qualitative study showed that the fair dismissal and probation requirements negatively influenced three of the business participants not to sustain jobs, as businesses had become more regulated. The reason they gave was that the amendments to the LRA had caused them to reduce their probationary period to three months. Another deterrent was that the LRA had made it difficult for employers to dismiss and retrench workers when there was a reduction in the demand for their goods or services (Bronstein, 2009:69). Furthermore, they found the dismissal process to be time-consuming and placed them under unnecessary emotional stress. Their staff provoked them knowing it is not easy for their staff to be dismissed. Consequently in the long-term, the amendments have had a detrimental effect on the employer's future. The findings further indicate that the amendments negatively influenced not only job sustainability, but also job creation and employability, as these amendments were deterring or preventing employers from creating jobs. A few of the business participants revealed that they dismiss rather than appoint workers full-time; they will not renew contracts; and they will only convert the odd post which becomes available to a permanent position. Consequently, the findings support Bronstein's (2009:69) contention that the protection of workers against unfair dismissal remains a highly sensitive and controversial issue.

- ***Bargaining councils and collective agreements:*** The responses of seven business participants aligned with Olsen's (2010:302) statement that bargaining councils and collective agreements have a positive influence on job creation, especially when they formed part of a bargaining council and had their own business representatives on the employer associations and/or on the bargaining council. The findings support McCann, Lee and Belser's (2014:163) contention that bargaining councils ensure standardisation

throughout the sectors and avoid unfairness and abuse of salaries. In addition, bargaining councils created a balance and ensured equal representation; levelled the playing fields; provided certainty and social security; assisted the parties with labour issues; ensured labour peace; and prevented unscrupulous persons or businesses trading in the industry.

The responses of two business participants aligned with Shapiro and Irons' (2011:2) contention that bargaining councils and collective agreements had a positive influence on job sustainability, as it helped them with labour queries. Furthermore, the bargaining council agents were more disciplined and the bargaining councils took care of staff welfare. They also created certainty and industrial peace by having some kind of control system with what was happening with the labour market forces and ensured job sustainability.

The responses of six business participants align with Cohen and Moodley's (2012:323) and Feldmann's (2009:76) contentions that bargaining councils and collective agreements negatively influenced them not to create jobs. The findings further support Barker's (1999:30-39) claim that issues of bureaucracy, enforcement of compliance and the majoritarian principle negatively influenced them. Consequently, the findings of some business participants confirm Badenhorst-Weiss and Waugh's (2014:289) and Ayanda and Laraba's (2011:200) view that bargaining councils were perceived to be bureaucratic; ineffective; set wage increases too high and for fixed periods; they were an abuse of the collective bargaining process; wasted time extracting settlements from employers; limited business expansion; chased business away; and stifled job creation, especially amongst small businesses

The responses from two of the business participants aligned with Almeida and Carneiro's (2009:64) contention that rigorous selective enforcement of regulations by bargaining council agents and the non-enforcement with non-compliant businesses counteracted against job sustainability and had negatively influenced them not to sustain jobs.

Thus, the overall findings indicate that bargaining councils and collective agreements influence job creation and job sustainability. However, the participants disagreed on the extent of the influence. They were equally

divided on whether the influence is positive or negative. This finding is in agreement with Gwatidzo and Moyo's (2014:300) conclusion that there was no consensus on this issue.

- **Industrial action:** The findings that emerged from the quantitative study indicate that there is strong agreement between the business and the trade union survey respondents that industrial action was likely to influence job creation.

The finding from the qualitative study revealed that only one trade union participant perceived industrial action to have a positive influence on job creation and job sustainability, as it was the only power that workers had to ensure fairness. Industrial action influenced businesses not to abuse their authority and to be circumspect on how and what jobs to create (Swanepoel, *et al.*, 2012:427; Mcleod, 2007:609 and Finnemore, 2002:145). Strike action also protected workers and ensured that jobs are sustained (Venter, *et al.*, 2010:23-24 and Baird, 2007:47).

The responses of nine of the business participants were in agreement with Badenhorst-Weiss and Waugh's (2015:8) contention that strikes had a negative influence on job creation. The findings that emerged from the qualitative study indicate that strikes discouraged business growth; caused a loss of international investment; promoted international companies to move their businesses elsewhere; and impacted on the industry as a whole. Strikes resulted in increased costs and loss of revenue as businesses had to employ scab labour. The research participants feared violence and intimidation, which led to the loss of life and property. They were also concerned that the manner in which negotiations took place had changed.

Additionally, the responses of three of the business participants indicated that strikes had negatively influenced them not to sustain jobs for the same reasons. Furthermore, two trade union participants' responses indicated that they were in agreement with the business participants' responses and they were aligned with Badenhorst-Weiss and Waugh's (2015:8) contention that

the rise of militant trade unionism and the failure of collective bargaining deterred employers and the economy from creating and sustaining jobs. Thus, the overall findings were in alignment with the author's contention that industrial action negatively influences job creation and job sustainability.

- ***Dispute resolution:*** The response of one trade union participant aligned with Cohen's (2014:18) contention that dispute resolution had a positive influence on job creation, causing businesses to create qualitative jobs and making businesses aware of the repercussions if they abuse the process.

Conversely, the responses of seven business participants indicate that dispute resolution negatively influenced them not to create jobs they perceived the CCMA commissioners to be biased and behave unethically in favour of the dismissed employees. Furthermore, some of the business participants felt that the CCMA commissioners by focusing on procedural fairness, they wasted valuable time. They complained that the CCMA Commissioners bullied them into quick settlements and nuisance payments. It had resulted in one of the business participants halving his employees, automating and outsourcing his business.

The findings that emerged from the qualitative study further indicate that trade union participants were divided on dispute resolution's influence on job sustainability. The responses from two trade union participants suggested that dispute resolution by the CCMA had a positive influence on job sustainability as the CCMA is expedient and ensured fairness. The findings were in agreement with Badenhorst-Weiss and Waugh's (2014:289) and Cohen's (2014:27) contentions that businesses perceived bargaining councils to be ineffective. One trade union participant felt that the CCMA is over-burdened, which negatively influenced job sustainability.

The findings that emerged from the qualitative study indicate that overall, dispute resolution does influence job creation and job sustainability. Nevertheless, the participants were divided between dispute resolution not having an influence and it having a negative influence.

- ***Enforcement of compliance with collective agreements by bargaining council agents:*** The findings that emerged from the quantitative study indicate that there was significant disagreement between businesses and trade unions on the influence of the monitoring and enforcement of collective agreements by bargaining council agents on job creation. The responses of some of the business respondents suggest that enforcement of compliance with collective agreements by bargaining council agents was likely to influence them, whereas the responses of the majority of trade union respondents revealed that it was likely to influence job creation. Consequently, the findings support McCann, Lee and Belser's (2014:163) contention that regulatory costs are likely to influence job creation.

The responses from four of the business participants are in agreement with Cooke's (2011:101), Almeida and Carneiro's (2009: 64) and Boeri and Jimeno's (2005:2057) contentions that the regulatory costs of monitoring and enforcing compliance influenced job creation. The findings show that the rigid enforcement of collective agreements; the selective targeting of certain factories in certain areas; the insistence that employers be penalised for late payments by bargaining council agents; and their arbitrarily wanting their own rules negatively influenced four business participants not to create jobs.

- ***Enforcement of compliance by labour inspectors:*** The findings that emerged from the quantitative study indicate that there was disagreement amongst the business and trade union respondents with regard to the labour inspectors' monitoring and enforcement of compliance with the LRA as being less likely to influence job creation. Only some of the business respondents denoted that the enforcement of compliance by labour inspectors was likely to influence them, whereas the majority of trade union respondents indicated that it was likely to influence job creation. Thus the findings confirm Du Toit, Godfrey, *et al.*'s (2011:639) claim that the monitoring and enforcement of compliance influences job creation.

The findings that emerged from the qualitative study suggest that the monitoring and enforcement of compliance by labour inspectors has a positive influence. One of the business participants remarked that it ensures that jobs are created in accordance with the LRA's guidelines and regulations, that a worker is paid fairly, and if the labour inspectors were privatised this would create an opportunity to create jobs.

The response one of the business participants aligned with Shapiro and Irons' (2011:2) contention that regulations influence job creation and should be enforced in a more positive light. The finding indicates that the negative perception of consciously and subconsciously threatening small businesses chases business away.

Thus, the findings signify that the majority of research participants were in agreement with Bennington and Wein's (2000:31) view that labour legislation had little or no influence on efficiency. Furthermore, they did not have major difficulty complying with the legislation. The findings demonstrate that overall labour legislation, in regulating the employment relationship and the enforcement of compliance by labour inspectors, influenced job creation to some extent. Furthermore, in some instances the influence was to a greater extent, whilst in other instances to a lesser extent. The findings indicated that bargaining councils, industrial action, dispute resolution and enforcement by bargaining council agents were the factors most likely to negatively influence job creation.

#### **7.2.5.3 The Employment Equity Act, No.55 of 1998 (EEA)**

The findings that emerged from the quantitative study indicate that there was significant agreement between the business and trade union survey respondents that various aspects of the EEA influenced job creation and job sustainability. However, the survey respondents differed considerably on the influence of the prohibition of discrimination, removal of unfair discrimination and unfair labour practices on job sustainability. The findings of the business respondents revealed that the prohibition of discrimination, removal of unfair discrimination and unfair



labour practices were less likely to influence them to sustain jobs. They also indicated that the promotion of affirmative action and removal of discrimination as less likely to influence job sustainability. However, the findings of the majority of the trade union participants signified a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability.

The findings that emerged from the qualitative study indicated that the provisions on employment equity did not influence the majority (eleven out of sixteen) of business participants to create jobs. It was pertinent that the workforce of seven of these business participants was primarily from disadvantaged groups. Only one business participant was not influenced at all to sustain jobs.

The discussion below on aspects of the EEA will refer to the themes relating to fairness, equity and job security. The discussion of the findings relating thereto is further divided into four sub-themes, namely recruitment practices; affirmative action; equal pay for equal value; and income differentials:

- **Recruitment practices:** The response from one of the business participants aligns with Du Toit, *et al.*'s (2011:656), Ramlall's (2012:273) and Du Plessis and Fouche's (2012:91) contention that the EEA's regulation of recruitment practices had a positive influence on job creation as it caused businesses to employ more disadvantaged people; provided guidelines on how to create jobs; ensured equal treatment; ensured that there was no discrimination; and encouraged skills retention.

The responses of two of the business participants were in agreement with Hofmeyer's (2013:26) contention that the EEA's regulation of recruitment practices had negatively influenced them not to create jobs. The regulation affected White-owned businesses that were unable to meet the necessary equity targets timeously. The findings confirmed Du Toit, *et al.*'s (2011:36); Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), and Giles' (2011) contention that the EEA heavily regulated the employment relationship, increased costs and limited the employer's right to choose. In addition, these two business participants had an issue with

productivity and claimed that those businesses that were unable to appoint the right person would close.

- **Affirmative action:** The findings that emerged from the qualitative study indicate that compliance with affirmative action and equity plans negatively influenced seven business participants not to create jobs. The findings are in agreement with Hofmeyer's (2013:26) contention that the reasons include problems with local demographics and the available skilled labour pool which restricts businesses in meeting their equity targets. In addition, the findings confirm that poor education and a lack of/or inadequate skills have caused businesses to duplicate positions and roles. The findings verified that training could overcome some of the difficulties that businesses experienced with the available skills pool through their in-house training programmes (Cole and Van der Walt, 2014:525), but they felt that it was not near enough. The findings indicate that one trade union participant agreed with the business participants that if the employer was unable to employ the right person, a business did not reach its objectives.

The findings that emerged from the quantitative study on the promotion of equality revealed that both businesses and trade unions agreed that the EEA provisions on the promotion of affirmative action were more likely to influence them in sustaining jobs. They were in agreement with Dapper and Garbers' contention, cited in Le Roux and Rycroft (2013:253), that affirmative action had socio-economic benefits for the disadvantaged by introducing appropriate training and human resource development.

However, the responses from of the business participants were in agreement with the Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), contention that compliance with affirmative action and equity plans negatively influenced businesses not to sustain jobs, as the employment equity plan required the business to have targets which it cannot always meet. The findings which emerged from the qualitative study indicate that one of the problems that some of the business participants were experiencing was with being representative of minority groups, such as

Coloured persons, were difficult to find with the requisite skills in small towns such as Ladysmith. The response of one trade union participant aligned with Du Toit, *et al.* (2011:36) and Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), view that compliance with affirmative action made it difficult for business to fill positions with the correct people, which had the opposite effect on job sustainability.

- ***Equal pay for equal value on income and benefits:*** The findings that emerged from the quantitative study indicate that both business and trade union respondents agreed that the EEA's provisions on the promotion of equal income distribution were more likely to influence job sustainability.

Nevertheless, two trade union participants agreed that the EEA's provisions on the promotion of equal income distribution had a positive influence on job creation. Furthermore, the two trade union participants' responses aligned with Du Plessis and Fouche's (2012:91) contention that the EEA's provisions on the promotion of equal income distribution ensured equality, fairness and the payment of a living wage. One of the trade union participants who perceived the provisions of the Act to positively influence job sustainability was in agreement with Cohen's (2014:27) view that there should not be any discrepancy in income and benefits and those workers should be paid the same.

The findings that emerged from the qualitative study indicate that the EEA's provisions on the promotion of equal income distribution negatively influenced three of the business participants not to create jobs. The three business participants agree with Hofmeyer (2013:26) that the provisions infringed on their discretion to pay certain employees more for making a special effort. It also resulted in increased labour costs to pay everyone the same.

- ***Enforcement of compliance with the EEA by labour inspectors:*** The findings that emerged from the quantitative study aligned with Boeri and Jimeno's (2005:2057) contention that labour protection legislation was not

enforced uniformly. The findings that emerged from the quantitative study indicate that the survey respondents differed in their opinions on whether the monitoring and enforcement of compliance with the EEA by labour inspectors influenced job creation. Furthermore, the findings indicate that it was unlikely to influence the majority of the business respondents to sustain jobs. On the other hand, the findings of the majority of the trade union respondents were in agreement with Almeida and Carneiro's (2009:64) contention that there was a stronger likelihood that it was likely to influence businesses to sustain jobs.

The responses from two of the business participants were in agreement with Du Toit, *et al.* (2015:36) and Bronstein's (2009:123) contentions that enforcement of compliance by labour inspectors with the EEA negatively influenced businesses not to create jobs, especially if the enforcement was harsh and may cause businesses to close.

Consequently, the findings that emerged from the qualitative study was that the majority of participants indicated that overall the labour legislation, in regulating equity and fairness, influenced job creation - some to a greater extent than others - and that affirmative action was the most likely to negatively influence job creation.

#### **7.2.5.4 The Skills Development Act, No.97 of 1998 (SDA)**

The findings that emerged from the quantitative study indicate that there was significant agreement amongst the business and trade union respondents that skills development influenced both job creation and job sustainability. The findings indicate that on training and education in general, there was overwhelming agreement between both business and trade union respondents and aligned with McGrath and Akoojee's (2007:427) contention that education and training improved a business's competitiveness and increased workers' productivity. The findings also denote that on the SDA's training and education provisions, there was agreement between businesses and trade unions. The findings signify that an overwhelming majority of trade union and the majority of business respondents agreed that education and training programmes which ensured that workers were equipped with the necessary

skills, re-training through skills programmes and learnership agreements, were all likely to influence job sustainability. However, the findings that emerged from the quantitative study reveal that the trade union responses showed a stronger likelihood that education, training and re-training were likely to influence businesses to sustain jobs. The findings that emerged from the quantitative study demonstrate that there was agreement between businesses and trade unions' responses on the LRA's training and education provisions. The findings also show that an overwhelming majority of the trade union and a majority of the business respondents agreed with each other and were aligned with Heitmann's (2009:2) contention that education and training programmes ensuring workers were equipped with the necessary skills, re-training through skills programmes and learnership agreements were all likely to influence job sustainability.

The findings that emerged from the qualitative study aligned with Cole and Van der Walt's (2014:525) contention that the SDA has a direct positive link to job creation and to job sustainability. The responses of two of the business participants were in agreement with Du Plessis and Fouche's (2012:201) and Rasool and Botha's (2011:2) contention that the SDA positively influenced businesses to create jobs by incentivizing businesses through training grants to use the workplace as a training ground to train people, which empowered workers and made workers more marketable and self-sustainable.

The responses from seven business participants aligned with Wentzel and De Hart's (2015:106) view that the SDA positively influences job sustainability through the training grants offered by the SETAs. The seven business participants confirmed that they had expanded their businesses through skills development and that they engaged in on-going training to up-skill and develop their workers. The findings that emerged from the qualitative study aligned with Cole and Van der Walt's (2014:525) contention that the SDA had encouraged skills development and training, which had empowered people.

Conversely, the responses of four of the business participants were in agreement with Venter, *et al.* (2010:132) and Greene, *et al.*'s (2007:85) contention that the SDA and SDL's regulation of skills development had negatively influenced them not to

create jobs because of the cost implications and administrative burdens placed on them to comply. Although businesses benefitted from training people, the findings that emerged from the qualitative study indicate that the SETAs were bureaucratic, dysfunctional, wasted money and inefficiently spent training monies. In addition, the smaller SETAs were not delivering on training. Moreover, they found the skills development administration to be laborious and onerous. Furthermore, because of excessive bureaucratic red tape, some business participants struggled to be accredited; to obtain approval for their training courses; and to access funding for training, which had caused them to stop applying. The business participants were also limited by the amount that they could recover on what they had spent on training, which discouraged them from training and creating jobs. Consequently, many of the business participants perceived the skills development levy simply to be another form of tax. The SDA also heavily regulated the employment relationship and restricted the employer's freedom of choice through the skills training plan, whereby businesses were forced to take on additional people if they accepted subsidies.

The findings that emerged from the qualitative study also confirmed that the SDA had negatively influenced five business participants not to sustain jobs for the same reasons - that the bureaucracy surrounding the implementation of skills development has made it cumbersome for employers to train and get their money back. Moreover, they perceived the SETAs to be too bureaucratic and there was too much administration, which they found to be burdensome, instead of enabling and supportive. One trade union participant agreed with the five business participants. He felt that the skills development levies were fine but that the SETAs needed to spend the monies more efficiently and that there are billions of rands in SETA allocations and this money was wasted. He remarked that the SETAs were not working and that they should be abandoned.

Consequently, the finding that emerged from the qualitative study was that the SDA had the most positive influence on job sustainability as it helped to create and sustain jobs through training and development. This finding is aligned with Cole and Van der Walt's (2014:525) contention that the SDA had a direct positive link to job sustainability through the fulfilment of its aims. Thus, the overall findings indicate that it is not the SDA itself which is the problem, but rather the implementation thereof.

#### **7.2.5.5 The promotion and facilitation of productive employment:**

Various pieces of labour legislation, namely the ESA, the ETIA, the UIA, the EEA and the B-BBEEA have been passed to ensure the promotion and facilitation of productive employment.

The findings that emerged from the qualitative study indicate that the promotion of skills development training primarily through the SETA grants, the ETIA youth tax incentives, the B-BBEEA and the UIA had positively influenced three of the business participants to create jobs. The findings also showed that all seven trade union participants agreed with the business participants that the SDA, the ETIA, the EEA, the B-BBEEA and the UIA through the provision of financial incentives and the promotion of skills development and training positively influenced job creation. The discussion of the findings below will cover the influence of each of the aforesaid Acts' influence on job creation and job sustainability separately.

##### **7.2.5.5.1 The Broad-based Black Economic Empowerment Act, No.53 of 2003 (B-BBEEA):**

The responses of five of the business participants aligned with Venter, *et al.*'s (2010:239) contention that businesses perceive the B-BBEEA to be bureaucratic, which has negatively influenced them not to create jobs. The findings that emerged from the qualitative study reveal that businesses perceive the manner in which the legislature had structured the B-BBEEA scoring system to be destroying small business, especially amongst predominantly White-owned businesses. The finding also aligned with Duffett, Van der Heever and Bell's (2009:91) contention that smaller businesses were struggling to find suitable equity partners.

The findings that emerged from the qualitative study also indicate that B-BBEEA discouraged business expansion and growth, as the legislative amendments to the B-BBEE scorecard criteria threatened business participants whose businesses do not meet the new criteria and who were reliant on government contracts and tenders. In addition, the responses from the business participants were in agreement with Tucker (2003:1) that their business sustainability was threatened where skills needs or experience was required. Nevertheless, the findings that emerged from the

qualitative study show that a few of the business participants had overcome some of the B-BBEEA scorecard difficulties through skills training. The findings also indicate that two trade union participants agreed with the business participants that it limited the employer's freedom to select and employ and that it also does not help the people who need it. The finding is that the amendments are broad but not ideal, and that more work needs to be done to improve them.

The findings that emerged from the qualitative study aligned with Van der Heever and Bell's (2009:91) identification of some of the challenges and criticisms pertaining to the implementation of the B-BBEEA in relation to the high costs associated with compliance with the B-BBEEA, which was believed to be detrimental to foreign investment; B-BBEE partners often added little value to B-BBEE deals; insincere government affiliations; fronting; discrimination and narrow-based transformation. In addition, the findings were in agreement with the ACA survey, cited in Van der Heever and Bell (2009:91) which identified the lack of skills of Black executives, the low number of Black females at management level and the brain drain of senior employees. The findings also aligned with Acemoglu, Gelb and Robinson's (2007:23) contention that there is ambivalence as to whether the B-BBEEA's effects are positive or negative on investment, productivity and growth.

#### **7.3.5.5.2 The Employment Tax Incentive Act, No.26 of 2013 (ETIA)**

Overall, the findings that emerged from the qualitative study indicate that the ETIA had (to some extent) positively influenced some business participants to create jobs, especially amongst the youth, as well as through learnerships and apprenticeships. Conversely, the responses of four other business participants indicated businesses' reluctance to employ the youth. Although they were initially incentivized to employ them, they have subsequently stopped. The four business participants were disillusioned and discouraged with employing the youth, whom they found to be more of a burden than a benefit. The finding is that that emerged from the qualitative study the ETIA is also perceived by businesses to be a punitive incentive to create jobs as the tax financial incentives do not adequately cover the cost of employing and training the youth. Conversely, two trade union participants were in agreement with Cray, *et al.* (2011:5) that the ETIA's job creation strategy benefited job creation as it enabled management to employ young workers. The findings that emerged



from the qualitative study also indicate that the ETIA has a positive influence on job sustainability.

#### **7.3.5.5.3 The Employment Services Act, No.4 of 2014 (ESA)**

The findings that emerged from the qualitative study indicate that an overwhelming majority of the research participants (both business and trade union participants) failed to comment on the ESA. The response from one trade union participant was in agreement with Morotoba, cited in the Department of Labour Annual Report (2014:10), Arranz, Serrano and Hernanz (2013:327), Hofmeyer (2013:26) and Tzehainesh's (2010:21) contentions that the intention of the ESA is good. A possible reason is that the research participants might be unaware of the employment agencies. One trade union participant admitted that she was unaware of any government employment agencies and remarked that trade unions were totally against employment agencies, which she felt do the unemployment situation a dis-service.

Thus, once again, it is not the legislation itself which appears to be the problem, but rather the implementation thereof.

#### **7.2.5.6 The promotion and facilitation of work security:**

The following discussion will cover the findings on aspects of legislation that promote and facilitate work security which positively influence job creation and job sustainability.

##### **7.2.5.6.1 The Broad-based Black Economic Empowerment Act, No.53 of 2003 (B-BBEEA):**

The findings that emerged from the qualitative study indicate that the B-BBEEA positively influenced four business participants to sustain jobs, which was also confirmed by one of the trade union participants. The reasons given were that training improved the businesses' B-BBEE score and level. Thus, the findings are in agreement with Kruger's (2011:207) and Acemoglu, Gelb and Robinson's (2007:1) contention that the B-BBEE scorecard made it attractive for business participants to

invest in training, which led them to develop and train staff as well as the unemployed.

Hence, the findings that emerged from the qualitative study aligned with Duffett, Van der Heever and Bell's (2009:94) contention that the benefits of the B-BBEEA was that it improved the lives of previously disadvantaged individuals; that a substantial Black-middle class had emerged as a result thereof; and Kloppers' (2014:59) claim that the B-BBEEA facilitated the utilisation of the scarce and unique skills of the previously marginalised Black majority.

#### **7.2.5.6.2 The Skills Development Act, No.97 of 1998 (SDA)**

The findings that emerged from the qualitative study was that seven business participants and three trade union participants responses aligned with Cole and Van der Walt's (2014:525); Le Roux and Rycroft's (2013:23); Du Plessis and Fouche's (2012:207); Rasool and Botha's (2011:2); Venter, *et al.*'s (2010:142); and Heitmann's (2009:2) contentions that the SDA and the B-BBEEA positively influenced job sustainability through businesses expanding by training workers and by improving their skills.

#### **7.2.5.6.3 Occupational Health and Safety Act, No.85 of 1993 (OHASA)**

The findings that emerged from the quantitative study reveal that there was agreement amongst the business and trade union respondents that the OHASA influenced job sustainability. The findings also indicate that businesses and trade unions were in agreement with the Department of Labour's Annual Report (2014:5); Le Roux and Rycroft's (2013:vii); and Venter, *et al.*'s. (2010:134) view that the creation of a safe working environment was likely to influence job sustainability. Furthermore, the findings that emerged from the quantitative study reveal that businesses and trade unions agree with Rogers' (2014:1544), Du Toit, *et al.*'s. (2011:597); and Berg and Kucera's (2008:12) contention that the monitoring of health and safety, by health and safety representatives, influenced job sustainability.

However, the disagreement between the business and trade union respondents on the monitoring and enforcement of health and safety by the labour inspectors'

influencing job sustainability aligned with Almeida and Carneiro's (2009:64) claim that there is disagreement in the literature on this point. The findings that emerged from the quantitative study reveal that the majority of the business respondents are in agreement with McCann, Lee and Belser (2014:163) and Boeri and Jimeno, (2005:2057) that monitoring and enforcing of health and safety by the labour inspectors was unlikely to influence them to sustain jobs.

It is interesting to note that only one trade union participant remarked on the OHSA having a positive influence on job creation. She stated that it was important to comply with OHASA and that compliance with OHASA was beneficial to both the employer and the employee as it kept businesses within legislative boundaries and ensured that they focused on the quality of the jobs and not just on quantity.

Thus, the findings that emerged from the empirical study align with the Department of Labour's Annual Report (2014:5); Le Roux and Rycroft's (2013:vii); and Venter, *et al.*'s (2010:134) contention that it is important to ensure a safe working environment. In addition, the findings that emerged from the qualitative study are in agreement with Rogers' (2014:1544); Du Toit, *et al.*'s (2011:597) and Berg and Kucera's (2008:12) view that the OHASA generally covers and ensures health and safety in the workplace.

#### **7.2.5.6.4      The Compensation for Occupational Injuries and Diseases Act, No.130 of 1993 (COIDA)**

The findings that emerged from the quantitative study show that there is agreement amongst business and trade union respondents that the COIDA influences job sustainability. The findings that emerged from the quantitative study also indicate that businesses and trade unions are in agreement with Morotoba's, cited in the Department of Labour Annual Report (2014:10), contention that both the Compensation Commissioner's holding of inquiries into accidents and the enforcement of compliance are likely to influence job sustainability. However, the business and trade union respondents disagreed on how likely that influence would be on job sustainability. The majority of business respondents indicated that it is

unlikely to influence them to sustain jobs. Whereas the majority of the trade union respondents indicated that the Compensation Commissioner's holding of inquiries into accidents and the enforcement of compliance were likely to influence job sustainability. The findings that emerged from the qualitative study are in agreement with Escudero, et al. (2013:110) and Venter, Levy, *et al.*'s (2010:253) averments that the COIDA provides for the compensation for workers who have been injured on duty and/or contracted a listed disease in the workplace.

#### **7.3.5.6.5 The Unemployment Insurance Act, No.63 of 2001 (UIA)**

The findings that emerged from the quantitative study indicate agreement amongst the business and trade union respondents. The businesses and trade unions are in agreement with Le Roux and Rycroft (2013:vii); Venter, *et al.* (2010:134); and Heitmann's (2009:2) contentions that the UIA's benefits influence job sustainability. However, the findings that emerged from the quantitative study indicate that the business and trade union survey respondents disagree on the influence of illness and adoption benefits on job sustainability.

The findings that emerged from the qualitative study also show that the majority of trade union participants (four out of six) agree that the UIA positively influences job sustainability. The majority of the trade union participants are in agreement with the Department of Labour's Annual Report (2014:4) and Smit and Mpedi's (2010:172) contention that workers need a social security net which provides them with important financial social security, training and retrenchment schemes because these provide the unemployed with important assistance to help them find jobs.

Consequently, the findings that emerged from the qualitative study align with Morotoba's, cited in the Department of Labour Annual Report (2014:10), claim that the UIA helps to promote and facilitate productive employment, as well as work security. The findings that emerged from the qualitative study is in agreement with the Department of Labour's Annual Report (2014:4) statement that it primarily helps to negate the effects of unemployment; provides the unemployed with a temporary income; and assists unemployed workers to improve or acquire new skills to enable them to find alternate employment.

Therefore, the findings that emerged from the empirical study indicate that the B-BBEEA, the SDA and the UIA, through training and development, have positively influenced job creation and job sustainability. The trade union participants' responses indicate that the OHASA and the COIDA, by ensuring a safe working environment and providing for compensation in the event of an accident or contracting a disease, positively influence job sustainability.

#### **7.2.6 Research Question Four**

##### **Which aspects of labour legislation should be amended to enable job creation and job sustainability to occur in South Africa?**

The findings that emerged from the qualitative study indicate that the majority of business participants (ten out of sixteen) perceived the BCEA, the LRA and the SDL to negatively influence job creation. The reasons were that they found labour legislation to be difficult, inflexible and a minefield to navigate. The ten business participants were in agreement with Godfrey's (2014:2587) contention that the BCEA and the LRA were perceived by organised business as being mostly to blame for restricting job creation. The findings that emerged from the qualitative study indicate that two business participants considered knowledge of the legislation to be essential. Furthermore, they found its administration and implementation to be time-consuming and costly. The findings that emerged from the qualitative study also were in agreement with Darrol's (2013:14) concerns that the LRA and the BCEA act as a dis-incentive for investment. Furthermore, the LRA and the BCEA were too onerous for small businesses, which could lead to the widespread evasion of labour legislation.

The responses of two other business participants were in agreement with Venter, *et al.*, (2010:239) and Duffett, Van der Heever and Bell's (2009:91) contentions that the B-BBEEA and the EEA could be a deterrent to job creation, especially for businesses that did not qualify, such as White-owned entities. In addition, the responses from three of the trade union participants were in agreement with the two business participants and were also aligned with Hofmeyer's (2013:26) averment that certain aspects of the B-BBEEA, the EEA and the SDA negatively influenced job

creation. The business and trade union participants conceded that employment equity had a positive influence on addressing inequality. However, they felt that affirmative action is not working and they were in agreement with Naidoo's (2013:8) contention that affirmative action should be balanced. The findings that emerged from the qualitative study aligned with Venter, *et al.*'s (2010:133) contention that the administrative burden of employing and completing reports on affirmative action and skills development deterred smaller employers. The findings that emerged from the qualitative study further indicated that the current legislation had negatively influenced job creation in comparison with other countries, such as China.

The discussion below identifies the various aspects of implementation relating to bureaucracy, administrative burden and costs of compliance, all of which negatively influenced job creation and job sustainability.

#### **7.2.6.1 Flaws identified in the implementation of labour legislation**

The findings that emerged from the qualitative study relating to compliance and its enforcement are in agreement with Almeida and Carneiro's (2009:28-29) averment that labour regulation causes labour costs to be higher due to compliance. Nevertheless, the findings emerged from the empirical study aligned with Weber and Gerard's (2014:32) claim that organisational culture and ethical stance influence businesses' adherence and pro-active commitment to compliance. Consequently, various pieces of labour legislation required regulatory compliance, some to a greater degree and others to a lesser degree, which in turn influenced job creation and job sustainability.

The findings that emerged from the qualitative study relating to the cost of compliance are in agreement with Hofmeyer's (2013:26) view that increased fines for employment equity shortcomings and the serious limitations on employers' abilities to change working practices adversely influenced job creation and job sustainability.

Furthermore, the findings emerged from the qualitative study relating to administrative compliance indicated that compliance with the legislative amendments to the B-BBEEA scorecard detrimentally influenced job creation and job

sustainability. The findings emerged from the empirical study indicated that adherence to and enforcement of compliance with adverse consequences negatively contributed to and presented challenges for job creation and job sustainability, which ultimately hindered social justice.

The discussion below relates to the various aspects of compliance with labour legislation negatively influencing job creation and job sustainability. The findings relating thereto are divided into three sub-themes, namely administrative compliance - bureaucracy and the administrative burden of compliance; the cost of compliance and the financial impact of increased compliance; and the enforcement of compliance by bargaining council agents in particular.

#### **7.3.6.1.1      Administrative burden of compliance – bureaucracy, legislative prescription and over-regulation**

The findings that emerged from the qualitative study indicate that seven business participants were negatively influenced by the bureaucratic, over-regulated, inflexible and too onerous labour environment to create jobs. In addition, the findings from the qualitative study indicate that new start-up businesses and businesses in general were finding it difficult to comply with labour legislation administratively. Likewise, the findings that emerged from the qualitative study indicated that businesses were finding it time-consuming to understand everything that the legislature expected from them and to deal with all of the paperwork, instead of focusing on expanding their businesses.

Furthermore, the findings that emerged from the qualitative study confirmed that legislative prescription was hampering flexibility, which was impeding the growth of small businesses. The responses from three of the trade union participants confirmed that businesses were operating in a hostile, over-regulated environment, in which it was difficult to manage staff. Furthermore, administrative compliance with labour legislation posed a challenge for businesses, which was negatively influencing and discouraging businesses, especially small businesses, from creating jobs.

The responses from two of the business participants indicated that they perceived SETAs to be bureaucratic, dysfunctional and not delivering on training. In addition, the difficulties businesses experienced in accessing SETA funding was having a negative influence on them creating jobs. Furthermore, the responses of the majority (four) of trade union participants were in agreement with Marrock's (2012:6) contention that the SETAs are dysfunctional; that they waste money, and that high training costs negatively influence job creation.

Although the participants' opinions varied on the influence of various aspects of labour legislation on job sustainability, they were in agreement with Wilhelm and Wilhelm (2012:63) and Almeida and Carneiro (2009:28-29) that their clients and their business needs, and not labour legislation, were the primary drivers for the sustainability of jobs, as well as the types of jobs sustained.

The findings that emerged from the qualitative study indicate that the administrative burden of compliance had negatively influenced four of the business participants not to create jobs. The reason was that there was too much administration involved in complying with legislation. The business participants also found the completion and submission of annual returns and the BCEA's documentation to be onerous. The findings that emerged from the qualitative study also indicated that employing, completing reports on affirmative action and skills development is a deterrent to smaller employers. One business participant was in agreement with Hofmeyer (2013:24) and the Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), contention that small businesses should not be destroyed with the completion of all the documentation.

#### **7.2.6.1.2 The cost of compliance and the financial impact of increased labour costs**

The findings that emerged from the qualitative study indicated that the cost of compliance negatively influenced two business participants to create jobs. The reason given was that it was very onerous, costly and time-consuming to comply with legislation. In addition, it added to the cost of doing business. This burden made it difficult for small businesses to flourish. Furthermore, the business participants had to employ additional people to deal with the legislative administration. One of the



trade union participants was in agreement with the two business participants that dismissals were time-consuming and expensive.

Consequently, the findings that emerged from the qualitative study were in agreement with Duffett, Van der Heever and Bell's (2009:94) argument that compliance would depend on the penalty. The findings that emerged from the qualitative study further aligned with McCann, Lee and Belser's (2014:163) contention that businesses will try to avoid or minimise compliance costs through non-compliance. The findings that emerged from the qualitative study were also in agreement with the authors' assertion that most employers prefer to comply with the law. Furthermore, the findings that emerged from the qualitative study aligned with Duffett, Van der Heever and Bell's (2009:94) contention that costs of compliance vary across different types of labour regulation, for example dismissal, discrimination and safety. Moreover, the probability of detection, violation and enforcement varies. The findings that emerged from the qualitative study likewise confirmed that all these aspects of compliance would result in increased costs to the employer, which might contribute to or present challenges for job creation and job sustainability, ultimately either promoting or hindering social justice.

The findings that emerged from the qualitative study indicated that the financial impact of increased labour costs influenced seven of the business participants negatively to create jobs. The reasons they advanced were the extra payment for work on Sundays; night work; ad hoc public holidays; additional benefits; skills development levies; unrealistic minimum wage increases, and nuisance pay settlements added to labour costs which they were unable to recover from their clients. The findings that emerged from the qualitative study also confirmed that the proposed national minimum wage negatively influenced two of them to create jobs. Results that emerged from the qualitative study also indicated that five trade union participants were in agreement with some of the business participants' contention that the regulation of dismissals was time-consuming and expensive and that additional benefits increased labour costs. Moreover, the findings that emerged from the qualitative study confirmed that payments made in terms of the EEA, the UIA and the SDLA is perceived by some business participants to be a secondary form of tax. The findings that emerged from the qualitative study aligned with Venter, *et al.*

(2010:133), Almeida and Carneiro (2009:28-29) and Arnold and Hartman's (2005:207-208) contentions that forcing businesses to comply and to take on additional people negatively influenced job creation.

The results that emerged from the qualitative study also were in agreement with Solidarity Trade Union's (2012:4) assertion that analysing and cross-referencing the different legal provisions; looking up applicable case law guidelines and interpretations; and reducing it all to a workable tool to use in relation to 'equal pay' issues would pose an administrative problem and increase costs for employers to implement. These in turn could have an adverse influence on job creation and job sustainability. The findings that emerged from the qualitative study aligned with Almeida and Carneiro's (2009:28-29) claim that efficiency and firm size were sacrificed in the process, as well as more informal labour being employed to evade compliance with the law. that emerged from the qualitative study were in agreement with Venter, *et al.*'s (2010:133) averment that an employer burdened with substantive costs, as well as with direct costs and procedural costs, will be less inclined to employ more workers on a permanent basis.

#### **7.2.6.1.3 Enforcement of compliance, especially by bargaining council agents**

The findings that emerged from the qualitative study indicated that the enforcement of compliance by bargaining council agents negatively influenced three business participants not to create jobs. The findings that emerged from the qualitative study were in agreement with Badenhorst-Weiss and Waugh's (2015:8), Ayanda and Laraba's (2011:200) and Almeida and Carneiro's (2009:28-29) view that bargaining council agents' and trade unions' more active participation in regulating and enforcing compliance affected small businesses more than big business. The findings that emerged from the qualitative study aligned with Barker's (1999:30-39) contention that the selective enforcement of compliance by bargaining council agents and trade unions affected small businesses more than big businesses.

Results from the qualitative study also agreed with Almeida and Carneiro's (2009:28-29) view that stricter enforcement of labour regulation constrained firm size, output,

productivity and led to higher unemployment. The findings that emerged from the qualitative study also aligned with Ayanda and Laraba's (2011:200) contention that the problem of dealing with government regulations and tax authorities fell more heavily onto smaller businesses through higher compliance costs, for example the fixed costs of complying with import/export and tax regulations; labour market regulations, and licensing and price control.

Consequently, the findings that emerged from the qualitative study indicate that the majority of business participants, ten out of sixteen, perceived that overall labour legislation did not influence them to sustain jobs as they complied with the legislation. The reasons provided were that the spirit of the legislation was good as it helped to protect workers and to sustain jobs. Nevertheless, all labour legislation cannot be generalised as having either a positive or a negative influence. The findings that emerged from the qualitative study indicate that some of the business and trade union participants perceived certain labour legislation such as the SDA, the ETIA and the B-BBEEA to positively influence job sustainability; whilst others perceived the LRA and the B-BBEEA in terms of dismissals, the administrative burdens and cost of compliance to negatively influence job sustainability. In addition, the findings that emerged from the qualitative study indicated that the business participants perceived that the proposed national minimum wage would be set too high, which would negatively influence them not to sustain jobs.

Thus, the findings that emerged from the qualitative study were in agreement with Arnold and Hartman's (2005:207-208) contention that the primary reason for a call for de-regulation was to reduce labour and compliance costs in order to improve job creation and job sustainability. Furthermore, the findings that emerged from the qualitative study aligned with Almeida and Carneiro's (2009:28-29) recommendations that enforcement be relaxed, especially by bargaining councils, as well as for the promotion of more flexible labour laws to stimulate growth. Likewise, the findings that emerged from the qualitative study were in agreement with the author's claim that in most developing countries, strict labour market regulations implied high costs of employing workers and low labour flexibility.

Consequently, the findings that emerged from the qualitative study aligned with Strauss and du Toit's (2010:308) averment that in South Africa too much emphasis

had been placed on various issues such as numbers, quotas and B-BBEE. The findings that emerged from the qualitative study were in agreement with the authors' view that the issue of skills urgently needed to be addressed to make South Africa more globally competitive. Moreover, the findings that emerged from the qualitative study aligned with Kloppers' (2014:67) contention that a skilled workforce was a central element of sustainable economic and social development and was essential to achieving global economic competitiveness.

Thus, the findings that emerged from the qualitative study confirmed that it was not the legislation itself which appeared to be the problem, but rather the implementation thereof. The problem appears to be with the proliferation of legislation and the bureaucracy created by the SETAS surrounding administrative compliance, cost of compliance, the enforcement of compliance and the perceived wastage of money. The implementation of the SDA has negatively influenced five businesses to train and sustain jobs. The findings that emerged from the qualitative study indicated that only one of the business participants was uninfluenced by the SDA and the ETIA to sustain jobs. Conversely, the findings that emerged from the qualitative study indicated that the trade union participants perceived the SDA and the SETAs to have a positive influence on job sustainability as a whole, although they conceded that the bureaucracy surrounding its implementation was problematic. They confirmed that the SETAs were run inefficiently and that the levies could be better utilised. Nevertheless, the findings that emerged from the qualitative study indicated that a far more pressing need was for government to improve primary, secondary and tertiary education.

#### **7.2.7 Research Question Seven**

##### **What factors other than labour legislation influence job creation and job sustainability in South Africa?**

The findings from research question seven indicate that there is agreement amongst the business and trade union participants that there are a number of macro and micro factors, other than labour legislation, which appear to have had a far greater influence on businesses' decisions to create and to sustain jobs, namely the economy; the political and social environment; what is happening in South Africa, and business viability.

### **7.2.7.1 Factors influencing job creation and job sustainability:**

The findings that emerged from the qualitative study indicate that economic factors, political factors, internal factors, skills shortage and skills mismatch, as well as labour costs influence job creation and job sustainability. This study's findings confirm Miller's (2012:20) contention that job creation is closely linked to economic, fiscal and monetary policies. This study's findings indicate that the poor economic climate, issues of corruption and political uncertainty, foreign exchange fluctuations, inflation, poor infrastructure, international competition, shortage of skilled labour, industrial action and a restrictive business environment have negatively influenced job creation and job sustainability in South Africa. This study's findings confirm Le Roux and Rycroft's (2013:35) averment that there are a number of internal factors, other than labour legislation, affecting job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers, the shortage of critical skills and the lack of infrastructure which have contributed to the job crisis. This study's findings agree with Nienaber's (2007:82) contention that the decisions that both government and business make influence businesses' future performance and prosperity, thereby affecting economic growth, job creation and job sustainability.

#### **7.2.7.1.1 Negative factors influencing job creation and job sustainability**

The findings that emerged from the qualitative study confirm that:

- Some businesses are finding it difficult to do business in South Africa because of the current economic climate and the restrictive business environment, which has influenced job creation and job sustainability. Inflexible, prescriptive legislation; poor education; political instability and uncertainty, government's failure to address corruption; the high unemployment rate; poverty and social inequality; and skills shortages in South Africa, negatively influence job sustainability.
- Structural interference; high levels of job insecurity; high levels of inequality; the inadequacy of social security systems; the oversupply of low skilled workers; and the shortage of critical skills affect job sustainability.
- The improvement of skills and qualifications are essential for economic growth, job creation and job sustainability.

- Education, training and lifelong learning are essential for increased productivity, quality employment, income growth and development.

The findings that emerged from the qualitative study also confirm that a general shortage of a skilled workforce in South Africa is hampering economic growth. One of the primary labour factors influencing job creation is the lack of suitably qualified staff. The OECD (2017:11) identifies skills shortages and mismatches as the key bottlenecks to growth and inclusiveness. This is confirmed by the majority of the participants, who emphasise that the skills mismatch between education and the workplace is an important factor affecting job creation. They also remarked on the mismatch between higher education and training, and between tertiary education degree content and workplace needs, which are other important factors affecting job creation. Thus, they confirm Badenhorst-Weiss and Waugh's (2015:8) argument that the lack of sufficiently educated and skilled human resources poses a serious risk to job creation and job sustainability.

A few of the business participants were also highly critical of the current quality and standards of education in South Africa, which they maintain is of a very poor standard, especially with regard to poor literacy and numeracy skills which is affecting jobs. They therefore confirm Badenhorst-Weiss and Waugh's (2015:8) contention that a skilled, educated and efficient workforce remains a large problem in South Africa. Their views also corroborate Venter, *et al.*'s (2010:146) understanding that the issue of the skills shortage in South Africa is having a negative influence on South Africa's economic performance, which is being further compounded by the serious shortage of sound managerial expertise.

The findings that emerged from the qualitative study aligned with Le Roux and Rycroft's (2013:35) contention that the over-supply of low-skilled workers; the shortage of critical skills, and the lack of infrastructure contribute to the job crisis in the country. They validate Le Roux's (2013:508) argument that the primary causes for the skills shortage appears to be a poor education system, low skills levels and the inability of the South African economy to create sufficient jobs. According to Miller (2012:20), job creation is closely linked to economic, fiscal and monetary policies. Consequently, in order to sustain jobs, people increasingly need better

education, training, skills and qualifications to compete in today's labour market. Consequently, the challenge should not only be to manage labour costs, but to simultaneously improve skills (Badenhorst-Weiss and Waugh, 2015:7).

Furthermore, the findings that emerged from the qualitative study indicated that other external factors which negatively influence job sustainability, such as international competition by foreign businesses from overseas countries, as well as, from Southern African Development Community (SADAC) countries of the African Union; unfair local competition by non-compliant businesses within the same industry; small businesses competing with big businesses; dependency of some businesses on the success of other businesses and on government contracts, which were not being paid timeously. These factors adversely affect businesses, which in turn negatively influences job sustainability.

The findings that emerged from the qualitative study suggested that the strength and the debilitating effect of trade unions on the country and the economy negatively influenced some of the businesses ability to create jobs. Their perceptions and attitudes towards the strength of trade unions and the effects of industrial action can also have an adverse effect on their decision to sustain jobs. They confirm Badenhorst-Weiss and Waugh's (2015:8) identification of labour relations, strikes and unrest in particular, as serious risk factors to all industries in South Africa.

#### **7.2.3.3.2 Positive factors influencing job creation and job sustainability**

The findings that emerged from the qualitative study revealed that infrastructure development; government implementation and involvement; investment and intervention in strategic projects; expansion of public works positively influence and are necessary for job creation. State-owned enterprises are, and can be used to create jobs to alleviate poverty and unemployment. The Department of Labour's annual performance plan (2017:1) states that the youth represent about 3.5 million or 65.2 percent of the total unemployed persons in the country. The findings confirm that the lack of opportunities for work seekers to gain workplace experience affects the youth's employability. Nevertheless, it appears from the findings of the qualitative study that levies, subsidies and youth tax incentives had encouraged some of the

business participants to employ the youth and first-time work-seekers. However, it had also discouraged a few because of their unpredictability and volatility.

### **7.2.8 Research Question Eight**

#### **What are the strategies to increase job creation and/or improve job sustainability in South Africa?**

The findings from research question eight indicate that there is agreement amongst the business and trade union participants about the strategies businesses, government and trade unions could implement to increase job creation and/to improve job sustainability in South Africa.

#### **7.2.8.1 Business strategies to increase**

##### **7.2.8.1.1 Job creation**

The following suggestions were advocated by the business participants to be implemented to increase job creation:

- Focus on running a well-managed organisation in an orderly, disciplined and efficient manner. They must revolutionise how they do business;
- Identify opportunities and be more innovative in growth and expansion and set strategic objectives for skills development;
- Big business can and should help small business; and give entrepreneurs access to and opportunity;
- Business should be more influential and aggressive in their approach to unions and government, and limit the influence of trade unions; and
- Business persons need to constantly commit their businesses to prayer.

The trade union participants agreed and, on the whole, made similar suggestions.

##### **7.2.8.1.2 Job sustainability**

Ten business participants indicated that business should implement the following to increase job sustainability:



- Businesspersons should be more confident and positive about South Africa and its economy and focus their energies on exploring, discovering and exploiting opportunities that exist, both in South Africa and on the African continent, and they should grow and prosper their businesses;
- Produce good business leaders and set strategic objectives;
- Business should form a partnership with government. Stakeholders should form a social partnership similar to the German model and work together for the greater good of the country;
- Businesses should be further incentivised to employ and train more people. Businesses should find alternatives to retrenchments;
- Businesses must ensure compliance with equity and affirmative action policies and implement proper work procedures to ensure that workers are treated fairly;
- There should also be greater assistance and co-operation by big business with small business. Big business should assist with and provide funding for education and training, pay for development and help small businesses to grow and succeed;
- All businesses should invest in people, give workers skills and provide capacity and facilities, as well as contribute to training overall, over and above their individual requirements. They should fund training and development, engage in and conduct their own training programmes, in-house training and workplace mentoring;
- All businesses should make correct, effective, efficient and ethical strategic decisions. They need to understand the markets; be ethical and moral; manage their internal and external environments; improve their operational performance; manage their finances, maximize revenues; reduce expenses, and market their businesses. They should have a positive mind-set; strategize; be adaptable to change; analyse and be efficient in their business processes; focus on efficiencies; implement the greater use of technology; train and educate their workers;
- Businesses should ensure that they have a healthy and fit workforce, as well as support the use of electronics and technology.

## **7.2.8.2 Government strategies to increase**

### **7.2.8.2.1 Job creation**

The findings that emerged from the qualitative study indicated the following strategies suggested by the business participants for government to implement in order to increase job creation. Government should:

- Stop corruption; create certainty and confidence in the South African economy; cut back on excessive spending; streamline bureaucracy; merge the SETAs; and be more business friendly;
- Communicate more between departments. There should be greater engagement with business;
- Consider policy decisions carefully and ask whether these will stimulate the economy and business.
- Assist and support SMMEs and create opportunities for all businesses to grow;
- Be more astute and spend more money on pre-tertiary education;
- Improve the skills support structure that feeds into business;
- Focus on providing quality education;
- Provide for a skilled labour base, extend the youth development programme and increase the skilled labour pool;
- Facilitate, fund and provide training for artisans and the acquisition of necessary skills;
- Give entrepreneurs access and opportunity;
- Reduce bureaucracy and the cost of compliance;
- Provide for a sunset clause on employment equity;
- Better implement B-BBEEA;
- Amend the B-BBEEA legislation to place fewer requirements on smaller business, and
- Better control the unions.

The findings that emerged from the qualitative study indicated that trade union participants made similar suggestions to the business participants. On the whole, the trade union participants agreed with or shared similar suggestions. However, one

trade union participant disagreed with the business participants about making any drastic changes to the labour legislation. He remarked that only amendments which are fair to both parties should be made.

#### **7.2.8.2.2 Job sustainability**

The majority of the business participants (eleven) suggested the following strategies that government can implement to increase job sustainability. Government should:

- Increase investor confidence in the South African economy by ensuring that the economy is run in a more investor-friendly way. One of the business participants felt that the presidency should listen to what business has to say;
- Stop wasting money, cut back on excessive spending, eliminate corruption and utilise taxpayers' money more wisely to sustain jobs. For example, spending more money on pre-tertiary education, improving language skills and channelling money to sustain jobs;
- Be an active participant in the economy. It should stimulate the economy, assist business to sustain jobs, stop privatisation and assist struggling companies to sustain jobs;
- Create employment mechanisms as it did in the 1940's and 1950's, start infrastructure development programs and get internship programmes. There should be less regulation;
- Stop cronyism and limit the strength of the trade unions;
- Operate its administration in accordance with ethical business principles and appoint business-orientated people with the same level of qualifications in these positions as would be required in the private sector. Government workers need to have the necessary skills, be proficient and productive;
- Broaden training and education to include non-designated groups;
- Step in and help small business; empower workers with the necessary skills to make them more efficient and productive; provide more government sponsored internship programmes; be fair and not restrict training and development only to designated groups;
- Improve the support structure that feeds into business;

- Improve primary, secondary and tertiary education. It should focus on the quality of education and not the quantity of education;
- Increase and develop the national skills pool to match supply with demand in order to sustain jobs. There should also be more government-sponsored internship programmes;
- Reduce bureaucracy, revise bureaucratic red tape and prevent the selective enforcement of compliance;
- Ensure that the law is applied fairly and evenly throughout the country by its agents, as well as ensure that non-compliant businesses comply;
- Make administrative compliance easier and reduce the cost of compliance through creating and facilitating the use of more computer online technology and systems in order to sustain jobs, especially for new businesses and start-up businesses;
- Control business less and streamline labour legislation. Labour legislation should be more in tune with business, instead of trying to control. Be more laissez-faire and create a minimum legislative framework;
- Provide the CCMA with a vetting process to establish the merits of and to deal with frivolous cases in advance;
- Set minimum wages regionally, not nationally. Minimum wages need to be industry-specific, and
- Reduce the import duty costs on fabrics to assist with diminishing international competition to help sustain jobs in the clothing industry.

### **7.2.8.3 Trade union strategies to increase**

#### **7.2.8.3.1 Job creation**

The following strategies were suggested by the business participants that trade unions may implement to increase job creation. Trade unions should:

- Know how to keep a sustainable business;
- Focus on labour stability, as well as focus on the balance between union satisfaction, earnings and business survival;

- Co-operate and work with management. They need to look at the bigger picture and not just at the employed;
- Be more realistic in their demands. They should also consider and include the unemployed;
- Ensure that employers comply with worker-related legislation. They can use cellphone technology to enforce compliance;
- Ensure that all the businesses, not only some in the industry, are compliant, and
- Focus on representing employee interests, not on their political agenda.

#### **7.2.8.3.2 Job sustainability**

Nine of the business participants suggested the following strategies that trade unions can implement to increase job sustainability. Trade unions should:

- Play a more active role in representing their members' interests and participate in bargaining council structures;
- Balance union satisfaction, earnings and business survival. They should abstain from participating in unrelated political strikes;
- De-politicise and assist the Department of Labour with controlling and enforcing non-compliance equally and fairly across the entire industry, and not do so selectively;
- Exercise more leniencies when enforcing compliance, depending on the size of the business;
- Assist in ensuring that industries are completely compliant with worker-related legislation;
- Educate their members on the challenges faced by small businesses and they should focus on ensuring labour stability;
- Work with management;
- Deal with trust and greed; keep employers and employees satisfied; be committed to settling disputes; work with members; be reasonable about monetary issues; be involved in policy-making in the workplace; and act in the best interest of ensuring business sustainability;

- Ensure greater communication and co-operation between businesses and trade unions;
- Co-ordinate more with the businesses in which they are involved;
- Stop making unrealistic and unreasonable demands, causing companies to close down, and
- Take a wider view, consider and include the unemployed in the negotiation process.

### **7.2.9 Research Question Nine**

#### **To what extent do the qualitative results confirm the quantitative results of the empirical study?**

As evidenced by the triangulation of the findings that emerged from the quantitative study with the findings that emerged from the qualitative study and with the literature for research questions one to four above, to a large extent the results that emerged from the qualitative study confirm and expand on the results that emerged from the quantitative study of the empirical study. The findings emerged from the quantitative study indicated the legislative aspects that influence job creation and job sustainability. The findings that emerged from the qualitative study added the extent to which the legislative aspects influenced job creation and job sustainability, and whether the influence was positive or negative.

The findings that emerged from the empirical study indicated that to a large extent, the various regulatory aspects of the legislation did not influence job creation and job sustainability. The findings that emerged from the qualitative study also identified and elaborated on the legislative aspects which had a positive influence on job creation and job sustainability. The findings that emerged from the qualitative study further identified and elaborated on the negative influence, which to a large extent revolved around implementation and compliance. It was pertinent to note that the greatest negative influence appeared to be the manner in which labour legislation was being implemented and to a lesser extent enforced, especially by bargaining councils.

This study uncovered four primary findings. These findings were organised according to the research questions.

- The primary finding is that poor education and the skills shortage in South Africa affects job creation and job sustainability.
- The second finding is that the current economic and political environment in which businesses operate does not motivate businesses to create and/or sustain jobs.
- The third finding is that legislation which provides businesses with financial incentives and promoting skills development motivate businesses to create and/or to sustain jobs.
- The fourth finding is that increased labour costs, compliance with and enforcement of compliance with labour legislation deters and/or discourages businesses from creating and/or sustaining jobs.

Thus, the overall findings that emerged from the empirical study indicated that the greatest problem does not lie with the legislation itself, but rather with its implementation, which needs to be addressed in order to improve job creation and job sustainability.

### **7.3 Summary**

Although the focus of this study was limited to labour legislation's influence on job creation and job sustainability, it was realized that the complete de-regulation of the labour market is not ideal as it would not have the desired effect of improving the economy and the lives of South Africans. It was discovered that the influence of labour legislation was minimal in comparison to its greater good. Furthermore, it was learned that there were other far more pressing factors such as globalisation, political and economic uncertainty, poor education and skills shortages, which have had far greater and further reaching influence on job creation and job sustainability than labour legislation. It was uncovered that the labour legislation, especially through the promotion of training and skills development, positively influenced job creation and job sustainability and in the long run, had a positive influence on the

South African economy. This in turn had positive implications for the South African business community.

Consequently, the short-term goals of big business and international business should not be promoted over the long-term goals of the South African nation as a whole. To pander to the ideals of neo-liberalists promoted by big business and international business is not in the best interests of South Africa and local business in the long run.

In accordance with the Keynesian economic approach, the labour theory of social justice and corporate social responsibility, the focus should be on decent work, amongst other things, and not just on pure profit. Decent work is ensured by improving the security and quality of life of the worker through education and training, job and social security, as well as the payment of a decent wage. Furthermore, when the needs of workers are appropriately addressed, there will be labour peace and increased productivity, which will boost both local and foreign investor confidence in the country and the South African economy.

In accordance with the Keynesian economic approach and the labour theory of social justice, the South African government plays an important active role in passing labour legislation, which the CCMA, the labour courts and its administration enforce in order to ensure labour protection and fairness, equity and work security. Therefore, the South African government cannot afford to adopt a hands-off approach, as the neo-liberalists would like it to do. In a constitutional state, entrenched human rights are of paramount importance. Thus, to deregulate or to amend labour legislation and to make it more flexible for business to do business, is to re-open the doors to exploitation and to defeat the normative purpose of labour law.

Additionally, the removal of labour protection will result in greater inequality, increased unemployment and poverty, destabilising the country further. This is not in the interests of South Africa. Labour legislation, through ensuring equity, fairness and job security, leads to an increase in productivity and the long term reduction of labour costs if the goals of social justice are achieved.



Therefore, the findings that emerged from the empirical study are in agreement with Van der Walt's (2004:261) contention that the transformative theoretical approach is the correct approach for the country. The labour legislation in South Africa does not need to be amended drastically.

## **7.4 Conclusion**

An analysis of the results provided an insight into the extent to which labour legislation influenced job creation and job sustainability, which in some instances were discovered to be positive, whilst in other instances they were negative. The provision of financial incentives to businesses to train workers had a positive influence on job creation and job sustainability. Conversely, the bureaucratic implementation of administrative compliance and the cost implications thereof, as well as the enforcement of compliance and the cost implications thereof, negatively influenced job creation and job sustainability. Nevertheless, in most instances, labour legislation did not influence job creation or job sustainability at all. The research study results also highlighted the importance of social justice and the importance of the role that labour law plays. The inherent flaws in the bureaucratic implementation of labour legislation need to be addressed. This study's results have also highlighted the negative impact that the EEA and B-BBEEA are having on the sustainability of small and medium enterprises. This also needs to be addressed.

In the context of the preceding discussion of the findings and conclusions, recommendations are made and presented in the following chapter. The conclusions and recommendations are based on the research findings that emerged from the empirical study, as well as on the literature review contained in Chapters Two and Three. The recommendations in the next chapter will provide constructive answers to the critical questions asked in the research study.

### 8.1 Introduction

This final chapter discusses the conclusions drawn on the study objectives and the research problem, as well as the recommendations of the study. The purpose of this study was to establish the influence of labour legislation on job creation and job sustainability. Although there is a plethora of literature and research available on various aspects of the research topic covered herein, there is no previous study that deals with the topic as comprehensively as the study conducted herein.

The empirical study explored and determined the influence of labour legislation on job creation and job sustainability in South Africa, the results of which are set out in Chapters Five and Six. As noted in Chapter Four, a convergent parallel-mixed methods research that combines the quantitative and qualitative methods was adopted in this study to explore the research objective. Specifically, the quantitative component of this study examined the relationships amongst different pieces and aspects of labour legislation, the interaction between them and their influence on job creation and job sustainability. On the other hand, the qualitative study assessed the positive and/or negative influences of various aspects of labour legislation in promoting, threatening or impeding job creation and job sustainability, by conducting semi-structured interviews with sixteen businesspersons and six trade unionists in South Africa.

By using quantitative statistical analysis and qualitative interview-based analysis, this study explored the central research question: ***Does labour legislation influence job creation and/or job sustainability?*** This central question was broken into nine specific research questions (RQ), namely:

- ☐ **RQ1:** Who creates and sustains jobs, and how?
- ☐ **RQ2:** What are businesses' perceptions about labour legislation?

- **RQ3:** Which specific aspects of the labour legislation influence businesses' to create and/or sustain jobs? Why?
- **RQ4:** How do businesses' perceptions about labour legislation influence them to create and/or sustain jobs?
- **RQ5:** What may be the problems and limitations with labour legislation for job creation and job sustainability?
- **RQ6:** What changes, if any, should be made to labour legislation to improve job creation and/or job sustainability?
- **RQ7:** What are the factors (apart from labour legislation) affecting job creation and job sustainability?
- **RQ8:** What are the strategies to increase and/or improve job creation and job sustainability?
- **RQ9:** To what extent do the qualitative results confirm the quantitative results of the empirical study?

In particular, RQ3, RQ4, RQ5 and RQ6 aimed to assess the interactions amongst different aspects of labour legislation as well as other factors and their influence on job creation and job sustainability by using the quantitative and qualitative approaches. RQ1 was concerned with understanding how jobs are created and/or sustained, as well as who creates and/or sustains them. RQ5 and RQ6 intended to explore issues related to aspects of labour legislation's influence on job creation and job sustainability. RQ5 and RQ6 are joint questions that were answered by the integration and combination of the quantitative and qualitative approaches. RQ7 and RQ8 intended to explore issues related to factors', other than labour legislation, influence on job creation and job sustainability. RQ9 explored the extent to which the qualitative results confirmed the quantitative results of the empirical study. By answering these questions, this study provides a comprehensive picture of how

of specific aspects of labour legislation (RQ5 and RQ6) on job creation and job sustainability respectively. Finally, the research findings in relation to RQ2, RQ3 and RQ4, RQ5, RQ6, RQ7, RQ8 and RQ9 that were gathered from the integration of the quantitative and qualitative studies are presented in Section 8.2.5.

The study findings met the research objectives and resolved the research questions as discussed below.

### **8.2.1 Understanding who creates and sustains jobs and how**

Considering the research objective and the research question related to who and how jobs are created and sustained, the findings of the study showed that the creation of job opportunities and the sustaining of jobs are very important, and that jobs were primarily created and sustained through skills development. Consequently, the study discovered that skills development had the most significant influence on both job creation and job sustainability. Moreover, the study understands that one of the greatest threats to business sustainability, economic growth, job creation and job sustainability is the lack of skills, poor education and workers not having the skills needed for the workplace. Furthermore, the study unearthed that one of the greatest opportunities for economic growth, business sustainability, expansion, growth, job creation and job sustainability is in skills development, by empowering and training workers and potential workers with the requisite skills for the workplace. In addition, businesses that were financially incentivized to train and develop skills were motivated to expand and grow to create and to sustain jobs. Accordingly, the study realises that the provisions in the SDA, the EEA, the LRA, the UIA and the B-BBEEA promoting skills development, have had a positive influence on job creation and job sustainability, especially in recent years. Furthermore, the study discloses that the majority of jobs being created are permanent, although some temporary jobs have also been created, as a result of the financial incentives businesses received to train workers and to employ the youth.

Additionally, it is interesting to note that the study found that economic, political and internal factors have a far greater influence on job creation and job sustainability than labour legislation. Consequently, the study realizes that it is important for

businesses to be well-managed; forward looking; continuously improve themselves; operate ethically; be efficient in their operations; have a well-trained productive workforce; invest in training and to develop their workers; and operate in a healthy economy where there is economic growth and political stability in order to create and sustain jobs. Moreover, the study discovered that businesses which acknowledge their responsibility towards the societies within which they operate and who support social justice as their underlying ethical value, in particular in treating others fairly and who respect employees' labour rights, create good stable sustainable jobs. Thus, the frequency tables reveal that businesses' recognition of and adherence to social justice, human rights and decent work principles are very important for job creation and job sustainability.

The empirical results of the qualitative study observe that businesspersons and trade unionists presented different views on who is creating jobs. Consequently, the study findings are inconclusive as there is disagreement as to whether small and medium business enterprises or large businesses are creating and sustaining the most jobs. The study findings also indicated that there is disagreement as to whether it was the public sector or the private sector that is creating and sustaining most of jobs. Nevertheless, the study confirmed that more jobs are being lost than created and/or sustained, which was largely attributed to political and economic uncertainty, corruption, poor education, skills shortage, skills mismatch and labour costs.

### **8.2.2 The regulatory influence of labour legislation on job creation and job sustainability**

Considering that the research objective and the research question related to the regulatory influence of labour legislation on job creation and job sustainability, the study findings show that overall businesses and trade unions favour labour legislation regulating the employment relationship. In addition, the study reveals that the BCEA, the LRA, the EEA and the SDA, through the regulation of employment contracts; working conditions; efficiency; ensuring fair and equal treatment in the workplace; work security and skills development; create and sustain jobs. Consequently, the study discloses that the BCEA, the LRA, the EEA and the SDA

fulfil labour law's normative role of protection, efficiency, equity and fairness through regulation.

The study findings also confirm that businesses are largely uninfluenced by labour legislation to create and sustain jobs. Moreover, the results of this study indicate that on the whole, businesses' perceptions of the BCEA's provisions on staffing contracts; hours of work, minimum wages, notice periods and enforcement of compliance by labour inspectors do not have a significant influence on job creation and job sustainability.

Furthermore, the study verifies that the LRA focuses on labour relations as it is concerned with fair labour practices, flexibility and work security. Bargaining councils ensure standardisation throughout the sectors, which avoids unfairness and abuse of salaries. However, businesses perceive bargaining councils to be bureaucratic in their selective and unfair enforcement of compliance with labour legislation, which has a negative influence on job creation and job sustainability.

Although, the study realises that the EEA promotes and regulates equality, fairness and equal treatment in the workplace, it discovered that affirmative action, employment equity and the enforcement of compliance have a negative influence on job creation and job sustainability.

Furthermore, the study corroborates that the SDA promotes training and facilitates skills acquisition. However, the study's discoveries reveal that bureaucratic, ineffective SETAs and the administrative burden of compliance negatively influence job creation and job sustainability.

Nonetheless, the study's results reveal that there are regulatory aspects of the BCEA, the LRA, the EEA, the B-BBEEA, the SDA and the SDL, namely bureaucracy; the administrative burden; the enforcement of compliance; and labour costs which negatively influence job creation and job sustainability. In particular, the study's findings reveal that affirmative action in terms of the EEA has the most likely negative influence on job creation. The study's findings further reveal that bargaining

councils, industrial action, dispute resolution and enforcement by bargaining council agents in terms of the LRA are most likely to negatively influence job creation.

Despite the aforesaid, the study unearthed that there are aspects of the SDA, the EEA, the B-BBEEA, the ETIA and the UIA which positively influence job creation and job sustainability.

### **8.2.3 Positive legislative aspects which assist with and/or encourage job creation and job sustainability in South Africa**

Considering that the research objective and the research questions related to the positive influence of aspects of labour legislation which assist with and/or encourage job creation and the sustaining of jobs in South Africa, the study findings reveal that certain aspects of the SDA, the EEA, the B-BBEEA, the ETIA and the UIA, have a positive influence on job creation by creating job opportunities and/or sustaining the jobs that have been created. The provision of financial incentives by the ETIA, the Department of Trade and Industry's subsidies and the SETAs refunding of skills development levies for the training and development that business have conducted, encourage businesses to develop skills and implement training, thereby creating jobs and promoting employment, especially for youth.

Consequently, the study's findings confirm that the SDA, the EEA, the B-BBEEA and UIA, by financially incentivising businesses to train and develop workers' skills, have a positive influence on businesses to create and sustain jobs. In addition, the study's findings reveal that the BCEA, through the creative use of shift work instead of the payment of overtime, allows for flexibility by creating additional jobs and saving on labour costs.

Likewise, the study findings disclose that rest periods ensure a productive and healthy labour force, which has a positive influence on job sustainability. The study further shows that the termination of notice allows for planning, and that severance pay for retrenched workers has a positive influence. Furthermore, the study findings reveal that trade unions perceive the BCEA's provisions relating to staffing contracts and notice periods as having a positive influence on job creation.

The study's results verify that the LRA's procedures are fair and beneficial to both parties as it creates certainty and, if a job is secured, then it is sustained. In addition, the study's findings reveal that the LRA helps job sustainability by making it difficult to dismiss somebody, which has a positive influence on job sustainability as it provides businesses with greater incentives to train their workers. Moreover, the study findings disclose that the limitations imposed on fixed-term contracts by the LRA deters employers from offering insecure jobs and from denying employees certain benefits, which has a positive influence on both job creation and job sustainability.

Furthermore, the study findings reveal that bargaining councils and collective agreements have a positive influence as they help to create certainty and industrial peace. In addition, the study findings show that strike action ensures fairness, that workers are protected and that jobs are sustained. The study findings confirm that the CCMA is expedient and that it ensures fairness for dispute resolution.

The study's outcomes validate that the EEA and the SDA indirectly compel businesses to engage in corporate social responsibility, which has a positive influence on job creation and job sustainability. In addition, the study's findings reveal that the B-BBEEA and the EEA compel businesses to indirectly engage in corporate social responsibility through affirmative action, training and through the provision of equal pay for equal value, which ensures equality, fairness and the payment of a living wage.

Moreover, the study findings disclose that the SDA compels businesses indirectly to engage in corporate social responsibility through the provision of training incentives. The study also reveals that businesses expanded through skills development as they are engaging in on-going training to up-skill and develop their workers. Furthermore, the study proves that the SDA encourages businesses to develop in-house training programmes and to use the workplace as a training ground. Thus, skills improvement has a positive influence on job sustainability as it helps to preserve jobs.



The study reveals that most of the jobs created and sustained are through training and skills development, which is primarily as a result of the provision of incentives to business, namely the SETA grants; improved B-BBEE scorecard levels; the ETIA youth tax incentives; and the UIA, which all positively influence job creation and job sustainability. In addition, the study uncovers that businesses expand and sustain jobs through training the workers and improving their skills because of the SDA and the B-BBEEA. Consequently, the B-BBEEA scorecard has made it attractive for businesses to invest in training, which has encouraged them to develop and train their staff, as well as the unemployed. It was also found that the ETIA, through the promotion of learnerships and apprenticeships, has to some extent influenced job creation positively, especially amongst the youth.

Consequently, government should not de-regulate labour legislation, but rather regulate the EEA, the B-BBEEA and the SDA, better by simplifying, reducing duplications and streamlining them, as well as by providing businesses with more incentives to train. Business will consequently continue to invest in training, train, re-train and develop their workers' skills.

Therefore, the study unearths that the SDA has the most positive influence on job sustainability, but the SDA also helps to create some jobs through training and development. However, the study also discovered the bureaucracy and administrative burdens surrounding the implementation of the SDA to be problematic and as most likely to negatively influence job creation and job sustainability.

Consequently, government should not de-regulate labour legislation, but rather regulate it better by simplifying the legislation, reducing the duplications that exist across the various pieces of labour legislation, streamline them and provide businesses with more incentives to train. Business should then increase and continue to invest in training, re-training and developing workers' skills.

#### **8.2.4 Impeding legislative aspects' negative influence on job creation and job sustainability in South Africa**

Considering the research objective and the research questions related to negative aspects of labour legislation impeding job creation and job sustainability, the study's

findings reveal that the LRA's limitations imposed on fixed-term contracts infringed on businesses freedom to employ and their right to select. It also increased their costs of existing staff, causing some employers to hesitate employing additional people, whilst inhibiting others from building up capacity in advance. Moreover, the study results show that the LRA amendments to fixed-term contracts have increased insecurity and uncertainty as employers are discouraged from employing the same person twice. It has caused some workers to be dismissed rather than be appointed full-time. Fixed-term contracts are not being renewed and they are open to abuse as employers can and do manipulate the system.

Likewise, the study outcomes also show that the national minimum wage, if set too high, can have a detrimental effect on job creation and job sustainability, resulting in greater job losses when labour supply becomes too expensive and is unaffordable, thereby exacerbating unemployment. In addition, the study's findings reveal that job creation is stifled if smaller employers cannot afford the services of labour.

Moreover, the study findings disclosed that the BCEA's hourly-based limits imposed on the use of casual labour and the LRA's limitations and restrictions placed on fixed-term contracts have deterred some businesses from creating jobs and/or employing additional staff. Furthermore, the study's verdicts indicate that CCMA commissioners, by bullying businesses into paying quick settlements which they otherwise would not have agreed to, impede job creation and job sustainability when businesses decide to automate, outsource and retrench their employees as a result of this bullying.

Similarly, the study findings show that the EEA and the B-BBEEA could stifle entrepreneurs and deter businesses who do not qualify especially small White-owned entities. Furthermore, the study findings reveal that the administrative burden of complying with the EEA and having to employ additional people to complete affirmative action reports, as well as the bureaucracy surrounding the EEA's implementation, enforcement and the severest penalties for non-compliance, deter businesses and smaller employers from creating and sustaining jobs.

### **8.2.5 Threatening negative legislative aspects which hinder job creation and job sustainability in South Africa**

Considering the research objective and the research questions related to negative aspects of labour legislation threatening existing jobs and job creation, the study findings show that the labour legislation, in regulating the employment relationship and the enforcement of compliance by labour inspectors, influences job creation and job sustainability overall, some legislation to a greater extent than others.

The study's findings indicate that businesses' negative perceptions of the BCEA's provisions on staffing contracts, hours of work and enforcement of compliance is more negative than their negative perceptions on minimum wages and notice periods in influencing job creation and job sustainability. In addition, the study findings disclose that the BCEA's provisions on public holidays, overtime, night work and work on Sundays can be perceived to be inflexible, especially in the transport industry and with smaller employers who are unable to comply.

Furthermore, results reveal that the financial impact of increased labour costs caused by the BCEA's provisions for extra payment for work on Sundays, night work, ad hoc public holidays, additional benefits and unrealistic minimum wage increases which eat into profit margins and which they are unable to recover from their clients, negatively influence job creation and job sustainability. Moreover, the study findings show that fixing wage increases for three years limits business expansion. Furthermore, the study findings disclose that sectoral determinations are too bureaucratic and unwieldy because of staff incompetence and wasteful expenditure, which negatively influence job creation and job sustainability.

The study's findings also show that businesses are finding dismissals for misconduct and poor work performance in terms of the LRA, to be difficult, time consuming and expensive. Furthermore, the study findings disclose that although some businesses have reduced their probationary periods to three months, it was not long enough for them to assess someone. Likewise, findings confirm that businesses perceive "nuisance payments" to be very costly, tedious and time consuming, which has a negative influence on job creation and job sustainability.

Similarly, the study findings disclose that smaller businesses are reluctant to go to the CCMA as they perceive the commissioners to behave unethically and are biased in favour of dismissed employees. Additionally, findings show that the enforcement of compliance by bargaining councils has a far greater negative influence than labour inspectors enforcing compliance. Correspondingly, the study findings disclose that the problem of corrupt officials abusing power and wanting to be paid bribes negatively influences job creation.

Furthermore, the study findings indicate that strikes and industrial action discourage business growth, cause a loss of international investors as international companies move their businesses elsewhere and impacts on the industry as a whole. It was found to result in increased costs, loss of revenue, the employment of scab labour, fear of intimidation, victimisation and violence, loss of life and property. In addition, study findings reveal that it affects the efficiency of the economy, especially when a strike lasts for longer than six months.

Similarly, the study findings confirm that the EEA heavily regulates the employment relationship and puts measures in place to give preference to disadvantaged groups. Moreover, the study findings show that it is very difficult to employ persons with suitable skills. Furthermore, findings reveal that the poor education system, the lack of skills training and forcing businesses to comply with employment equity negatively influence job creation. Nevertheless, the study findings disclosed that in-house training programmes have helped some businesses to overcome some of the difficulties they are experiencing with the available skills pool, although they felt it was not nearly enough.

Additionally, the study findings reveal that the EEA is not representative. Similarly, the study findings disclose that the EEA operates separately from other educational institutions such as high schools and tertiary education, which do not sufficiently support it. The study findings also show that the EEA's provisions on "equal pay" infringes on businesses' discretion to pay certain employees more "for going the extra mile", which results in increased labour costs if they have to pay everyone the

same. Moreover, the study findings also reveal that businesses perceive the payments made in terms of the EEA to be a secondary form of tax.

In addition, the study results show that businesses find the large amount of administrative documentation that they have to comply with when completing SDA reports, applying for accreditation of training courses and applying for refunds of training courses to be burdensome. The study findings also disclose that the quality of the training courses is not being policed. The study outcomes divulge that employers are forced by the Department of Labour to take on more people through the skills training plan if the business accepts subsidies, which increases the cost to existing staff. Equally, the study results disclose that some of the SETAs have created jobs in the bureaucracy. However, they have not delivered on training.

The study findings verify that the skills development levies increase labour costs. Similarly, the study verdict discloses that although one of the business participants commented that there are billions of rands in SETA allocations, businesses are frustrated when they see the SETAs wasting money.

Moreover, the study findings reveal that the latest B-BBEEA scoring system discourages businesses, especially small businesses, from expanding and growing, which is having a negative influence on job creation. Furthermore, the study findings show that some of the business participants overcame some of the B-BBEE scorecard difficulties that they have encountered through skills training. Likewise, the study results reveal that smaller businesses are struggling to find suitable equity partners.

The study outcomes disclose that businesses perceive the ETIA to be a punitive incentive to create jobs as it costs money to create jobs. Equally, the study findings divulge that the financial incentives do not adequately cover the cost of employing and training the youth. The study findings also reveal that the business participants perceive the youth to lack integrity and skills; are quite militant and demanding; and are only willing to do the job and nothing extra, which negatively influences job sustainability.

### 8.2.6 Integration of findings from the quantitative and qualitative approaches

Considering the research objective and the research questions related to the extent to which the qualitative results confirm the quantitative results of the study, the study findings, through triangulation reveal that qualitative results confirm and elaborate on the quantitative results and the literature reviewed in the study.

### 8.3 Conclusions

The conclusions drawn from the empirical study are interpreted and discussed based on the following research objectives and research questions:

**Table 8.1: Research objectives and research questions**

Research objectives	Research questions
1. To describe, explore and understand the need for job creation and job sustainability.	1. Who creates and sustains jobs, and how?
2. To describe, explore and understand through a literature review the regulatory influence of labour legislation on job creation and job sustainability.	2. What are businesses' perceptions about labour legislation?
3.1 To explore and compare through an empirical study using semi-structured interviews and surveys, the perspectives of business (entrepreneurs, senior managers) and trade unions (trade unionists) in South Africa in order to establish the extent to which selected labour legislation (viz BCEA, LRA, EEA, SDA, etc) influences the creation and sustainability of jobs.	4 Which specific aspects of the labour legislation influence businesses to create and/or sustain jobs? Why?
3.2 Assists with and/or encourages job creation and sustaining jobs.	5 How do businesses' perceptions about labour legislation influence them to create and/or sustain jobs?
3.3 Threatens existing jobs and job creation.	6 What changes, if any, should be made to labour legislation to improve job creation and/or job sustainability?
3.4 Impedes job creation and job sustainability.	7 What are the factors, apart from labour legislation, affecting job creation and job sustainability?
	8 What strategies businesses, trade unions and government can implement to increase/improve job creation and job sustainability?
	9 To what extent do the qualitative results confirm the quantitative results of the empirical study?

### **8.3.1 Conclusions from the literature review**

There is no consensus on whether employment protection legislation is beneficial or harmful to the economy (Gwatidzo and Moyo (2014:300), job creation and job sustainability. Consequently, this study sought to fill the gap by investigating the influence of employment protection legislation on job creation and job sustainability, as well as to examine the extent to which law may be used to achieve the goals of social policy. The normative ethical principle that was used to evaluate the influence of labour legislation on job creation and job sustainability, was social justice, which forms the basis of legislation in South Africa, in particular the Constitution and labour legislation.

#### **8.3.1.1 Labour legislation's regulatory influence on job creation**

In a market economy, it is the market and not the law that creates, modifies and destroys employment (Bronstein, 2009:71). There are two main economic theories, namely the Neo-classical Economic Theory and the Keynesian Stimulus Theory, which shape perceptions of labour legislation's influence on job creation and job sustainability. Consequently, labour legislation's regulatory influence on job creation and job sustainability is dependent on the economic viewpoint from which it is perceived (Darrol, 2013:14).

Herrington, Kew and Kew (2010:5), Faulkner and Loewald (2008:18) and Van Niekerk, *et al.* (2008:7-8) favour de-regulation and support the neo-classical argument. The British neo-classical economic approach has influenced South African labour law (Sebola and Nkuna, 2014:926). Nevertheless, the pursuit of neo-liberal economic policies in South Africa has resulted in changing patterns of work and labour, and made the South African economy increasingly vulnerable to social and economic shocks (Mahadea and Simson, 2010:399). Consequently, the decisions that both government and business make influence economic growth, job creation and job sustainability (Nienaber, 2007:82). Nonetheless, Faulkner and Loewald, (2008:18) and Herrington, Kew and Kew (2010:5) agree that labour legislation through over-regulation, has stifled job creation in South Africa.

Van Niekerk, *et al.* (2008:7-8) maintain that there is a link between inflexible labour markets and stifling job creation. Issues such as wage flexibility, non-wage labour costs and job security all add to labour market rigidity (Chen and Funke, 2005:688). The BCEA can have a negative influence on flexible working conditions and working time flexibility, as well as labour market institutions such as the National Economic, Development and Labour Council (NEDLAC), Bargaining Councils and Sectoral Determinations directly and indirectly affect labour market flexibility (Barker, 1999:30-39). Bassanini, Nunziata and Venn (2009:352) disagree with Barker's view. There is little evidence of protective labour legislation having a collective influence on employment (Bassanini, Nunziata and Venn, 2009:352). Nevertheless, Feldmann (2009:76) found that stricter regulation, tight hiring and firing rules, as well as collective bargaining, have an adverse effect. They generally appear to increase unemployment, especially amongst females and, in particular, the youth (Cohen and Moodley 2012:323 and Noelke, 2011:1).

Conversely, the neo-liberal demand for de-regulation is built solely on the premise that labour market regulation is detrimental to efficiency and is misleading (Benjamin, cited in Le Roux and Rycroft, 2013:29). In addition, the debate as to whether or not regulation is necessary is false (Darrol, 2013:14). The debates revolving around de-regulation creates a false dichotomy that there can never be a total absence of regulation (Le Roux and Rycroft, 2013:27). The debates are really about substituting one body of regulations for another (Le Roux and Rycroft, 2013:27). Furthermore, Venter, *et al.* (2010:130) claim that there is no such thing as a perfectly flexible labour market and they contend that neither is it socially desirable. Consequently, the focus should not be on de-regulation, but rather on how best to promote labour laws and policies that best respond to individual countries' current development challenges (McCann and Torm, 2008:428).

Deakin, Malmberg and Sarkar (2014:2), Cazes Khatiwada and Malo (2012:36) and Burgess (2010:19) support the Keynesian Stimulus Theory and are opposed to de-regulation. Cazes Khatiwada and Malo (2012:36) maintains that employment levels tend to be associated positively with more stringent regulations. Deakin, Malmberg and Sarkar (2014:2) contend that the supposed negative effects of labour laws are either very small or simply non-existent and that such laws, in fact, have beneficial



effects on productivity and innovation. Bronstein (2009:71) agrees that there is no evidence to support the assumption that deregulatory labour reforms alone will be sufficient to improve the country's levels of employment. Conversely, Miller (2012:10) claims that regulatory policy plays an important role in creating and formalising job opportunities to promote job creation and job sustainability, which is aligned with the Distributive Justice Theory (Warikandwa and Osode, 2014:69). The aim of the ESA is to assist the unemployed in seeking new employment (Govindjee, Olivier and Dupper, 2011:776). Since business in South Africa generally avoids the idea of corporate social responsibility, there is a need for regulation (Jamali, 2007: 1 and Fig, 2005: 601).

Furthermore, Le Roux and Rycroft (2013:35) contend that there are a number of factors, other than labour legislation, which affect job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers; the shortage of critical skills; and the lack of infrastructure, which have contributed to the job crisis. Tzehainesh (2010:11) also maintains that the influence of labour legislation on job creation and job sustainability cannot be viewed in isolation and that the labour market structure; the socio-political structure; the state legal framework beyond labour law; the legal culture; non-state regulatory systems and social norms as well as the economic ideological environment, need to be taken into account. Moreover, Clover and Darroch (2005:238) identify labour legislation as one of eight factors or constraints that affect business survival or growth. Thus, Shapiro and Irons (2011:3) contend that a multi-dimensional theory on the effects of regulations on employment is more appropriate.

#### **8.3.1.2 Labour legislation's regulatory influence on job sustainability**

The regulation of non-standard employment or labour broking has resulted in the increased security of employment for vulnerable workers (Kettledas, 2013:4), which may have an influence on job creation and job sustainability. An important benefit of employment protection is that it limits job destruction, whereas temporary jobs intensify it (Cahuc and Postel-Vinay, 2002:63). The danger of facilitating the creation of more temporary jobs to foster job creation is that it can increase job destruction,

thereby increasing unemployment. Thus, the more flexible the regulation on fixed-term contracts, the greater the potential to destroy jobs, increase unemployment and reduce aggregate welfare, especially when firing costs are high (Cahuc and Postel-Vinay, 2002:65).

Labour legislation imposes significant burdens on business, raising business costs, and ultimately costing jobs (Darrol, 2013:15). Labour regulation causes labour costs to be higher due to compliance (Almeida and Carneiro, 2009:28-29). Arnold and Hartman (2005: 207-208) maintain that the primary reason for de-regulation is to reduce labour and compliance costs in order to improve job creation and job sustainability. Therefore, Almeida and Carneiro (2009:28-29) recommend the relaxation of enforcement and the promotion of more flexible labour laws to stimulate growth. Regulation and minimum wage fixing has resulted in increased direct and indirect labour costs, which could influence job creation and job sustainability (Marneffe and Vereeck, 2011:352 and Venter, *et al.*, 2010:138). The two groups most negatively affected by minimum wage regulations are the poor and the young (Greene, *et al.*, 2007: 85).

Thus, the need for the regulation of the labour market will continue as long as unsustainable working conditions and the mismanagement of labour relations exist and persist in South Africa (Young, 2012: 2).

### **8.3.2 Conclusions from the empirical study**

#### **8.3.2.1 The extent to which labour legislation regulation influences job creation and job sustainability in South Africa**

In considering the research objective and the research questions related to the regulatory influence of labour legislation on job creation and job sustainability, the study concludes that labour legislation has played and continues to play an important role in ensuring fairness and equity in the employment relationship; that it fulfils its normative role; and that labour regulation is necessary. In addition, the study deduces that businesses, on the whole, comply with labour legislation and that the de-regulation of the employment relationship is therefore unwarranted.

Moreover, the study construes that labour legislation, in regulating the employment relationship and the enforcement of compliance by labour inspectors, influences job creation, some laws to a greater extent than others. Furthermore, the study supposes that the LRA, the EEA and the B-BBEEA, in regulating equity and fairness overall, have influenced job creation, some legislation to a greater extent than others. Likewise, the study deduces that there are aspects of the labour legislation which require amendment in order to enhance and promote job creation and job sustainability.

#### **8.3.2.2      The extent to which labour legislation assists with and/or encourages job creation and job sustainability in South Africa**

In considering the research objective and the research questions related to aspects of labour legislation which assist with and/or encourage job creation and job sustainability, the study concludes that businesses which are incentivised by the SDA, the EEA, the B-BBEEA, the ETIA and the UIA, to train and develop their workers, are expanding, growing, creating and sustaining jobs. In addition, the study concludes that the enforcement of compliance by labour inspectors ensures that jobs are created in accordance with the LRA guidelines and regulations, and that those workers are paid fairly. Moreover, the study concludes that industrial action influences businesses to be more circumspect on how and what jobs they create. Furthermore, the study deduces that the SDA, through the SETA training grants, incentivizes businesses to train people, which empowers and makes them more marketable and self-sustainable, thereby promoting job creation and job sustainability. Likewise, the study assumes that SETA training grants help businesses to sustain jobs through training. Similarly, the study construes that workers need to have the necessary skills, be proficient and productive. Additionally, the study infers that skills development, through education and training, helps to increase the efficiency and productivity of the worker, as well as to promote and facilitate productive employment, which has a positive influence on job creation and job sustainability.

### **8.3.2.3      The extent to which labour legislation threatens existing jobs and job creation in South Africa**

In considering the research objective and the research question related to the extent to which labour legislation threatens existing jobs and job creation, the study concludes that the administrative burden and the cost of compliance with labour legislation threaten existing jobs and job creation. In addition, the study deduces that businesses find the completion and submission of annual returns and BCEA documentation to be very onerous, especially for small businesses that have employed additional people to deal with their legislative administrative documentation, which threatens existing jobs and job creation.

Likewise, the study construes that the enforcement of compliance, especially by bargaining council agents and bargaining councils, as well as industrial action; dispute resolution; affirmative action; B-BBEE scorecard criteria; and dysfunctional, bureaucratic and inefficient SETAs are all factors that are most likely to threaten existing jobs and job creation.

In addition, the study infers that the administrative bureaucracy and enforcement of compliance with the BCEA threatens existing jobs and job creation. The study supposes that the amendments to the LRA restricting fixed-term contracts to three months threatens existing jobs and job creation, as businesses easily replace and rotate unskilled workers. Furthermore, the study presumes that businesses perceive bargaining councils to be administrative bureaucracies.

Equally, the study reckons that some bargaining councils are ineffective and unfair in their enforcement of compliance with labour legislation, which threatens existing jobs and job creation. Similarly, the study assumes that bargaining council agents who selectively target certain factories in certain areas and in other areas rigidly, monitor and enforce compliance with collective agreements and the law, threaten job creation and job sustainability.

The study further concludes that bargaining councils that waste employers' time in trying to extract settlements from them also threaten job creation and job

sustainability. Correspondingly, the study deduces that the CCMA's commissioners' over-emphasis on the non-adherence to procedural fairness and their wasting of employers' valuable time in the conciliation and arbitration processes could have a detrimental effect on employers' futures, thereby threatening existing jobs and job creation.

Moreover, the study assumes that business needs to employ appropriately skilled people in order to survive; otherwise the EEA threatens existing jobs and job creation. The study also presumes that the local demographics and the available skilled labour pool restrict businesses from complying with affirmative action and meeting their equity targets. Furthermore, the study deduces that compliance with the EEA's affirmative action and employment equity plans have made it difficult for businesses to fill their positions with the right people. Equally, the study reckons that poor education and the lack of or inadequate skills have caused businesses to duplicate positions and roles.

The study concludes that businesses find the administration and bureaucracy surrounding the SDA and the skills development levies documentation to be laborious, onerous and time-consuming. Likewise, the study infers that twenty-one SETAs are excessive. Similarly, the study assumes that some of the SETAs are too bureaucratic, dysfunctional and that they are not properly implementing skills development. Moreover, the study presumes that the skills development levies are perceived to simply be another form of tax, especially when businesses are limited to recovering a maximum of twenty-five percent of what they have spent on training, which threatens existing jobs and job creation. Correspondingly, the study findings also indicate that businesses perceive payments in terms of the UIA to be another form of secondary tax.

Additionally, the study construes that the recent amendments to the B-BBEEA, in particular the new B-BBEEA scorecard requirements, threaten existing jobs and job creation, especially where businesses do not meet the new scorecard criteria or where skills needs or experience is required. Correspondingly, the study deduces that the amendments to the B-BBEEA are broad but not ideal, and that more work needs to be done to improve them.

Likewise, the study supposes that although businesses were initially incentivized by the ETIA to employ the youth, they have since stopped. Similarly the study concludes that businesses have become disillusioned and discouraged with employing the youth, whom they found to be more of a burden than a benefit, which threatens existing jobs and job creation.

#### **8.3.2.4      The extent to which labour legislation impedes job creation and job sustainability in South Africa**

In considering the research objective and the research questions related to the extent to which labour legislation impedes job creation and job sustainability, the study concludes that increased labour costs, the administrative burden of compliance and the enforcement of compliance with labour legislation by collective bargaining agents deter and/or discourage businesses from creating and/or sustaining jobs.

Additionally, the study presumes` that the national minimum wage, if set too high in terms of the BCEA, will result in greater job losses and exacerbate unemployment, which will have a detrimental effect on job creation and job sustainability. Moreover, the study deduces that job creation is stifled when smaller employers cannot afford labour's services. The study also assumes that the BCEA's hourly-based limits imposed on the use of casual labour and the LRA's limitations and restrictions on fixed-term contracts have deterred some businesses from creating jobs and/or employing additional staff.

Moreover, the study infers that the LRA's limitations imposed on fixed-term contracts infringes businesses' freedom to employ and their right to select, as well as increases their cost of existing staff. This will cause some employers to hesitate to employ additional people and inhibits others from building up capacity in advance. Furthermore, the study presumes that the LRA's amendments to fixed-term contracts impedes job creation and the sustaining of jobs as the amendments discourage employers from employing the same person twice. They encourage fixed-term contracts not to be renewed and cause temporary and part-time workers to be dismissed after three months, rather than to be appointed full-time.

The study also deduces that the LRA's majoritarian principle results in wage increases being set too high, which smaller businesses are unable to afford, thereby stifling job creation. Similarly, the study reckons that CCMA commissioners who bully businesses into paying quick settlements cause businesses to automate, outsource and retrench their employees, impeding job creation and job sustainability.

Furthermore, the study supposes that the administrative burden of complying, the enforcement of compliance and the costs of compliance with the B-BBEEA and the EEA are impeding job creation and job sustainability as they can stifle entrepreneurs and deter businesses who do not qualify, especially small White-owned entities, from creating and sustaining jobs.

Equally the study decides that the financial impact of increased labour costs through the enforcement of compliance by bargaining council agents and the non-enforcement of non-compliant businesses counters job sustainability.

The study presumes that labour legislation *per se* is not the problem, but rather the implementation thereof. Moreover, the study supposes that although the legislation appears to be onerous, it is relatively easy to comply with. Furthermore, the study infers that the problem lies with the bureaucracy surrounding the implementation, the compliance and the enforcement of compliance with labour legislation. These create the impression that labour legislation is inflexible.

#### **8.3.2.5      The extent to which the quantitative and qualitative findings support social justice**

The study concludes that the triangulation of the findings confirms and supports the underpinning meta-theory that regulation through labour legislation is important and necessary to ensure that social justice is realized in the workplace.

### **8.4      Recommendations**

A social justice model for labour legislation for the promotion of job creation and job sustainability, as demonstrated in Figure 8.1 on page 572, is proposed. It is

recommended that an increase in skills development to address the skills shortage accompanied by a reduction in administrative and compliance costs will assist and promote job creation and job sustainability in South Africa, as demonstrated in Figure 8.2 on page 573.

#### **8.4.1 Entrench social justice, human rights, decent work as important underlying ethical values**

This study recommends that in order to ensure social justice, it is essential that the employment relationship continues to be regulated by labour legislation, despite its influence on job creation and job sustainability. In addition, it is recommended that government should only amend aspects of labour legislation that the study has identified as threatening or impeding job creation and job sustainability. It is also recommended that the underlying ethical value within which businesses, government and trade unions should operate is social justice, which includes human rights and decent work. This will in turn influence job creation and job sustainability positively.

#### **8.4.2 Recognise and accept the importance of labour law's normative role and labour legislation's regulation of the employment relationship**

It is recommended that all stakeholders (business, government and the trade unions) acknowledge and respect the important normative and regulatory role that labour law fulfils in protecting both employers and employees by ensuring efficiency; fair and equal treatment in the workplace; work security; and in promoting the development of skills to improve business sustainability, growth, expansion, economic growth, job creation and job sustainability.

#### **8.4.3 Increase and continue to promote and encourage skills development through labour legislation**

It is recommended that government improve the current economic and political environments in which businesses operate in order to positively influence economic growth, business sustainability, job creation and job sustainability.



In addition, the recommendation to government is that it needs to provide for a skilled labour base, extend the youth development programme and increase the skilled labour pool. A further recommendation to government is that it also needs to facilitate, fund and provide training for artisans and the acquisition of necessary skills. Another recommendation is for government to incentivise businesses further to employ and train more people and to give entrepreneurs access and opportunity.

Consequently, it is recommended that labour legislation should continue to regulate, promote and encourage skills development and continue to provide businesses with financial incentives and subsidies through the SDA, the ETIA, the B-BBEEA, the EEA, the LRA and the UIA to motivate them to develop skills; train their workers; employ the youth, first-time work seekers and the unemployed; to assist with and to encourage job creation and job sustainability.

It is further recommended that government should extend and increase the ETIA's incentives, increase the Department of Trade and Industry's subsidies and increase the SETA refunds to businesses for training and development so that businesses are further encouraged to invest even more in training and skills development, all of which have a positive influence on job creation and job sustainability and promotes employment.

This study also recommends that government spend more money on pre-tertiary education. Additionally, it is recommended that government urgently improve primary, secondary and tertiary education content to match the workplace's needs. Moreover, it is recommended that government improve the language skills of its people in order to sustain jobs. Furthermore, government should continue to increase and develop the national skills pool to match supply with demand and assist with and encourage job creation and job sustainability.

Likewise, it is recommended that government should provide more sponsored internship programmes. Similarly, it is recommended that government should step in, channel money and help small businesses, as well as empower workers with the necessary skills to make them more efficient and productive. It is also further recommended that government should be fair and not restrict training and development to designated groups only.

The recommendation to government is that the skills development levies need to be spent more efficiently. It is recommended that government should focus on providing quality education and not just quantity of education. Government needs to improve the support structure that feeds into business, namely primary, secondary and tertiary education. It is recommended that government should broaden training and education to non-designated groups as well. A further recommendation is that business should continue to invest in education, training, re-training, skilling and up-skilling their workers as it has a positive influence on business sustainability, growth, expansion, economic growth, job creation and job sustainability.

Moreover, it is recommended that businesses should contribute overall to training by training over and above their individual requirements. Furthermore, it is recommended that there should be greater assistance and co-operation between big business and small business in order to assist them with and to provide funding for education, training and development. This will help small businesses to grow and succeed.

The recommendation for businesses and trade unions is that there should be greater communication and co-operation between them. Furthermore, it is recommended that trade unions should represent their members' interests and participate more actively on bargaining council structures.

#### **8.4.4 Simplify and streamline labour legislation**

The recommendation for government is not to de-regulate labour legislation, but to regulate it better, increase flexibility, simplify provisions, remove duplications and overlap. The recommendation is for government to simplify and streamline labour legislation by consolidating the BCEA and the LRA; incorporating the EEA into the LRA; combining the SDA and the SDL; removing the duplication and overlap in functions between the CCMA, bargaining councils and SETAs; ensuring that industries are properly regulated; reduce bureaucracy and administrative documentation by facilitating online applications and submissions; and reduce

compliance costs and penalties. Similarly, it is recommended that government should control businesses less and create a minimum legislative framework.

It is recommended that government refine the BCEA provisions relating to hours of work and hourly-based limits imposed on the use of casual labour, which introduces greater flexibility for small businesses and certain industries such as the transport industry.

This study also recommends that government amend the LRA's provisions relating to the limitations and restrictions placed on fixed-term contracts by increasing the initial period of fixed-term contracts to six months as this would allow for maternity leave and a longer period of probation. In addition, it is recommended that government re-visit and revise the role and function of bargaining councils, especially where they overlap and duplicate the functions of the CCMA, labour inspectors and the SETAs.

It is recommended that government should improve the regulation of strikes and there should be a fair deadlock breaking mechanism to break deadlocks, when parties reach an impasse. Moreover, it is recommended that government should improve the regulation of trade unions.

It is further recommended that government should relieve the CCMA's burden by refining its vetting process by having a pre-trial conference before conciliation takes place. This would ensure that the CCMA establishes the merits and deals with frivolous and vexatious cases in advance. It is also recommended that Commissioners should be trained to know that they need to be ethical at all times and should remain neutral throughout the conciliation and arbitration process, as well as to focus on the substantive merits during the conciliation process when trying to arrive at a fair settlement between the parties.

Moreover, it is recommended that there needs to be a sunset clause on employment equity. Furthermore, it is recommended that government should also amend the

B-BBEE legislation; revise the B-BBEE scorecard and relax the B-BBEE scoring system; place fewer requirements on smaller businesses; and more effectively and efficiently implement the B-BBEEA.

#### **8.4.5 Simplify administrative compliance**

It is recommended that government should simplify business's administrative burden of complying with the BCEA, the EEA, the LRA, the SDA and the SDLA, as well as reduce the administrative bureaucracy found in the bargaining councils, sectoral determinations and in the SETAs. Correspondingly, it is recommended that government should make administrative compliance easier for businesses and reduce the cost of compliance through automation, such as the creation and facilitation of online e-filing technology and systems used by SARS to enable businesses to complete the administrative compliance forms online, as well as to apply for refunds electronically online. Likewise, it is recommended that government should reduce bureaucracy, as well as the cost of compliance.

It is proposed that government make it less cumbersome for employers to train and get a refund of their money. In addition, it is recommended that government simplify the administrative process by developing an enabling and supportive online e-filing system for labour legislation, like SARS has, so that SDA reports, applications for accreditation and refunds for skills development levies can be completed and submitted online. Furthermore, it is recommended that government should consolidate, streamline and reduce the number of SETAs, retain those that are working and abandon those that are not. Furthermore, it is recommended that there should be one communal SETA with branches, similar to the CCMA's structures. In addition, it is recommended that government extend the ETIA and increase the financial incentives for businesses to employ and train the youth.

Likewise, it is recommended that government should operate its administration in accordance with ethical business principles and appoint business-orientated people with the same level of qualifications in positions, as would be required in the private sector. Similarly, it is recommended that government should cut back on excessive

spending, stop wasting money and eradicate corruption; create certainty; and increase business and investor confidence in the South African economy. Correspondingly, it is suggested that government should be a more active participant in the economy. It should revitalize the economy, stop privatisation and motivate business to sustain jobs and assist struggling companies. Additionally, government should create employment mechanisms as it did in the 1940's and 1950's, start infrastructure development programmes and there should be less regulation.

Therefore, government should not de-regulate labour legislation, but rather improve regulation by simplifying the labour legislation, streamlining it, reducing bureaucracy and administrative burdens, compliance costs and penalties.

The recommendation for business is that employers need to strictly act in accordance with labour legislation; be correct; substantively and procedurally fair; and draft the correct documentation.

#### **8.4.6 Reduce compliance costs and penalties**

The recommendation is for government to reduce the financial impact of increased labour costs and the payment of “nuisance settlements”. In addition, the recommendation is that government should reduce the bureaucracy surrounding the implementation, compliance and the enforcement of compliance with labour legislation and the cost of compliance. It is also recommended that government properly regulate the enforcement of compliance in order to enhance and improve job creation and job sustainability. It is further recommended for government to enforce compliance through labour inspectors and not bargaining council agents.

#### **8.5 Suggestions for future studies**

Time constraints have not allowed for more research on this topic and consequently this study has not explored all of the issues which have been identified herein in detail. Thus, there is scope for further research, as follows:

The current study was limited to two groups, namely businesses and trade unions, who are generally a homogenous population with similar backgrounds. It is recommended that the study should be expanded to other members of the business and trade union community, from which the participants and respondents are selected. A truly representative sample would look at a heterogeneous population sample, comprising members from NEDLAC; the Department of Labour; employer organisations; business forums and chambers of commerce; trade union federations; legal institutions; human resources; law and management academics; as well as legal human resources and managerial professionals who practice in South Africa.

There are also a number of focus areas that this study was unable to examine. Consequently, the following topics arise from this study, which future studies may consider:

- Consolidating and streamlining labour legislation, especially where there is an overlap;
- The effectiveness of current labour legislation strategies to encourage and improve job creation and job sustainability;
- The effectiveness of current legislation strategies to encourage and improve skills development and youth employment;
- Ways in which the administrative burden and cost of compliance with labour legislation can be reduced through computerised record-keeping and online e-filing for the submission of reports and application for refunds;
- Efficient and effective functioning of the SETAs;
- A consolidation of the SETAs, as well as the revision of the role and function of the SETAs; the reduction of bureaucracy and the administrative burden, and the removal of unnecessary duplication by bargaining councils on training and development;
- Efficient and effective functioning of bargaining councils, statutory councils and sectoral determinations;
- A revision of the role and function of bargaining councils; the reduction of bureaucracy and the administrative burden; and the removal of unnecessary duplication with the CCMA, as well as with the SETAs on training and

development; and with labour inspectors on enforcement and compliance;

- Efficient and effective functioning of the CCMA;
- A revision of the CCMA's dispute resolution processes, especially with regard to conciliation and nuisance settlements; and
- The effects on a country's economy where the executive and the legislature disrespect the Constitution of South Africa, the rule of law and social justice; where bribery and corruption is rife amongst its state officials; and there is a weak educational system.

## **8.6 Concluding note**

The primary objective of this study was to establish the influence of labour legislation on job creation and job sustainability in South Africa. The study findings reveal that skills development is primarily where job creation and job sustainability have taken place in recent years. This may be attributed to specific pieces of labour legislation, such as the SDA, the EEA, the LRA and the UIA. In addition, the study findings show that other ancillary legislation has also positively influenced job creation and job sustainability by encouraging, facilitating and promoting skills development and job creation.

An evaluation of business and trade union perceptions of the influence of labour legislation on job creation and job sustainability show that labour legislation primarily has a positive influence on job creation and job sustainability. Nevertheless, certain aspects of labour legislation, and in particular, compliance with labour legislation threaten and/or impede job creation and job sustainability.

In particular, the study findings expose that the administrative burden of compliance, the cost of compliance and the bureaucracy related thereto, as well as corruption and the selective enforcement of compliance threaten and/or impede job creation and job sustainability.

In addition, the study findings disclose that bargaining councils and SETAs are too bureaucratic and that their administration, enforcement and implementation of labour legislation threaten and/or impede job creation and job sustainability, as well as negatively influence job creation and job sustainability. The study's findings confirm

that these negative influences have contributed to the increase in criticism of labour legislation, the increased demand for labour legislation to be relaxed and the labour market to be de-regulated.

The study findings further reveal that skills development has a positive influence on economic growth, business sustainability, growth and expansion, employment, job creation and job sustainability. Therefore, it is recommended that government should continue to provide businesses with greater financial incentives to train and develop workers. It is also recommended that government should focus on finding ways to reduce the administrative burdens associated with the labour legislation and the associated bureaucracies, as well as eliminate bias and corruption.

Furthermore, it is recommended that government should take drastic steps to eliminate corruption and ensure economic and political stability to increase local and foreign investor confidence in the South African economy. Moreover, it is recommended that government should only amend those aspects of the labour legislation that the study identified as threatening and/or impeding job creation and job sustainability by reducing the related administrative burdens, bureaucracy and enforcement of compliance, which are hindering and impeding job creation and job sustainability in South Africa. Consequently, the recommendation for the future is that government should enhance the positive aspects of labour legislation identified in this study and further encourage, enhance and improve skills development to empower the nation, increase economic growth and productivity, eliminate inequality and reduce poverty.



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Department of Management & Entrepreneurial Studies

1<sup>st</sup> March 2016

Attention: CEO / MD of Company

Address

.....  
.....

Dear Sir/Madam

**RE : REQUEST FOR PERMISSION FOR THE DIRECTORS OR MEMBERS  
AND SENIOR MANAGERIAL STAFF OF YOUR BUSINESS ENTITY TO  
PARTICIPATE IN THIS STUDY FOR ACADEMIC RESEARCH PURPOSES:**

My name is **Anna Johanna Catharina Womack**; I am a doctoral student reading towards a PHD in Management Sciences: Business Administration at the Durban University of Technology in Durban, South Africa.

I hereby seek your permission to allow me to invite all the directors, members, partners, trustees and senior managerial staff in your business entity to participate in this study to investigate the perceptions of entrepreneurs, managers and trade unions of the influence of labour legislation on job creation and job sustainability.

Through your participation, I hope to understand which legislative factors may influence job creation and job sustainability.

The results of the study will primarily be for the completion of my doctoral dissertation and is intended to contribute to an existing body of knowledge. With the help of directors', members', senior managerial staff's, entrepreneurs' and trade unions' participation, I hope to explore and understand what influence current labour legislation, in particular, the Basic Conditions of Employment Act No. 75 of 1997; the

Labour Relations Act No. 66 of 1995; the Employment Equity Act No. 55 of 1998; the Broad-Based Black Economic Empowerment Act No. 53 of 2003 is having on your business's decisions to create and sustain jobs. An outcome of the research will be to make the recommendations needed to be taken by all stakeholders in order to enhance and/or improve labour legislation. This will enable government to amend labour legislation, if needed, to sustain existing jobs and to create more sustainable jobs in the future, in order to achieve economic growth. I also hope to share my results by publishing them in journal articles.

I do not know of any risks to your company or close corporation or business entity and/or its subsidiaries, if the directors, members, senior managers or entrepreneurs, businessmen or women decide to participate in this survey. However, I guarantee that their responses will not be identified with them or your business entity personally. Their participation in this project is voluntary or optional. They can refuse to participate or withdraw from the project at any time with no negative consequence. I promise not to share any information that identifies your company or/ close corporation or business entity and/or its subsidiaries or the directors, members, senior managers, or entrepreneurs or businessmen/women with anyone outside my research group, which consists of my supervisor, my co-supervisor and myself. The directors, members, senior managers, businessmen or women will not be required to put their names or any identifiers on the questionnaire. The Faculty of Management Sciences at the Durban University of Technology will maintain confidentiality and the anonymity of records identifying your company or close corporation or business entity and/or its subsidiaries or the directors, members, senior managers, or entrepreneurs or businessmen/women as participants for many years.

The survey should take the directors, senior managers / members of the close corporation / entrepreneurs / businessmen about fifteen minutes to complete.

I hope you will grant me permission to invite the directors or members and/or senior managerial staff of your company or close corporation or business entity to participate in this research, and if they agree to participate, that I may send them my survey questionnaire to complete; that you permit them to complete the survey questionnaire; and that you also grant me permission to interview them, if they agree and consent thereto.

If you have any questions or concerns about the research, you may contact me on 0825780884 or by email [cat@cwomack.za.net](mailto:cat@cwomack.za.net).

I humbly thank you for having taken the time to read this letter and I humbly look forward to receiving a favourable response from you.

Yours faithfully

**CATHARINA WOMACK (MRS)**

Student No. 21242648

P.O.Box 30985

Mayville

4058

## **CONSENT**

I have read and understand the above information. I have received a copy of this form. I agree to allow the senior managerial staff members of my organization to participate in this study.

CEO's / Managing Director /  
Member/ Owner of Business's signature \_\_\_\_\_ Date\_\_\_\_\_

Company/Close Corporation/  
Entity/ Business stamp

Researcher's signature\_\_\_\_\_ Date \_\_\_\_\_





## LETTER OF INFORMATION

**Title of the Research Study:** The influence of labour legislation on job creation and job sustainability in South Africa

**Researcher:** Anna Johanna Catharina Womack (MBA, LLB, B.Soc.Sci)

**Supervisor:** Professor Karunanidhi Reddy (LLD, LLM, LLB, B. Comm)

**Co-Supervisor:** Dr Soobramoney Chetty (D.Com, MBL, B Com (Hons), B. Paed)

### Brief Introduction and Purpose of the Study:

This is a mixed method research study which aims to investigate managerial, entrepreneurial and trade unionist perceptions of the impact that labour legislation, in regulating the labour relationship, has on job creation and job sustainability in South Africa.

**Outline of the Procedures:** Data will be collected through the administration of survey questionnaires and interviews. The survey questionnaire will be administered to the participant at his or her place of work or location. It will be used to obtain the necessary information to conduct the study. A 5 point Likert scale will be used to measure the respondents' answers to the questions in the questionnaire. The questionnaires will be delivered to the participants electronically or face-to-face, whichever manner the participant prefers. The participants will be required to voluntarily accept being interviewed. The researcher will contact the participant to arrange for the venue and time best suited to the participant. This communication will be done *via* telephone and email after permission to conduct research has been obtained.

Face-to-face interviews will also be conducted with participants who have informed the researcher in writing that they agree to be interviewed. An interview schedule of questions to be asked at the interview will be provided in advance of the interview taking place. No risk or discomfort will be encountered or experienced by participants during the course of interviews.

**Benefits:** The output will enable participants to gain knowledge in order to make meaningful business decisions with regard to creating and sustaining jobs, whilst

simultaneously enabling the researcher to publish journal articles, as well as completing a doctoral thesis.

**Reason/s why the Participant May Withdraw from the Study:**

Participants will be informed and assured that participation is voluntary and for the sole benefit of the research. Participants reserve the right to withdraw from the study at any stage (for example non-compliance, illness, adverse reactions, etc) and that there shall be no consequences for the participants should they choose to withdraw.

**Remuneration:**

There will be no remuneration for participants in the study or for the researcher.

**Costs of the Study:** (N/A)

**Confidentiality:** Information obtained will be treated in the strictest confidence.

**Research-related Injury:** (N/A)

**Persons to Contact in the Event of Any Problems or Queries:**

Please contact the researcher on 031 3735366, my supervisor on 031 373 5367, my co-supervisor 031 3735395 or the Institutional Research Ethics administrator on 031 373 2900. Complaints can be reported to the DVC: TIP, Prof F. Otieno on 031 373 2382 or [dvctip@dut.ac.za](mailto:dvctip@dut.ac.za).

**General:**

Potential participants are assured that participation is voluntary and the approximate number of participants to be included will be disclosed. A copy of the information letter will be issued to participants.



## CONSENT

### Statement of Agreement to Participate in the Research Study:

- I hereby confirm that I have been informed by the researcher, Anna Johanna Catharina Womack , about the nature, conduct, benefits and risks of this study - Research Ethics Clearance Number: \_\_\_\_\_,
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed by a computerised system by the researcher.
- I may, at any stage, without prejudice, withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

\_\_\_\_\_  
**Full Name of Participant**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Time**

\_\_\_\_\_  
**Signature**

I, Anna Johanna Catharina Womack, herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

Anna Johanna Catharina Womack  
**Full Name of Researcher**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Full Name of Witness (If applicable)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

**Please note the following:**

Research details must be provided in a clear, simple and culturally appropriate manner and prospective participants should be helped to arrive at an informed decision by use of appropriate language (grade 10 level - use Flesch Reading Ease Scores on Microsoft Word), selecting of a non-threatening environment for interaction and the availability of peer counseling (Department of Health, 2004).

If the potential participant is unable to read/illiterate, then a right thumbprint is required and an impartial witness, who is literate and knows the participant (e.g. parent, sibling, friend, pastor, etc.) should verify in writing, duly signed that informed verbal consent was obtained (Department of Health, 2004).

If anyone makes a mistake completing this document (e.g. wrong date or spelling mistake) a new document has to be completed. The incomplete original document has to be kept in the participant file and not thrown away and copies thereof must be issued to the participant.

**References:**

Department of Health: 2004. *Ethics in Health Research: Principles, Structures and Processes* <http://www.doh.gov.za/docs/factsheets/guidelines/ethnics/>

Department of Health. 2006. *South African Good Clinical Practice Guidelines*. 2nd Ed. Available at: [http://www.nhrec.org.za/?page\\_id=14](http://www.nhrec.org.za/?page_id=14)



Department of Management & Entrepreneurial Studies

10<sup>th</sup> September 2015

.....  
.....

Dear Respondent,

### **Letter of Consent**

My name is **Anna Johanna Catharina Womack**; I am a doctoral student reading towards a PHD in Management Sciences: Business Administration at the Durban University of Technology in Durban, South Africa. I hereby seek your consent to conduct a research study on the topic **“The influence of labour legislation on job creation and job sustainability in South Africa”**.

The aim of this topic is to solicit information from South African entrepreneurs, managers and trade unionists regarding their perceptions of the extent to which the regulation of the employment relationship through labour legislation impacts on job creation and job sustainability in South Africa. The survey also aims to identify the sections of the various labour legislation that contribute to job creation and job sustainability; and the sections of the various labour legislation that constrain and/or militate against sustaining existing jobs and creating new jobs; as well as to ascertain the overall impact of the sections of the various labour legislation on job creation and job sustainability as a whole.

Through your participation, I hope to understand what legislative factors may serve as hurdles or are hindering job creation and job sustainability. The results of the study are to contribute to the existing body of knowledge, exploring the business employment strategies which are unknown business, trade unions and government by making the recommendations needed to be taken by all stakeholders in order to

enhance and/or improve labour legislation, thereby enabling business to see the need for compliance to sustain existing jobs and to create more jobs in order to achieve economic growth. The information and the ratings that you provide will assist me in identifying these issues.

The questionnaire will be administered for the purpose of eliciting the required information and should not take more than 15-20 minutes to complete.

Please know that your participation in this project is voluntary. You may refuse to participate or you may withdraw from the project at any time with no negative consequences as you do not have to answer individual questions you may not want to answer. Your name will not be attached to the questionnaire and all information will be held in the strictest confidence. Therefore, should you have any query with regard to the questionnaire or about participating in this study, do not hesitate to contact me or my supervisor on the telephone numbers below.

Thanking you in anticipation

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Researcher's Name: A.J. Catharina Womack  
Cell Number: 082 578 0884

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Supervisor: Professor Karunanidhi Reddy  
Contact number: 031 373 5367

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Co-Supervisor: Dr Soobramoney Chetty  
Contact number: 031 3735395

DUT Research Ethics Administration  
Contact number: 031 373 2900

Dear Respondent

## HOW TO COMPLETE THE QUESTIONNAIRE

1. Please answer the questions as truthfully as you can. Please read and follow the directions for each part.
2. You may only answer the questions you feel comfortable about. If you are uncomfortable to answer a question, you may indicate that you do not want to answer it. Kindly give your reason. For those questions that you do answer, your responses will be kept confidential.
3. You can mark each response by making a cross (WITH A PEN), or by filling in the required words or numbers.

In this questionnaire, you are asked to indicate your opinion or perception, so there is no “right” or “wrong” answers to any question. If you wish to make a comment, please write it directly on the questionnaire itself. Please try to answer all the questions. The questionnaire should only take 15-20 minutes to complete.

Thank you for participating.

## THE FOLLOWING PIECES OF LABOUR LEGISLATION WILL BE COVERED IN THE QUESTIONNAIRE:

- Basic Conditions of Employment Act No. 75 of 1997 (BCEA);
- Employment Equity Act No. 55 of 1998 (EEA);
- Labour Relations Act No. 66 of 1995 (LRA);
- Skills Development Act No. 97 of 1998 (SDA);
- Skills Development Levies Act No.9 of 1999 (SDL);
- Unemployment Insurance Act No. 63 of 2001 (UIA);
- Occupational Health and Safety Act No. 85 of 1993 (OHASA);
- Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA);
- Broad-Based Black Economic Empowerment Act No. 53 of 2003 (B-BBEE);
- Employment Services Act No.4 of 2014 (ESA);
- Employment Tax Incentive Act No 26 of 2013 (ETIA).

Please note that in the questionnaire, the abbreviations of the above-mentioned pieces of labour legislation will be used.

## **PART 1: SOCIAL JUSTICE, HUMAN RIGHTS AND THE RIGHT TO DECENT WORK**

Please mark with a cross (X) only ONE response to each of the statements that follows, per row below.

- 1. Please indicate how important or unimportant you consider the following social justice, human rights and the right to decent work factors to be:**

a.	Creation of job opportunities for work seekers	Very important	Important	Neutral	Unimportant	Very unimportant
b.	Freedom from exploitation in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
c.	Protection of workers' rights, ensuring workplace security	Very important	Important	Neutral	Unimportant	Very unimportant
d.	The development of quality education and training systems	Very important	Important	Neutral	Unimportant	Very unimportant
e.	Equality in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
f.	Freedom from discrimination in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
g.	A sustainable living, whereby workers are paid a fair income	Very important	Important	Neutral	Unimportant	Very unimportant



## **PART 2: LABOUR LAW**

Please mark with a cross (X) only ONE response per row for each of the statements below.

### **2. Please indicate to what extent you agree or disagree with the following statements about the role of labour law, which is to:**

a.	Balance the employment relationship	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
b.	Regulate (control, legalize and standardize) the employment relationship	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
c.	Ensure conformance with human rights	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
d.	Ensure business sustainability	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
e.	Enhance social equality	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
f.	Enhance economic equality	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
g.	Find a balance between social justice and efficiency	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
h.	Find a balance between efficiency and worker security	Strongly agree	Agree	Neutral	Disagree	Strongly disagree

### PART 3: JOB CREATION

Please mark with a cross (X) only ONE option in the questions below.

3. The percentage of the business entity's annual budget which was spent on job creation last year was:

a.	0 percent	
b.	1-20 percent	
c.	21-40 percent	
d.	41-60 percent	
e.	Over 60 percent	

### THE INFLUENCE OF LABOUR LEGISLATION ON JOB CREATION

4. Please indicate to what extent the following provisions, in terms of the BCEA dealing with the different categories of working hours, are likely or unlikely to influence your business's decision to create jobs through:

a.	Ordinary hours of work (Section 9)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Overtime hours (Section 10)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Working on Sundays (Section 16)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Night work (Section 17)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Work on Public holidays (Section 18)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act by labour inspectors (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act by labour inspectors (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 5. Please indicate to what extent the following provisions dealing with work time flexibility in terms of the BCEA are likely or unlikely to influence your business's decision to create jobs through:**

a.	Compressed working week (Section 11)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Averaging of hours worked (Section 12)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 6. Please indicate to what extent the following provisions dealing with the fairness requirements in terms of the LRA are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Regulation of the use of "alternative" employment contracts (Fixed-Term contracts, part-time contracts, labour brokers and temporary employment services) to improve job creation (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) to promote labour peace in the workplace (Sections 64 and 65)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

7. **Please indicate to what extent the following provisions dealing with various kinds of dismissals in terms of the LRA are likely or unlikely to influence your business's decision to create jobs through the:**

a.	General requirements of fairness (Section 188)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Requirements for fairness in respect of minor retrenchments (Section 189)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

8. **Please indicate to what extent the following provisions in terms of the LRA promoting equal treatment and equality in the workplace, are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Control of alternative "employment" contracts to improve job security (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Automatically unfair dismissals (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**9. Please indicate to what extent the following provisions in terms of the EEA promoting equality and equal treatment in the workplace, are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Prohibition of unfair discrimination (Section 6)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Removal of unfair discrimination (Section 9 (3) and (4))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Section 34)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**10. Please indicate to what extent the following aspects of legislation are likely or unlikely to influence your business's decision to create jobs through:**

a.	Job creation schemes in terms of Sections 5 and 6 of the ESA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Tax incentive schemes in terms of Sections 2 and 3 of the ETIA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Employment services offices, in terms of Sections 23 and 24 of the SDA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Training of unemployed workers, in terms of Sections 18 and 19 of the UIA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Affirmative action, in terms of Sections 12-27 of the EEA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Black ownership, corporate advancement and involvement of Black people in terms of Section 2 of the B-BBEEA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

#### **PART 4: JOB SUSTAINABILITY**

- 11. To what extent have the number of available permanent and temporary jobs in your business entity increased in the past five years:**

a.	Permanent jobs	Increased substantially	Increased slightly	Remained the same	Decreased slightly	Decreased substantially
b.	Temporary jobs	Increased substantially	Increased slightly	Remained the same	Decreased slightly	Decreased substantially

- 12. Please indicate the extent to which the following skills development factors are likely or unlikely to influence your business entity's decision to educate and train in order to sustain jobs through:**

a.	Education improving the business's competitiveness	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training improving the business's competitiveness	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Education increasing workers' productivity	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Training increasing workers' productivity	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 13. The percentage of your business entity's annual budget which was spent on skills development last year was:**

a.	0 percent	
b.	1-20 percent	
c.	21-40 percent	
d.	41-60 percent	
E.	Over 60 percent	

## THE INFLUENCE OF LABOUR LEGISLATION ON JOB SUSTAINABILITY

- 14. Please indicate to what extent the following provisions, in terms of the BCEA, are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	Control of the number of overtime hours worked retaining jobs (Section 10)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Regulation of sick leave retaining jobs (Sections 22 to 24)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of maternity leave retaining jobs (Section 25 and 26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 15. Please indicate to what extent the provision dealing with notice periods, in terms of Section 37 of the BCEA, is likely or unlikely to influence your business entity's decision to sustain jobs:**

Very likely	
Quite likely	
Neutral (neither likely nor unlikely)	
Quite unlikely	
Very unlikely	

- 16. Please indicate to what extent the provisions regulating minimum wages through sectoral determinations, in terms of Sections 51-58 of the BCEA, are likely or unlikely to influence your business entity's decision to sustain jobs:**

Very likely to sustain jobs	
Quite likely to sustain jobs	
Neutral (neither likely nor unlikely to sustain jobs)	
Quite unlikely to sustain jobs	
Very unlikely to sustain jobs	

- 17. Please indicate to what extent Section 41 of the BCEA dealing with the payment of severance pay to retrenched workers is likely or unlikely to influence your business entity's decision to sustain jobs:**

Very likely to sustain jobs	
Quite likely to sustain jobs	
Neutral (neither likely nor unlikely to sustain jobs)	
Quite unlikely to sustain jobs	
Very unlikely to sustain jobs	

- 18. Please indicate to what extent the following requirements for fairness in terms of the LRA are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	Regulation of the use of "alternative" employment contracts (fixed-term contracts, part-time contracts, labour brokers and temporary employment services) improving job security (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Protection of workers affected by mergers, takeovers or transfers improving job security (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) promoting labour peace in the workplace (Sections 64 and 65)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements by the bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of collective agreements by bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely



**19. Please indicate to what extent the following provisions, in terms of the LRA dealing with various kinds of dismissals, are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	General requirements of fairness (Section 188)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Requirements for fairness in respect of minor retrenchments (Section 189)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**20. Please indicate to what extent the following provisions; in terms of the LRA dealing with the promotion of equal treatment and equality, are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Control of alternative "employment" contracts improving job security (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Automatically unfair dismissals (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 21. Please indicate to what extent the following provisions, in terms of the EEA dealing with the promotion of equality and equal treatment in the workplace, are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	Prohibition of unfair discrimination (Section 6)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Removal of unfair discrimination (Section 9 (3) and (4))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Section 34)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 22. Please indicate the extent to which the following provisions, in terms of the SDA dealing with various forms of skills development, are likely or unlikely to influence your business entity's decision to train workers in order to sustain jobs through:**

a.	Education ensuring that workers are equipped with necessary skills to work (Section 22)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training provided by skills programmes ensuring that workers are equipped with the necessary skills to perform their work competently (Section 20)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Re-training through skills programmes providing workers with the new skills needed to perform different work (Section 20)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Learnership agreements ensuring that workers are equipped with the relevant vocational skills to perform their work competently (Sections 16-19)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 23. Please indicate to what extent the following provisions, in terms of the LRA dealing with industrial and sectoral training and education, are**

**likely or unlikely to influence your business entity's decision to train workers in order to sustain jobs by:**

a.	Educating workers who lack skills	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training workers who lack skills (Sections 28, 43 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Re-training workers with new skills to perform different work (Sections 28, 43 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Ensuring that workers, through learnership agreements, acquire the relevant vocational skills needed to perform their work competently (Sections 28, 43 and 84).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**24. Please indicate to what extent the following provisions, in terms of the LRA, dealing with skills improvement, are likely or unlikely to influence your business entity's decision to sustain jobs through:**

a.	Training under-performing workers who lack skills, thereby ensuring that jobs are maintained (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Retraining workers instead of retrenching in order to help them to retain their jobs (Sections 189, 189A and 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**25. Please indicate to what extent these provisions, in terms of the UIA, are likely or unlikely to influence your business entity's decision to sustain jobs through:**

a.	Illness benefits helping sick workers to retain their jobs while they are on unpaid sick leave (Section 19)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Maternity benefits helping pregnant workers to retain their jobs while they are on unpaid maternity leave (Section 24)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Adoption benefits helping adoptive parents, adopting a child under the age of 2 to retain their jobs while they are on unpaid leave (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**26. Please indicate to what extent the following provisions, in terms of OHASA, are likely or unlikely to influence a business entity's decision to sustain jobs through:**

a.	Creating a safe working environment	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Monitoring health and safety by health and safety representatives (Sections 18 and 22)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Monitoring of health and safety by labour inspectors (Sections 24 and 25)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Enforcement of health and safety by labour inspectors (Sections 30-38)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**27. Please indicate to what extent the following provisions, in terms of COIDA, are likely or unlikely to influence your business entity's decision to sustain jobs through the:**

a.	Compensation Commissioner holding inquiries into accidents sustain jobs (Section 40)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 and 99)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**PART 5: GENERAL PARTICULARS**

**28. What is your current position in the business entity?**

Chief Executive Officer	
Managing Director	
Director of a Company	
Senior Manager	
Manager	
Member of Close Corporation	
Owner	
Partner	
Trustee	
Other	

**29. What type of business entity is it?**

Business Trust	
Close Corporation	
Multi National Corporation	
Partnership	
Private Company (unlisted)	
Public Company (listed on the stock exchange)	
Sole proprietor	
Other	

**30. The business entity is situated in the following sector:**

Agriculture, forestry and fishing	
Building and Construction	
Business services	
Communication	
Education	
Electricity, gas and water	
Financial services	
General government services	
Health	
Hospitality, catering and accommodation	
ICT and electronics	
Manufacturing	
Mining and quarrying	
Motor trade	
Property related and real estate services	
Retail and Wholesale	
Tourism	
Transport and storage	
Other	

**31. Please indicate how many workers currently work for the entire (including all branches) business entity.**

1 – 10 workers	
11 – 20 workers	
21 – 50 workers	
51 – 200 workers	
Over 200 workers	

- 32. Please indicate the percentage of current workers in the entire (including all branches) business entity who fall into each of the following categories of workers:**

<b>Categories of workers</b>	<b>0 percent</b>	<b>1 – 20 percent</b>	<b>21 - 40 percent</b>	<b>41 – 60 percent</b>	<b>61 - 80 percent</b>	<b>81 – 100 percent</b>
a. Permanent employees						
b. Part-time employees						
c. Fixed-Term contract workers						
d. Seasonal workers						
e. Casual workers						
f. Workers supplied by labour brokers						
g. Workers supplied by temporary employment services						

- 33. Please indicate the percentage of workers in your business entity (including all branches) that currently belong to a trade union.**

0 percent	
1 - 20 percent	
21 -40 percent	
41 - 60 percent	
61 - 80 percent	
81 – 100 percent	

**34. Is there a Bargaining Council or a Statutory Council established for the industry or sector to which the business entity belongs?**

a.	Yes, there is a bargaining council established for the industry or sector in which the business entity conducts business	
b.	Yes, there is a statutory council established for the industry or sector in which the business entity conducts business	
c.	No, there is neither a bargaining council nor a statutory council established for the industry or sector in which the business entity conducts business	
d.	I do not know	

**PART 6: ADDITIONAL COMMENTS**

**35. Please feel free to comment on or add anything which you feel is relevant and which may not have been covered or adequately covered in this questionnaire:**

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Once again, thank you very much for completing this questionnaire.

**Catharina Womack (Mrs)**

## INVITATION TO ALSO PARTICIPATE IN AN INTERVIEW

Please indicate below whether or not you are willing to participate in an interview. Prior to the interview, I will forward you the schedule of interview questions *via* email.

**37. Agreement or refusal to participate in an interview, as well:**

a.	Yes, I agree to be interviewed	
b.	No, I do not wish to be interviewed	

**38. As the responses to the questionnaire are anonymous, please record your contact details, if you agree to be interviewed, so that I can contact you:**

Email address	
Telephone number	
Cellphone number	
Skype address	

**39. If you agree to be interviewed please indicate what form of interview you prefer to participate in:**

a.	In person, face-to-face	
b.	Skype	
c.	Telephonically	
d.	WhatsApp	
e.	Viber	



Dear Respondent

## HOW TO COMPLETE THE QUESTIONNAIRE

1. Please answer the questions as truthfully as you can. Please read and follow the directions for each part.
2. You may only answer the questions you feel comfortable about. If you are uncomfortable to answer a question, you may indicate that you do not want to answer it. Kindly give your reason. For those questions that you do answer, your responses will be kept confidential.
3. You can mark each response by making a cross (WITH A PEN), or by filling in the required words or numbers.

In this questionnaire, you are asked to indicate your opinion or perception, so there is no “right” or “wrong” answers to any question. If you wish to make a comment, please write it directly on the questionnaire itself. Please try to answer all the questions. The questionnaire should only take 15-20 minutes to complete.

Thank you for participating.

## THE FOLLOWING PIECES OF LABOUR LEGISLATION WILL BE COVERED IN THE QUESTIONNAIRE:

- Basic Conditions of Employment Act No. 75 of 1997 (BCEA);
- Employment Equity Act No. 55 of 1998 (EEA);
- Labour Relations Act No. 66 of 1995 (LRA);
- Skills Development Act No. 97 of 1998 (SDA);
- Skills Development Levies Act No.9 of 1999 (SDL);
- Unemployment Insurance Act No. 63 of 2001 (UIA);
- Occupational Health and Safety Act No. 85 of 1993 (OHASA);
- Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA);
- Broad-Based Black Economic Empowerment Act No. 53 of 2003 (B-BBEE);
- Employment Services Act No.4 of 2014 (ESA);
- Employment Tax Incentive Act No 26 of 2013 (ETIA).

Please note that in the questionnaire, the abbreviations of the above-mentioned pieces of labour legislation will be used.

## **PART 1: SOCIAL JUSTICE, HUMAN RIGHTS AND THE RIGHT TO DECENT WORK**

Please mark with a cross (X) only ONE response to each of the statements that follows, per row below.

- 1. Please indicate how important or unimportant you consider the following social justice, human rights and the right to decent work factors to be:**

a.	Creation of job opportunities for work seekers	Very important	Important	Neutral	Unimportant	Very unimportant
b.	Freedom from exploitation in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
c.	Protection of workers' rights, ensuring workplace security	Very important	Important	Neutral	Unimportant	Very unimportant
d.	The development of quality education and training systems	Very important	Important	Neutral	Unimportant	Very unimportant
e.	Equality in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
f.	Freedom from discrimination in the workplace	Very important	Important	Neutral	Unimportant	Very unimportant
g.	A sustainable living, whereby workers are paid a fair income	Very important	Important	Neutral	Unimportant	Very unimportant

## PART 2: LABOUR LAW

Please mark with a cross (X) only ONE response per row for each of the statements below.

### 2. Please indicate to what extent you agree or disagree with the following statements about the role of labour law, which is to:

a.	Balance the employment relationship	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
b.	Regulate (control, legalize and standardize) the employment relationship	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
c.	Ensure conformance with human rights	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
d.	Ensure business sustainability	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
e.	Enhance social equality	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
f.	Enhance economic equality	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
g.	Find a balance between social justice and efficiency	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
h.	Find a balance between efficiency and worker security	Strongly agree	Agree	Neutral	Disagree	Strongly disagree

### PART 3: JOB CREATION

Please mark with a cross (X) only ONE option in the questions below.

3. The percentage of the business's annual budget which was spent on job creation last year was:

0 percent	
1-20 percent	
21-40 percent	
41-60 percent	
Over 60 percent	

### THE INFLUENCE OF LABOUR LEGISLATION ON JOB CREATION

4. Please indicate to what extent the following provisions, in terms of the BCEA dealing with the different categories of working hours, are likely or unlikely to influence your business's decision to create jobs through:

a.	Ordinary hours of work (Section 9)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Overtime hours (Section 10)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Working on Sundays (Section 16)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Night work (Section 17)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Work on Public holidays (Section 18)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act by labour inspectors (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act by labour inspectors (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**5. Please indicate to what extent the following provisions dealing with work time flexibility in terms of the BCEA are likely or unlikely to influence your business's decision to create jobs through:**

a.	Compressed working week (Section 11)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Averaging of hours worked (Section 12)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**6. Please indicate to what extent the following provisions dealing with the fairness requirements in terms of the LRA are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Regulation of the use of "alternative" employment contracts (Fixed-Term contracts, part-time contracts, labour brokers and temporary employment services) to improve job creation (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) to promote labour peace in the workplace (Sections 64 and 65)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

7. **Please indicate to what extent the following provisions dealing with various kinds of dismissals in terms of the LRA are likely or unlikely to influence your business's decision to create jobs through the:**

a.	General requirements of fairness (Section 188)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Requirements for fairness in respect of minor retrenchments (Section 189)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

8. **Please indicate to what extent the following provisions in terms of the LRA promoting equal treatment and equality in the workplace, are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Control of alternative "employment" contracts to improve job security (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Automatically unfair dismissals (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**9. Please indicate to what extent the following provisions in terms of the EEA promoting equality and equal treatment in the workplace, are likely or unlikely to influence your business's decision to create jobs through the:**

a.	Prohibition of unfair discrimination (Section 6)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Removal of unfair discrimination (Section 9 (3) and (4))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Section 34)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**10. Please indicate to what extent the following aspects of legislation are likely or unlikely to influence your business's decision to create jobs through:**

a.	Job creation schemes in terms of Sections 5 and 6 of the ESA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Tax incentive schemes, in terms of Sections 2 and 3 of the ETIA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Employment services offices, in terms of Sections 23 and 24 of the SDA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Training of unemployed workers, in terms of Sections 18 and 19 of the UIA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Affirmative action, in terms of Sections 12-27 of the EEA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Black ownership, corporate advancement and involvement of Black people in terms of Section 2 of the B-BBEEA	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

## **PART 4: JOB SUSTAINABILITY**

- 11. To what extent have the number of available permanent and temporary jobs increased in the industries or sectors of which the trade union or trade union federation is a part, in the past five years:**

a.	Permanent jobs	Increased substantially	Increased slightly	Remained the same	Decreased slightly	Decreased substantially
b.	Temporary jobs	Increased substantially	Increased slightly	Remained the same	Decreased slightly	Decreased substantially

- 12. Please indicate the extent to which the following skills development factors are likely or unlikely to influence a business's decision to educate and train in order to sustain jobs through:**

a.	Education improving the business's competitiveness	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training improving the business's competitiveness	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Education increasing workers' productivity	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Training increasing workers' productivity	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 13. The percentage of the business's annual budget which was spent on skills development last year was:**

0 percent	
1-20 percent	
21-40 percent	
41-60 percent	
Over 60 percent	



## THE INFLUENCE OF LABOUR LEGISLATION ON JOB SUSTAINABILITY

- 14. Please indicate to what extent the following provisions, in terms of the BCEA, are likely or unlikely to influence a business's decision to sustain jobs through the:**

a.	Control of the number of overtime hours worked retaining jobs (Section 10)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Regulation of sick leave retaining jobs (Sections 22 to 24)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of maternity leave retaining jobs (Section 25 and 26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 15. Please indicate to what extent the provision dealing with notice periods, in terms of Section 37 of the BCEA, is likely or unlikely to influence a business's decision to sustain jobs:**

a.	Very likely	
b.	Quite likely	
c.	Neutral (neither likely nor unlikely)	
d.	Quite unlikely	
e.	Very unlikely	

- 16. Please indicate to what extent the provisions regulating minimum wages through sectoral determinations, in terms of Sections 51-58 of the BCEA, are likely or unlikely to influence a business's decision to sustain jobs:**

a.	Very likely to sustain jobs.	
b.	Quite likely to sustain jobs.	
c.	Neutral (neither likely nor unlikely to sustain jobs).	
d.	Quite unlikely to sustain jobs.	
e.	Very unlikely to sustain jobs.	

- 17. Please indicate to what extent Section 41 of the BCEA, dealing with the payment of severance pay to retrenched workers, is likely or unlikely to influence a business's decision to sustain jobs:**

a.	Very likely to sustain jobs.	
b.	Quite likely to sustain jobs.	
c.	Neutral (neither likely nor unlikely to sustain jobs).	
d.	Quite unlikely to sustain jobs.	
e.	Very unlikely to sustain jobs.	

**18. Please indicate to what extent the following requirements for fairness, in terms of the LRA, are likely or unlikely to influence a business's decision to sustain jobs:**

a.	Regulation of the use of "alternative" employment contracts (fixed-term contracts, part-time contracts, labour brokers and temporary employment services) improving job security (Sections 198 and 200A).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Protection of workers affected by mergers, takeovers or transfers improving job security (Section 197).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Regulation of industrial action (strikes, picketing and protest action) promoting labour peace in the workplace (Sections 64 and 65).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Monitoring of collective agreements by bargaining councils' designated agents ensuring that workers are treated fairly (Section 33).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Enforcement of collective agreements by bargaining councils' designated agents ensuring that workers are treated fairly (Section 33).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**19. Please indicate to what extent the following provisions, in terms of the LRA dealing with various kinds of dismissals, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through the:**

a.	General requirements of fairness (Section 188)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Requirements for fairness in respect of minor retrenchments (Section 189)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Fairness requirements for mass (major) retrenchments (Section 189A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 20. Please indicate to what extent the following provisions; in terms of the LRA dealing with the promotion of equal treatment and equality, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through the:**

a.	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Control of alternative "employment" contracts improving job security (Sections 198 and 200A)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Automatically unfair dismissals (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 21. Please indicate to what extent the following provisions, in terms of the EEA dealing with the promotion of equality and equal treatment in the workplace, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through the:**

a.	Prohibition of unfair discrimination (Section 6)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Removal of unfair discrimination (Section 9 (3) and (4))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Right to equal income distribution, wages and conditions of employment (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Regulation of unfair labour practices (Section 186 (2))	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
e.	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
f.	Monitoring of the Act's provisions by labour inspectors (Section 34)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
g.	Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 22. Please indicate the extent to which the following provisions, in terms of the SDA dealing with various forms of skills development, are likely or unlikely to influence a business entity's or an organization's decision to train workers in order to sustain jobs through:**

a.	Education ensuring that workers are equipped with necessary skills to work (Section 22)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training provided by skills programmes ensuring that workers are equipped with the necessary skills to perform their work competently (Section 20)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Re-training through skills programmes providing workers with the new skills needed to perform different work (Section 20)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Learnership agreements ensuring that workers are equipped with the relevant vocational skills to perform their work competently (Sections 16-19)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 23. Please indicate to what extent the following provisions, in terms of the LRA dealing with industrial and sectoral training and education, are likely or unlikely to influence a business entity's or an organization's decision to train workers in order to sustain jobs by:**

a.	Educating workers who lack skills	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Training workers who lack skills (Sections 28, 43 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Re-training workers with new skills to perform different work (Sections 28, 43 and 84)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Ensuring that workers, through learnership agreements, acquire the relevant vocational skills needed to perform their work competently (Sections 28, 43 and 84).	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**24. Please indicate to what extent the following provisions, in terms of the LRA, dealing with skills improvement, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through:**

a.	Training under-performing workers who lack skills, thereby ensuring that jobs are maintained (Section 187)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Retraining workers instead of retrenching in order to help them to retain their jobs (Sections 189, 189A and 197)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**25. Please indicate to what extent these provisions, in terms of the UIA, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through:**

a.	Illness benefits helping sick workers to retain their jobs while they are on unpaid sick leave (Section 19)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Maternity benefits helping pregnant workers to retain their jobs while they are on unpaid maternity leave (Section 24)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Adoption benefits helping adoptive parents, adopting a child under the age of 2 to retain their jobs while they are on unpaid leave (Section 27)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

**26. Please indicate to what extent the following provisions, in terms of OHASA, are likely or unlikely to influence a business entity's or an organization's decision to sustain jobs through:**

a.	Creating a safe working environment	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Monitoring health and safety by health and safety representatives (Sections 18 and 22)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
c.	Monitoring of health and safety by labour inspectors (Sections 24 and 25)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
d.	Enforcement of health and safety by labour inspectors (Sections 30-38)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

- 27. Please indicate to what extent the following provisions, in terms of COIDA, are likely or unlikely influence a business entity's or an organization's decision to sustain jobs through the:**

a.	Compensation Commissioner holding inquiries into accidents sustain jobs (Section 40)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely
b.	Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 and 99)	Very likely	Quite likely	Neutral	Quite unlikely	Very unlikely

## **PART 5: GENERAL PARTICULARS**

- 28. What is your current position in the Trade Union Federation or Trade Union?**

a.	President of a Trade Union Federation	
b.	Deputy President of a Trade Union Federation	
c.	Treasurer of a Trade Union Federation	
d.	General Secretary of a Trade Union Federation	
e.	Deputy General Secretary of a Trade Union Federation	
f.	President of a Trade Union	
g.	Deputy President of a Trade Union	
h.	Treasurer of a Trade Union	
i.	General Secretary of a Trade Union	
j.	Deputy General Secretary of a Trade Union	
k.	Trade Union official	
l.	Trade Union representative	
m.	Trade Union shop steward	

- 29. The Trade Union Federation or Trade Union is situated in the following sectors: (If you choose 'other', please specify.)**

a.	Agriculture, forestry and fishing	
b.	Building and Construction	
c.	Business services	
d.	Communication	
e.	Education	
f.	Electricity, gas and water	
g.	Financial services	
h.	General government services	
i.	Health	
j.	Hospitality, catering and accommodation	
k.	ICT and electronics	
l.	Manufacturing	
m.	Mining and quarrying	
n.	Motor trade	
o.	Property related and real estate services	
p.	Retail and Wholesale	
q.	Tourism	
r.	Transport and storage	
s.	Other	

- 30. Is there a Bargaining or Statutory Council established for the industry or sector in which the trade union or organisation has members? Please select which apply to your trade union.**

a.	Yes, there is a bargaining council established for the industry or sector in which the trade union has members.	
b.	Yes, there is a statutory council established for the industry or sector in which the trade union has members.	
c.	Yes, there are bargaining councils, as well as, statutory councils established for the industries or sectors in which the trade union has members.	
d.	No, there is neither a bargaining council nor a statutory council established for the industries or sectors in which the trade union has members.	
e.	I do not know.	



31. Please indicate the number of members that belong to the trade union or trade union federation.

a.	1 – 500 members	
b.	501 - 1,000 members	
c.	1,001 - 5,000 members	
d.	5,001 - 10,000 members	
e.	10,001 - 50,000 members	
f.	50,001 - 100,000 members	
g.	100,001 - 200,000 members	
h.	201,001 - 400,000 members	
i.	400,001 - 600,000 members	

**PART 6: ADDITIONAL COMMENTS**

32. Please feel free to comment on or add anything which you feel is relevant and which may not have been covered or adequately covered in this questionnaire:

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Once again, thank you very much for agreeing to participate and completing this questionnaire.

**Catharina Womack (Mrs)**

## INVITATION TO ALSO PARTICIPATE IN AN INTERVIEW

Please indicate below whether or not you are willing to participate in an interview. Prior to the interview, I will forward you the schedule of interview questions *via* email.

**37. Agreement or refusal to participate in an interview, as well:**

a.	Yes, I agree to be interviewed	
b.	No, I do not wish to be interviewed	

**38. As the responses to the questionnaire are anonymous, please record your contact details, if you agree to be interviewed, so that I can contact you:**

Email address	
Telephone number	
Cellphone number	
Skype address	

**39. If you agree to be interviewed please indicate what form of interview you prefer to participate in:**

a.	In person, face-to-face	
b.	Skype	
c.	Telephonically	
d.	WhatsApp	
e.	Viber	

**Time of Interview:**

**Date:**

**Place:**

**Interviewer:** A.J. Catharina Womack

**Interviewee:**

**Position of Interviewee:**

**Role of the Interviewee in the organisation:**

The focus of this study will be to determine what influence, if any, labour legislation has on job creation and job sustainability.

## **GENERAL INTRODUCTION**

Hello, I am Catharina Womack, a doctoral student conducting a survey as well as interviews (which can be in person or by telephone, skype, face time, viber or WhatsApp, whichever form of interview suits you best and is more convenient for you) for the completion of my doctoral studies. I am conducting a survey and asking questions about labour legislation's influence on job creation and job sustainability. The information provided will be used to determine what influence, if any, labour legislation has on job creation and job sustainability in South Africa.

You do not have to answer any questions you do not want to and you can end the interview at any time. The interview takes about 30 minutes to complete and any information you give me will be confidential. If you have any questions, you can call me on 082 578 0884; or my Supervisor Professor Karunanidhi Reddy on 031 373 5367; or my Co-Supervisor Dr Soobramoney Chetty on 031 3735395; or the DUT Research Ethic Administration on 031 373 2900 to get more information.

Thank you once again for agreeing to participate.

## **PART 1: JOB CREATION**

- 1. The first question is about job creation. Can you please comment on how you see jobs being created?**
- 2. Now please comment on how likely your business entity or organization is to create jobs in the near future. If the answer is no, please give reasons why not. If your answer to question two is yes, can you please comment on what types of jobs your business is likely to create and why?**
  - Permanent full-time employment; or
  - Temporary – Part-time, fixed-term contracts, casual, independent contractors (self-employed); or
  - Use labour provided by labour brokers or temporary employment services.
- 3. Next, can you please comment on whether your business entity or organization created jobs in the past year. If the answer is yes, how many jobs were created? What types of jobs were created?**
- 4. Now please comment on how likely your business entity or organization is to employ people in the near future. If the answer is no, please give reasons why not. If the answer is yes, how many jobs will be created? What types of jobs will be created?**
- 5. Many people consider labour legislation to influence job creation. Do you have an opinion on this?**
- 6. Next, can you please comment on how labour legislation has influenced your business entity's or organization's decisions to create more jobs?**
- 7. Please can you comment on what aspects of the following pieces of labour legislation influence your business's decisions to create jobs?**
  - Basic Conditions of Employment Act No. 75 of 1997 (BCEA);
  - Employment Equity Act No. 55 of 1998 (EEA);
  - Labour Relations Act No. 66 of 1995 (LRA);
  - Skills Development Act No. 97 of 1998 (SDA);
  - Skills Development Levies Act No.9 of 1999 (SDL);
  - Unemployment Insurance Act No. 63 of 2001 (UIA);
  - Occupational Health and Safety Act No. 85 of 1993 (OHASA);
  - Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA);
  - Broad-Based Black Economic Empowerment Act No. 53 of 2003 (B-BBEEA);

- Employment Services Act No.4 of 2014 (ESA); and
- Employment Tax Incentive Act No 26 of 2013 (ETIA).

**For example:**

**7.1 Can you please comment more specifically on how likely the following aspects of the Basic Conditions of Employment Act No. 75 of 1997 (BCEA), as amended, are to influence your business's decision to create jobs:**

- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers?
- b. Working conditions - reduced working hours, overtime, night work, leave, etc;
- c. Regulating minimum wages, working conditions – through sectoral and ministerial determinations;
- d. Regulation of notice periods;
- e. Enforcement of compliance by labour inspectors.

**7.2 Can you please comment more specifically on what influence, if any, the following aspects of the Labour Relations Act No. 66 of 1995 (LRA), as amended, has had on your business's decision to create jobs:**

- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers?
- b. Job security – regulations on dismissals and probationary periods;
- c. Collective bargaining - bargaining council agreements and extension agreements;
- d. Industrial action – strikes;
- e. Dispute resolution - labour institutions; and
- f. Enforcement of compliance by labour inspectors.

**7.3 Can you please comment more specifically on what influence, if any, the following aspects of the Employment Equity Act No. 55 of 1998 (EEA), as amended, has had on your business's decision to create jobs:**

- a. Recruitment practices – prohibition and removal of discrimination, implementing affirmative action;
- b. Implementing affirmative action programmes;
- c. “Equal pay for equal value” – income and benefits;
- d. Reduction of “disproportionate” income differentials; and
- e. Enforcement of compliance by labour inspectors.

8. **Now thinking about what you have said about labour legislation's influence on job creation, please comment on what strategies you think should be employed to enhance/increase job creation:**
- a. Business;
  - b. Government; and
  - c. Trade unions.

## **PART 2: JOB SUSTAINABILITY**

9. **On a different subject, namely job sustainability, can you please comment on how do you see jobs being sustained?**
10. **Next, can you please comment on what factors are likely to influence your business's decision to sustain jobs?**
11. **How likely is your business to sustain jobs in the near future? If so, how? If not, why not?**
12. **How many jobs did your business sustain in the past year? What did your business do to sustain the jobs you mentioned?**
13. **Many people consider labour legislation to influence job sustainability. Do you have an opinion on this?**
14. **Please can you comment on what aspects of the following pieces of labour legislation would influence your business entity's or organisation's decisions with regard to sustaining jobs?**
15. **How has labour legislation influenced your business entity's or organization's decisions with regard to improving workers' skills? Where possible, please illustrate your answers with examples. For example:**
- 15.1 **Basic Conditions of Employment Act No. 75 of 1997 (BCEA), as amended, with regard to:**
- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers.
  - b. Working conditions - reduced working hours, overtime, night work, leave, etc;
  - c. Regulating minimum wages, working conditions through sectoral and ministerial determinations;
  - d. Severance pay; and
  - e. The enforcement of compliance by labour inspectors.

**15.2 Labour Relations Act No. 66 of 1995 (LRA), as amended, with regard to:**

- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers.
- b. Job security – regulations on dismissals and probationary periods;
- c. Collective bargaining - bargaining council agreements and extension agreements;
- d. Industrial action – strikes;
- e. Dispute resolution – Bargaining and Statutory Councils, CCMA, Labour Courts and Labour Appeal Courts; and
- f. The enforcement of compliance by bargaining council agents and labour inspectors.

**15.3 Employment Equity Act No. 55 of 1998 (EEA), as amended, with regard to:**

- a. Recruitment practices – prohibition and removal of discrimination, implementing affirmative action;
- b. Affirmative action programmes;
- c. Equal pay for equal value” – income and benefits;
- d. Reduction of “disproportionate” income differentials; and
- e. Enforcement of compliance by labour inspectors.

**16. Now thinking about what you have said about labour legislation’s influence on job sustainability, please comment on what strategies you think business, government and trade unions should employ to help sustain existing jobs:**

- a. Business;
- b. Government; and
- c. Trade unions.

## **TRADE UNION PARTICIPANTS' INTERVIEW PROTOCOL OR GUIDE**

**Time of Interview:**

**Date:**

**Place:**

**Interviewer:** A.J. Catharina Womack

**Interviewee:**

**Position of Interviewee:**

**Role of the Interviewee in the organisation:**

The focus of this study will be to determine what influence, if any, labour legislation has on job creation and job sustainability.

### **GENERAL INTRODUCTION**

Hello, I am Catharina Womack, a doctoral student conducting a survey as well as interviews (which can be in person or by telephone, skype, face time, viber or WhatsApp, whichever form of interview suits you best and is more convenient for you) for the completion of my doctoral studies. I am conducting a survey and asking questions about labour legislation's influence on job creation and job sustainability. The information provided will be used to determine what influence, if any, labour legislation has on job creation and job sustainability in South Africa.

You do not have to answer any questions you do not want to and you can end the interview at any time. The interview takes about 30 minutes to complete and any information you give me will be confidential. If you have any questions, you can call me on 082 578 0884; or my Supervisor Professor Karunanidhi Reddy on 031 373 5367; or my Co-Supervisor Dr Soobramoney Chetty on 031 3735395; or the DUT Research Ethic Administration on 031 373 2900 to get more information.

Thank you once again for agreeing to participate.



## **PART 1: JOB CREATION**

- 8. The first question is about job creation. Can you please comment on how you see jobs being created?**
- 9. Now please comment on how likely businesses are to create jobs in the near future. If the answer is no, please give reasons why not. If your answer to question two is yes, can you please comment on what types of jobs your business is likely to create and why?**
  - Permanent full-time employment; or
  - Temporary – Part-time, fixed-term contracts, casual, independent contractors (self-employed); or
  - Use labour provided by labour brokers or temporary employment services.
- 10. Next, can you please comment on whether you are aware of any businesses having created jobs in the past year. If the answer is yes, how many jobs were created? What types of jobs were created?**
- 11. Now please comment on how likely businesses are to employ people in the near future. If the answer is no, please give reasons why not. If the answer is yes, how many jobs will be created? What types of jobs will be created?**
- 12. Many people consider labour legislation to influence job creation. Do you have an opinion on this?**
- 13. Next, can you please comment on how labour legislation has influenced businesses' decisions to create more jobs?**
- 14. Please can you comment on what aspects of the following pieces of labour legislation influence your business's decisions to create jobs?**
  - Basic Conditions of Employment Act No. 75 of 1997 (BCEA);
  - Employment Equity Act No. 55 of 1998 (EEA);
  - Labour Relations Act No. 66 of 1995 (LRA);
  - Skills Development Act No. 97 of 1998 (SDA);
  - Skills Development Levies Act No. 9 of 1999 (SDL);
  - Unemployment Insurance Act No. 63 of 2001 (UIA);
  - Occupational Health and Safety Act No. 85 of 1993 (OHASA);
  - Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA);
  - Broad-Based Black Economic Empowerment Act No. 53 of 2003 (BBEEA);
  - Employment Services Act No. 4 of 2014 (ESA); and

- Employment Tax Incentive Act No 26 of 2013 (ETIA).

**For example:**

**7.1 Can you please comment more specifically on how likely the following aspects of the Basic Conditions of Employment Act No. 75 of 1997 (BCEA), as amended, are to influence businesses' decision to create jobs:**

- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers?
- g. Working conditions - reduced working hours, overtime, night work, leave, etc;
- h. Regulating minimum wages, working conditions – through sectoral and ministerial determinations;
- i. Regulation of notice periods;
- j. Enforcement of compliance by labour inspectors.

**7.2 Can you please comment more specifically on what influence, if any, the following aspects of the Labour Relations Act No. 66 of 1995 (LRA), as amended, has had on businesses' decision to create jobs:**

- f. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers?
- g. Job security – regulations on dismissals and probationary periods;
- h. Collective bargaining - bargaining council agreements and extension agreements;
- i. Industrial action – strikes;
- j. Dispute resolution - labour institutions; and
- k. Enforcement of compliance by labour inspectors.

**7.3 Can you please comment more specifically on what influence, if any, the following aspects of the Employment Equity Act No. 55 of 1998 (EEA), as amended, has had on businesses' decision to create jobs:**

- f. Recruitment practices – prohibition and removal of discrimination, implementing affirmative action;
- g. Implementing affirmative action programmes;
- h. "Equal pay for equal value" – income and benefits;
- i. Reduction of "disproportionate" income differentials; and
- j. Enforcement of compliance by labour inspectors.

**8. Now thinking about what you have said about labour legislation's influence on job creation, please comment on what strategies you think should be employed to enhance/increase job creation by:**

- a. Business;
- b. Government; and
- c. Trade unions.

## **PART 2: JOB SUSTAINABILITY**

**9. On a different subject, namely job sustainability, can you please comment on how do you see jobs being sustained?**

**10. Next, can you please comment on what factors are likely to influence businesses' decision to sustain jobs?**

**11. How likely are businesses to sustain jobs in the near future? If so, how? If not, why not?**

**12. How many jobs did businesses sustain in the past year? What did businesses do to sustain the jobs you mentioned?**

**13. Many people consider labour legislation to influence job sustainability. Do you have an opinion on this?**

**14. Please can you comment on what aspects of the following pieces of labour legislation would influence businesses' decisions with regard to sustaining jobs?**

**15. How has labour legislation influenced businesses' decisions with regard to improving workers' skills?**

**Where possible, please illustrate your answers with examples.**

**For example:**

**15.1 Basic Conditions of Employment Act No. 75 of 1997 (BCEA), as amended, with regard to:**

- a. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers.
- f. Working conditions - reduced working hours, overtime, night work, leave, etc;
- g. Regulating minimum wages, working conditions through sectoral and ministerial determinations;
- h. Severance pay; and
- i. The enforcement of compliance by labour inspectors.

**15.2 Labour Relations Act No. 66 of 1995 (LRA), as amended, with regard to:**

- g. The employment of staff – full-time employees versus temporary staff, contract workers, independent contractors and labour brokers.
- h. Job security – regulations on dismissals and probationary periods;
- i. Collective bargaining - bargaining council agreements and extension agreements;
- j. Industrial action – strikes;

- k. Dispute resolution – Bargaining and Statutory Councils, CCMA, Labour Courts and Labour Appeal Courts; and
- l. The enforcement of compliance by bargaining council agents and labour inspectors.

**15.3.1 Employment Equity Act No. 55 of 1998 (EEA), as amended, with regard to:**

- f. Recruitment practices – prohibition and removal of discrimination, implementing affirmative action;
- g. Affirmative action programmes;
- h. Equal pay for equal value” – income and benefits;
- i. Reduction of “disproportionate” income differentials; and
- j. Enforcement of compliance by labour inspectors.

**16. Now thinking about what you have said about labour legislation’s influence on job sustainability, please comment on what strategies you think business, government and trade unions should employ to help sustain existing jobs:**

- a. Business;
- b. Government; and
- c. Trade unions.

Figure 4.2 Thematic Analysis Diagram



Objectives	Themes	What do you want to find out about this theme?	Question no.	Qualitative/ Quantitative
	1. Social Justice, Human Rights and the right to Decent Work.	To establish how important the respondents perceive social Justice, human rights and the right to decent work to be.	Q1.	Both
	2. The role of labour law in general.	To establish what the respondents perceive social Justice, human rights and the right to decent work to be.	Q2.	Both
	3. Job creation.	To establish whether jobs are being created. If so, what type of jobs?	Q3	Both
<b>1. Identify, explore and investigate the influence of labour legislation on job creation in South Africa.</b>	4. The influence of labour legislation on job creation.	To establish whether labour legislation influences businesses' decision to create jobs.	Q4 to Q10	Both
	<i>a. Favourable working conditions increase efficiency and productivity</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to create or not to create jobs.	Q4 & Q5	Both
	<i>b. Fairness in the workplace and the right to fair labour practices</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to create or not to create jobs.	Q6 & Q7	Both

	<i>c. Equality and the right to equal treatment in the workplace</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to create or not to create jobs.	Q8&Q9	Both
	<i>d. The promotion and facilitation of productive employment</i>	To identify, explore and investigate which aspects of labour legislation influences businesses' decision to create or not to create jobs?	Q10	Both
	5. Job sustainability.	To establish whether jobs are being sustained.	Q11 to Q13	Both
<b>2. Identify, explore and investigate the influence of labour legislation on job sustainability in South Africa.</b>	6. The influence of labour legislation on job sustainability.	To establish whether labour legislation influences businesses' decision to sustain jobs.	Q14 to Q28	Both
	<i>a. Favourable working conditions increase efficiency and productivity</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to sustain or not to sustain jobs.	Q14 to Q18	Both
	<i>b. Fairness in the workplace and the right to fair labour practices</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to sustain or not to sustain jobs.	Q19&Q20	Both
	<i>c. Equality and the right to equal treatment in the workplace</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to sustain or not to sustain jobs.	Q21&Q22	Both
	<i>d. Skills Development</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to sustain or not to sustain jobs.	Q23 to Q25	Both

	<i>e. Work security</i>	To identify, explore and investigate which aspects of labour legislation influence businesses' decision to sustain or not to sustain jobs.	Q26 to Q28	Both
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Figure 4.3 Labour Legislation thematic diagram

Appendix 9

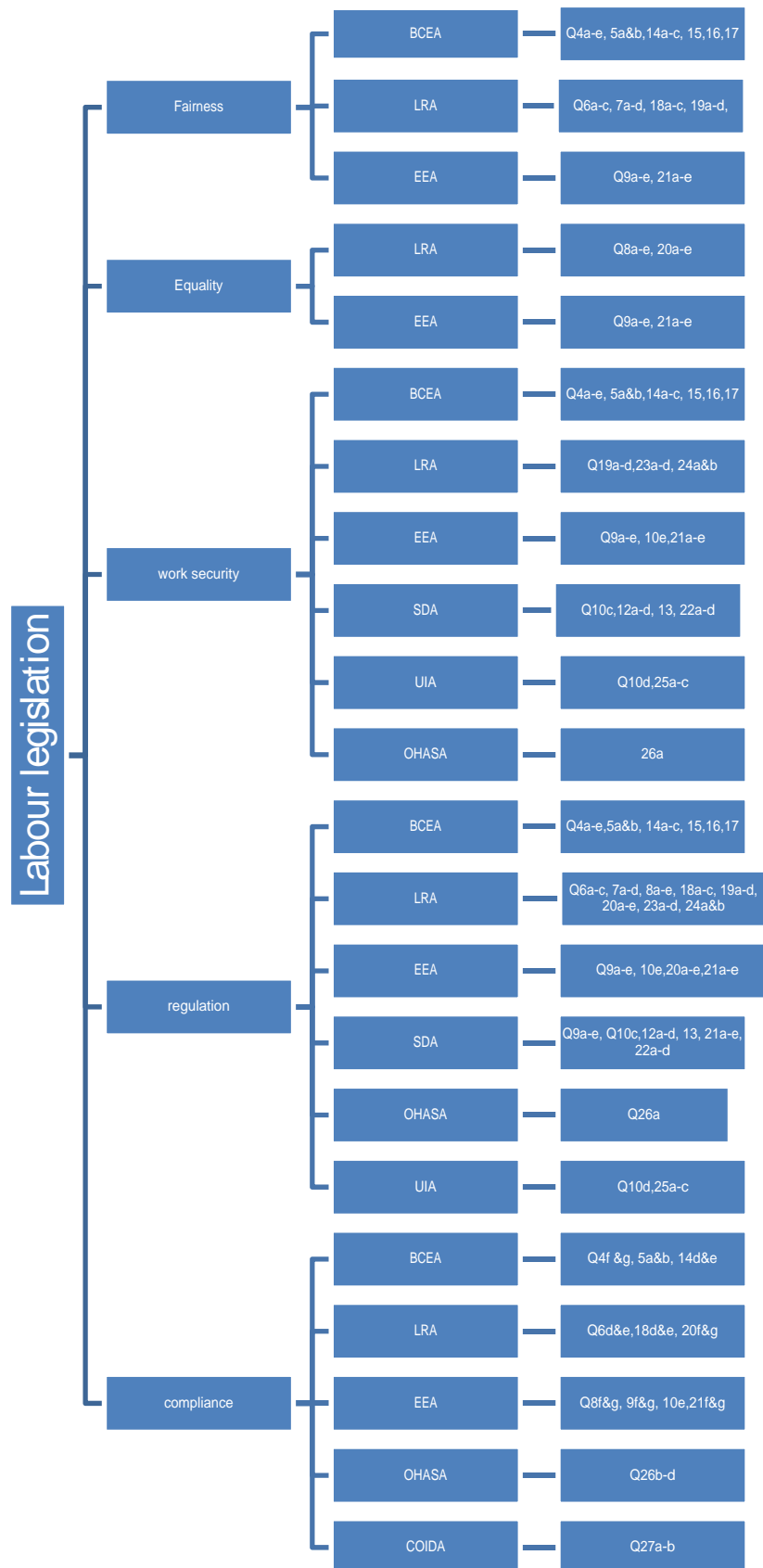
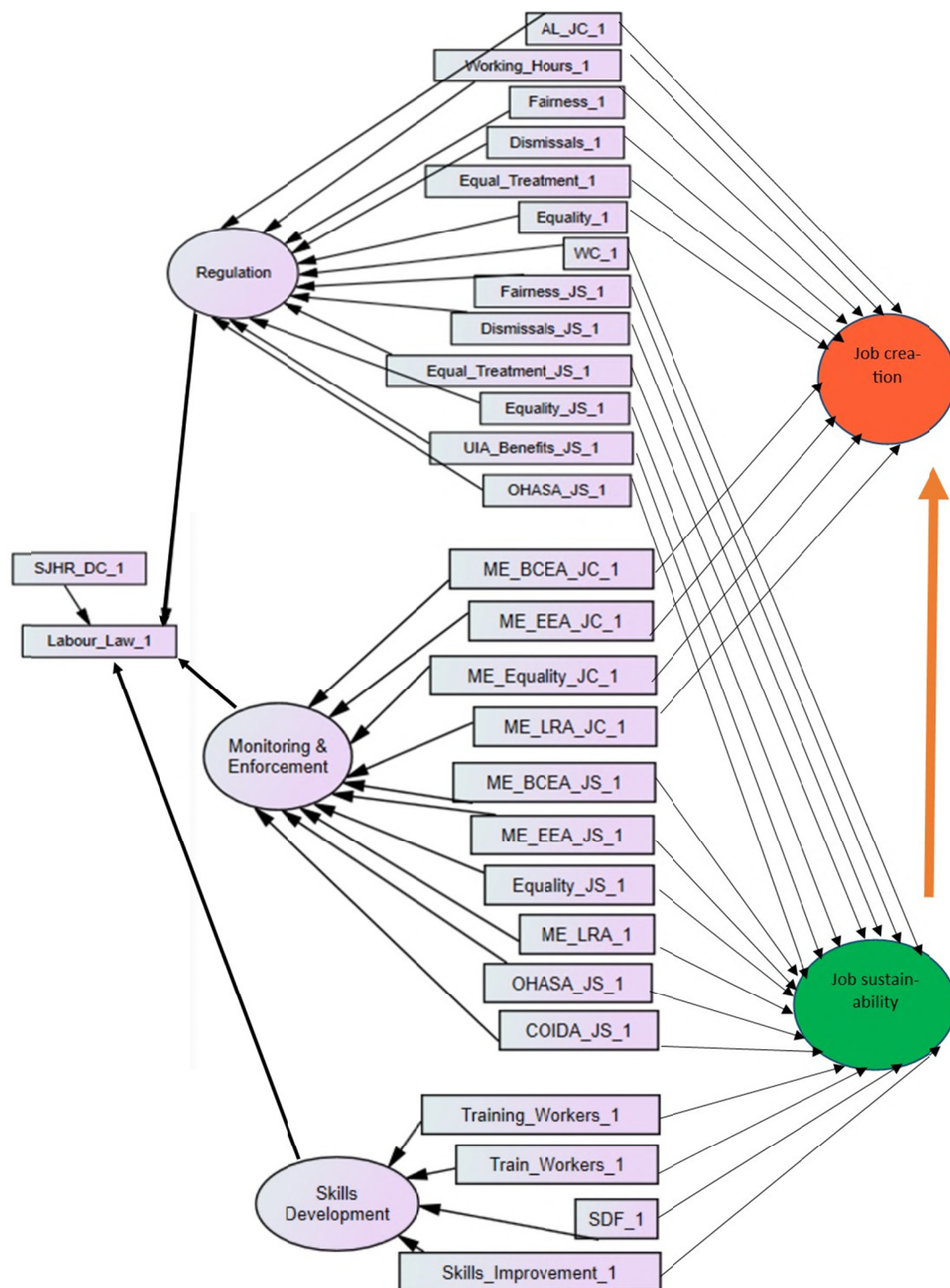


Figure 5.11 Schematic diagram



The results indicate the following patterns. All significant relationships are highlighted.

Appendix 11

### Cross-tabulation table

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>Importance of Social justice, Human Rights and Decent Work:</b>									
Creation of job opportunities for work seekers	18.471	2	0.000	128.899	4	0.000	168.07	4	0.000
Freedom from exploitation in the workplace	13.235	1	0.000	69.377	3	0.000	104.419	3	0.000
Protection of workers' rights, ensuring workplace security	7.118	1	0.008	6.87	2	0.032	16.767	2	0.000
The development quality of education and training systems	9.941	1	0.002	82.362	3	0.000	115.395	3	0.000
Equality in the workplace	9.941	1	0.002	38.768	3	0.000	65.256	3	0.000
Freedom from discrimination in the workplace	9.941	1	0.002	87.232	3	0.000	121.535	3	0.000
A sustainable living, whereby workers are paid a fair income	9.941	1	0.002	51.362	4	0.000	83.302	4	0.000
<b>The role of labour law is to:</b>									
Balance the employment relationship	4.765	1	0.029	36.87	4	0.000	47.256	4	0.000
Regulate (control, legalize and standardize) the employment relationship	0.529	1	0.467	63.246	4	0.000	72.953	4	0.000
Ensure conformance with human rights	4.765	1	0.029	41.899	3	0.000	47.488	3	0.000
Ensure business sustainability	8.941	2	0.011	29.768	4	0.000	50.395	4	0.000
Enhance social equality	4.765	1	0.029	29.913	4	0.000	36.209	4	0.000
Enhance economic equality	7.176	2	0.028	21.072	4	0.000	30.163	4	0.000
Find a balance between social justice and efficiency	11.471	3	0.009	15.275	4	0.004	22.023	4	0.000
Find a balance between efficiency and worker security	7.882	2	0.019	20.928	4	0.000	27.605	4	0.000
<b>Increase in number of available jobs in past five years</b>									
Permanent jobs	6.235	4	0.182	14.125	4	0.007	11.654	4	0.020
Temporary jobs	0.941	4	0.919	22.525	4	0.000	19.564	4	0.001

## Labour legislation's influence on Job Creation

### BCEA's regulation of working hours' influence on job creation

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
Ordinary hours of work (Section 9)	8	4	0.092	21.942	4	0.000	29	4	0.000
Overtime hours (Section 10)	3.471	3	0.325	22.232	4	0.000	30.163	4	0.000
Working on Sundays (Section 16)	3	3	0.392	8.754	4	0.068	11.791	4	0.019
Night work (Section 17)	4.412	3	0.220	11.507	4	0.021	14.814	4	0.005
Work on Public holidays (Section 18)	4.412	3	0.220	3.681	4	0.451	8.186	4	0.085

### BCEA's regulation of work time flexibility on job creation

Compressed working week (Section 11)	6.235	4	0.182	10.058	4	0.039	14.233	4	0.007
Averaging of hours worked (Section 12)	3.471	3	0.325	17.449	4	0.002	23.884	4	0.000

### BCEA's monitoring and enforcement on job creation

Monitoring of the Act by labour inspectors (Sections 63 - 84)	6.235	4	0.182	3.971	4	0.410	5.512	4	0.239
Enforcement of the Act by labour inspectors (Sections 63 - 84)	6.235	4	0.182	3.391	4	0.495	5.977	4	0.201

### LRA's general requirements for fairness on job creation

Regulation of the use of "alternative" employment contracts (Fixed-Term contracts, part-time contracts, labour brokers and temporary employment services) to improve job creation (Sections 198 and 200A)	4.882	3	0.181	57.441	4	0.000	62.706	4	0.000
Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	8.588	4	0.072	13.912	4	0.008	16.706	4	0.002
Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) to promote labour peace in the workplace (Sections 64 and 65)	7.235	3	0.065	22	4	0.000	32.588	4	0.000

### LRA's fair dismissal requirements influence on job creation

General requirements of fair dismissals (Section 188)	11	3	0.012	21.265	4	0.000	31.176	4	0.000
Requirements for fairness in respect of minor retrenchments (Section 189)	7.235	3	0.065	19.794	4	0.001	29.059	4	0.000
Fairness requirements for mass (major) retrenchments (Section 189A)	6.824	4	0.146	18.176	4	0.001	24	4	0.000
Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	3.941	3	0.268	15.824	4	0.003	22.588	4	0.000

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>LRA's monitoring and enforcement by BC agents on job creation</b>									
Monitoring of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	7.706	3	0.052	9.5	4	0.050	16	4	0.003
Enforcement of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	4.412	3	0.220	9.5	4	0.050	15.412	4	0.004
<b>LRA's monitoring and enforcement by labour inspectors</b>									
Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	5.059	4	0.281	10.382	4	0.034	5.882	4	0.208
Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	2.706	4	0.608	6.853	4	0.144	5.294	4	0.258
<b>LRA's equity and equal treatment requirements on job creation</b>									
Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	10.529	3	0.015	28.912	4	0.000	39.765	4	0.000
Control of alternative "employment" contracts to improve job creation (Sections 198 and 200A)	5.059	4	0.281	28.912	4	0.000	31.294	4	0.000
Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	1.529	2	0.465	19.5	4	0.001	29.647	4	0.000
Regulation of unfair labour practices (Section 186 (2))	9.176	4	0.057	24.206	4	0.000	25.176	4	0.000
Automatically unfair dismissals (Section 187)	3.294	4	0.510	14.206	4	0.007	13.059	4	0.011
<b>EEA's promotion of equality and equal treatment on job creation</b>									
Prohibition of unfair discrimination (Section 6)	6.294	3	0.098	16.118	4	0.003	18.235	4	0.001
Removal of unfair discrimination (Section 9 (3) & (4))	7.706	3	0.052	16.853	4	0.002	18	4	0.001
Right to equal income distribution, wages and conditions of employment (Section 27)	5.059	2	0.080	12.294	4	0.015	24.941	4	0.000
Regulation of unfair labour practices (Section 186 (2))	4.353	2	0.113	23.224	4	0.000	21.357	4	0.000
Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	4.882	3	0.181	15.015	4	0.005	23.619	4	0.000
Affirmative action, in terms of the EEA (Sections 12-27)	5.353	3	0.148	17.735	4	0.001	21.529	4	0.000

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>EEA's monitoring and enforcement by labour inspectors</b>									
Monitoring of the Act's provisions by labour inspectors (Section 34)	6.235	4	0.182	5.235	4	0.264	6.941	4	0.139
Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	5.647	4	0.227	6.412	4	0.170	9.647	4	0.047
<b>Ancillary legislation's influence on job creation</b>									
Job creation schemes, in terms of the ESA (Sections 5 & 6)	5.824	3	0.121	18.299	4	0.001	21	4	0.000
Tax incentive schemes, in terms of the ETIA (Sections 2 & 3)	4.412	3	0.220	35.612	4	0.000	43.738	4	0.000
Employment services offices, in terms of the SDA (Sections 23 & 24)	5.353	3	0.148	24.206	4	0.000	32.824	4	0.000
Training of unemployed workers, in terms of the UIA (Sections 18 & 19)	3.647	2	0.161	17.851	4	0.001	31.119	4	0.000
Black ownership, corporate advancement and involvement of Black people, in terms of the BBBEE (Section 2)	4.412	3	0.220	20.382	4	0.000	22.588	4	0.000

## Labour legislation's influence on Job Sustainability

### BCEA's work security provisions to retain jobs influence on job sustainability

Control of the number of overtime hours worked retaining jobs (Section 10)	10.059	3	0.018	21.284	4	0.000	33.024	4	0.000
Regulation of sick leave retaining jobs (Sections 22 to 24)	7.412	4	0.116	24.716	4	0.000	31.595	4	0.000
Regulation of maternity leave retaining jobs (Section 25 and 26)	3.882	4	0.422	22.478	4	0.000	25.048	4	0.000
Regulation of notice periods (Section 37) sustaining jobs	9.118	3	0.028	18.308	4	0.001	27.634	4	0.000
Regulation of minimum wages through sectoral determinations (Sections 51-58) sustaining jobs	6.235	4	0.182	30.537	4	0.000	31.357	4	0.000
Payment of Severance Pay (Section 41) sustaining jobs	6.235	4	0.182	8.403	3	0.038	29.214	4	0.000

### BCEA's monitoring and enforcement's influence on job sustainability

Monitoring of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	7.412	4	0.116	12.925	4	0.012	15.524	4	0.004
Enforcement of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	4.412	3	0.220	10.061	4	0.039	14.048	4	0.007

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>LRA's fairness regulations on promoting job security's influence on job sustainability</b>									
Regulation of "alternative" employment contracts to improve job creation (Sections 198 and 200A)	8	4	0.092	30.667	4	0.000	37.783	4	0.000
Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	3.471	3	0.325	2.262	3	0.520	2.78	3	0.427
Regulation of industrial action promoting labour peace in the workplace to improve job sustainability (Sections 64 & 65)	7.412	4	0.116	25.667	4	0.000	31.759	4	0.000
<b>LRA's fair dismissal requirements influence on job sustainability</b>									
General requirements of fairness (Section 188)	5.353	3	0.148	19.909	4	0.001	27.06	4	0.000
Requirements for fairness in respect of minor retrenchments (Section 189)	3.471	3	0.325	19.303	4	0.001	23.446	4	0.000
Fairness requirements for mass (major) retrenchments (Section 189A)	4.412	3	0.220	11.273	4	0.024	18.627	4	0.001
Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	4.412	3	0.220	14.769	4	0.005	21.293	4	0.000
<b>LRA's monitoring and enforcement by BC agents influence on job sustainability</b>									
Monitoring of collective agreements by the bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	4.412	3	0.220	13.697	4	0.008	19.831	4	0.001
Enforcement of collective agreements by the bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	4.412	3	0.220	11.121	4	0.025	17.904	4	0.001
<b>LRA's monitoring and enforcement by labour inspectors influence on job sustainability</b>									
Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	6.235	4	0.182	15.364	4	0.004	17.06	4	0.002
Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	5.059	4	0.281	10	4	0.040	10.073	4	0.039

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>LRA's equality and equal treatment requirements influence on job sustainability</b>									
Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	5.059	4	0.281	4.6	3	0.204	25.561	4	0.000
Control of alternative "employment" contracts improving job security (Sections 198 and 200A)	3.471	3	0.325	19.077	4	0.001	26.415	4	0.000
Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	4.412	3	0.220	22.939	4	0.000	26.217	4	0.000
Regulation of unfair labour practices (Section 186 (2))	0.471	2	0.790	21.273	4	0.000	26.096	4	0.000
Automatically unfair dismissals (Section 187)	3.471	3	0.325	20.308	4	0.000	23.488	4	0.000
<b>EEA's promotion of equality and equal treatment influence on job sustainability</b>									
Prohibition of unfair discrimination (Section 6)	4.882	3	0.181	19.606	4	0.001	20.554	4	0.000
Removal of unfair discrimination (Section 9 (3) & (4))	2.059	3	0.560	24	4	0.000	25.614	4	0.000
Right to equal income distribution, wages and conditions of employment (Section 27)	11.471	3	0.009	18.848	4	0.001	23.687	4	0.000
Regulation of unfair labour practices (Section 186 (2))	5.824	3	0.121	22.03	4	0.000	22.843	4	0.000
Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	6.235	4	0.182	22.636	4	0.000	27.06	4	0.000
<b>EEA's monitoring and enforcement by labour inspectors influence on job sustainability</b>									
Monitoring of the Act's provisions by labour inspectors(Section 34)	6.294	3	0.098	10.061	4	0.039	16.458	4	0.002
Enforcement of the Act's provisions by labour inspectors (Sections 35 to 45)	4.412	3	0.220	9.909	4	0.042	12.964	4	0.011



	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
<b>Education and training's influence on job sustainability</b>									
Education improving a business's competitiveness	0.059	1	0.808	43.176	3	0.000	59.518	3	0.000
Training improving a business's competitiveness	5.765	2	0.056	43.882	3	0.000	56.976	3	0.000
Education increasing workers' productivity	1.471	1	0.225	69.941	4	0.000	97.529	4	0.000
Training increasing workers' productivity	1.471	1	0.225	72.478	4	0.000	100.286	4	0.000
<b>SDA's skills development's provisions influence on job sustainability</b>									
Education ensuring that workers are equipped with the necessary skills to work (Section 22)	4.353	2	0.113	26	4	0.000	40.317	4	0.000
Training provided by the skills programmes ensuring that workers are equipped with the necessary skills to perform their work competently (Section 20)	1.882	2	0.390	36.657	4	0.000	49.929	4	0.000
Re-training through skills programmes providing workers with new skills needed to perform different work (Section 20)	1.882	2	0.390	25.612	4	0.000	38.262	4	0.000
Learnership agreements ensuring that workers are equipped with the relevant vocational skills to perform their work competently (Sections 16-19)	3.647	2	0.161	28.896	4	0.000	43.857	4	0.000
<b>LRA's training and education's provisions on skills development influence job sustainability</b>									
Educating workers who lack skills	2.235	2	0.327	24.923	4	0.000	29.341	4	0.000
Training workers who lack skills (Sections 28, 43 and 84)	2.941	2	0.230	22.308	4	0.000	32.634	4	0.000
Re-training workers with new skills to perform different work (Sections 28, 43 and 84)	2.235	2	0.327	20.97	4	0.000	27.663	4	0.000
Ensuring that workers, through learnership agreements, acquire the relevant vocational skills needed to perform their work competently (Sections 28, 43 and 84)	1.882	2	0.390	30.462	4	0.000	43.244	4	0.000
Training under performing workers who lack skills thereby ensuring that jobs are maintained (Section 187)	6.294	3	0.098	30.537	4	0.000	35.881	4	0.000
Retraining workers, instead of retrenching, to help them to retain their jobs (Sections 189, 189A and 197)	5.353	3	0.148	14.308	4	0.006	21.537	4	0.000

#### UIA's influence on job sustainability

Illness benefits helping sick workers to retain their jobs, while they are on unpaid sick leave (Section 19)

Maternity benefits helping pregnant workers to retain their jobs, while they are on unpaid maternity leave (Section 24)

Adoption benefits helping adoptive parents, adopting a child under the age of 2, to retain their jobs, while they are on unpaid leave (Section 27)

#### OHASA's influence on job sustainability

Creating a safe working environment

#### OHASA's monitoring and enforcement influence on job sustainability

Monitoring HS by health and safety representatives (Sections 18 & 22)

Monitoring HS by labour inspectors (Sections 24 & 25)

Enforcement HS by the labour inspectors (Sections 30-38)

#### COIDA's influence on job sustainability

Compensation Commissioner holding inquiries into accidents sustain jobs (Section 40)

#### COIDA's enforcement's influence on job sustainability

Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 & 99)

	Trade unions			Business			Combined		
	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.	Chi-Square	df	Asymp. Sig.
Illness benefits helping sick workers to retain their jobs, while they are on unpaid sick leave (Section 19)	6.294	3	0.098	14.303	4	0.006	18.386	4	0.001
Maternity benefits helping pregnant workers to retain their jobs, while they are on unpaid maternity leave (Section 24)	9.765	4	0.045	19.455	4	0.001	21.518	4	0.000
Adoption benefits helping adoptive parents, adopting a child under the age of 2, to retain their jobs, while they are on unpaid leave (Section 27)	3.471	3	0.325	7.846	4	0.097	8.122	4	0.087
Creating a safe working environment	5.353	3	0.148	20.239	4	0.000	29.452	4	0.000
Monitoring HS by health and safety representatives (Sections 18 & 22)	5.353	3	0.148	19.493	4	0.001	26.833	4	0.000
Monitoring HS by labour inspectors (Sections 24 & 25)	5.824	3	0.121	15.164	4	0.004	18.262	4	0.001
Enforcement HS by the labour inspectors (Sections 30-38)	5.824	3	0.121	18.896	4	0.001	22.548	4	0.000
Compensation Commissioner holding inquiries into accidents sustain jobs (Section 40)	0.118	2	0.943	20.09	4	0.000	28.619	4	0.000
Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 & 99)	3.471	3	0.325	20.09	4	0.000	25.762	4	0.000

**Table 6.2. Business interviewees' profile**

<b><u>No.</u></b>	<b><u>Date</u></b>	<b><u>Type</u></b>	<b><u>Position</u></b>	<b><u>Entity</u></b>	<b><u>Area</u></b>	<b><u>Industry</u></b>
B1	18.09.2016	Face-to-Face	IT Manager	Public Company	Pinetown	Logistics
B2	19.09.2016	Telephone	Managing Director	Close Corporation	Johannesburg	Transport and storage
B3	20.09.2016	Email	Manager	Close Corporation	Pinetown	Retail and Wholesale
B4	20.09.2016	WhatsApp	HR Manager	Private Company	Ladysmith	Manufacturing
B5	21.09.2016	Face-to-Face	Group Quality Manager	Private Company	Durban North	Private Education
B6	22.09.2016	Telephone	Group Company Secretary	Public Company	Johannesburg	Transport and storage
B7	23.09.2016	Telephone	Owner	Close Corporation	Cape Town	Business services
B8	23.09.2016	Face-to-Face	Director of Operations	Private Company	Durban	Security
B9	03.10.2016	Telephone	Senior Manager	Business Federation	Johannesburg	Metal and Engineering
B10	04.10.2016	Skype	CEO	Close Corporation	Johannesburg	Retail and Wholesale.
B11	18.10.2016	Telephone	Senior Manager	Close Corporation	Cape Town	Manufacturing
B12	21.10.2016	Telephone	Managing Director	Private Company	Ballito	Business services
B13	11.11.2016	Telephone	Sole Proprietor	Close Corporation	Durban North	Forwarding and freight
B14	14.11.2016	Telephone	Managing Director	Private Company	Pinetown	Electricity, gas and water.
B15	19.01.2017	Telephone	HR Executive – Senior Manager	Public Company	Johannesburg	Transport and storage.
B16	25.01.2017	Telephone	HR Director	Multi National Corporation	Pinetown	Manufacturing

**Table 6.3 Trade Union interviewees' profile**

<b><u>Code</u></b>	<b><u>Date</u></b>	<b><u>Interview Type</u></b>	<b><u>Position</u></b>	<b><u>Entity</u></b>	<b><u>Area</u></b>	<b><u>Industry</u></b>
TU1	22.09.2016	Skype	TU Official, shop steward	Trade Union	Durban	Tertiary Education
TU2	24.10.2016	Telephone	TU Official, divisional manager - strategic development	Trade Union Federation	Johannesburg	Mining, Metal and Engineering
TU3	26.10.2016	Cellphone	TU Official, Deputy General Secretary	Trade Union	Johannesburg	Hospitality, catering and accommodation.
TU4	31.10.2016	Telephone	TU Official, divisional manager – specialist section	Trade Union Federation	Johannesburg	Mining, Metal and Engineering
TU5	26.01.2017	Cellphone	Trade Union Official, General Secretary,	Trade Union	Johannesburg	Retail and wholesale
TU6	16.03.2017	Cellphone	Trade union administrator	Trade Union	Durban	Tertiary Education

## Table of variables that constitute each section

Appendix 13

### General

Social Justice, Human Rights & Decent work	Q1a	Q1b	Q1c	Q1d	Q1e	Q1f	Q1g							
Labour_Law	Q2a	Q2b	Q2c	Q2d	Q2e	Q2f	Q2g	Q2h						
<b>Labour Law influence on</b>														
<b>BCEA's influence</b>														
Working Hours / conditions	Q4a	Q4b	Q4c	Q4d	Q4e	Q5a	Q5b		Q14a	Q14b	Q14c			
Notice periods									Q15					
Minimum wages									Q16					
Severance pay									Q17					
Monitoring of BCEA	Q4f								Q14d					
Enforcement of BCEA	Q4g								Q14e					
<b>LRA's influence on</b>														
Fairness	Q6a	Q6b	Q6c						Q18a	Q18b	Q18c			
Monitoring of LRA	Q6d								Q18d					
Enforcement of LRA	Q6e								Q18e					
Dismissals	Q7a	Q7b	Q7c	Q7d					Q19a	Q19b	Q19c	Q19d		
Equality	Q8a	Q8b	Q8c	Q8d	Q8e				Q20a	Q20b	Q20c	Q20d	Q20e	
Monitoring of LRA Equality	Q8f								Q20f					
Enforcement of LRA Equality	Q8g								Q20g					
<b>EEA's influence on</b>														
Equal Treatment	Q9a	Q9b	Q9c	Q9d	Q9e				Q21a	Q21b	Q21c	Q21d	Q21e	
Monitoring of EEA	Q9f								Q21f					
Enforcement of EEA	Q9g								Q21g					

**Additional legislative influence**

Job creation schemes - ESA  
 Tax incentive schemes - ETIA  
 Employment services - SDA  
 Training unemployed - UIA  
 Affirmative action - EEA  
 Black ownership - BBBEE

**on Job Creation**

Q10a  
 Q10b  
 Q10c  
 Q10d  
 Q10e  
 Q10f

**on Job Sustainability**

Skills development - SDA	Q22a	Q22b	Q22c	Q22d
Training Workers - LRA	Q23a	Q23b	Q23c	Q23d
Skills improvement - LRA	Q24a	Q24b		
UIA benefits	Q25a	Q25b	Q25c	

**OHASA's influence on Job sustainability**

Safe working environment	Q26a
Monitoring by HS reps	Q26b
Monitoring by inspectors	Q26c
Enforcement of OHASA	Q26d

**COIDA's influence on Job sustainability**

Holding of enquiries	Q27a
Enforcement of COIDA	Q27b

**General particulars**

Percentage of budget spent on job creation

Q3

Increase number of job types

Q11a Q11b

Skills development factors

Q12a Q12b Q12c Q12d

Percentage of budget spent on Skills development

Q13

Type of Business entity

Q29

Sector

Q30

Number of workers

Q31

Percentage of work categories

Q33a Q33b Q33c Q33d Q33e Q33f Q33g

Number of unionised workers

Q34

Percentage of members

Q35

Bargaining or statutory councils

Q36

Additional comments

Q37

## **THEMATIC FRAMEWORK: INFLUENCE OF LABOUR LEGISLATION STUDY:**

### **1. BACKGROUND**

- 1.1 Sampling details**
- 2.2 Organisational composition and relationship to the organisation**
- 2.3 Position in the organisation**
- 2.4 Industry or sector in which the organisation is situated**
- 2.5 Geographical area in which the organisation is situated**

### **2. JOB CREATION, JOB SUSTAINABILITY AND LABOUR LEGISLATION**

- 2.1 Views on job creation**
- 2.2 Views on job sustainability**
- 2.3 Views on labour legislation – BCEA, LRA, EEA, SDA & other**

### **3 JOB CREATION**

- 3.1 Current job creation activities engaged in**
- 3.2 Comparison of current job creation activities with past job creation activities**
- 3.3 Factors influencing job creation**
- 3.4 Reasons for creating jobs**
- 3.5 Reasons for not creating jobs**
- 3.6 Positive feelings for creating jobs**
- 3.7 Negative feelings for creating jobs**
- 3.8 Views**

### **4. JOB SUSTAINABILITY**

- 4.1 Current job sustainability activities engaged in**
- 4.2 Comparison of current job sustaining activities with past job sustaining activities**
- 4.3 Factors influencing job sustainability**
- 4.4 Reasons for sustaining jobs**
- 4.5 Reasons for not sustaining jobs**
- 4.6 Positive feelings towards sustaining jobs**
- 4.7 Negative feelings towards sustaining jobs**
- 4.8 Views**

**5. EXPERIENCE WITH LABOUR LEGISLATION**

- 5.1 Labour legislation experiences – BCEA, LRA, EEA, SDA & other
- 5.2 Impact of labour legislation experiences – BCEA, LRA, EEA, SDA
- 5.3 Positive feelings about labour legislation– BCEA, LRA, EEA, SDA
- 5.4 Negative feelings about labour legislation– BCEA, LRA, EEA, SDA
- 5.5 Other

**6. EXPERIENCE WITH REGULATION**

- 6.1 Regulatory experiences – BCEA, LRA, EEA, SDA & other
- 6.2 Impact of regulatory experiences – BCEA, LRA, EEA, SDA & other
- 6.3 Positive feelings about labour legislation regulations– BCEA, etc
- 6.4 Negative feelings about labour legislation regulations– BCEA, etc
- 6.5 Views on labour legislation regulation– BCEA, LRA, EEA, SDA & other legislation
- 6.6 Other

**7. EXPERIENCE WITH ENFORCEMENT OF COMPLIANCE WITH LABOUR LEGISLATION**

- 7.1 Enforcement of compliance experiences – BCEA, LRA, EEA, SDA
- 7.2 Impact of enforcement of compliance experiences – BCEA, etc
- 7.3 Positive feelings about enforcement of compliance – BCEA, etc,
- 7.4 Negative feelings about enforcement of compliance– BCEA, etc
- 7.5 Views on enforcement of compliance – BCEA, LRA, EEA, SDA etc
- 7.6 Other

**8. COST OF COMPLIANCE WITH LABOUR LEGISLATION**

- 8.1 Amount spent on compliance– BCEA, LRA, EEA, SDA & other
- 8.2 Amount spent on training – LRA, SDA & other
- 8.3 Current financial position
- 8.4 Impact on financial position – BCEA, LRA, EEA, SDA & other
- 8.5 Views on cost of compliance
- 8.6 Other

**9. IMPACT OF LABOUR LEGISLATION ON**

- 9.1 Business
- 9.2 Employment
- 9.3 Job creation
- 9.4 Job sustainability
- 9.5 Views on the impact of labour legislation
- 9.6 Other



## **10. STRATEGIES**

**10.1 Methods**

**10.2 Opportunities**

**10.3 Support**

**10.4 Future**

**10.5 Recommendations**

Most of the items on the role of labour law load quite strongly. However, where there are a few items that load on component 2, namely to balance and to regulate the employment relationship. This split suggests that a two-factor solution is likely to be more appropriate between equity and fairness.

### Component Matrix<sup>a</sup>

BCEA's regulation of working hours influence on job creation		Component	
		1 Fairness	2 Flexibility
4a	Ordinary hours of work (Section 9)	0.577	0.128
4b	Overtime hours (Section 10)	0.768	0.160
5a	Compressed working week (Section 11)	0.256	0.904
5b	Averaging of hours worked (Section 12)	0.146	0.936
4c	Working on Sundays (Section 16)	0.901	0.214
4d	Night work (Section 17)	0.873	0.136
4e	Work on Public holidays (Section 18)	0.880	0.232

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 3 iterations.

Most of the items on BCEA's regulation of working hours influence on job creation load quite strongly. However, where there are a few items that load on component 2, namely compressed week and averaging of hours worked that suggest that a two-factor solution is likely to be more appropriate between fairness and flexibility.

### Component Matrix<sup>a</sup>

Monitoring and enforcement of compliance of BCEA by labour inspectors influence on job creation		Component
		1
4f	Monitoring of the Act by labour inspectors (Sections 63 - 84)	0.989
4g	Enforcement of the Act by labour inspectors (Sections 63 - 84)	0.989

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on monitoring and enforcement of compliance with BCEA's influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>LRA's fairness requirements influence on job creation</b>	<b>1</b>
6a	Regulation of the use of "alternative" employment contracts (Fixed-Term contracts, part-time contracts, labour brokers and temporary employment services) to improve job creation (Sections 198 and 200A)	0.799
6b	Protection of workers affected by mergers, takeovers or transfers to improve job creation (Section 197)	0.771
6c	Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) to promote labour peace in the workplace (Sections 64 and 65)	0.851

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on LRA's fairness requirements influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Monitoring and enforcement of LRA compliance by bargaining council's designated agents on job creation</b>	<b>1</b>
6d	Monitoring of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	0.961
6e	Enforcement of collective agreements by the bargaining councils' designated agents to ensure that workers are treated fairly (Section 33)	0.961

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the influence of the bargaining council's agents monitoring and enforcement of compliance with LRA on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>LRA's requirements for a fair dismissal's influence on job creation</b>	<b>1</b>
7a	General requirements of fairness (Section 188)	0.842
7b	Requirements for fairness in respect of minor retrenchments (Section 189)	0.917
7c	Fairness requirements for mass (major) retrenchments (Section 189A)	0.916
7d	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	0.853

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the LRA's requirements for a fair dismissal influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>LRA's equity and equal treatment requirements influence on job creation</b>	<b>1</b>
8a	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	0.717
8b	Control of alternative "employment" contracts to improve job creation (Sections 198 and 200A)	0.703
8c	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	0.757
8d	Regulation of unfair labour practices (Section 186 (2))	0.853
8e	Automatically unfair dismissals (Section 187)	0.816

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the EEA's equity and equal treatment requirements influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Influence of monitoring and enforcing compliance with LRA by labour inspectors on job creation</b>	<b>1</b>
8f	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	0.972
8g	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	0.972

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the labour inspectors' monitoring and enforcement of compliance with LRA's influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Rotated Component Matrix<sup>a</sup>

EEA's promotion of equality and equal treatment influence on job creation		Component	
		1 No unfair discrimination	2 Equal treatment
9a	Prohibition of unfair discrimination (Section 6)	0.947	0.157
9b	Removal of unfair discrimination (Section 9 (3) & (4))	0.953	0.213
9c	Right to equal income distribution, wages and conditions of employment (Section 27)	0.438	0.812
9d	Regulation of unfair labour practices (Section 186 (2))	0.685	0.607
9e	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	0.055	0.923

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 3 iterations.

Most of the items on the EEA's promotion of equality and equal treatment's influence on job creation load quite strongly. However, where there are a few items that load on component 1, that suggest that a two-factor solution is likely to be more appropriate, such as a split between equal treatment and no unfair discrimination.

### Component Matrix<sup>a</sup>

EEA's monitoring and enforcement of compliance by labour inspectors influence on job creation		Component 1
9f	Monitoring of the Act's provisions by labour inspectors (Section 34)	0.939
9g	Enforcement of the Act's provisions by labour inspectors (Sections 35 - 45)	0.947
10e	Affirmative action, in terms of the EEA (Sections 12-27)	0.657

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section the labour inspectors' monitoring and enforcement of compliance with EEA's influence on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

Ancillary legislation's influence on job creation		Component 1
10a	ESA Job creation schemes (Sections 5 & 6)	0.849
10b	ETIA tax incentive schemes (Sections 2 & 3)	0.871
10c	SDA employment services offices (Sections 23 & 24)	0.863
10d	UIA training of unemployed workers (Sections 18 & 19)	0.772
10f	BBBEE black ownership, corporate advancement and involvement of Black people (Section 2)	0.652

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the influence of ancillary legislation on job creation loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

BCEA's work security provisions to retain jobs influence on job sustainability		Component 1
14a	Control of the number of overtime hours worked retaining jobs (Section 10)	0.835
14b	Regulation of sick leave retaining jobs (Sections 22 to 24)	0.942
14c	Regulation of maternity leave retaining jobs (Section 25 and 26)	0.886

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the BCEA's work security provisions to retain jobs influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

	Monitoring and enforcement of compliance with BCEA by labour inspectors influence on job sustainability	Component 1
14d	Monitoring of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	0.952
14e	Enforcement of the Act by labour inspectors sustaining jobs (Sections 63 - 84)	0.951

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the labour inspectors' monitoring and enforcement of compliance with BCEA's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what it set out to measure.

### Component Matrix<sup>a</sup>

	BCEA's work security provisions influence on job sustainability	Component 1
15	Notice periods (Section 37)	0.711
16	Regulation of minimum wages (Sections 51-58)	0.736
17	Severance Pay (Section 41)	0.854

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the BCEA's work security provisions influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what it set out to measure.

### Component Matrix<sup>a</sup>

	LRA's fairness requirements influence on job sustainability	Component 1
18a	Regulation of the use of "alternative" employment contracts (Fixed-Term contracts, part-time contracts, labour brokers and temporary employment services) improving job security (Sections 198 and 200A)	0.814
18b	Protection of workers affected by mergers, takeovers or transfers improving job security (Section 197)	0.832
18c	Regulation of industrial action (strikes, unprotected strikes, picketing and protest action) promoting labour peace in the workplace (Sections 64 and 65)	0.801

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the LRA's fairness requirements influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what it set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Bargaining council agents monitoring and enforcing compliance with LRA influence on job sustainability</b>	<b>1</b>
18d	Monitoring of collective agreements by the bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	0.988
18e	Enforcement of collective agreements by the bargaining councils' designated agents ensuring that workers are treated fairly (Section 33)	0.988

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the influence of bargaining council's agents monitoring and enforcement of compliance with LRA on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what it set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>LRA's fair dismissal requirements influence on job sustainability</b>	<b>1</b>
19a	General requirements of fairness (Section 188)	0.891
19b	Requirements for fairness in respect of minor retrenchments (Section 189)	0.916
19c	Fairness requirements for mass (major) retrenchments (Section 189A)	0.933
19d	Requirement that workers affected by mergers, takeovers or transfers are retrenched fairly (Section 197)	0.918

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the LRA's fairness requirements influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what it set out to measure.



### Rotated Component Matrix<sup>a</sup>

LRA's equality and equal treatment requirements influence on job sustainability		Component	
		1 No unfair discrimination	2 Equal treatment
20a	Standardization of income distribution, wages and conditions of employment (Section 198A (4A-F))	0.266	0.879
20b	Control of alternative "employment" contracts improving job security (Sections 198 and 200A)	0.186	0.907
20c	Requirements not to discriminate unfairly when recruiting and selecting workers (Sections 186 and 187)	0.902	0.156
20d	Regulation of unfair labour practices (Section 186 (2))	0.895	0.222
20e	Automatically unfair dismissals (Section 187)	0.843	0.314

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 3 iterations.

Most of the items on the LRA's equality and equal treatment requirements influence on job sustainability load quite strongly. However, where there are a few items that load on component 2, that suggest that a two-factor solution is likely to be more appropriate, such as a split between equal treatment and unfair discrimination.

### Component Matrix<sup>a</sup>

Labour inspectors monitoring and enforcing compliance with LRA's influence on job sustainability		Component
		1
20f	Monitoring of the Act's provisions by labour inspectors (Sections 33 and 84)	0.983
20g	Enforcement of the Act's provisions by labour inspectors (Sections 33 and 84)	0.983

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the labour inspectors monitoring and enforcement of compliance with LRA's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Influence of LRA's skills development provisions on job sustainability</b>	<b>1</b>
23a	Educating workers who lack skills	0.965
23b	Training workers who lack skills (Sections 28, 43 and 84)	0.961
23c	Re-training workers with new skills to perform different work (Sections 28, 43 and 84)	0.930
23d	Ensuring that workers, through learnership agreements, acquire the relevant vocational skills needed to perform their work competently (Sections 28, 43 and 84)	0.881

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the LRA's skills development provisions influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Influence of skills development on job sustainability</b>	<b>1</b>
24 a	Training under performing workers who lack skills thereby ensuring that jobs are maintained (Section 187)	0.964
24 b	Retraining workers, instead of retrenching, to help them to retain their jobs (Sections 189, 189A and 197)	0.964

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on skills development in general's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>EEA's promotion of equality and equal treatment influence on job sustainability</b>	<b>1</b>
21a	Prohibition of unfair discrimination (Section 6)	0.881
21b	Removal of unfair discrimination (Section 9 (3) & (4))	0.881
21c	Right to equal income distribution, wages and conditions of employment (Section 27)	0.850
21d	Regulation of unfair labour practices (Section 186 (2))	0.892
21e	Promotion of affirmative action in the recruitment and selection process (Sections 13-26)	0.642

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on EEA's equality and equal treatment's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Labour inspectors monitoring and enforcing compliance with EEA's influence on job sustainability</b>	<b>1</b>
21f	Monitoring of the Act's provisions by labour inspectors(Section 34)	0.990
21g	Enforcement of the Act's provisions by labour inspectors (Sections 35 to 45)	0.990

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on the monitoring and enforcement of compliance with EEA's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

		Component
	<b>Influence of education and training in general on job sustainability</b>	<b>1</b>
12a	Education improving a business's competitiveness	0.869
12b	Training improving a business's competitiveness	0.852
12c	Education increasing workers' productivity	0.914
12d	Training increasing workers' productivity	0.917

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on education and training in general's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

	Influence of SDA on job sustainability	Component 1
22a	Education ensuring that workers are equipped with the necessary skills to work (Section 22)	0.907
22b	Training provided by the skills programmes ensuring that workers are equipped with the necessary skills to perform their work competently (Section 20)	0.941
22c	Re-training through skills programmes providing workers with new skills needed to perform different work (Section 20)	0.935
22d	Learnership agreements ensuring that workers are equipped with the relevant vocational skills to perform their work competently (Sections 16-19)	0.903

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on SDA's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

	Influence of UIA's work security provisions on job sustainability	Component 1
25a	Illness benefits helping sick workers to retain their jobs, while they are on unpaid sick leave (Section 19)	0.906
25b	Maternity benefits helping pregnant workers to retain their jobs, while they are on unpaid maternity leave (Section 24)	0.900
25c	Adoption benefits helping adoptive parents, adopting a child under the age of 2, to retain their jobs, while they are on unpaid leave (Section 27)	0.926

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

a. 1 components extracted.

The statements in this section on the UIA's work security provisions influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

	Influence of labour inspectors monitoring and enforcing compliance with OHASA on job sustainability	Component 1
26b	Monitoring health and safety by health and safety representatives (Sections 18 & 22)	0.884
26c	Monitoring of health and safety by labour inspectors (Sections 24 & 25)	0.968
26d	Enforcement of health and safety by the labour inspectors (Sections 30-38)	0.961

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The statements in this section on education and training in general's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

### Component Matrix<sup>a</sup>

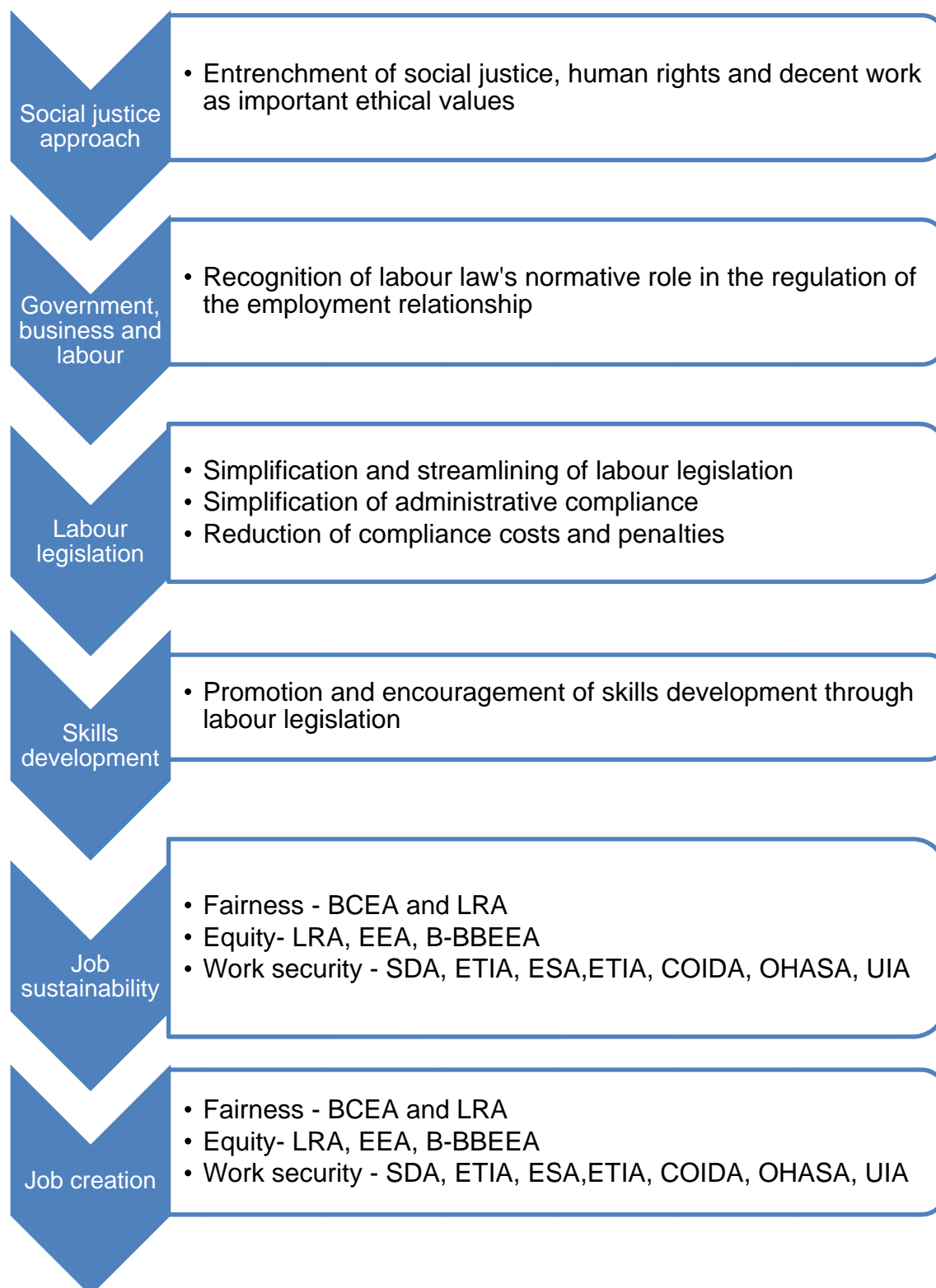
Influence of ensuring compliance with COIDA on job sustainability		Component
		1
27a	Compensation Commissioner holding inquiries into accidents sustain jobs (Section 40)	0.980
27b	Compensation Commissioner's enforcement of the Act sustains jobs (Sections 87 & 99)	0.980

Extraction Method: Principal Component Analysis.

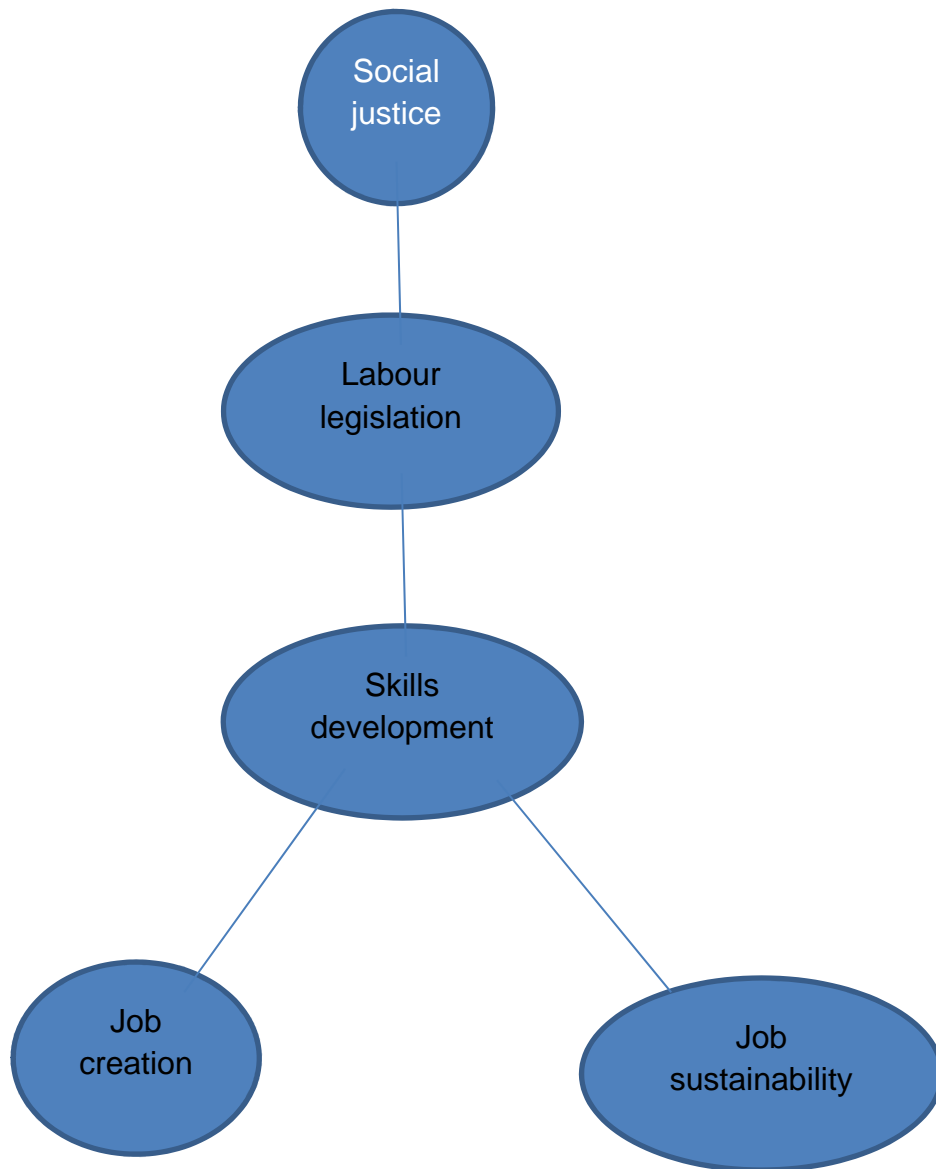
a. 1 components extracted.

The statements in this section on ensuring compliance with COIDA's influence on job sustainability loaded perfectly along a single component. This implies that the statements in this section perfectly measured what they set out to measure.

**Figure 8.1: A social justice model of labour legislation for the promotion of job creation and job sustainability in South Africa**



**Figure 8.2: A social justice concept of labour legislation through skills development, promoting job creation and job sustainability in South Africa**





**MANAGEMENT SCIENCES: FACULTY RESEARCH ETHICS COMMITTEE (FREC)**

26 May 2014  
PO Box 30985  
Mayville  
Durban  
4058  
Student No: 21242648  
FREC No: 04/13FREC

Dear Mrs AJC Womack

**DOCTORATE DEGREE IN TECHNOLOGY: BUSINESS ADMINISTRATION**

**TITLE: THE IMPACT OF LABOUR LEGISLATION ON JOB CREATION AND JOB SUSTAINABILITY IN SOUTH AFRICA**

Please be advised that the FREC Committee has reviewed your proposal and the following decision was made: Ethical Level 2 -Full Approval

Approval has been granted for a period of one year, after which you are required to apply for safety monitoring and annual recertification. Please use the form located at the Faculty. This form must be submitted to the FREC at least 3 months before the ethics approval for the study expires.

Any adverse events [serious or minor] which occur in connection with this study and/or which may alter its ethical consideration must be reported to the FREC according to the FREC SOP's.

Please note that ANY amendments in the approved proposal require the approval of the FREC as outlined in the FREC SOP's.

Yours Sincerely

Prof N Dorasamy  
FREC: Chairperson





**MANAGEMENT SCIENCES: FACULTY RESEARCH ETHICS COMMITTEE (FREC)**

20 May 2015  
PO Box 30985  
Mayville  
Durban  
4058  
Student No: 21242648  
FREC No: 04/13FREC

Dear Mrs AJC Womack

**RE-CERTIFICATION: DOCTORATE DEGREE IN TECHNOLOGY: BUSINESS ADMINISTRATION**

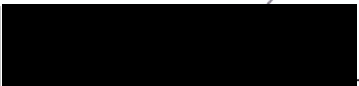
**TITLE: THE IMPACT OF LABOUR LEGISLATION ON JOB CREATION AND JOB SUSTAINABILITY IN SOUTH AFRICA**

Please be advised that the FREC Committee has reviewed your proposal and the following decision was made: Ethical Level 2 -Full Approval (as per letter dated 26 May 2014)

Approval has been re-granted for a period of one year, after which you are required to apply for safety monitoring and annual recertification. Please use the form located at the Faculty. This form must be submitted to the FREC at least 3 months before the ethics approval for the study expires.

Any adverse events [serious or minor] which occur in connection with this study and/or which may alter its ethical consideration must be reported to the FREC according to the FREC SOP's.  
Please note that ANY amendments in the approved proposal require the approval of the FREC as outlined in the FREC SOP's.

Yours Sincerely

  
Prof N Dorasamy  
FREC: Chairperson