

LABOUR LEGISLATION AND SMMEs  
The impact of Sectoral Determination 1: Contract  
Cleaning Sector South Africa on the growth of small  
medium and micro enterprises

Submitted in partial fulfillment of the requirements for the degree  
Magister Legum(Labour Law)

by



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## **KEY WORDS**

Basic Conditions of Employment Act

Sectoral Determination

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Impact

Growth

Compliance

Job creation

Key provisions

Threat



## ABSTRACT

### **LABOUR LEGISLATION AND SMMEs: THE IMPACT OF SECTORAL DETERMINATION 1: CONTRACT CLEANING SECTOR SOUTH AFRICA ON THE GROWTH OF SMMEs**

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LLM mini-dissertation, Department of Labour and Social Law, University of the Western Cape.

This mini-dissertation explores the impact that *Sectoral Determination 1: Contract Cleaning Sector, South Africa* had on the growth of small, medium and micro enterprises (SMMEs) in the sector. It critically examines the prevailing perception in industry that labour legislation has a negative impact on the growth of SMMEs, and, evaluates the South African government's response to this perception.

This study investigates the level of compliance with Sectoral Determination 1 and finds a high level of compliance among SMMEs. It further examines the impact that key provisions of Sectoral Determination 1 had on the growth of SMMEs in the Contract Cleaning sector and finds no evidence in support of the perception that these key provisions had a negative impact on the growth of these enterprises.

This mini-dissertation finds that **organizational problems**, caused by internal factors such as availability of resources and management skills, **and industry-based problems**, in the form of unfair competition, contributes significantly to the level of compliance and how the Sectoral Determination is perceived to impact on the growth of these enterprises. This study therefore concludes that the capacity to manage the workforce effectively within the confines of the Sectoral Determination plays a pivotal role in the impact that it has on the growth of the enterprise.

November 2006

## DECLARATION

I, NOLEEN LEACH NEè NOBLE, declare that the work presented in this dissertation has not been submitted before for any degree or examination and that all the sources I have used or quoted have been indicated and acknowledged as complete references. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the *Magister Legum* Degree in Labour Law.

Signature:.....

Date:.....



## **DEDICATION**

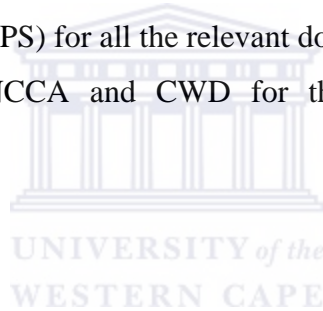
This dissertation is dedicated to my family, especially my husband, my most loyal supporter and fiercest critic.



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# TABLE OF CONTENTS

<i>TITLE PAGE</i> .....	(i)
<i>KEY WORDS</i> .....	(ii)
<i>ABSTRACT</i> .....	(iii)
<i>DECLARATION</i> .....	(iv)
<i>DEDICATION</i> .....	(v)
<i>ACKNOWLEDGEMENTS</i> .....	(vi)
<i>TABLE OF CONTENTS</i> .....	(vii)
<i>LIST OF TABLES</i> .....	(xii)
<i>LIST OF FIGURES</i> .....	(xiii)
<i>LIST OF GRAPHS</i> .....	(xiv)
<i>LIST OF ABBREVIATIONS</i> .....	(xvii)
CHAPTER 1	
1. INTRODUCTION.....	1
CHAPTER 2	
2. EXISTING PERCEPTIONS REGARDING THE IMPACT OF LABOUR LEGISLATION ON THE GROWTH OF SMMEs.....	6
2.1 SMMEs DEFINED.....	6
2.2 LABOUR REGULATIONS.....	12
2.2.1 Labour Relations Act 66 of 1995.....	12
2.2.2 Basic Conditions of Employment Act 75 of 1999.....	13
2.2.3 Employment Equity Act 55 of 1998.....	14

## CHAPTER 3

3.	GOVERNMENT’S RESPONSE TO EXISTING PERCEPTIONS.....	15
3.1	GOVERNMENT’S RESPONSE.....	15
3.1.1	Ministerial Determination on Small Businesses.....	16
3.1.2	Labour Relations Act .....	17
3.1.3	Basic Conditions of Employment Act.....	17
3.1.4	Employment Equity Act.....	18
3.2	GOVERNMENT’S RESPONSE EXAMINED.....	18
3.2.1	Job creation accompanies the development of SMMEs.....	18
3.2.1.1	Industrialised countries.....	19
3.2.1.2	The African experience.....	20
3.2.1.3	The South African experience.....	21
3.2.2	Labour regulations pose a threat to the development of SMMEs and, hence, employment creation.....	24

## CHAPTER 4

4.	SECTORAL DETERMINATION 1: CONTRACT CLEANING SECTOR SOUTH AFRICA.....	29
4.1	Sectoral Determination defined.....	29
4.2	State of the industry: 1999.....	30
4.3	Contents of the Sectoral Determination 1.....	31
4.3.1	Area and scope of application.....	31
4.3.2	Remuneration.....	32
4.3.3	Ordinary hours of work.....	32
4.3.4	Overtime.....	33



4.3.5	Payment of overtime.....	33
4.3.6	Compressed working week.....	33
4.3.7	Averaging of hours of work.....	34
4.3.8	Payment for work on Sunday.....	34
4.3.9	Night work.....	34
4.3.10	Public holidays.....	34
4.3.11	Annual leave.....	36
4.3.12	Sick leave.....	36
4.3.13	Maternity leave.....	36
4.3.14	Family responsibility leave.....	37
4.3.15	Termination of employment.....	37
4.3.16	Severance pay.....	37
4.4	State of the industry: 2002.....	37
4.5	Brief commentary on state of the industry.....	38
<b>CHAPTER 5</b>		
5.	<b>RESEARCH DESIGN AND METHOD.....</b>	<b>40</b>
5.1	Research instrument.....	40
5.2	Sampling procedure.....	45
5.3	Data collection.....	45
5.3.1	Primary data.....	45
5.3.2	Secondary data.....	46
5.4	Data capturing and analysis.....	46

## CHAPTER 6

6.	THE IMPACT OF SECTORAL DETERMINATION 1 ON SMMEs – RESEARCH FINDINGS.....	48
6.1	Compliance with Sectoral Determination 1.....	48
6.1.1	Remuneration per ordinary hour.....	50
6.1.2	Maximum ordinary hours per week.....	51
6.1.3	Annual bonus paid.....	51
6.1.4	Overtime.....	53
6.1.4.1	Maximum overtime hours per day.....	54
6.1.4.2	Maximum overtime hours per week.....	54
6.1.5	Night work.....	55
6.1.6	Annual leave.....	56
6.1.7	Maternity leave.....	57
6.1.7.1	Maternity leave granted.....	57
6.1.7.2	Replacements.....	58
6.1.8	Family responsibility leave.....	59
6.1.8.1	Maximum number of days granted.....	59
6.1.8.2	Replacements.....	60
6.1.9	Sick leave.....	60
6.1.10	Termination of employment.....	61
6.1.11	Severance pay.....	62
6.2	Impact of compliance on the growth of the enterprise.....	63
6.2.1	Ordinary hours.....	63
6.2.2	Overtime.....	65

6.2.3	Night work.....	66
6.2.4	Sunday work.....	67
6.2.5	Public holidays.....	69
6.2.6	Bonuses.....	70
6.2.7	Annual leave.....	71
6.2.8	Maternity leave.....	72
6.2.9	Family responsibility leave.....	73
6.2.10	Sick leave.....	74
6.2.11	Termination of service.....	75
6.2.12	Severance pay.....	76
CHAPTER 7		
7.	DISCUSSION OF RESEARCH FINDINGS.....	78
CHAPTER 8		
8.	CONCLUSION AND RECOMMENDATIONS.....	82
8.1	CONCLUSION.....	82
8.2	RECOMMENDATIONS.....	83
<i>BIBLIOGRAPHY</i> .....		85
<i>ANNEXURES</i>		



## LIST OF TABLES

TABLE 1	CLASSIFICATION OF SMMEs.....	8
TABLE 2	SUMMARY OF SAMPLE BY CLASS SIZE.....	45
TABLE 3	SUMMARY OF COMPLIANCE WITH SECTORAL DETERMINATION.....	48



## LIST OF FIGURES

FIGURE 1	SAMPLING PROCEDURE.....	42
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## LIST OF GRAPHS

GRAPH 1	REMUNERATION PER ORDINARY HOUR(FULL-TIME)....	50
GRAPH 2	MAXIMUM ORDINARY HOURS PER WEEK.....	51
GRAPH 3	ANNUAL BONUS PAID PER FULL-TIME EMPLOYEE.....	52
GRAPH 4.1	WORK OVERTIME(SMALL ENTERPRISES).....	53
GRAPH 4.2	WORK OVERTIME(LARGE ENTERPRISES).....	53
GRAPH 5	MAXIMUM OVERTIME HOURS PER DAY.....	54
GRAPH 6	MAXIMUM OVERTIME HOURS PER WEEK.....	55
GRAPH 7.1	NIGHT WORK(SMALL ENTERPRISES).....	55
GRAPH 7.2	NIGHT WORK(LARGE ENTERPRISES).....	55
GRAPH 8	ANNUAL LEAVE DAYS GRANTED.....	56
GRAPH 9	MATERNITY LEAVE GRANTED.....	57
GRAPH 10.1	TRAINING REPLACEMENT FOR MATERNITY LEAVE(SMALL ENTERPRISES).....	58
GRAPH 10.2	TRAINING REPLACEMENT FOR MATERNITY LEAVE(LARGE ENTERPRISES).....	58
GRAPH 11	FAMILY RESPONSIBILITY LEAVE DAYS GRANTED.....	59
GRAPH 12.1	REPLACEMENTS FOR FAMILY RESPONSIBILITY LEAVE GRANTED(SMALL ENTERPRISES).....	60
GRAPH 12.1	REPLACEMENTS FOR FAMILY RESPONSIBILITY LEAVE GRANTED(LARGE ENTERPRISES.....	60
GRAPH 13	MAXIMUM DAYS SICK LEAVE GRANTED.....	61
GRAPH 14	TERMINATION OF EMPLOYMENT(SMALL ENTERPRISES).....	62
GRAPH 15.1	TERMINATION FOR OPERATIONAL REASONS(SMALL ENTERPRISES).....	62
GRAPH 15.2	TERMINATION FOR OPERATIONAL REASONS(LARGE ENTERPRISES).....	62
GRAPH 16	IMPACT OF GROWTH ON ENTERPRISE (REMUNERATION PER ORDINARY HOUR).....	63

GRAPH 17	IMPACT OF GROWTH ON ENTERPRISE (MINIMUM WAGE RATES).....	64
GRAPH 18.1	IMPACT OF OVERTIME ON THE GROWTH OF THE ENTERPRISE .....	65
GRAPH 18.2	SUMMARY OF IMPACT OF OVERTIME ON GROWTH OF THE ENTERPRISE .....	65
GRAPH 19	IMPACT ON GROWTH OF THE ENTERPRISE(OVERTIME) .....	66
GRAPH 20.1	IMPACT ON GROWTH OF THE ENTERPRISE(NIGHT WORK).....	67
GRAPH 20.2	SUMMARY OF IMPACT ON GROWTH OF THE ENTERPRISE (NIGHT WORK).....	67
GRAPH 21.1	IMPACT ON GROWTH OF ENTERPRISE (SUNDAY WORK).....	68
GRAPH 21.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(SUNDAY WORK).....	68
GRAPH 22.1	IMPACT ON GROWTH OF ENTERPRISE(PUBLIC HOLIDAYS).....	69
GRAPH 22.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(PUBLIC HOLIDAYS).....	69
GRAPH 23.1	IMPACT ON GROWTH OF ENTERPRISE(BONUSES).....	70
GRAPH 23.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(BONUSES).....	70
GRAPH 24.1	IMPACT ON GROWTH OF ENTERPRISE (ANNUAL LEAVE).....	71
GRAPH 24.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(ANNUAL LEAVE).....	71
GRAPH 25.1	IMPACT ON GROWTH OF ENTERPRISE(MATERNITY LEAVE).....	72
GRAPH 25.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(MATERNITY LEAVE).....	72

GRAPH 26.1	IMPACT ON GROWTH OF ENTERPRISE(FAMILY RESPONSIBILIY LEAVE).....	73
GRAPH 26.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(FAMILY RESPONSIBILITY LEAVE).....	73
GRAPH 27.	IMPACT ON GROWTH OF ENTERPRISE(SICK LEAVE).....	74
GRAPH 28.1	IMPACT ON GROWTH OF ENTERPRISE(NOTICE PAY).....	75
GRAPH 28.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(NOTICE PAY).....	75
GRAPH 29.1	IMPACT ON GROWTH OF ENTERPRISE (SEVERANCE PAY).....	77
GRAPH 29.2	SUMMARY OF IMPACT ON GROWTH OF ENTERPRISE(SEVERANCE PAY).....	77





## **LIST OF ABBREVIATIONS**

BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Unions
CWD	Catholic Welfare Development
ECC	Employment Conditions Commission
EEA	Employment Equity Act
GDP	Gross Domestic Product
ILO	International Labour Organisation
LRA	Labour Relations Act
MENNGOS	Micro Enterprise Network of Non-Government Organisations
NCCA	National Contract Cleaning Association
PAYE	Pay As You Earn
SACOB	South African Chamber of Business
SARS	South African Revenue Services
SATAWU	South African Transport and Allied Workers Union
SD	Sectoral Determination
SETA	Sector Education and Training Authority
SMMEs	Small medium and micro enterprises
TIPS	Trade and Industrial Policy Strategies
VAT	Value Added Tax

# CHAPTER 1

## INTRODUCTION

Conventional wisdom suggests that the growth and development of small, medium and micro enterprises (SMMEs) is of critical importance to South Africa's ability to address the serious problems of unemployment, income inequality, economic concentration, lack of international competitiveness, and low socio-economic growth.(SACOB,1999:3; Ntsika, 2005:5)

Some researchers, however, remain sceptical of this conventional wisdom as the “economic rationale to date has been neither well argued, nor rigorously investigated.”(Berry *et al*, 2003:6) They claim that, despite the extensive research conducted on the matter, “there is still little clarity about the extent to which South Africa's SMMEs contribute to poverty alleviation, economic growth or international competitiveness.” (Berry *et al*, 2003:6)

Early research has revealed that the SMME sector in South Africa contributes 35% to the country's GDP, employs 55% of the country's labour force and contributes approximately 42% to the total remuneration figure of the country.(Lloyd, 1999:18-19) Subsequent research conducted by the Ntsika Promotion Agency has shown that SMMEs account for over 50% of the GDP and employment.(Ntsika, 2001:38)

Therefore, in the 1995 *White Paper on National Strategy for Development and Promotion of Small Business in South Africa*, the government assigns the SMME sector a key role in South Africa's socio-economic transition. SMMEs are regarded as a vehicle to

- address the problem of high unemployment levels in South Africa as they have a high labour-absorptive capacity,
- activate domestic competition by creating market niches in which they grow until they identify a new niche as a response to demand changes,
- be internationally competitive because of their flexibility,

- redress the inequalities inherited from the Apartheid era – in terms of patterns of economic ownership and restricted career opportunities for black employees,
- contribute to black economic empowerment in that the majority of SSMEs is reported to be initiated, owned or controlled by previously disadvantaged individuals,
- play a crucial role in people’s efforts to meet basic needs in the absence of social support systems during restructuring processes – which refers in particular to South Africa’s micro-enterprise segment and especially survivalist activities characterized by low entry barriers for inexperienced job seekers.

Numerous initiatives were embarked upon to “unlock” the potential of the SMME sector and to assist with the development process. These initiatives took two broad forms:

- the first comprises measures which seek to create an environment that is more conducive to small business growth. These efforts were mainly limited to attempts to deregulate the labour market and increasing its flexibility.
- The second form consists of measures targeted to assist small business, *inter alia*, the provision of financial aid and training.(Theron and Godfrey, 2000;53)

These efforts to create a friendlier environment for small businesses were criticised as they were mainly limited to attempts to deregulate the labour market.(Theron and Godfrey, 2000:53)

The South African Chamber of Business claims that, based on anecdotal and other evidence, the initiatives to promote SMME growth have largely failed to achieve their objectives.(SACOB, 1993:3) It has identified various problem areas for small business, caused by certain provisions in, *inter alia*, the *Labour Relations Act 66 of 1995(LRA)*, *Basic Conditions of Employment Act 75 of 1999(BCEA)*, *Employment Equity Act 55 of 1998(EEA)*. These problem areas will be discussed in detail in Chapter 2.

Although labour market regulations have the potential to increase labour costs and inflexibility, thereby undermining the viability of the business, research conducted in the South African labour market shows that there is very little empirical evidence to support the perception that labour legislation constitutes the most significant constraint to small business growth.(Kesper, 2005; Godfrey and Theron, 1999) Quartey(2001:2) claims that, despite the existence of a wide range of literature on regulation and competition, very little has been done to directly assess the effects of regulation on firm competitiveness, especially SMMEs.

Policy makers nevertheless turn increasingly to the SMME sector as the “panacea” for South Africa’s poverty and inequality problem.(Chandra *et al*, 2002:10) This tendency appears to be firmly rooted in the fact that, SMMEs have, at least in theory, the potential to generate employment and human capital.(Berry *et al*, 2002:4)

In the *White Paper on the National Strategy for the Development and Promotion of Small Business*, it was acknowledged that inappropriate legislative and regulatory conditions were acting as constraints on the growth and development of small businesses. Hence the Department of Labour, in its Fifteen Point programme of Action 1999-2004, committed itself to addressing a number of interrelated challenges. First of these challenges was the need to secure an appropriate balance between security and flexibility in the labour market. The Department of Labour therefore adopted a special approach towards accommodating the needs of SMMEs to ensure that SMMEs remain employment friendly while protecting the labour rights of workers.

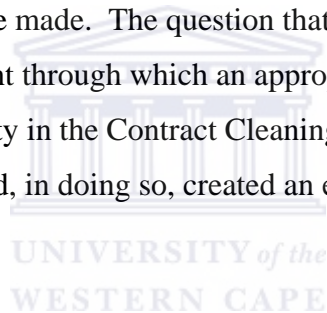
The legislative approach involved special provisions in the LRA, BCEA, EEA, *Skills Development Act 97 of 1998* and *Unemployment Insurance Act 63 of 2001*. The special provisions in the BCEA are of particular importance for the purpose of this study. These include provisions on Sectoral Determinations, Ministerial Determinations and some administrative obligations relating to employment and reporting periods.

S51 of the BCEA makes provision for the Minister to make a Sectoral Determination on the advice of the Employment Conditions Commission (ECC), following an

investigation by the Director-General and the submission of such report to the Commission. This report must consider, *inter alia*, the ability of the employers to carry on their businesses successfully, the operation of SMMEs and new enterprises, the likely impact of any proposed condition of employment on current employment or the creation of employment, and, the alleviation of poverty.

It would therefore appear that a Sectoral Determination could be regarded as an instrument through which an appropriate balance can be secured between security and flexibility in a particular sector where small businesses are predominant.

On 14 May 1999 *Sectoral Determination 1: Contract Cleaning Sector, South Africa*, was promulgated. This followed an investigation by the Director General of the Department of Labour into the existing conditions in the Contract Cleaning sector, and, the submission of a report to the Employment Conditions Commission in which certain recommendations were made. The question that arises is, whether Sectoral Determination 1, an instrument through which an appropriate balance is sought between security and flexibility in the Contract Cleaning sector, enabled SMMEs to comply with its conditions and, in doing so, created an enabling environment for them to grow.



This study, therefore, intends to concern itself with the above investigation, that is, whether *Sectoral Determination 1: Contract Cleaning Sector, SA* succeeded in bringing about the flexibility and security which apparently formed the rationale for its enactment. It seeks to establish the actual effect that the Sectoral Determination had on a sample of SMMEs in the contract cleaning sector.

In-depth interviews with the owners or managers of the sampled SMMEs were conducted using an interview schedule that sought to establish whether there is full, partial or no compliance with key conditions of the Sectoral Determination. The interview schedule also sought to examine the impact that compliance with these key conditions have on the growth of these enterprises.

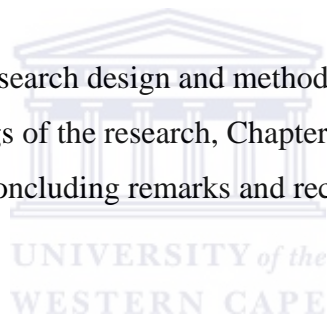
This thesis will therefore conduct a critical review of the literature available, elaborate on the research design and method, and, report and discuss the findings of the investigation. The structure of the thesis is as follows:

Chapter 2 examines the prevailing opinions that exist on the perceived impact that labour legislation has on the growth of SMMEs in South Africa.

In Chapter 3, government's response to these prevailing perceptions is critically examined by having regard to the apparent underlying presumptions that underscore that response.

Chapter 4 examines the conditions that existed in the contract cleaning sector prior to and following the enactment of *Sectoral Determination 1: Contract Cleaning Sector SA*. It also examines the key conditions in the SD.

Chapter 5 elaborates on the research design and method employed in the research. Chapter 6 contains the findings of the research, Chapter 7, a discussion of those findings and, Chapter 8, the concluding remarks and recommendations.



## CHAPTER 2

# EXISTING PERCEPTIONS REGARDING THE IMPACT OF LABOUR LEGISLATION ON THE GROWTH OF SMMEs

This chapter seeks to examine the range of opinions that exists with regards to the impact that labour legislation has on the growth of SMMEs. During this examination, the definition of SMMEs, as well as the existing perceptions regarding the impact of the *Labour Relations Act*, *Basic Conditions of Employment Act* and the *Employment Equity Act* on the growth of SMMEs will be considered.

### 2.1 SMMEs DEFINED

The definition of SMMEs, differs from country to country, based on the criteria used to define them. In South Africa, SMMEs encompass a broad range of firms, from the established traditional family business employing over a hundred people (medium – size enterprises), down to the survivalist self-employed from the poorest of the population (informal micro-enterprises). (Berry *et al*, 2002:51)

The post-apartheid government seems to have established a more comprehensive definition of SMMEs, manifested in the *National Small Business Act 102 of 1996*. Three broad sets of enterprises were identified, namely

- survivalist enterprises:- these are mainly informal and operate out of necessity to secure income with little capital and skills and with scant prospect for upward growth;
- micro-enterprises:- these enterprises have a growth potential and involve the owner and family members or at the most four employees and whose turnover is below R300 000, the threshold for Value Added Tax (VAT) registration;
- and

- formal small and medium-sized enterprises:- these enterprises have 5 to 100 and 100 to 200 employees respectively which are still owner-managed and fulfil all the trappings associated with formality, such as registration and payment of VAT.

A further distinction is drawn between two types of SMMEs, that is,

- emerging SMMEs:- these enterprises were assumed to be informal and predominantly owned and managed by previously disadvantaged individuals and
- established SMMEs:- these enterprises were assumed to be formal and predominantly owned and managed by white entrepreneurs.

According to the *National Small Business Act*, whether an enterprise qualifies as an SMME varies from industrial sector to industrial sector with the most common criteria in all definitions being the total full-time equivalent of paid employees, the total annual turnover and its gross asset value.

The Contract Cleaning subsector, which forms the focus of this study, is categorised in terms of the *National Small Business Act* in the Business Services sector. **Table 1** below illustrates the definition of each size of SMME in that particular sector as contained in *National Small Business Amendment Act 26 of 2003*.



**TABLE 1: CLASSIFICATION OF SMMEs**

<b>Sector or subsectors in accordance with the Standard Industrial Classification</b>	<b>Size or class</b>	<b>Total full-time equivalent of paid employees</b>	<b>Total annual turnover</b>	<b>Total gross asset value (fixed property excluded)</b>
		Less than	Less than	Less than
Business Services	Medium	200	R26.00 m	R 6.00 m
	Small	50	R13.00 m	R 3.00 m
	Very small	20	R 3.00 m	R 0.50 m
	Micro	5	R 0.20 m	R 0.10 m

For the purposes of this study, the above definition will apply.

## **2.2 LABOUR REGULATIONS**

The general perception exists that prevailing labour legislation in South Africa poses a threat to the growth of enterprises. It is suggested that the role of labour, labour markets and skill levels are probably the most important contributors to SMME growth.(Berry *et al*, 2002:51)

In the classical model, labour market flexibility is regarded as an important mechanism for job creation and an important element in the battle against unemployment.(Barker, 2004:39) Hudson (2004:39) found “considerable evidence” to suggest that improving the regulatory environment can have a positive effect on the growth and survival of new and small enterprises.<sup>1</sup> She suggests that the regulatory burden on the private sector should be as modest as possible and matched to the state’s capacity to implement these regulations. This claim is based on international research conducted by Bannock *et al*(2002), which shows that the single most

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<sup>1</sup> She does, however, caution that during this process regard must be had to the protection of consumers from unsafe products, the preservation of the environment for current and future and current generations, the protection of employees from unfair labour practices and the need to collect taxes.

important action that government can take to stimulate growth of SMMEs is to get rid of inappropriate regulations.

Hudson concluded that informal operators apparently respond differently to the regulatory environment by ignoring taxes, levies, and health and safety standards. This comes at a cost to the national economy and informal entrepreneurs, in that inappropriate regulations act as a barrier to development by keeping a large proportion of the population out of the formal economy, which results in a loss of tax revenue and lack of compliance.

Chandra *et al*(2001:32) also suggests that where, for example, wages are rigid, the impact of these shocks shows up in unemployment as firms are unable to adjust wages downwards to meet competitive pressures and therefore respond by hiring less labour. Lewis(2001), however, cautions that the focus on regulations should not overshadow the other factors contributing to or restraining SMME growth.

In the World Bank's *Doing Business Study in 2005*, support is found for this argument that regulatory reform is important to small enterprise growth. This study revealed three major findings:

- businesses in poor countries face much larger regulatory burdens than in rich countries.
- overly complex regulations and weak property rights exclude the poor from doing business in the formal sector.
- the payoffs for reform appear to be large because regulatory reform allows businesses to spend less time and money on dealing with regulations, and so does government.

The World Bank claims that South Africa's relatively rigid labour market increased the regulatory burden on businesses and curtailed employment creation and economic growth. This claim was reiterated recently in the *World Bank Doing Business in 2007* report. It was nevertheless acknowledged that South Africa ranks within the top 30 countries in the world in which it is the easiest to do business.

Moreover, the Small Business Project(SBP 2004) conducted a review of the estimated regulatory compliance cost in South Africa. Although the study cautions that international comparisons could be hazardous, it nevertheless suggests that compliance costs in South Africa are higher than in developed countries.

In addition, the *World Business Environment Survey 2000* highlighted three structural constraints to investment and job creation in large manufacturing firms in South Africa; recent labour regulations, skills shortage and crime. This survey revealed that, in labour regulations, South Africa not only performed below OECD countries, but also below middle-income countries.

It is therefore not surprising that the South African Chamber of Business(SACOB, 1999:5), in its review of the regulatory and other obstacles to the development of the small business sector in South Africa, shows that small businesses have cited the following as the most common problems with the prevailing labour legislation:

- a) it imposes significant additional direct costs on businesses

Input-output tables for South Africa indicate that intermediate inputs top the table at 65% of the total production costs, with labour remuneration following at 19%. It is suggested that it is generally not possible for small business to obtain their intermediate inputs at lower prices than their larger competitors and that current labour legislation preclude small business from competing on the basis of wage costs. This apparently has a significantly negative impact on the labour-absorption capacity of the small business sector.

- b) there is a “high hassle factor” associated with compliance

In small businesses the owner/manager is often required to take responsibility for most of the management functions to ensure compliance with legislative provisions and regulations. This apparently places an onerous administrative burden on managers, diminishing the manager’s ability to focus on factors contributing to long-term growth and development of the business.

- c) the legislation “robs” owners and managers of some of the control and flexibility which they perceive as being both desirable and necessary for the effective running of their business.

Successful owners and managers previously employed by larger corporations often strike out on their own because there is the perception that they will have more direct control over their enterprise and greater flexibility to adjust quickly to the threats and opportunities of the market. Legislation is perceived to reduce that flexibility and the owner’s control over his/her business, hence acting as a disincentive to both starting a new business and to the growth and expansion of existing ones.

SACOB further claimed that labour regulations place an artificial constraint on growth and development of small businesses. This, they claim, is mainly due to the fact that small business owners and managers perceive the prevailing regulations governing employment practice and labour relations as excessively onerous and they are actively seeking ways to reduce the number of people they employ.

The *National Small Business Regulatory Review* examined all legislation and regulations in eight broad areas in order to identify those provisions that create obstacles to small business survival and growth. The areas included finance, taxation, labour, business trade, property and landownership, by-laws and regulations, procurement, and women and rural development. A wide range of regulatory constraints and obstacles to small business development were identified, however, Theron and Godfrey(2000:53) have expressed surprise that labour market regulation continued to draw the most attention.

This warrants a closer inspection of specific pieces of labour legislation allegedly affecting small businesses, *inter alia* the LRA, BCEA and EEA.

## 2.2.1 Labour Relations Act (LRA) 66 of 1995

The LRA, in brief, outlines organisational rights, sets a framework for collective bargaining and extending council agreements to non-parties, provides mechanisms for resolving disputes (including unfair dismissals) and regulated industrial action, and enables the establishment of workplace forums.

Three broad problem areas for small business in the LRA had been identified by the Small Business Review. They include

- a) bargaining councils,
- b) dismissal of employees, and
- c) Commission for Conciliation, Mediation and Arbitration (CCMA) proceedings.

### a) **Bargaining councils**

Bargaining councils are regarded by small business as “unrepresentative” institutions imposing “big business” conditions of service upon them while not incorporating their interests in wage negotiations. Small businesses claim that the extension of agreements to non-parties is regarded as being contrary to the principle of voluntarism. Small business claim that it is not possible for them to be effectively represented on these bargaining councils because they simply do not have the time and the expertise to effectively participate in such bodies.

### (b) **Dismissal of staff**

Small businesses claim not to have the time or the expertise to deal with unduly complicated legal and procedural rules and requirements. They find the dispute resolution procedures cumbersome.

### c) **CCMA proceedings**

Small business employers claim to be intimidated by these proceedings and often don't have the expertise to effectively represent themselves. They also claim that the dispute resolution system of which the CCMA is part, imposes a disproportionate burden on small businesses. In addition, it appears that thus far, commissioners do not show much regard for the size of an enterprise when making awards, a factor which may have a differential impact on small businesses. (Theron and Godfrey, 2000:56)

### **2.2.2 Basic Conditions of Employment Act (BCEA) 75 of 1997**

The BCEA lays down basic working conditions, such as the regulation of ordinary working hours, overtime and leave, overtime rates, leave provisions and severance pay, applicable to all full-time employees<sup>2</sup>.

Small business employers have claimed that the BCEA is likely to have a significant impact on additional labour costs for the enterprise. This claim is based on the fact that the standards imposed in the BCEA result in an increase in annual leave, family responsibility leave and the overtime rate.

The cost of overtime has been significantly increased to time-and-a-half, employers who require employees to do night work are compelled to compensate them at a premium and such employees must be able to obtain transport. It is the general sentiment among small business employers that the gains made by the increased flexibility in the arrangement of working time,<sup>3</sup> had been substantially reduced by the reduction in working time, stricter regulation of work time and increased cost.

SMME owner/managers indicate that the minimum wage levels set by the Employment Conditions Commission discourage them from taking on unskilled labour entrants and that the four months unpaid maternity leave discourages them from employing young women.

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<sup>2</sup> employees working more than 24 hours per week for one employer

<sup>3</sup> These include, *inter alia*, averaging of hours of work and the compressed working week.

They also find themselves reluctant to expand their permanent labour force due to the costs of the three weeks' leave provision as well as the three days family responsibility leave per annum.

### **2.2.3 Employment Equity Act (EEA) 55 of 1998**

The EEA aims to prevent unfair discrimination by employers on the basis of race, gender or health status, and obliges companies with more than 50 employees to develop and implement an Employment Equity Plan to ensure the equitable representation of previously disadvantaged individuals in all occupational categories and levels of the workforce.

In SACOB's view the provisions of the EEA will impose onerous direct and compliance costs on businesses that simply do not have the capacity to fulfil them. Their main concern is the definition of "designated employer" which includes enterprises that do not have the capacity to realistically meet the legislative requirements of the EEA and will therefore not be able to make a genuine contribution to affirmative action.

SMMEs expressed concern over the cost involved with

- assigning a manager to design and monitor an employment equity plan,
- searching for and identifying suitable previously disadvantaged individuals when recruiting, and
- retrenchment of longstanding employees in order to bring about the transformation required by the Act.<sup>4</sup>

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<sup>4</sup> This claim is based on the misconception that employers are obliged to retrench in order to give effect to affirmative action.

## **CHAPTER 3**

# **GOVERNMENT'S RESPONSE TO EXISTING PERCEPTIONS**

This chapter reports government's response to the aforementioned concerns and endeavours to critically examine that response by having regard to the experience of the developed world, the broader African continent as well as South Africa.

### **3.1 GOVERNMENT'S RESPONSE**

Prior to the implementation of the BCEA government launched an impact assessment carried out by the Ntsika Enterprise Promotion Agency. A Ministerial Task Team, made up of organised labour and business, the National Small Business Council and the International Labour Organisation, was put together to receive the impact assessment and make recommendations to the Minister of Labour on to how to assist small business in relation to the BCEA.

The impact assessment by Ntsika established that the BCEA would have no significant impact on small business. Moreover, the Ministerial Task team was of the opinion that the BCEA need not be amended and that small business should not be exempted from basic conditions of employment, but that account should be taken of their particular problems and circumstances. It also recommended that small business could be accommodated within the relatively flexible provisions of the BCEA. The task team nevertheless recommended that provision should be made for a Ministerial Determination for enterprises employing less than 10 people and that the Employment Conditions Commission (ECC) be consulted before such a Ministerial Determination is made.



### **3.1.1 Ministerial Determination on Small Business**

After having had regard to the recommendations by the Ministerial Task Team, the *Ministerial Determination: Small Business 1999* varied the following conditions of employment for all small business that at all times employ less than 10 employees **unless**

- such business is covered by a sectoral determination or bargaining council agreement,
- the employer is the employer of a domestic worker, or,
- the employer conducts more than one business.

#### **a) Overtime**

The BCEA prescribes that employees can work a maximum of 10 hours overtime per week at a rate of “time and a half”. The Ministerial Determination prescribes that employees can work up to a maximum of 15 hours overtime per week. The first ten must be remunerated at “time and a third” and the remaining five hours at “time and a half”.

#### **(b) Averaging of hours**

Under the BCEA, averaging of hours over a period of up to four months, with not more than an average of 45 hours per week and 10 hours overtime per week, can only occur through collective agreement. Under the Ministerial Determination the averaging of hours can also occur as a result of a written individual agreement.

#### **c) Family responsibility leave**

The BCEA prescribes three days family responsibility leave in addition to the twenty-one days annual leave. The Ministerial determination varied this provision so that the three days family responsibility leave is included in the twenty-one days annual leave.

Moreover, following a subsequent internal review by the Department of Labour of existing labour legislation, the Department recognised that other labour market reforms which were introduced might have had unintended consequences on employment creation. The Department of Labour, in its presentation to the Parliamentary Portfolio Committee in November 1999 highlighted its intention to achieve a balance between the protection of workers' rights and facilitating the promotion of SMME development, particularly in respect of previously disadvantaged individuals.

In doing so, the Department outlined its approach with the labour regulations in general, that is, that labour laws seek to reduce compliance costs for small businesses and increase their ability to comply with labour regulations without reducing labour rights. The Department of Labour therefore reported to the Parliamentary Portfolio Committee as follows:

### **3.1.2 Labour Relations Act**

The Minister of Labour is prevented from extending a bargaining council agreement to non-parties unless the bargaining council includes provision for an independent body to deal with appeals in respect of exemptions. Moreover, the Code of Good Practice on Dismissals requires that cognisance must be taken of the size of the enterprise.

### **3.1.3 Basic Conditions of Employment Act**

In terms of section 50 of the BCEA, the Minister of Labour is empowered to vary the BCEA for certain unorganised sectors by way of a Sectoral Determination<sup>5</sup>, a measure which is intended for sectors where small businesses are predominant. SMMEs are also entitled to a reduction of the administrative obligations in respect of, *inter alia*, particular employment and reporting periods. Section 49 of the BCEA also makes provision for the variation of conditions of employment by way of collective and individual agreement.

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<sup>5</sup> S51 of BCEA

### **3.1.4 Employment Equity Act**

Companies that employ less than 50 employees or who have a turnover threshold less than a predetermined amount do not have to prepare employment equity plans.

Simpler reporting requirements and procedures have been prescribed for companies who employ less than 150 employees.

Considering the response of government in respect of the LRA, BCEA and EEA, it appears that there has at least been an attempt on its part to address the concerns raised by critics.

## **3.2 GOVERNMENT'S RESPONSE EXAMINED**

Concern has to be expressed over two presumptions underlying the above measures taken by government to encourage the development of SMMEs and the creation of employment. These are:

3.2.1 Job creation accompanies the development of SMMEs

3.2.2 Labour regulations pose a threat to the development of SMMEs and hence, employment creation.

These apparent presumptions will be examined in more detail below.

### **3.2.1 Job creation accompanies the development of SMMEs**

It has been suggested that SMMEs resolve the persistent problems of unemployment while being highly efficient in meeting the demands of emerging consumer markets. (Mead, 1999)

Lloyd(1996:2) expresses the opinion that, in general, a business that produces goods and services that are in demand, will have the overarching aim of generating income for its owners and operators. He suggests that it is the initiative of a person or persons that leads to the creation of a formal entity and that the amalgamation of all individual

entities determines the state, nature and direction of a country's economy. He acknowledges, however, that an over-generalisation of the employment generating qualities of SMMEs is problematic because the majority of these enterprises do not remain competitive for long enough to pass on the benefits to their respective communities and the economy in general.

There is little doubt that, in aggregate terms, SMMEs have increased their share in employment economic growth at a much faster rate than large firms, but the precise nature of their contribution has been a subject of much debate. (Quartey, 2001:5)

In order to determine the validity of the presumption that the development of SMMEs is accompanied by job creation, due consideration must be given to the experience in industrialized countries, the greater African continent and South Africa.

### **3.2.1.1 Industrialised countries**

The experience in industrialised countries such as Western Europe and Japan seems to suggest that the SMME sector is at the forefront of local economic development. (Kesper, 2000:1)

A review of data on employment shares by enterprise size for the United States, France, The Federal Republic of Germany, United Kingdom, Japan, Norway, Hungary and Switzerland has shown that the employment share of small enterprises had reversed a downward trend that prevailed for many decades. (Loveman and Sengenberger, 1990:8)

Kesper(2000:2), however, cautions against overly general conclusions as to the economic and social implications of the shift towards smaller units. Research conducted by the European Union has shown that only enterprises characterised as fast-growing SMMEs contribute to 50% of the net job creation. (Papoutsis, 1996) More recent reports claim that only micro and small enterprises showed an increase in employment levels. (SMEs in Europe, 2002) These statistics include business start-ups and should be treated with caution as the high mortality rate of such enterprises is well documented.

It would therefore appear that small firms do indeed account for at least a proportional share of employment creation in these industrialised countries. They are, however, not the employment generators that conventional wisdom suggests.

### **3.2.1.2 The African experience**

SMMEs form an important part of African economies and have apparently found their own ways to deal with market instability and uncertainty.(Kesper, 2000:4) So-called “informal” activities generate employment for those who can no longer find work in the so-called “formal” sector, especially agriculture, government service or large-scale industry.(McCormick, 1999:1535)

Mead and Liedholm(1998:61) found that, although micro and small enterprises have been recognised as a major source of employment and income in many countries in the Third World, the contribution of small enterprises to the creation of new jobs has been a controversial issue around the world. Their research showed that employment in micro and small enterprises expands as a result of new businesses starting up and through expansion of existing enterprises. This, however are offset by the contraction or closure of other enterprises. Also, the viability of these small firms, their sustainability and the quality of employment generated by them, remain unclear.(McCormick *et al*, 1997: 1095)

Earlier research conducted by Mead(1999:65) has found little evidence on the “graduation” of SMMEs into larger enterprises in Africa. One-person operations constitute the majority of small-scale industry in Africa, with only 1% succeeding in developing into intermediate size enterprises. Virtually all SMMEs operate in conditions of excess supply of relatively unskilled and unorganized labour, hence allowing them to transmit the burden of unstable markets on their employees and to base their competition on squeezing labour costs rather than innovation or technological upgrading.

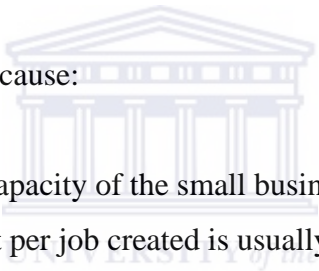
Mead also found that subcontracting to small and mostly informal firms in Africa is more than often a means to reduce costs by exploiting labour surplus conditions and circumventing regulations and trade union organisations.

The above range of existing opinions on SMMEs as employment generators certainly casts doubt on their potential to provide quality and sustainable employment.

### **3.2.1.3 The South African experience**

Much of the literature in South Africa follows the ILO's approach to SMMEs, which regards them as having considerable potential to enhance labour absorption in the economy. (Rogerson, 1998:85) The Ntsika Enterprise Promotion Agency reported that SMMEs account for over 50% of employment and GDP. The Agency claims that, through the growth of the SMME sector, "survivalist enterprises can become micro and small enterprises, creating jobs and raising the standard of living for hundreds of thousands and even millions of South Africans in urban and rural areas." (Ntsika, 2001:38)

SMMEs have been targeted because:

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- the labour absorptive capacity of the small business sector is high.
  - the average capital cost per job created is usually lower than in big business.
  - their role in technical and other innovation is vital for many of the challenges facing South Africa's economy.
  - they allow for more competitive markets.
  - they are suited to the exploitation of small, isolated niche markets, both domestic and export, through their superior ability to adapt to rapidly changing tastes and trends.
  - they use local (often recycled) resources.
  - they provide solutions for the newly urbanized, unemployed, retrenched, and rural and urban entrepreneur.
  - at the smaller end of the scale they often require little or no skills or training, workers learn skills on the job.
  - they have a high propensity to save and re-invest even at very low income levels.
  - subcontracting by large enterprises to SMMEs adds flexibility to the production process. (Ntsika, 2001:38)

SMMEs have therefore been attributed a very important role in job retention, rather than job creation, as it has absorbed workers who have been retrenched from large corporations and the public sector.

Preliminary research findings by Kesper show that the capacity for growth of the SMME sector is limited despite governmental support.(Kesper, 2000:6-8) It was found that the majority of South Africa's SMMEs are micro and survivalist enterprises with no signs of enterprise growth, while the minority responsible for economic growth were medium-sized.(Ntsika, 2001:44) It was therefore concluded that the contribution of existing SMMEs to employment growth is expected to remain low.

In addition, it is suggested that the bulk of employment creation by South African SMMEs is likely to emerge from new micro-enterprises. These operations are started out of necessity rather than choice, are characterised by a high mortality rate and do not generate more secure employment opportunities.(Ntsika, 2001) This appears to be in line with the findings on the broader African continent and the Caribbean.

Employment statistics recorded during the period 1997 to 1999 at first seem to show a phenomenal rise in employment growth at a rate of 23%.(Chandra, 2002:11) It erroneously suggested that there was phenomenal job creation in the SMME sector during this period. This leads to a misleading view of employment creation in the SMME sector because these employment rates were primarily due to a large number of new entrants. Moreover, new firms characteristically die within the first two years of their existence. The overall employment in existing SMMEs in fact declined by 7%.<sup>6</sup>

In-depth research conducted on manufacturing SMMEs in the Western Cape, Gauteng, Vaal Triangle and Witwatersrand rendered the following results: (Kesper, 2000:13-24)

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<sup>6</sup> *Caveat:* the period covered by the analysis was a time when the overall South African economy experienced low economic growth

(i) Western Cape

Statistics revealed that only 41% of the sample firms increased their labour force during the period 1994 to 1998, while 38% decreased the number of their permanent employees. Despite the increase in sales reported by these SMMEs, it has been accompanied by only marginal employment growth.

(ii) Vaal Triangle

The majority of sample firms reported positive growth in turnover and profits for the period 1994 to 1999. However, only 21% of all sample firms foresee an employment increase accompanying the turnover and profit increases projected for the period 1999 to 2004. It is significant that, of the enterprises reporting no growth or a decline in profits, turnover and employees, the overwhelming majority were micro and very small enterprises.

(iii) Gauteng

Sixty percent of the sample SMMEs believed that after having “survived the first years of trade liberalisation and inroads into their markets” they continue to show an increase in turnover. This growth, however, has not been, and is unlikely to be accompanied by employment growth.

(iv) Witwatersrand

The large majority of the sample firms had experienced turnover and profit stability or increases in the period 1994 to 2000 but very few increased their labour force. There seems to be the suggestion that labour had been replaced with capital.

It therefore appears from the above research findings that despite the growth in turnover and profits experienced by the majority of sample SMMEs, such growth did not necessarily result in employment creation. These SMMEs have therefore experienced what is commonly referred to as “jobless growth”. This has been the



case despite the supply-side measures implemented by the government to stimulate the development of SMMEs.

The perception that job creation accompanies the development of SMMEs has also been questioned by Manning(1996:63), who challenges some of the conventional wisdom surrounding the equation of SMME promotion with employment creation. She claims that “evidence in support of the perception of SMMEs as important sources of employment is somewhat weak.” Moreover, the World Bank statistics show that five to six years into SMME policy reform in South Africa, the SMME cluster showed no evidence of significant growth or job creation. (Chandra, 2002) The South African Government has also acknowledged as recently as 2005 that the performance of SMMEs in respect of its contribution to GDP and employment growth remained mediocre.

It would therefore appear that the situation in South Africa does not seem to be substantially different from that on the broader African continent.

This investigation will now turn to the second presumption apparently underlying government’s response, that is, that labour regulations pose a threat to the development of SMMEs, and, employment creation.

### **3.2.2 Labour regulations pose a threat to the development of SMMEs and hence, employment creation**

The claim that labour legislation impacts negatively on SMMEs and employment growth, accompanied by a call for more labour market flexibility, is definitely not universal.

Quarthey(2001;12) suggests that social regulation with inflexible labour codes and other indirect labour costs raise the costs of doing business and affect the ability of SMMEs to adapt. Minimum wages, labour costs and job security generally form the centre of social legislation and therefore place an additional administrative and accounting burden on the enterprise and discourage permanent job creation. Support

for this point of view is found in the research conducted by Holden *et al*(1998) in Latin America.

However, Quartey acknowledges the opposing point of view by White(1999) based on research conducted in Thailand, where it was found that SMMEs hardly comply with labour legislation. White argues, as a result, that there is very little connectivity between government regulations on labour and SMME development.

Others have boldly suggested that the concept of labour market flexibility has been used by whosoever needed to find a cause for the ailing industry, low levels of growth and dismal employment performance.(Hayter and Cheadle, 1999:1)

Survey evidence on the recent labour regulations conducted by Chandra *et al*(2001) reflects interesting data. The overwhelming majority of human resource managers of the large firms were unable to identify the negative effects of any individual labour regulation, although the cumulative effect was regarded as significantly negative. Research conducted by Lewis(2001) shows that 60% of large firms claim that labour legislation had no accumulative effect on their employment decisions.

Moreover, despite the rhetoric involved with the debate on the impact of labour legislation on SMMEs, the Department of Labour found that there is insufficient empirical evidence to suggest that labour law does indeed pose such a threat. The impact assessment conducted by the Ntsika Enterprise on the BCEA appears to support this view as it concluded that the economic impact on small business would be minimal and that the initial impact would be limited to certain sectors.<sup>7</sup>

The Congress of South African Trade Unions (Cosatu)<sup>8</sup>, a party with a keen interest in the debate, reiterated the lack of empirical evidence which supports the notion that labour market inflexibility impacts negatively on the growth of SMMEs. They base their point of view on the ILO study conducted on the impact of labour legislation on SMMEs, which revealed that the LRA is not out of line with other middle-income

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<sup>7</sup> These sectors include catering, security and general dealers.

<sup>8</sup> in their response to the Ministerial Determination

countries in so far as it relates to dismissals. This implies that numeric flexibility is not hampered by labour legislation.

Furthermore, the study shows significant wage flexibility in the South African labour market, in sharp contradiction to popular belief. Cosatu expressed the opinion that this rapid growth of sub-contracting, labour brokers and independent contracting is rather an indication that the labour market is too flexible.

The trade union has also criticised the point of view that the collective bargaining system, and in particular, the extension of agreements to non-parties, is a cause for negative labour market outcomes. Cosatu claims that these collective agreements do not cover the majority of formal sector workers. Statistics put forward suggest that these workers are covered by the most basic labour legislation. In addition, the majority of applications for exemptions from these collective agreements are approved.

Research conducted by Chandra *et al*(2001) has also shown that although wage-setting agreements in South Africa limit a firm's flexibility to respond to local market conditions, the level of collective agreement declines with the size of the enterprise. Ninety percent of micro enterprises, 72% of very small and 42% of small enterprises were not bound by any collective agreement. This is in line with the claims made by Cosatu.

Theron and Godfrey(1999:57) also expressed the view that labour market regulation has long been “the scapegoat for the ills of the small business sector”. Their research has revealed that most enterprises would only have to make minor adjustments to comply with the new *Basic Conditions of Employment Act*.<sup>9</sup> Where adjustments were necessary, they would add to the labour costs, but such costs should not be of a magnitude to threaten the viability of small firms.

Moreover, their research revealed that, despite the possible increased costs in certain areas, for example annual leave, family responsibility leave and overtime, the impact

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<sup>9</sup> Most employers were already organised to work a 45 hour week, and those who were not, only had to reduce their hours of work by one hour.

of the BCEA was unlikely to be significant. They based their conclusion on the following factors:

- there are a variety of ways in which employers can re-arrange their businesses to reduce the added costs of new conditions. In the case of the increased cost of overtime work, employers can reduce or eliminate overtime work.
- some provisions, for example the night work provision, that could add significant costs to some firms are not necessarily applicable to the small business sector.
- only employers with female workers of childbearing age will face the costs associated with maternity leave, and then only when such workers fall pregnant.
- the Act provides for flexibility in a number of ways, for example, provision is made for the averaging of hours and the compressed working week.

The research conducted by Chandra *et al*(2001:29) on the response of SMMEs to labour legislation in general has shown that no clear patterns emerged. Fifty percent of the SMMEs nevertheless reported being largely unaffected by the legislation, whereas between 20 and 22% indicated that regulations were not applicable to them. In addition, the majority of SMMEs reported that their employment levels were unaffected by any specific labour market regulation. Their responses to how they adjusted to LRA, BCEA, EEA and Skills Development Act merely suggest a preference for more flexible arrangements.(Chandra *et al*, 2001:30)

This confirms that, upon studying the operation of the labour regulations in practice, the conclusion could be drawn that empirical evidence does not support the perception that labour legislation impacts negatively on the growth of SMMEs and, hence, on the creation of employment.

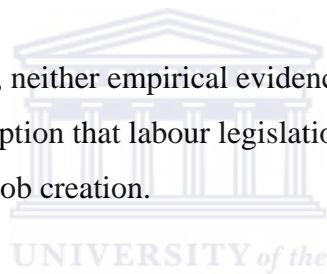
Furthermore, despite the finding by the *World Bank Doing Business Study in 2005* that South Africa's labour market rigidity curtails employment, the study reveals that South Africa ranks in the top quartile where it was the easiest for business to operate. This position has improved to such an extent that South Africa is now ranked among

the top 30 countries where it is the easiest for business to operate.(World Bank Doing Business Study, 2004)

In addition, the finding by the Small Business Project 2004 that regulatory compliance cost in South Africa is higher than in developed countries, is accompanied by a *caveat* that cultures, systems and administrative arrangements differ. Moreover, in this study, VAT and other tax related issues(PAYE and SARS) emerged as the most troublesome and time-consuming set of regulations, not labour laws.(Hudson, 2004)

Lewis(2001:26) aptly summarises this apparent contradiction with the following statement, “one corollary to the relative underdevelopment of the SMME sector in South Africa is that little is known about the composition and features of this segment of this economy.”

It would therefore appear that, neither empirical evidence, nor informed opinion provides support for the perception that labour legislation poses a threat to the development of SMMEs and job creation.



Having assessed the legislative framework under which SMMEs operate and the assumptions governing the approach to SMMEs in SA, this investigation now turns to an examination of *Sectoral Determination 1: Contract Cleaning Sector SA*. This Determination will form the focal point for the remainder of the thesis.

## **CHAPTER 4**

### **SECTORAL DETERMINATION 1: CONTRACT CLEANING SECTOR SOUTH AFRICA**

This chapter considers key conditions of Sectoral Determination 1. In doing so, regard must be had to the definition of the term Sectoral Determination, as well as the state of the industry as reported prior to and after the enactment of the SD.

#### **4.1 SECTORAL DETERMINATION DEFINED**

A sectoral determination is a determination made by the Minister of Labour in a particular sector in terms of s51 of the BCEA, which has as its purpose the establishment of basic conditions of employment in a particular industrial sector or area. Section 1 of the BCEA defines a sector as “an industry or service or part of an industry or service”.

On 14 May 1999 *Sectoral Determination 1: Contract Cleaning Sector, South Africa* was promulgated. Schedule 2 of this Sectoral Determination defines contract cleaning sector as “that sector in which employers and employees are associated on a fixed-term or fixed-project contract for the purpose of cleaning or washing by hand or machine, of furniture, windows, carpets, doors, floors, tools, machinery, under supervision at industrial or commercial premises, buildings, flats that are let commercially or any aeroplanes, trucks, cars, buses, trains or any other vehicle requiring to be so cleaned.”

This Sectoral Determination followed an investigation by the Director-General of the Department of Labour into the existing conditions in the Contract Cleaning sector. It is based on the recommendations made by the Employment Conditions Commission (ECC) following the investigation. The investigation found the conditions in the Contract Cleaning sector to be as follows:

## 4.2 STATE OF THE INDUSTRY: 1999

The ECC found, at the time of the investigation, that the trade was regulated by the *Wage Determination 482*, published in terms of s14(2) of the *Wage Act 1957* on 20 November 1998. The role players reached an agreement that the *Wage Determination* be published, despite the fact that the *Basic Conditions of Employment Act* was about to be promulgated. The reason advanced for this decision is the fact that the trade was characterized by lack of protection, insecurity and social and economic vulnerability.

The ECC was charged with the following duties:

- to investigate the conditions of employment in the contract cleaning sector,
- to investigate the rate of remuneration in the sector, and
- to establish a National Provident Fund for the sector.

The employer participants in the process were the National Contract Cleaning Association (NCCA), the National Organisation for Employers South Africa (NOESA) and Consolidated Employers Association of South Africa (CEASA).

Twenty-seven trade unions were party to the agreements reached with the NCCA on conditions of employment and rates remuneration. However, the ECC found the trade not to be well organized.

The ECC found the trade to be labour intensive and 75% of the costs of the enterprises were related to wages. Competition in the trade was based on fixed term contract rates resulting in a very competitive trade where contract cutting, most often at the expense of wage rates, was a regular phenomenon.

The Northern Province was found to be poor with limited business propositions for contract cleaners and employers indicated that the local market could not afford the wage rates as contained in *Wage Determination 482*. Employers were paying R3,50 per hour. However, illegal immigrant labour was readily available which contributed to the undercutting of wages.

Participants in Eastern Cape indicated that approximately 70% of all employers comply with the wage rates. Contract providers who experienced financial difficulties would adapt by usually cutting on the contract cleaning service.

The industry appeared to be in better shape in Mpumalanga, North West Province, Northern and Western Cape where participants indicated that they were already paying the proposed wage rates.

In Kwa Zulu-Natal a Bargaining Council, established in 1993, governed the contract cleaning sector. This bargaining council agreement covers 20% of the employees in the trade within the country.

Based on the existing conditions in the sector and the report filed by the ECC, *Sectoral Determination 1: Contract Cleaning Sector South Africa* was promulgated.

### **4.3 CONTENTS OF THE SECTORAL DETERMINATION 1**

#### **4.3.1 Area and scope of application**

The Sectoral Determination 1: Contract Cleaning Sector applies to every employer in the sector except a manager, administrative personnel, employees who work less than 24 hours a month for an employer and employers and employees who are subject to a bargaining council agreement in terms of the LRA 1995.(Sectoral Determination 1, Area and Scope of application) Although the term employer has not been initially defined in Sectoral Determination 1, 1999, it was subsequently defined as

“any person who employs or provides work for

- a) any person in the Contract Cleaning Sector and remunerates him/her or who permits any person in any manner to assist him/her in the carrying on or conducting of his/her business;...



- b) any person in another sector performing functions or services similar to those performed in the Contract Cleaning Sector as defined in the Sectoral Determination applicable to the Contract Cleaning Sector.”(Amendment of Sectoral Determination 1, 2001)

The employers covered by this Sectoral Determination includes every employer as defined above, whether the employer is a member of the NCCA or not, except those who are governed by the Bargaining Council Agreement which is operative in KwaZulu-Natal only. The NCCA is registered with the Department of Labour as the only employer body empowered to interact and negotiate with various trade unions concerning the setting of minimum wages and conditions of employment.

This thesis will now turn its focus on certain key conditions contained in the Sectoral Determination.

### **4.3.2 Remuneration**

For the purposes of remuneration, the country is divided into 3 geographical areas and a minimum wage is prescribed for each area. This minimum wage is reviewed on a biannual basis. At the time when research was conducted, the minimum prescribed wage was R8,05 per hour.

### **4.3.3 Ordinary hours of work**

The ordinary hours of work have been prescribed as follows:

- a) 45 hours in any week
- b) 9 hours in any day of a week of 5 days or fewer
- c) 8 hours in any day of a week exceeding 5 days (clause 8)

#### **4.3.4 Overtime**

The Sectoral Determination distinguishes between enterprises that employ 10 or more employees and those that employ fewer than 10. Overtime is provided for in terms of clause 9(1) which stipulates that an employer that employs 10 or more employees may only require or permit an employee to work overtime in terms of an agreement concluded with the employee and such agreement shall not exceed 3 hours overtime per day (clause 9(1)(a)) or 10 hours overtime in any week (clause 9(1)(b)).

Clause 9(2) provides for 15 hours overtime in any week for employers who employ less than 10 employees provided that the employer has reached such an agreement with the employee.

#### **4.3.5 Payment of overtime**

The minimum rate of payment for overtime worked is prescribed as the hourly wage X 1 ½ (clause 10(1)). Clause 10(3) provides for the substitution of the minimum prescribed overtime payment with either the

- ordinary wage for overtime worked plus 30 minutes' time off on full pay for every hour of overtime worked (10(3)(a)) or
- 90 minutes' paid time off for each hour of overtime worked.

Clause 10(4) stipulates that the paid time off must be granted within one month of the employee becoming entitled to it.

Clause 10(5), however, provides for an agreement in writing to extend the period of 1 month to 12 months.

#### **4.3.6 Compressed working week**

Clause 11(1) provides for employers and employees to conclude a written agreement in terms of which the employee agrees to work up to 12 hours in a day, inclusive of the meal intervals without receiving overtime pay.

Subclause (2) limits such an agreement so that the employee does not work more than 45 ordinary hours of work in any week(11(2)(a)), 10 hours' overtime in any week(11(2)(b)) on more than five days in any week(11)(2)(c).

#### **4.3.7 Averaging of hours of work**

Clause 12(1) provides for the averaging of ordinary hours of work and overtime over a period of up to 4 months in terms of a written agreement concluded between the employer and employee. Subclause (2) limits such an agreement so that the employee doesn't work more than an average of 45 ordinary hours of work in a week over the agreed period(12(1)(a)) and not more than an average of five hours' overtime in a week over the agreed period.(12(1)(b)).

#### **4.3.8 Payment for work on Sunday**

The prescribed remuneration for employees who don't ordinarily work on Sundays is 2 X the employee's wage for each hour worked. An employee who ordinarily works on Sundays should receive 1 ½ X the employee's wage for each hour worked.(15(1))

Subclause (3) provides an agreement which substitutes the prescribed payment in subclause (1) with paid time off, equivalent to the difference in value between the pay received by the employee for working on a Sunday and the pay that the employee is entitled to in terms of subclause (1) and (2).

#### **4.3.9 Night work**

In terms of clause 16(1) an employee may perform night work after concluding an agreement with the employer and subclause 16(1)(b) stipulates that an allowance of not less than 10% of the hourly wage for each hour or part thereof worked by the employee on night work be paid.

Subclause (2) requires of the employer to inform employees, who perform night work on a regular basis,<sup>10</sup> of any health and safety hazards associated with the work that the employee is required to perform.

Subclause (2)(b) stipulates that the employer should enable such an employee, at his/her request, to undergo a medical examination at the employer's expense, concerning those hazards. Such examination should be undergone either before the employee starts, or within a reasonable period of having started such work(16(b)(i)) and at appropriate intervals.(16(b)(ii)).

Subclause (2)(c) makes provision for the transfer of such employee to suitable day work within a reasonable time, should the employee suffer from health conditions related to performance of night work if it is practicable for the employer to do so.

#### **4.3.10 Public Holidays**

Clause 17 provides for employees to work on public holidays in accordance with an agreement concluded with the employer.

Subclause (2) stipulates the remuneration if such holiday falls on a day on which the employee would ordinarily work. If an employee doesn't work on the public holiday, the prescribed remuneration is the wage that the employee would ordinarily have received for work on that day.(17(2)(a)). If an employee does work on that public holiday, such employee should be paid at least 2 X the wage that the employee would ordinarily have received for work on that day(17(2)(b)(i) or, if it is greater, the amount referred to in 17(2)(a) plus the amount earned by the employee for time worked on that day.

If the public holiday falls on a day on which an employee would not ordinarily work, an employer must pay the employee an amount equal to the employee's ordinary daily wage(17(3)(a)) plus the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.

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<sup>10</sup> working for a period of longer than 1 hour after 23:00 and before 06:00 at least 5 times per month or 50 times per year

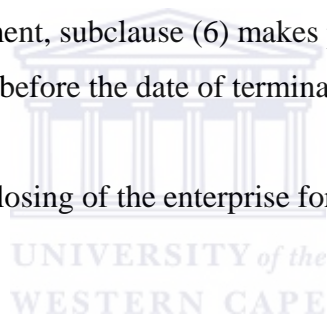
#### **4.3.11 Annual leave**

Clause 18(1) provides for annual leave of either 21 consecutive days' on full remuneration in respect of the annual leave cycle(18(1)(a)) or by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid(18(1)(b), or by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid(18(1)(c)) The leave shall be granted and taken at a time to be fixed by the employer.(18(4))

Clause 18(2) prescribes the minimum remuneration for paid leave as not less than 3 X the weekly wage that the employee was receiving immediately prior to the date on which the leave commenced.

Upon termination of employment, subclause (6) makes provision for the payment of leave accrued but not granted before the date of termination of employment.

Subclause (9) allows for the closing of the enterprise for 21 consecutive days every 12 months.



#### **4.3.12 Sick leave**

Clause 19(1) makes provision for sick leave cycle of 36 consecutive months during which the employee is entitled to paid sick leave equal to the number of days the employee would normally work during a period of six weeks. Employees in their first six months of employment are entitled to 1 day's paid sick leave for every 26 days worked(19(1)(a).

#### **4.3.13 Maternity leave**

An employee is entitled to unpaid maternity leave for at least four consecutive months.

#### **4.3.14 Family responsibility leave**

Employees who have been employed for longer than four months and who work for at least four days a week for that employer, are entitled to three days paid family responsibility leave

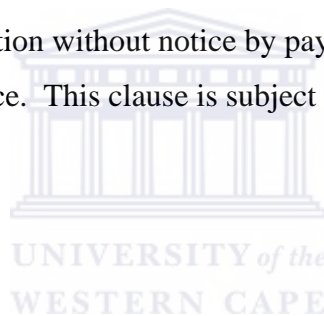
#### **4.3.15 Termination of employment**

Clause 23 requires that notice of termination of employment be given in writing, unless it is given by an illiterate employee. The prescribed notice periods are

- 1 working day during the first four weeks of employment(23(1)(a))
- 4 weeks, if the employee has been employed longer than 4 weeks(23(1)(b)).

Provision is made for termination without notice by paying the employee or employer, in lieu of such notice. This clause is subject to the Labour Relations Act 66 of 1995 as amended.

#### **4.3.16 Severance pay**



Clause 24(2) prescribes the rate of severance pay as equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with clause 4.

### **4.4 STATE OF THE INDUSTRY: 2002**

The Director-General was further instructed to investigate the conditions in the sector following the implementation of Sectoral Determination 1. The focus of the investigation was on wages, as conditions of employment were contained in previous determinations and the need to revisit and alter them did not exist at the time. There seems to be a significant change in the state of the industry since 1999, following the promulgation of the Sectoral Determination.

The Services SETA estimated the number of employees in the sector to be between 65 000 and 75 000 in 2002, as opposed to 55 000 in 1999. If this estimation is to be relied upon, it appears that there has been a significant growth in the contract cleaning sector over this period. Statistics SA did, however, indicate that the records for this particular sector during the period 1999 to 2002 are unreliable. Therefore, these records should be viewed as an approximation of the actual employment figures in the industry.

Employers who participated in the hearings were optimistic about future employment growth on condition that wage increases were closely managed. Employers from all the provinces welcomed the wage increases although they expressed concern about the enforcement of and compliance with the Sectoral Determination.

The ECC and the NCCA could not reach consensus on the method of calculation of the total increase in cost to the company following the amendments to the Sectoral Determination, taking into consideration provident fund, UIF, skills levy, bonus provision and actual increase. The ECC found the competition in the sector to be severe and refused to recommend that small business be excluded from paying the minimum wages because it would give them an unfair advantage.

Protracted negotiations between parties to the National Bargaining Forum prevented new wages from being promulgated upon the expiration of the wages prescribed in terms of the amended Sectoral Determination.

At this stage the sector doesn't have a national bargaining council because unions are not representative. There is, however, a National Bargaining Forum consisting of the NCCA and trade unions, the biggest employee representative being the South African Transport and Allied Workers Union(SATAWU). Wages negotiated in the Bargaining forum are not unilaterally extended to the rest of the country.

## **4.5 BRIEF COMMENTARY ON STATE OF THE INDUSTRY**

Based on the difference in employment figures reported by the Director General in 1999 and, thereafter in 2002, it would, on the face of it, appear that there has been significant employment growth in the industry since the implementation of Sectoral Determination 1. This implies that, despite the enactment of the legislation, the sector nevertheless experienced employment growth. Even if these statistics are treated as an approximation of the actual conditions in this sub sector, it nevertheless implies that the sub sector has experienced employment growth in spite of the enactment of the SD.

We therefore return to the focus of this investigation, that is, to determine the impact that Sectoral Determination 1 had on a sample of SMMEs in the sector.





## CHAPTER 5

### RESEARCH DESIGN AND METHOD

This study is an attempt to follow up on the earlier research conducted by Godfrey and Theron(1999) into the **likely** impact of the BCEA on small business. Their research instrument, that is, the questionnaire, was adapted to suit the purpose of this particular study.

#### 5.1 RESEARCH INSTRUMENT

The research method firstly comprised of an initial telephonic interview with the owner/manager of the enterprise, a questionnaire<sup>11</sup> and a follow-up face-to face interview where required.

The purpose of the initial interview was to establish firstly, whether the enterprise falls within the category of SMME as defined by the *Small Business Amendment Act*, and if it did, to explain the purpose of the research and to obtain their consent to participate in the research.

The questionnaire sought to

- a) establish whether there is full, partial or no compliance with key conditions of the Sectoral Determination, and,
- b) examine the impact that compliance with these key conditions has on the growth of these enterprises.

*Categories A to I* of the questionnaire dealt with compliance whereas *Category J* dealt with the impact that these provisions had on the growth of the enterprise,

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<sup>11</sup> See Annexure B

*Category A* of the questionnaire was designed to establish whether the enterprise was governed by the SD, and if so, whether, in the opinion of the owner/manager there was full compliance with the entire SD.

*Category B* of the questionnaire was designed to establish in which of the categories (small, very small, medium or micro) the enterprise falls.

*Categories C to I* comprise a series of open-ended questions which dealt with each key provision in turn. Its purpose was two-fold. Firstly, it aimed to verify the claim made by the employers in *Category A* regarding their compliance with the key provisions of the SD. Secondly, it sought to establish with which of these key provisions the enterprises were compliant or not.

*Category J* contains a series of closed format and open format questions to establish the impact that each of these key provisions had on the growth of the enterprise. The closed format questions dealt with the perceived impact of the SD on the growth of the enterprise, which had to be expressed as either **positive, negative or no impact**, incorporating a coding frame into the questionnaire for ease of reference. The open format questions dealt with the reasons for the response.

For the purpose of a meaningful discussion on the impact that these key provisions had on the sample, their responses in *Category J* had to be linked with their responses in *Categories C to I*, so that the impact of each key provision could be considered within the context of the enterprise's compliance/non-compliance with that key provision.

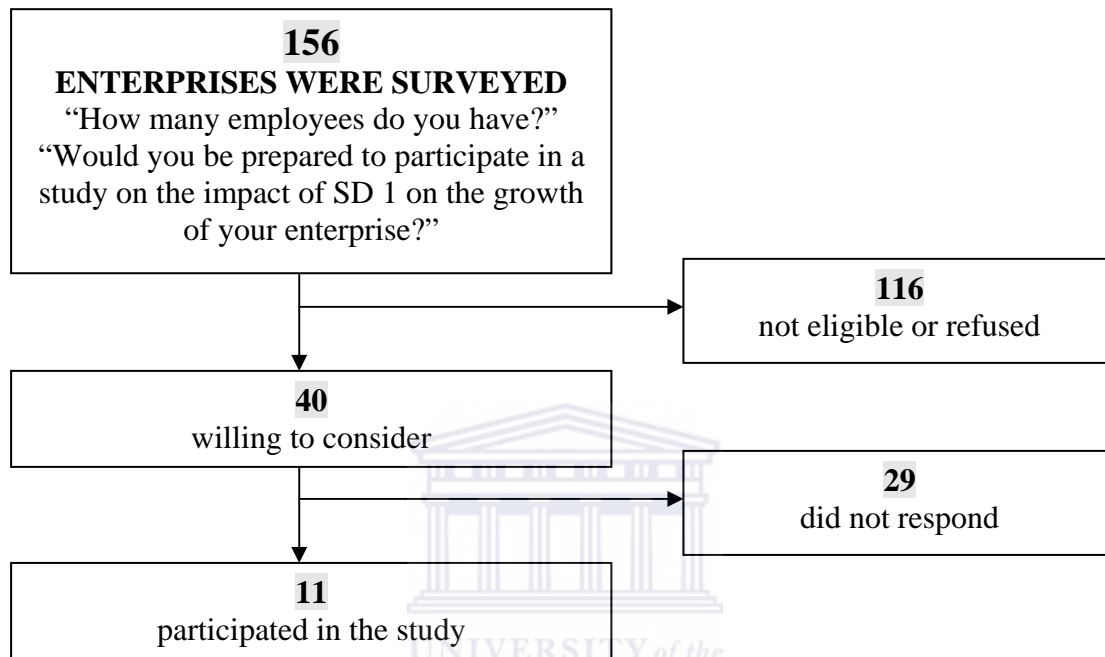
The researcher administered most of the questionnaires. However, where this was not done, a follow-up face-to-face interview was conducted to clarify responses.

The follow-up face-to-face semi structured interviews were mainly focused on points of clarification where contradictions appeared in the answers given in the questionnaire.

## 5.2 SAMPLING PROCEDURE

**Figure 1** below illustrates the sampling procedure that was used during the course of the investigation.

**FIGURE 1: SAMPLING PROCEDURE**



The final sample for this investigation cannot be regarded as representative of the target population as the sample represents only 7% of this population. The target population yielded a sample frame of 40 enterprises of which 11 participated in the study.

This sampling frame contains a sample of convenience<sup>12</sup> from the data base of the National Contract Cleaning Association and quota sampling<sup>13</sup> from other sources, such as the records of the Micro Enterprise Network of Non-Government Organisations (MENNGOS), Catholic Welfare Development (CWD), the Registrar of companies, the Yellow Pages and employees of enterprises the names of which did not appear on any of the aforementioned records. Numerous efforts to obtain records

<sup>12</sup> using the records that were immediately available

<sup>13</sup> an attempt to balance the sample interviewed by selecting responses from equal numbers of different respondents

from the Transport and Allied Workers Union (SATAWU) in the Western Cape had failed.

The intention with the sampling was to reduce the possibility of bias that accompanies the sample of convenience from the database of the NCCA. Membership to the NCCA is voluntary and the association does not have the authority to monitor and enforce compliance with the Sectoral Determination on their members, however, it is the only employer body mandated to represent employers in this sector in all the provinces except Kwa Zulu-Natal, where a Bargaining Council exists.

MENNGOS and the CWD provided samples that do not fall in the above-mentioned category and consisted only of micro-enterprises.

The sample taken from the Yellow Pages comprised of those enterprises that are not registered with the registrar of companies and that are not members of the NCCA.

Employees of enterprises that do not fall in any of the above-mentioned categories provided the contact details of some of their employers. These employees were approached on the streets and in parking areas. They were identified simply by virtue of the fact that they were busy cleaning when they were spotted.

A telephonic interview was conducted with these enterprises to establish whether they fall within the target population and to obtain their consent to participate in the study. The target population was all the SMMEs on record operating in the contract cleaning sector in the Cape Peninsula.

The intention was to use simple stratified sampling, of which the categories are small, very small, medium and micro enterprises as defined by the *Small Business Amendment Act*. In addition, the sample had to be further categorised into enterprises that complied fully, partially or not at all with the Sectoral Determination. Questionnaires with covering letters<sup>14</sup> were therefore dispatched to the entire sampling frame.

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<sup>14</sup> see Annexure A

The poor response rate from the owners/managers limited the possibility of obtaining an equally sized randomised sample.<sup>15</sup> Moreover, the following factors further impacted on the size of the sample:

- securing a follow-up interview with the owner/manager of the enterprise was difficult as they are engaged in running their “cut-throat” business throughout the day.
- the contact details of enterprises that appeared on any of the databases may have changed, been sold, closed down, merged, are not up and running yet, simply don’t want to be found, were not eligible, or refused to participate in the study.
- enterprises who initially indicated that they would participate in the research, decided against it once they have received a copy of the questionnaire despite the confidentially agreement signed by the researcher.

Although it was the intention to obtain a simple stratified sample, the following factors observed in the sample frame that was accessed limited this intention:

- these enterprises appear to have a very short life-span.
- they are absorbed by bigger companies.
- some owners were disillusioned with the tendering process, lack of funding, inability to compete with the bigger companies and therefore refused to cooperate with the research.
- the records of enterprises were sometimes non-existent and there was a lack of continuity where some form of record keeping existed.
- those enterprises that were registered sometimes did not get off the ground.
- where enterprises managed to be awarded contracts, these were often once-off and owners were compelled to abandon the business and find employment for themselves.
- some of the SMMEs converted into large enterprises during the course of the investigation.

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<sup>15</sup> where an equally sized randomised sample is obtained from each category separately to ensure that each is equally represented.

In conclusion, the final sampling yielded 1 micro enterprise, 1 very small enterprise, 5 small enterprises and 4 medium enterprises that have grown to large enterprises since the initial contact. The total full-time equivalent of paid employees is reflected in the **Table 2** below.

**TABLE 2: SUMMARY OF SAMPLE BY CLASS SIZE**

<b>SIZE OF ENTERPRISE</b>	<b>CODE</b>	<b>TOTAL FULL-TIME EQUIVALENT OF PAID EMPLOYEES</b>
Micro enterprise P	MP	3
Very small enterprise W	VsW	12
Small enterprise A	SA	31
Small enterprise S	SS	31
Small enterprise B	SB	45
Small enterprise M	SM	30
Small enterprise J	SJ	45
Large enterprise C	LC	220
Large enterprise B	LB	219
Large enterprise ME	LME	300
Large enterprise JM	LJM	300

Records obtained show hardly any active enterprises in the micro to very small range.

## **5.3 DATA COLLECTION**

### **5.3.1 Primary data**

Data on the total full-time equivalent of paid employees was collected during the initial telephonic structured interview. Where owners/managers refused to disclose this information over the telephone, a questionnaire with a covering letter was dispatched via e-mail or post, or hand delivered to the enterprise.

This was then followed by a telephone call confirming receipt of the documentation and establishing a mutually agreeable time during which the questionnaire could be completed, either by the researcher, or by the owner/manager of the enterprise, pending a follow-up interview.

The research was constrained by the lack of response by the majority of enterprises. Questionnaires would often get lost and would then have to be dispatched again, appointments would be cancelled as owners/managers give priority to running their businesses, owners/managers would often be away from the office for days or weeks as they attend meetings, deal with tendering procedures, liaise with clients and the like.

### **5.3.2 Secondary data**

The primary data was collected from the owners/managers and concern has to be expressed over the possible bias that may accompany these responses. To provide some form of triangulation in the case of compliance, secondary data was obtained from the CCMA records to establish whether any awards have been made against any of the enterprises in the sample.

As mentioned earlier, numerous attempts over a period of one year failed to produce any records of complaints from SATAWU in the Western Cape. The South African Revenue Services and the Department of Labour were also unable to assist as they regarded their records as confidential.

## **5.4 DATA CAPTURING AND ANALYSIS**

The data was first recorded in a matrix (spread sheet) in a case ordered display.<sup>16</sup> Each case's (enterprise's) results were therefore recorded individually. The data was subsequently presented in graphs for the purpose of comparing the results of the respective cases and for ease of reference. As a result of the small size of the sample,

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<sup>16</sup> a display that show the data of cases arranged in some kind of order according to an important variable in the study

limited coding categories were devised, mainly for the purpose of protecting the anonymity of the participants.





## CHAPTER 6

### THE IMPACT OF SECTORAL DETERMINATION 1 ON SMMEs – RESEARCH FINDINGS

The presentation of the research findings follows the format of the questionnaire by considering each of the key conditions in turn. A summary of CCMA awards<sup>17</sup> involving enterprises in the sample will be considered in an attempt to verify the claims of compliance made by the owners/managers of the enterprises.

#### 6.1 COMPLIANCE WITH SECTORAL DETERMINATION 1

All the enterprises in the sample claimed full compliance with the Sectoral Determination. However, upon further investigation, the results showed that only four of the eleven enterprises were in compliance with all the key provisions of the SD. These results are summarised in **Table 3** below.

**TABLE 3: SUMMARY OF COMPLIANCE WITH KEY PROVISIONS OF THE SECTORAL DETERMINATION**

Compliance with key provisions of SD	Full compliance with every key provision			Partial compliance			Non-compliance
	large	small	very small	large	small	micro	
Class							
Number of enterprises	3	1	1	1	4	1	0

The above results show that three of the four large enterprises in the sample appear to be in full compliance with the key provisions of the SD. The one large enterprise that

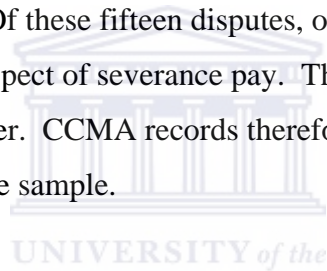
<sup>17</sup> See Annexure C

doesn't comply in full with the key provisions, nevertheless appears to be in compliance with all but one provision of the SD.

Only one of the five small enterprises appears to be in full compliance with the SD. This particular observation is rather misleading as the majority of non-compliant enterprises nevertheless appear to be in compliance with all but one, or, at most two of the provisions of the SD. Therefore, there appears to be on average, a high level of compliance with the key provisions of the SD among the small enterprises.

The very small enterprise appear to be in full compliance with the key provisions of the SD, however, the micro enterprise failed to comply with one key provision.

CCMA records between December 2001 and August 2006 revealed that six of the eleven enterprises in the sample had disputes brought before the CCMA. A total of fifteen disputes were heard. Of these fifteen disputes, only one related to alleged non-compliance with the SD in respect of severance pay. The award, in this case, was made in favour of the employer. CCMA records therefore do not point to non-compliance with the SD by the sample.



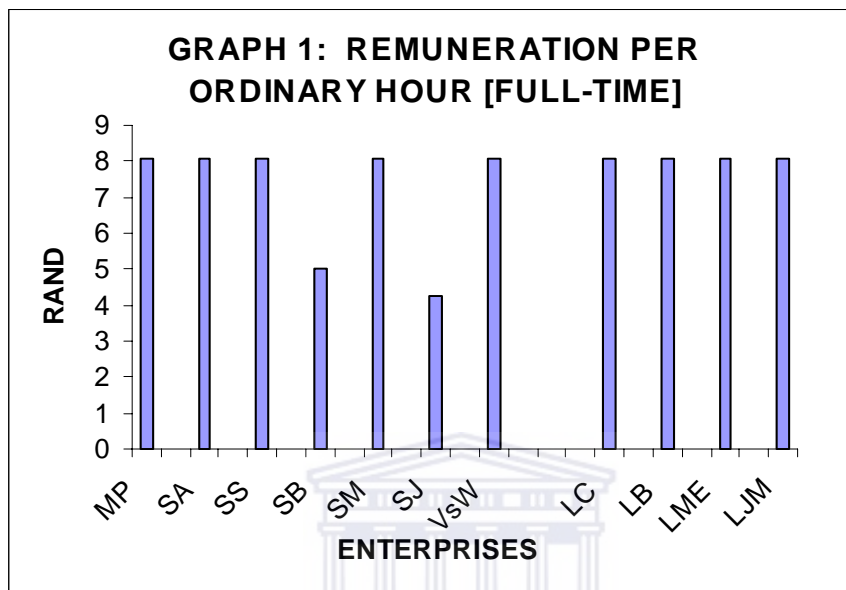
However, a closer look at the responses of the enterprises to each of the key conditions identified in the questionnaire is required for the following reasons:

- the summary of compliance is potentially misleading, therefore the follow up interviews with the owners/managers clarify certain responses on the questionnaire.
- a comparison between the responses of the large and the small enterprises appear to show interesting trends with regard to certain provisions
- it is important for the purposes of the discussion that follows the presentation of results, to identify the key provisions with which there is compliance and those with which there is non-compliance.

Each key condition will therefore be considered in turn.

### 6.1.1 Remuneration per ordinary hour

At the time when the research was conducted, the prescribed rate for remuneration per ordinary hour was R8,05. **Graph 1** illustrates the minimum wages paid by individual enterprises to full-time employees.



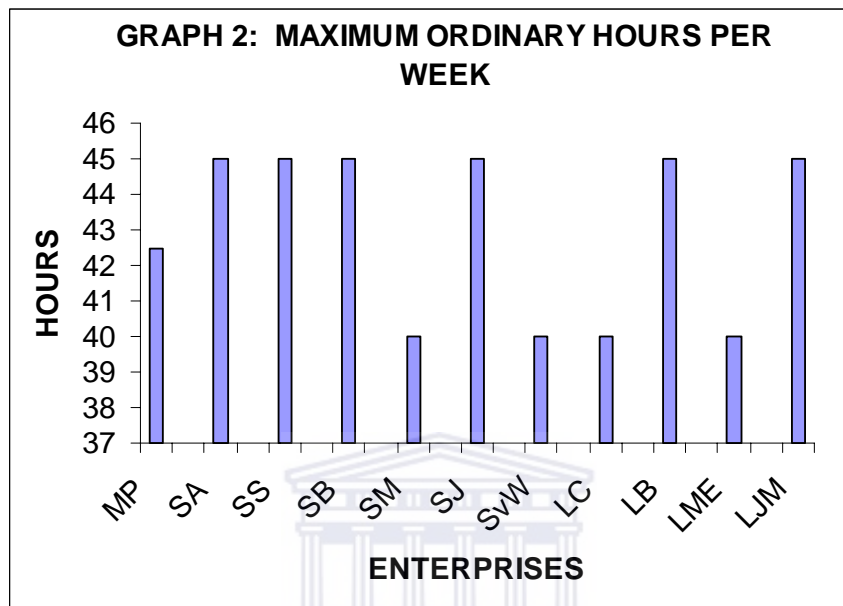
The results show that all but two of the enterprises were in compliance with this provision. These two enterprises were from the small enterprise range. Upon further investigation into the reasons for the non-compliance, the owners of SB and SJ indicated that their enterprises would not be economically viable should they comply with this provision. They added that their workforce is drawn from the most marginalized of society which brings with it particular socio-economic problems, which the enterprises apparently absorb.

Employees of these enterprises are allegedly drawn from the surrounding squatter community where, according to the owners/managers, extreme poverty, domestic violence and alcohol abuse are prevalent. This results in chronic absenteeism, poor work performance and frequent borrowing against wages and bonuses followed by abscondments.

### 6.1.2 Maximum ordinary hours per week

The Sectoral Determination prescribes maximum ordinary hours per week as 45.

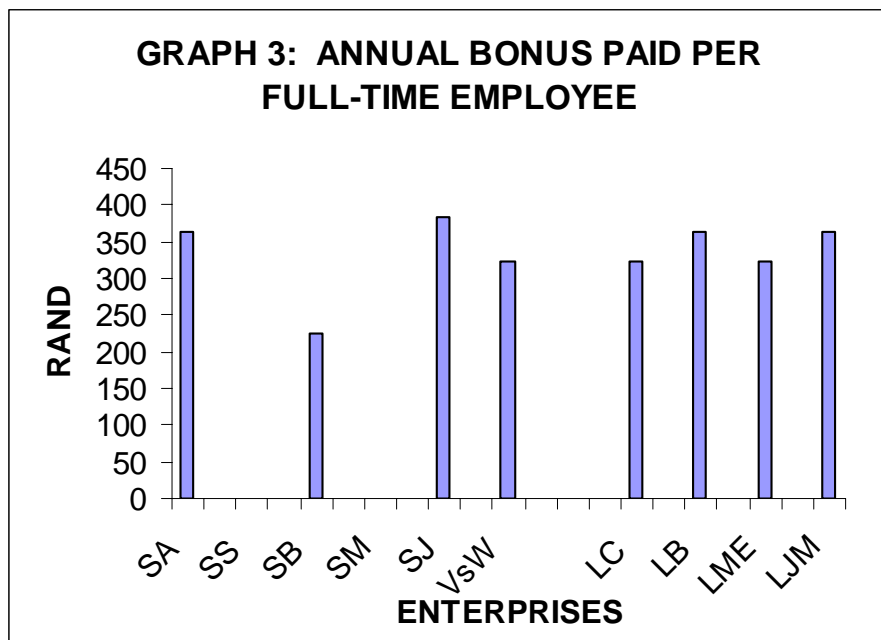
**Graph 2** illustrates the maximum ordinary hours worked per week by employees of the respective enterprises.



The results show that the entire sample appears to be in compliance with this provision. Although a slight majority of enterprises(55%) utilise the 45 hour week, a significant number(45%) use shorter hours.

### 6.1.3 Annual bonus paid

The Sectoral Determination prescribes an annual bonus equal to one week's wages. Therefore, for an employee working a 40 hour week at an hourly rate of R8,05, the bonus would be approximately R322,00. The range for employees earning R8,05 would therefore be between R322,00 for a 40 hour week and R366,75 for a 45 hour week. **Graph 3** illustrates the annual bonus paid to full-time employees by the respective enterprises.



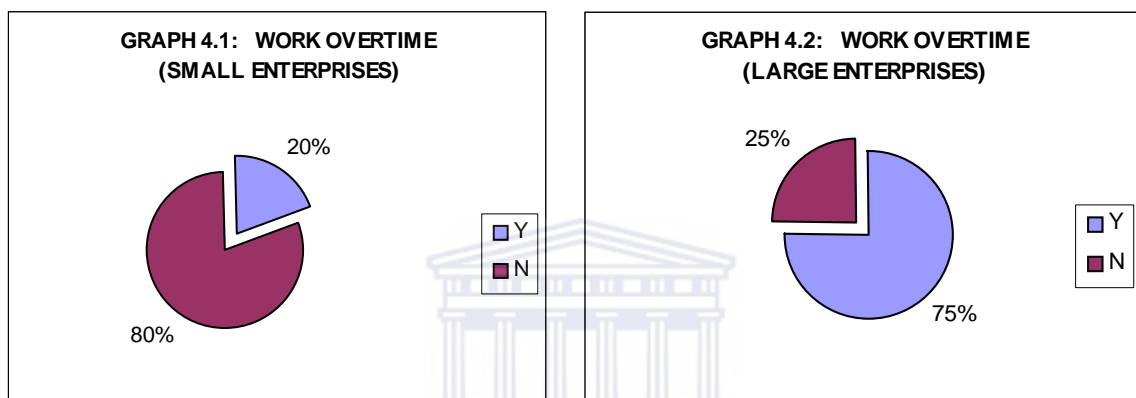
Seven of the eleven enterprises claim to be in compliance with this provision. Upon further investigation, two of the owners, SM and SS revealed in follow-up interviews that it was not financially possible for them to pay bonuses for the preceding financial year. The employees were therefore faced with the option of retrenchments or foregoing the bonuses and continuing their employment. The owner of SB revealed in a follow-up interview that the socio-economic circumstances of the employees dictate that bonuses be performance related rather than prescribed.

A significant observation is the fact that one of the small enterprises(SJ) that claimed non-compliance with the provision of remuneration per ordinary hour, appears to offer bonuses at a rate above the prescribed rate in the SD. Upon further investigation, the owner revealed that this serves as an incentive to the employees to remain with the enterprise and to complete a full year of service.

The micro enterprise was among those that did not pay bonuses at the end of the year as it has managed to get a contract for one year only and was unable to pay its employees a bonus at the end of their contract.

## 6.1.4 Overtime

Before reporting on the compliance with the SD in respect of the overtime provision, regard must be had to the interesting trend that is illustrated by the graphs below, that is, that the majority of large enterprises(75%) require their employees to work overtime, whereas the majority of small enterprises(60%) seem to steer clear of overtime. The very small and micro enterprise reacted similarly to the majority of small enterprises. **Graphs 4.1** and **4.2** illustrate the percentage of enterprises per class size that require their employees to work overtime.



The above statistics show that 75% of large enterprises in the sample require their employees to work overtime whereas 80% of small enterprises do not.

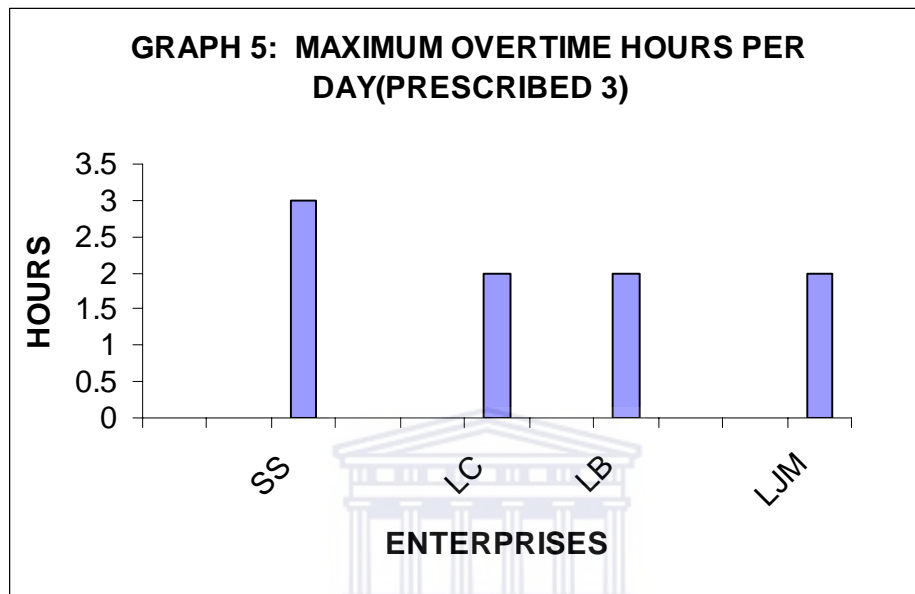
Upon enquiring into this phenomenon the owners/managers of the large enterprises indicated that the capacity to offer this service adds value to the service offered by the enterprise and results in, firstly, an increase in revenue for the enterprise and, secondly, increased remuneration for employees.

The owners of the small enterprises indicated that overtime is worked mostly to avert a crisis resulting from the inefficiency of the employees which is not cost effective.

#### 6.1.4.1 Maximum overtime hours per day

The Sectoral Determination prescribes three hours maximum overtime hours per day.

**Graph 5** illustrates the maximum number of overtime hours worked by employees per day.



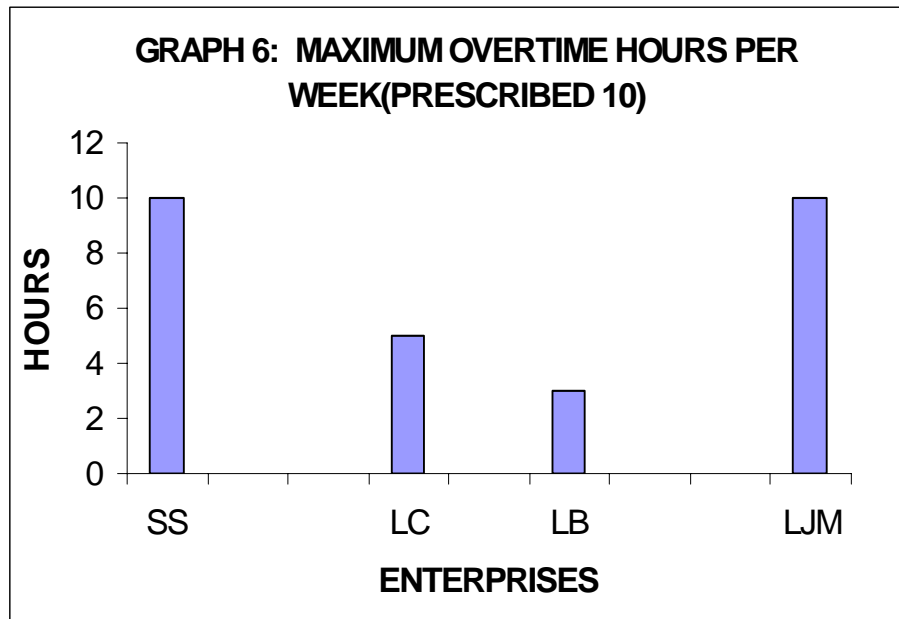
The three large enterprises, LC, LB and LJM recorded maximum hours of overtime less than the prescribed 3 hours.

The small enterprise SS, recorded the maximum prescribed hours of overtime per day.

#### 6.1.4.2 Maximum overtime hours per week

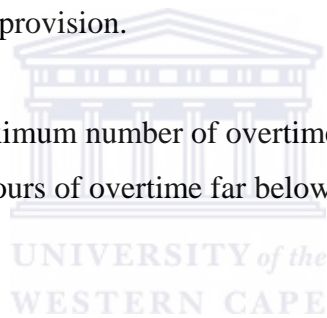
The Sectoral Determination prescribes ten hours maximum overtime hours per week.

**Graph 6** illustrates the maximum hours of overtime worked by employees per week.



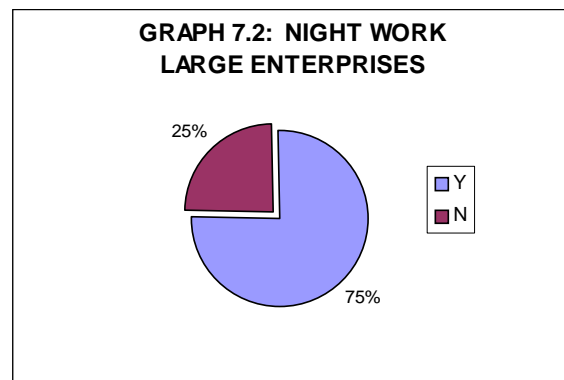
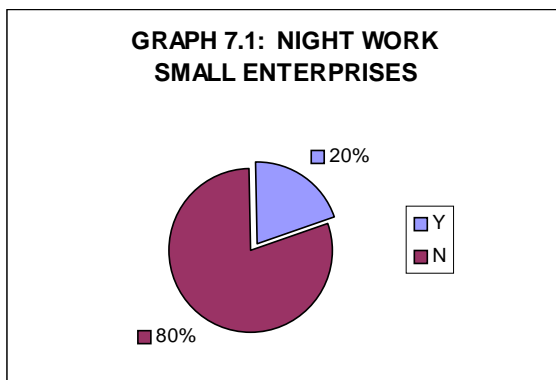
The results show that all the enterprises that require their employees to work overtime claimed compliance with this provision.

SS and LJM recorded the maximum number of overtime hours per week, whereas LC and LB recorded maximum hours of overtime far below the prescribed maximum.



### 6.1.5 Night work

The Sectoral Determination prescribes that night work could only occur upon written agreement by the employee, that transportation must be available for the employee, and, that the employee must be informed about health and safety issues relating to night work. **Graphs 7.1** and **7.2** illustrate the percentage of enterprises per class size that require their employees to work during the night.





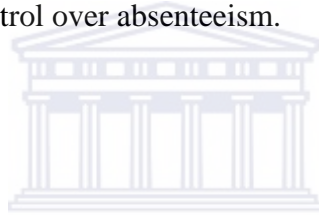
The results show that all the enterprises that require their employees to do night work, claim that they are in compliance with the night work provisions. The majority of these enterprises include it in their employment contract.

A significant observation is that only one of the five small enterprises requires of its employees to work at night occasionally, whereas three of the four large enterprises require their employees to perform night work on a regular basis.

The micro and very small enterprise reacted similarly to the majority of small enterprises as their employees did not work during the night.

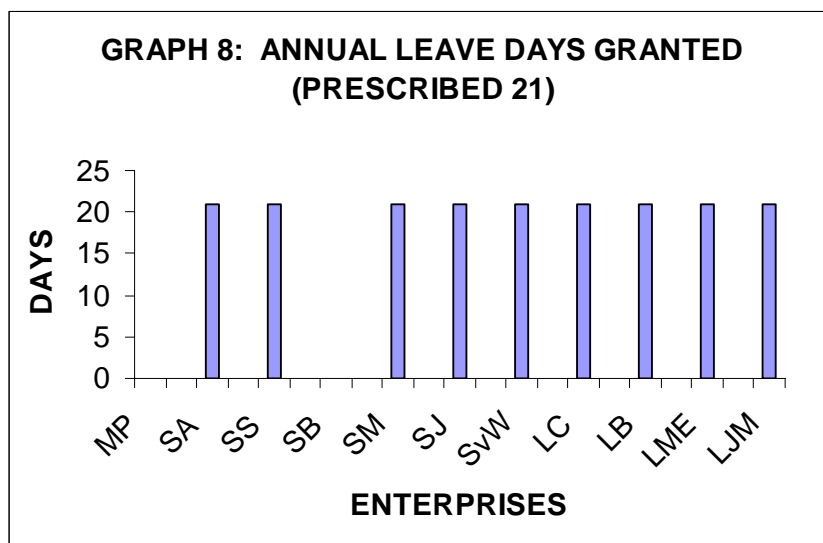
The investigation revealed that, because of the burdensome management involved and additional cost for transport, smaller enterprises prefer to avoid night work. The SD doesn't prescribe that transport must be available but the majority nevertheless provide transport to retain control over absenteeism.

### 6.1.6 Annual leave



The Sectoral Determination prescribes twenty-one consecutive leave days per year.

**Graph 8** illustrates the number of annual leave days granted by individual enterprises.

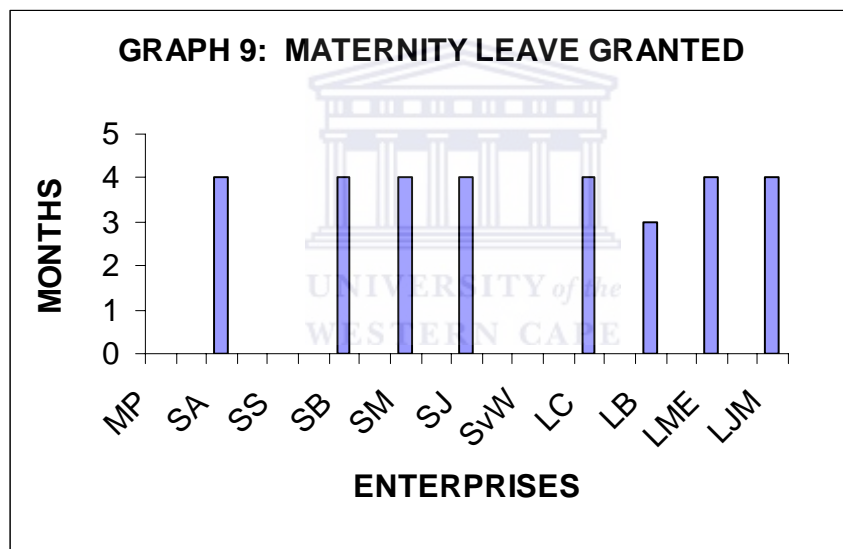


The statistics show that all but one of the enterprises are in compliance with this provision of the Sectoral Determination. The owner of the non-complaint enterprise, SB, indicated in the follow up interview that absenteeism and abscondments are so rife in this enterprise that paid annual leave is taken long before it becomes due.

## 6.1.7 Maternity leave

### 6.1.7.1 Maternity leave granted

The Sectoral Determination prescribes four consecutive months unpaid maternity leave. **Graph 9** illustrates the maximum period of maternity leave granted by individual enterprises.

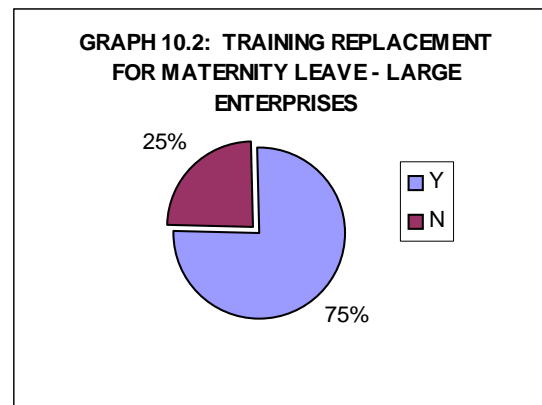
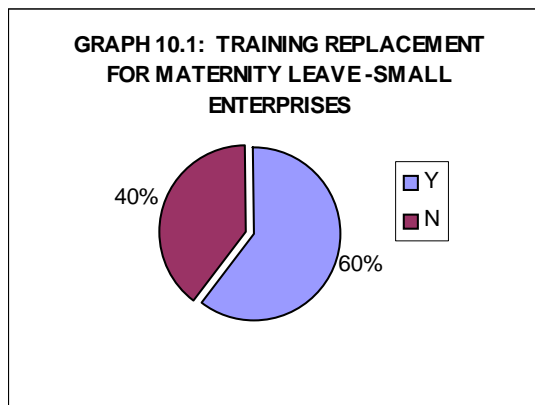


All but one of the enterprises that have granted maternity leave are in compliance with this provision. Upon further investigation, the non-compliant large enterprise, LC revealed that its employees preferred to return earlier, for economic reasons.

MP, SS and SvW did not have pregnant employees during the period of investigation.

### 6.1.7.2 Replacement

All the enterprises that granted maternity leave indicated that they required a replacement for the employee. **Graphs 10.1** and **10.2** illustrate the need for training the replacements per class size.



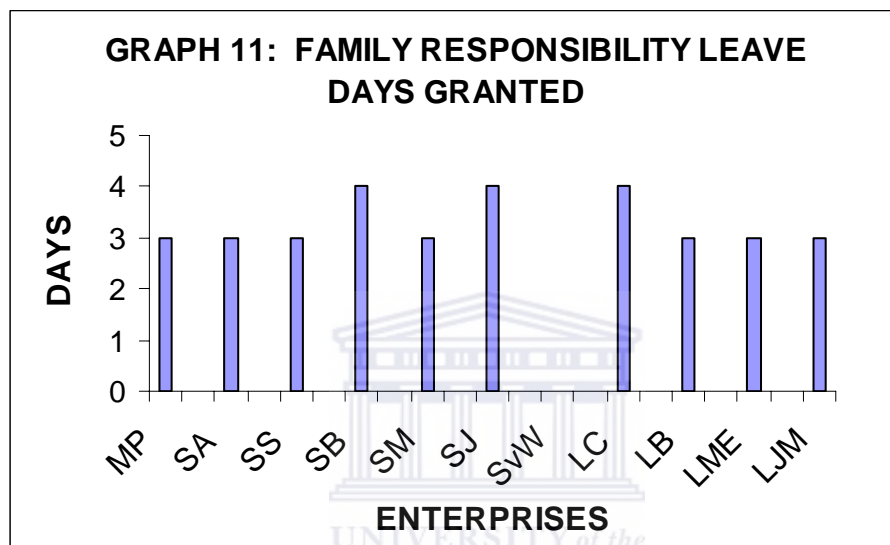
Sixty percent of the small enterprises that granted maternity leave claimed that they required the replacement to undergo training, whereas 75% of the large enterprises indicated that the replacements required training. Upon investigation, the large enterprises claimed that some of the work that their employees do, is specialised. The very small enterprise, micro enterprise and small enterprise S were unaffected as none of its female employees fell pregnant during the time that the study was conducted.

Upon further investigation, the small and the large enterprise that did not require a replacement claimed that the load gets distributed amongst the remaining employees.

## 6.1.8 Family responsibility leave

### 6.1.8.1 Maximum number of days granted

The Sectoral Determination prescribes three days paid family responsibility leave per year. **Graph 11** illustrates the maximum number of paid family responsibility leave days granted by individual enterprises.

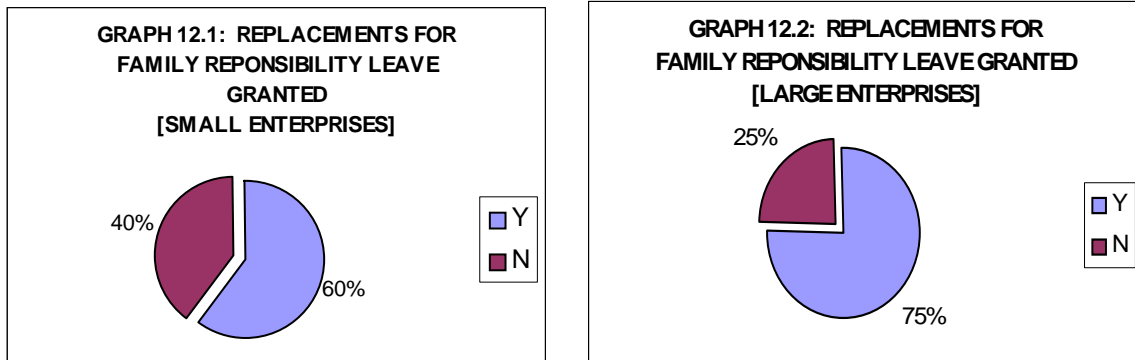


All but one of the enterprises have granted family responsibility leave days during the year of this investigation. The results reveal that all these enterprises claim compliance with this provision.

Three of the enterprises have granted family responsibility leave in excess of the three days prescribed by the SD. These enterprises claimed that it is required to be sensitive to cultural differences, and, that individual circumstances dictated that they extend the number of family responsibility leave days.

### 6.1.8.2 Replacements

Graphs 12.1 and 12.2 illustrate the need for a replacement per class size.

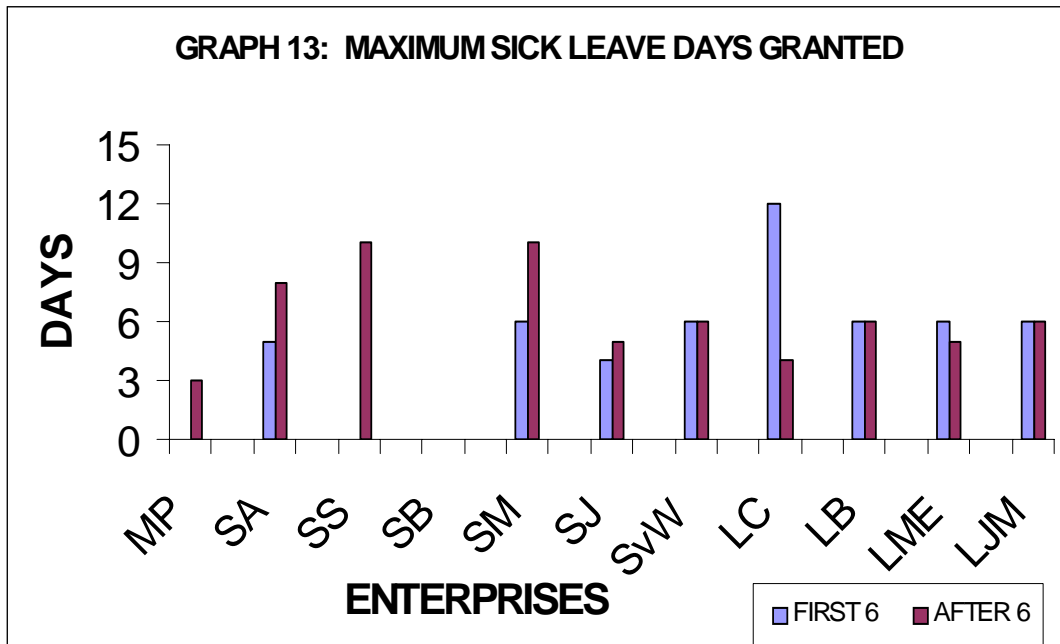


The majority of enterprises appear to require a replacement for the employee on family responsibility leave. The results show that 75% of large enterprises and 60% of small enterprises required a replacement.. Both the very small and the micro enterprise required a replacement for the employee on family responsibility leave.

The smaller enterprises indicated that, the smaller the contract, the more difficult it is to merely spread the load among the remaining employees whereas the large enterprises indicated that the work is often specialised which require them to move employees around and find replacements for the work that is less specialised.

### 6.1.9 Sick leave

The Sectoral Determination prescribes six days sick leave to be granted for the first six months and thirty days after the first six months of employment for an employee working a five-day week over a period of thirty-six months. **Graph 13** illustrates the maximum sick leave days granted by individual enterprises for the first six months and after the first six months.



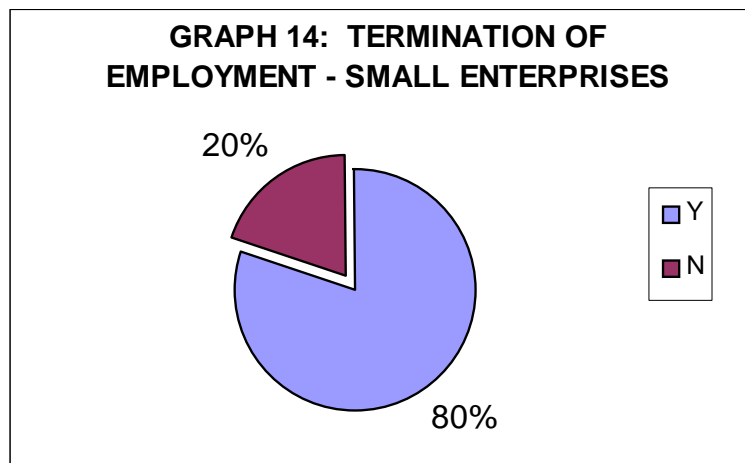
All but one of the enterprises claims compliance with this provision.

The non-compliant small enterprise, SB, had difficulty in responding to this question as its manager revealed that absenteeism is rife(chronic) and that this benefit gets exhausted very early in the cycle, compelling the enterprise to grant paid sick leave on a meritorious basis. The authenticity of the claim would first be investigated and the employment history of the employee will be considered before paid sick leave is granted.

All but two of the enterprises have granted sick leave during the first six months of employment.

### 6.1.10 Termination of employment

**Graph 14** illustrates the percentage of small enterprises that have dismissed employees for reasons other than operational reasons.

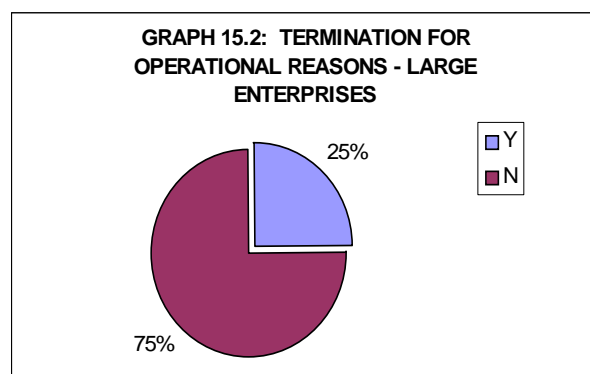
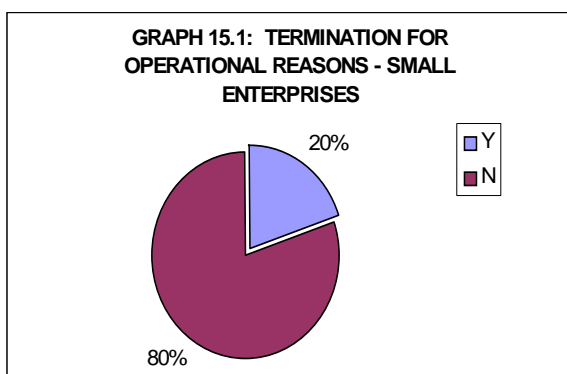


The majority of enterprises (80% - SMMEs; 100% large) have terminated the employment of one or more of their employees for reasons other than operational reasons. Upon further investigation, the enterprises disclosed that they do not engage in dismissals unless they can dismiss summarily for misconduct involving gross dishonesty, usually in the form of fraud or theft. In such a way they avoid disputes about notice periods and payment in lieu of notice.

Those enterprises that did not dismiss employees, claimed to have had only resignations or abscondments.

### 6.1.11 Severance pay

**Graphs 15.1** and **15.2** illustrate the percentage of enterprises per class size that engaged in termination for operational reasons.

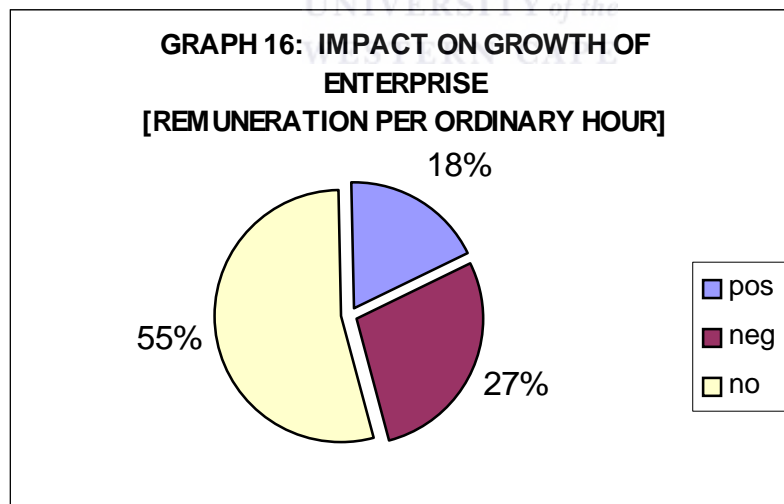


The above results show that the majority of enterprises have not dismissed for operational reasons. The two enterprises that did, SM and LC, both indicated that they paid severance pay in accordance with the provisions of the SD.

## 6.2 IMPACT OF COMPLIANCE ON THE GROWTH OF THE ENTERPRISE

### 6.2.1 Ordinary hours

The results show that a slight majority of enterprises(55%) claim that remuneration for ordinary hours has no impact on the financial growth of their respective enterprises, whereas 27% claim that the prescribed rates have a negative impact on the growth of the enterprise. Eighteen percent of the enterprises claim that remuneration for ordinary hours have a positive impact on the growth of their enterprise. **Graph 16** summarises the impact that remuneration per ordinary hour has on the growth of the enterprises in the sample.



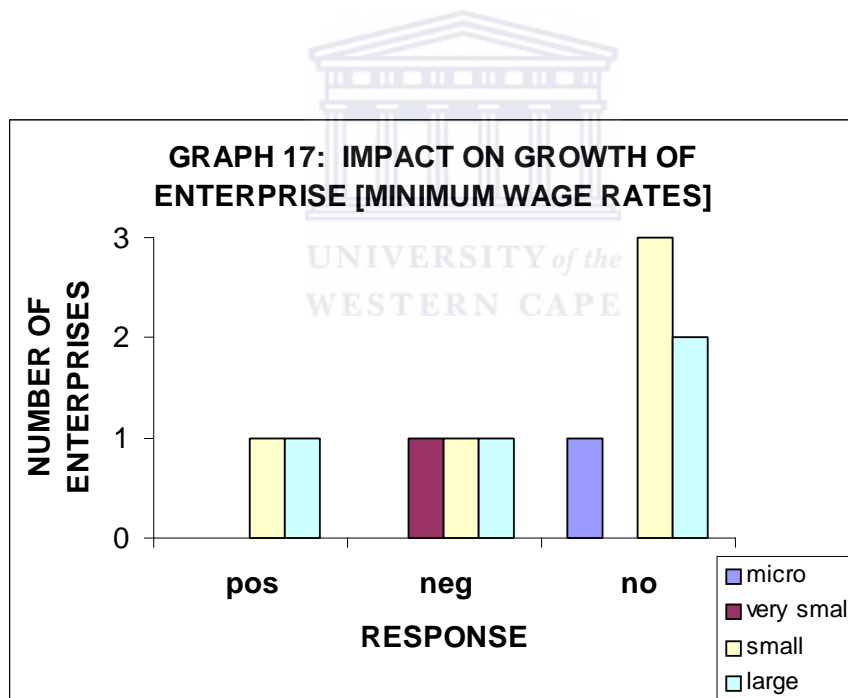
Those enterprises that claim that it has a positive impact advanced the following reasons: the prescribed rates serve as a directive, and, compliance with these rates results in fairer competition. The enterprises that claim that the prescribed rate has no impact on its growth, included the prescribed rate in their tenders.



Where the enterprise claimed that the prescribed rate had a negative impact on its growth, the following reasons were advanced: competition is rife and the prescribed rate has to be included in the tender, which impacts on the type of contract that gets awarded to the enterprise. Where it is not possible to include it in the tender, the prescribed rates have the potential to reduce minimal profits.

Upon considering the individual reactions of the various categories of enterprises, the results for large enterprises show that two claimed that the prescribed rate had no impact whereas one indicated that it had a positive impact on the growth of the enterprise. The majority of large enterprises therefore did not find the prescribed rate problematic.

**Graph 17** illustrates the responses of enterprises per class size to the minimum wage rates prescribed by the SD.

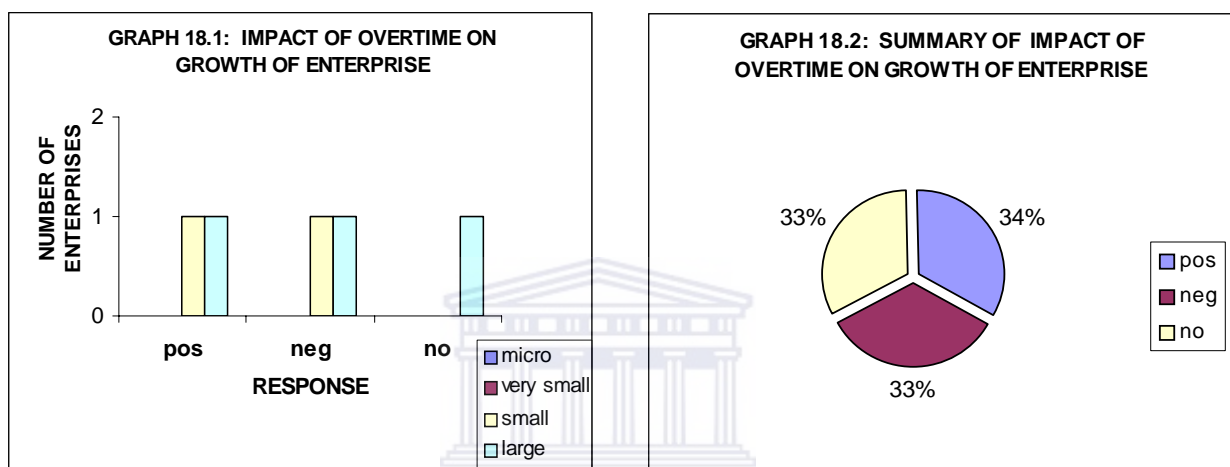


The small enterprises reacted like the large enterprises, with three indicating that the prescribed rate had no impact on the growth of their respective enterprises. The remaining two enterprises recorded a negative and a positive response respectively. The micro enterprise reacted like the majority of the enterprises, whereas the very small enterprise reacted negatively to this provision.

## 6.2.2 Overtime

The results on compliance reveal that 80% of the small enterprises do not require their employees to work overtime whereas 75% of large enterprises do.<sup>18</sup>

**Graph 18.1** illustrates the impact that remuneration for overtime work has on the growth of individual enterprises and **Graph 18.2** summarises the response of the entire sample to this provision.



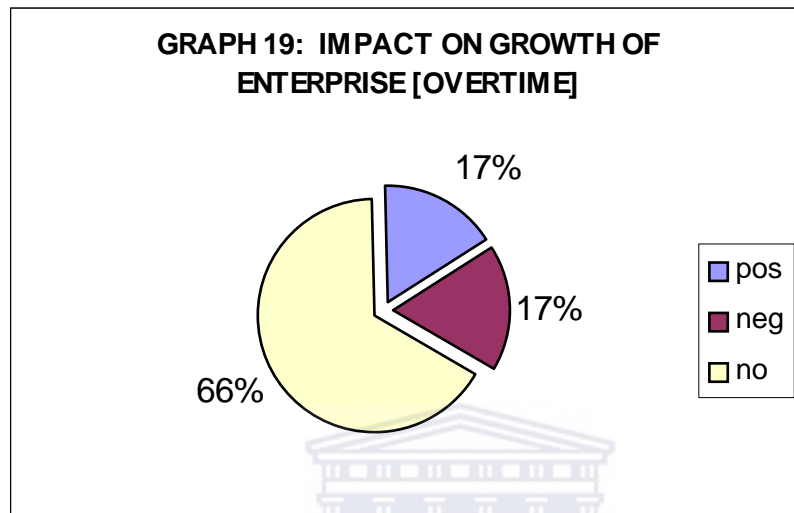
The results for those enterprises that require their employees to work overtime, show an equal spread across the entire range (positive, negative, no impact). The only small enterprise that requires its employees to work overtime indicated that this provision has both a positive and a negative impact on the growth of the enterprise. Reasons advanced for this correspond with the reasons advanced by the large enterprises.

The large enterprises that responded negatively indicated that, where working overtime results from crisis because inefficient staff did not perform their tasks, the enterprise has to foot the bill for which it has not budgeted, therefore it impacts negatively on the growth of the enterprise. Where the large enterprises have responded positively, they indicated that this function adds value to the service that

<sup>18</sup> See section 6.1.4 above

they render and increases profits when implemented correctly. Where the enterprises indicated that it had no impact, the client pays when overtime is worked.

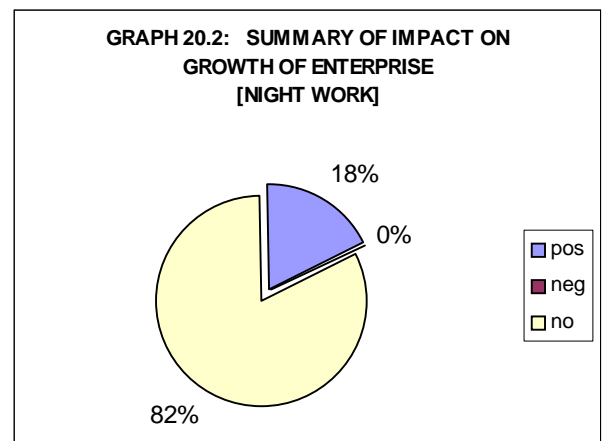
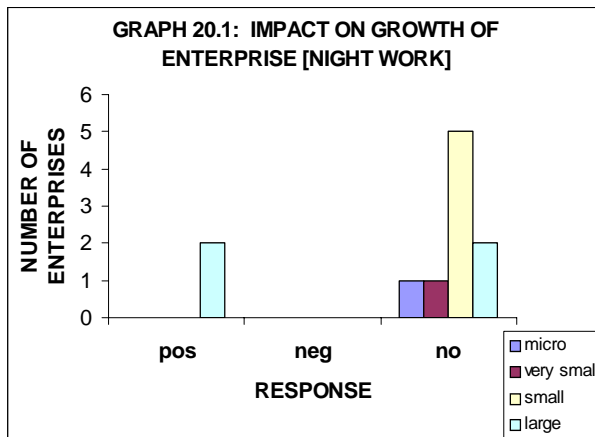
**Graph 19** summarises the responses of all the enterprises, whether their employees work overtime or not, to the provision on remuneration for overtime.



The above summary of the results show that the majority of all enterprises(66%) claim that the overtime provisions have no impact on them and the positive and negative response balance each other out at 17% each.

### 6.2.3 Night work

**Graph 20.1** illustrates the individual responses of enterprises per class size to the provision on remuneration for night work. **Graph 20.2** summarises the response of the entire sample to this provision.



All the smaller enterprises indicated that the night work provision has no impact on the growth of their enterprise. The reason advanced for this is that their employees do not work at night.

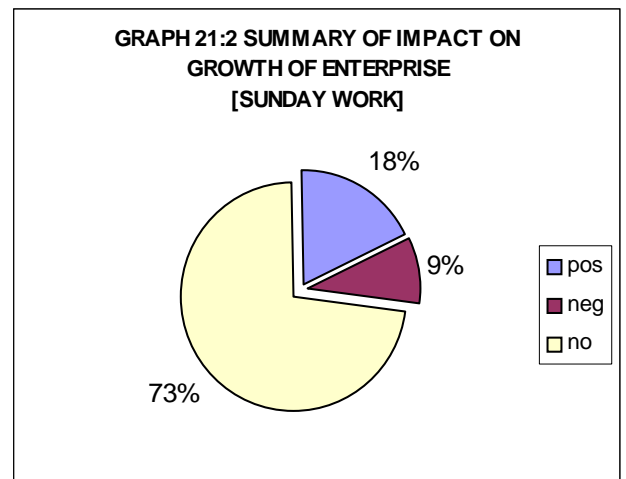
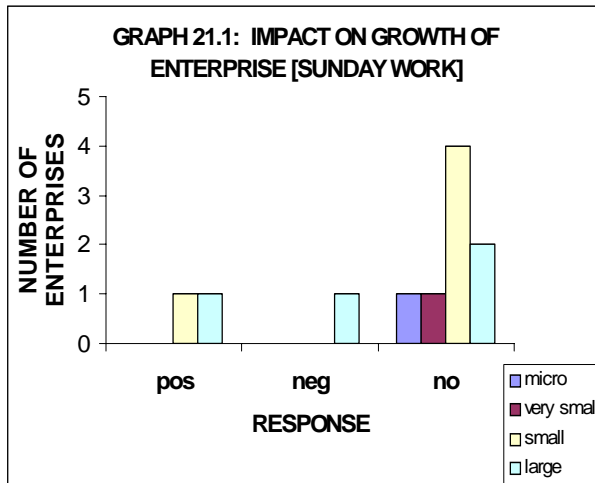
The large enterprises were evenly balanced between a positive and no impact response. The reasons advanced for the positive response include the following: the ability to provide night work adds value to the service, where provision is made in advance it results in an increase in turnover and some staff prefer night work.

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Where enterprises indicated that this provision has no impact they claimed that this service is rendered at the client's request, therefore the client foots the bill for the service.

#### 6.2.4 Sunday work

**Graph 21.1** illustrates the individual responses of enterprises per class size to the provision on remuneration for Sunday work. **Graph 21.2** summarises the responses of the entire sample to this provision.



The majority of small enterprises indicated that this provision has no impact on their growth. It must be noted, however, that the reason advanced for this is that their employees do not work on Sundays.

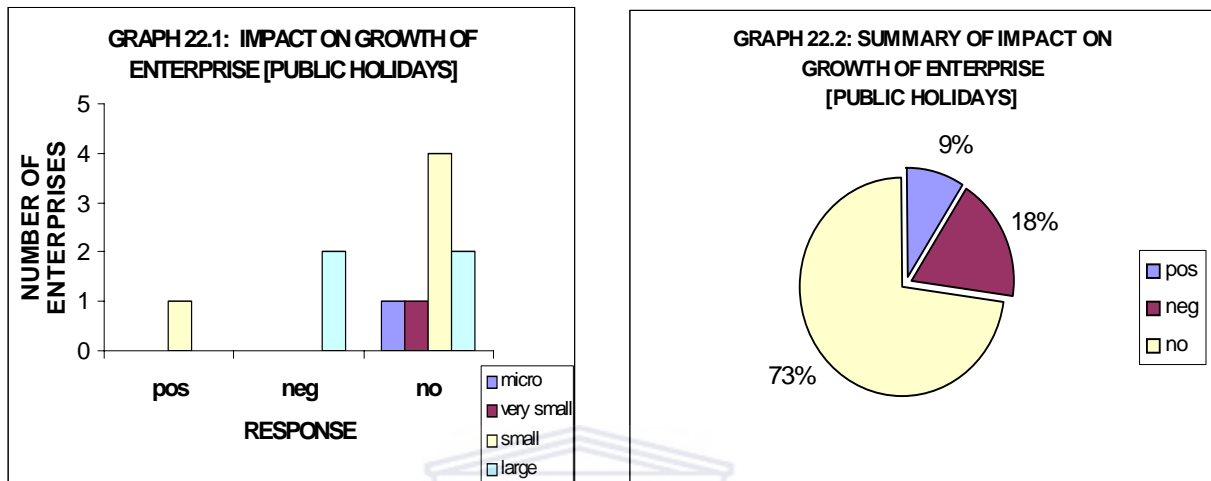
One of the small enterprises indicated that this provision could have a positive impact on the growth of the enterprise if it has been budgeted for effectively. The higher rate could also serve as an incentive to workers.

Two of the four large enterprises indicated that this provision has no impact on the growth of their respective enterprises, whereas one indicated that it had a positive impact. Reasons advanced for the positive response include the fact that it adds value to the service and that the workers benefit from higher rates. Where the enterprise indicated that it has no impact, it has managed to budget for it effectively.

The one large enterprise that indicated that this provision has a negative impact on its growth complained that Sunday is generally a quiet day for all specialised and detailed work, productivity is low and the company has to foot the bill.

## 6.2.5 Public holidays

**Graph 22.1** illustrates the individual responses of enterprises per class size to the provision on remuneration for public holidays. **Graph 22.2** summarises the responses of the sample to this provision.



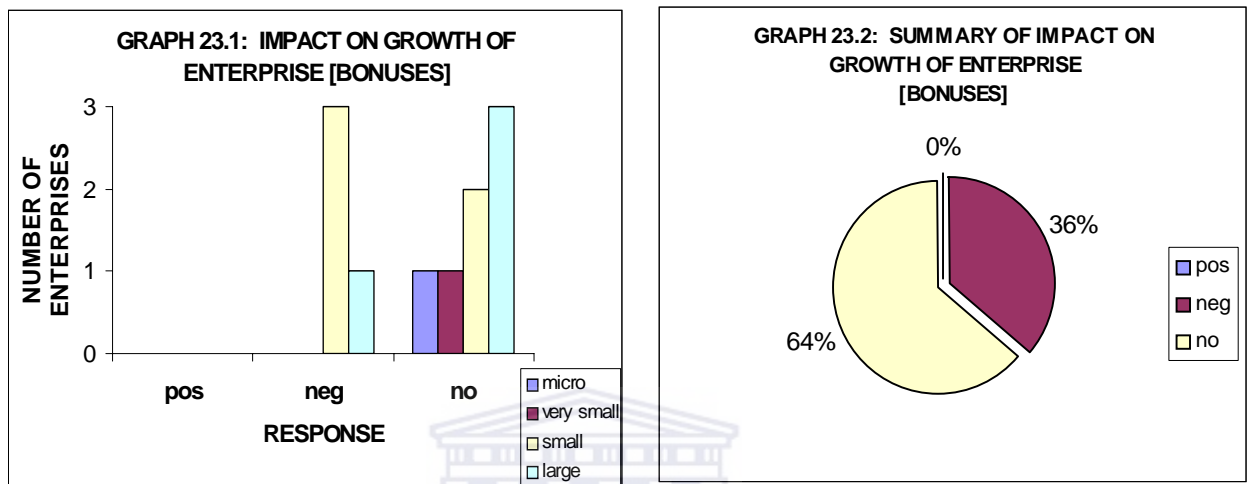
The smaller enterprises responded similarly to the provision for public holidays as for Sunday work. The majority indicated that this provision has no impact on their respective enterprises as their employees do not work on public holidays. Where the enterprise responded positively it indicated that this could serve as an incentive to workers if this has been budgeted for effectively.

The majority of large enterprises also responded similarly to this provision as for Sunday work. One responded positively and two indicated that it had no impact. The same reasons were advanced as for Sunday work. Where the enterprise responded negatively it advanced similar reasons to those for Sunday work.

In summary, the majority(73%) of all the enterprises indicated that this provision has no impact on the growth of the enterprise.

## 6.2.6 Bonuses

**Graph 23.1** illustrates the individual responses of enterprises per class size to the provision on bonuses. **Graph 23.2** summarises the responses of the entire sample to this provision.



Four of the twelve enterprises indicated that payment of bonuses had a negative impact on the growth of their enterprise. However, the majority of enterprises indicated that bonuses have no impact on the growth of their enterprise. Small enterprises that indicated that bonuses had no impact, revealed upon further investigation that bonuses are paid when the enterprise can afford it. Others indicated that such payment of bonuses is performance related. These enterprises therefore do not comply with the SD. Large enterprises include bonuses as part of the wages in their tenders, in other words, the client pays.

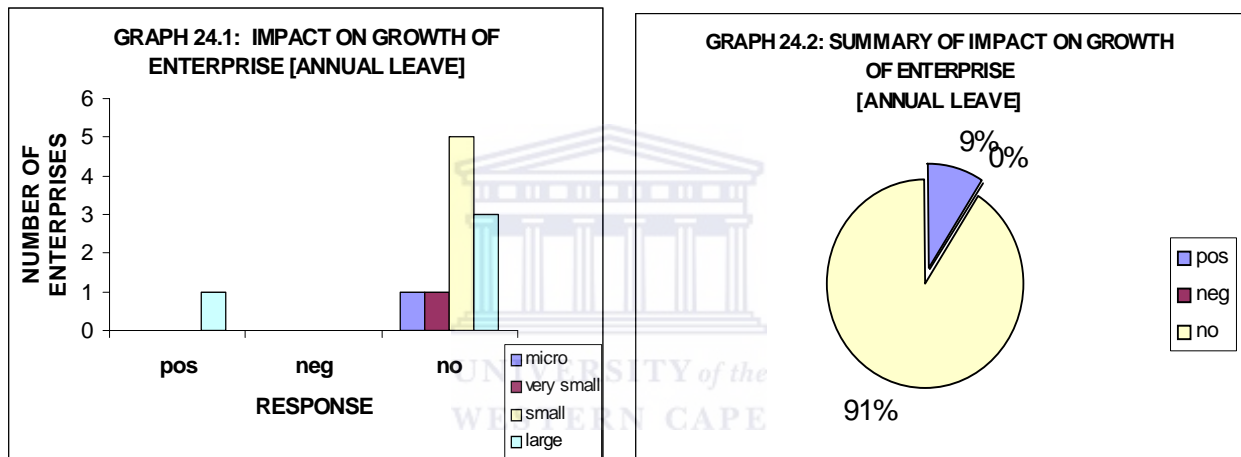
The majority of small enterprises claim that this provision has a negative impact because compliance pushes up the costs, which leads to expensive services. It also results in a small profit margin being reduced even further.

The large enterprises that responded negatively expressed strong dissatisfaction with the fact that the bonuses are legislated and not performance related because it impacts

negatively on the morale of the workers. Diligent and committed workers become demoralised when all workers receive a bonus regardless of their work performance. Moreover, compliance with this provision tends to increase cost that has to be included in the tender, scaring off potential clients.

### 6.2.7 Annual leave

**Graph 24.1** illustrates the individual responses of enterprises per class size to the annual leave provision. **Graph 24.2** summarises the responses of the entire sample to this provision.



All the small enterprises responded that this provision has no impact on the growth of the enterprise. Only one of these has advanced reasons that relate to non-compliance with the provision. The reasons the rest have advanced include staggering the leave across the year and budgeting adequately for the leave. The micro and very small enterprise reacted similarly to the majority of small enterprises.

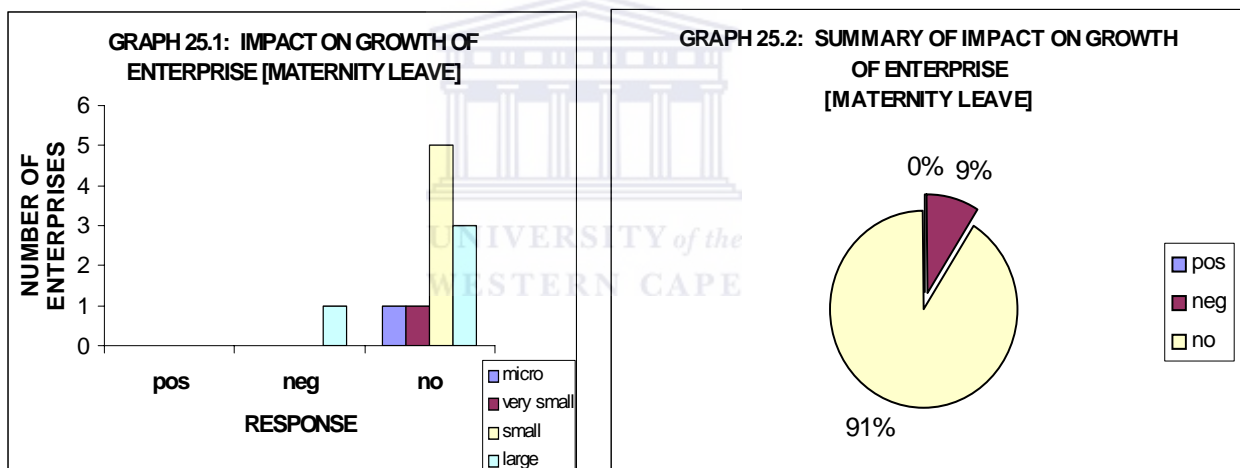
The majority of the large enterprises indicated this provision has no impact on the growth of their enterprises as they build it into their cost, stagger the leave across the year and merely shift employees between contracts instead of hiring replacements.



The rest indicated that this provision has a positive effect on the growth of their enterprises as the SD allows for a flexible arrangement whereby workers may take occasional leave. This occasional leave is then deducted from their annual leave. Employees may therefore decide how many consecutive leave days they take at any given time. Employees decide whether they would prefer to have their annual leave accumulate, or whether they would reduce it by taking occasional leave. This, apparently, adds to the morale of the employees.

### 6.2.8 Maternity leave

**Graph 25.1** illustrates the individual responses of enterprises per class size to the maternity leave provision. **Graph 25.2** summarises the responses of the entire sample to this provision.

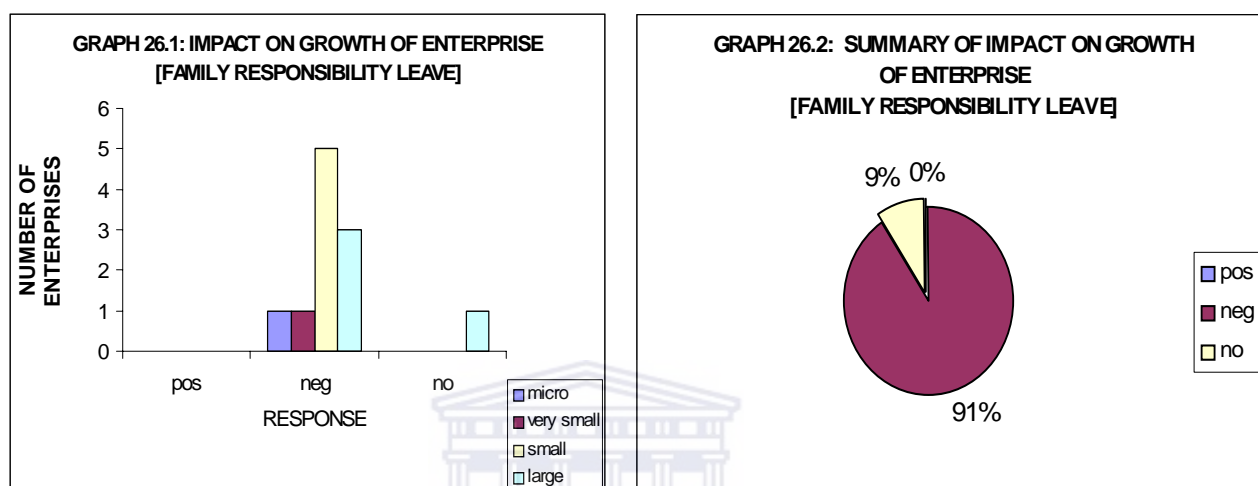


The overwhelming majority(91%) of enterprises indicated that this provision has no impact on their respective enterprises as it is unpaid.

The enterprise that claimed that this provision has a negative impact on its growth, complained about the cost involved in providing additional uniforms and the time wasted in training the replacement.

## 6.2.9 Family responsibility leave

**Graph 26.1** illustrates the individual responses of enterprises per class size to the family responsibility leave provision. **Graph 26.2** summarises the responses of the entire sample to this provision.



The overwhelming majority of enterprises(91%) indicated that this provision has a negative impact on the growth of their respective enterprises.

The smaller enterprises were unanimous in their negative response to this provision. They advanced the following reasons; the remaining workers have to carry the load of the absentee which leads to negative morale, they found the idea of extended families particularly problematic, the leave gets abused, the enterprise literally runs a social service and the enterprise cannot budget effectively for it, hence it has to foot the bill for relief staff.

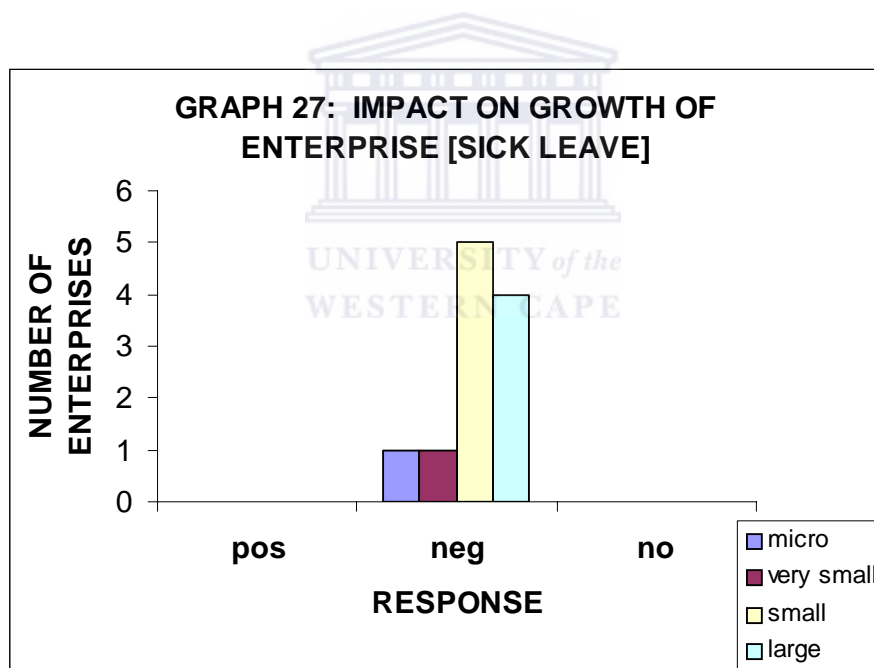
The majority of large enterprises responded similarly to the medium enterprises. Other reasons that they have included refer to the nebulous evidence that is provided causing the company to scrutinise all claims closely, wasting time and upsetting genuine cases.

Where the large enterprise claimed that it has no impact, it has managed to budget effectively for it by including it in its tender.

There appears to be a contradiction between the overwhelmingly negative response to this provision and compliance with it. All the enterprises claim compliance with this provision. Three of them have granted family responsibility leave in excess of the prescribed period despite the claim that this provision has a negative impact on the growth of their respective enterprises.

### 6.2.10 Sick leave

**Graph 27** illustrates the individual responses of enterprises per class size to the sick leave provision.



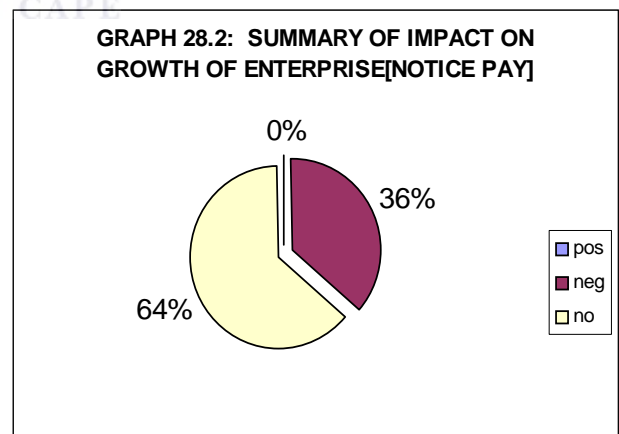
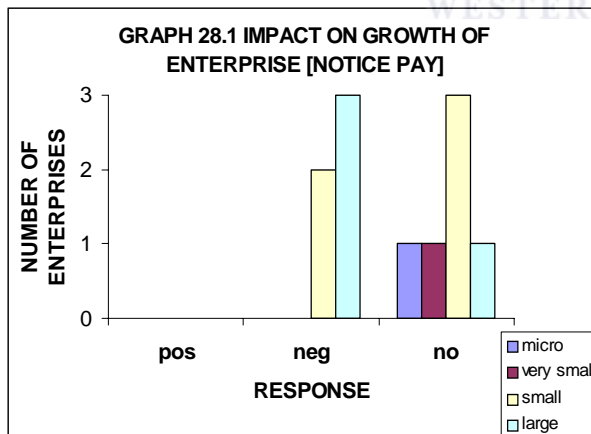
The micro, very small, small and large enterprises are unanimous in their response to the sick leave provision. All claim that this provision has a negative impact on the growth of the enterprise. They are also unanimous in their claim that there is large-scale abuse of the provision.

Further reasons advanced by the small enterprises include the following: employees regard this provision as a holiday to which they are entitled and take it on a regular basis without merit, enterprises cannot budget for it effectively therefore the enterprise has to foot the bill, and clients demand a certain number of cleaners forcing the enterprise to find a replacement.

The other reasons advanced by the larger enterprises include firstly, the failure on the part of employees to notify the company timeously which causes a shortage of workers. Time is then wasted in finding relief workers. Secondly, the abuse of this provision demoralises other employees and, thirdly, where the employee doesn't qualify for paid sick leave anymore, loss of earnings is demoralising.

### 6.2.11 Termination of service

**Graph 28.1** illustrates the individual responses of enterprises per class size to the provision on notice pay. **Graph 28.2** summarises the responses of the entire sample to this provision.



The majority of enterprises(64%) claimed that this provision has no impact on their respective enterprises whereas 36% claimed that it had a negative impact.

Upon considering the responses of the various categories of enterprises, the majority of small enterprises claim that this provision has no impact on the growth of their respective enterprises.

Small enterprises that responded negatively claimed that the time used to invest in the employee is wasted time for the enterprise.

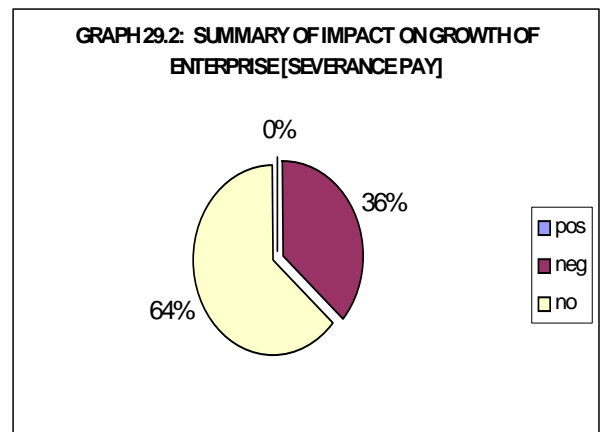
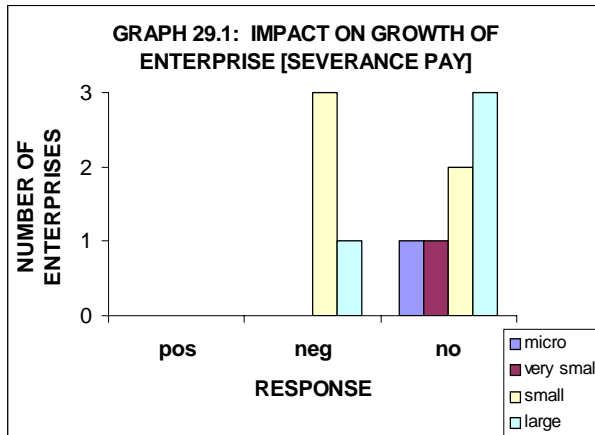
Where it had no impact the small enterprises advanced the following reasons: employees abscond, the enterprise doesn't terminate the services unless it dismisses summarily for misconduct usually involving gross dishonesty relating to theft or fraud, and, the enterprise did not terminate employment during the year of the investigation.

The majority of large enterprises responded negatively to this provision, they claimed, like the smaller enterprises, that time and training invested in the employee is lost to the enterprise and new workers have to be trained.

Where the large enterprise claimed that it had no impact, it has resorted to similar measures as those of small enterprises, that is, summary dismissals.

### **6.2.12 Severance pay**

**Graph 29.1** illustrates the individual responses of enterprises per class size to the provision on severance pay. **Graph 29.2** summarises the responses of the entire sample to this provision.



The majority of enterprises(64%) claim that this provision has no impact on the growth of their enterprise. These enterprises did not engage in any dismissals for operational reasons and therefore did not have to pay severance packages.

More small enterprises responded negatively to this provision.

Upon further investigation, the large enterprises that claimed that this provision has a negative impact on the growth of the enterprise claimed that it cannot be budgeted for effectively, therefore it comes off the company's bottom line profits.

Small enterprises that responded negatively claimed that payment of a severance package often follows the loss of a contract without any new prospects, and payment thereof could cripple the enterprise.

## CHAPTER 7

### DISCUSSION OF RESEARCH FINDINGS

This investigation finds, in essence, a high level of compliance with the Sectoral Determination by the enterprises in the sample. This finding seems to suggest that there is sufficient flexibility in the SD to enable these enterprises to comply, which, in turn, points to the appropriateness of the legislation.

However, one has to consider the possibility that the SD may have acted as a barrier to development by keeping a proportion of the population out of the formal economy, which, according to Hudson(2004), results in non-compliance. The statistics put forward by the ECC<sup>19</sup> in its report on the state of the industry 2002<sup>20</sup> seem to suggest otherwise. The report noted a significant increase in the number of employees in the contract cleaning subsector since the implementation of the SD.

Moreover, the results show that non-compliance with the SD appears to be more prevalent among small enterprises. This seems to be indicative of the tendency on the part of enterprises to transfer the burden of unstable market conditions to their employees. This tendency is illustrated by the concentration of non-compliance around the provisions relating to bonuses and minimum wages. Reasons advanced for the non-compliance with the provision on minimum wages seem to point to the exploitation of a rather vulnerable community. Non-compliance with the provision on payment of bonuses relate to the failure on the part of managers to budget effectively.

Furthermore, SMMEs, unlike large enterprises, appear to be unable to access the benefits associated with working overtime, on Sundays, public holidays and at night.<sup>21</sup> They shy away from having their employees work during these periods, whereas large enterprises view it as being mutually beneficial for the enterprise and

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<sup>19</sup> albeit an approximation of the employment statistics in the industry

<sup>20</sup> See Chapter 4 section 4.4 above

<sup>21</sup> i.e. increased profits for the enterprise and increased remuneration for the employees

employees. This difference in approach appears to be a reflection of the different operational dynamics between SMMEs and large enterprises.<sup>22</sup>

Having said this, it appears that **organizational problems**, caused by internal factors such as availability of resources and management skills, and **industry-based problems**, in the form of unfair competition, contributes significantly to the level of compliance and how owners/managers perceive the SD to impact on the growth of their enterprise. The capacity of enterprises to manage its workforce effectively within the confines of the SD seems to play a pivotal role. Where managers appeared to be more skilled, it results in, *inter alia*, more effective management of the workforce and the enterprise. This seems to support the prediction by some researchers that, generally, SMMEs that are run by highly educated and or experienced entrepreneurs with skilled labour will develop the capacity to create employment at socially desirable levels. (Levin, 1997. Levi, 1999. Kesper, 1999b)

This investigation therefore generally finds that, it is not the key provisions of the Sectoral Determination that impact negatively on the growth of SMMEs in the sample, but the capacity of management to deal effectively with the management of the enterprise and the workforce.

The alleged abuse of the sick leave and family responsibility leave provisions in the SD by employees seems to lead to the misguided perception that these provisions impact negatively on the growth of the enterprises in the sample. The overwhelming majority of enterprises claim compliance with these provisions. The fact that some enterprises have granted paid family responsibility leave in excess of the prescribed period seems to contradict this perception.

Once again, it appears that the ability to manage the enterprise and the workforce effectively plays a crucial role in how the SD is perceived to impact on the growth of the enterprise. Support for this view is found in the way in which management found

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<sup>22</sup> SMMEs have fewer internal resources, the operational dynamics are personalised as the manager is often the owner of the enterprise and the decision-making practices are less formalised.



legitimate ways around certain provisions of the SD which were identified to have increased labour costs.<sup>23</sup>

The majority of enterprises claimed that the annual leave provision, for example, has no significant impact on the growth of their respective enterprises as management sought to minimize its impact by making the following arrangements:

- employers either close their businesses for 21 consecutive days, or stagger the leave of employees across the year.
- employees would be shifted between contracts to avoid hiring replacements
- employers would budget effectively for annual leave
- employers would engage in flexible arrangements with employees, allowing them to take as many or as few of the prescribed annual leave days as they desire.<sup>24</sup>

This seems to support the finding by Theron and Godfrey(1999) that most enterprises only have to make minor adjustments to comply with the BCEA.

In addition, the majority of enterprises claimed that the provisions on notice periods and notice pay have no significant impact on their growth as they avoid disputes relating to these provisions by engaging only in summary dismissals on the grounds of gross dishonesty involving fraud and theft. The CCMA records seem to support this claim as none of the disputes on dismissal brought before it, involving the enterprises in the sample, related to the SD.

Furthermore, the overwhelming majority of enterprises claimed that the maternity leave provision has no impact on the growth of their enterprises as it is unpaid.

The provision on severance pay is found to have a significantly negative impact on the growth of the enterprise as it would often follow the loss of a contract to a competitor and it cannot be budgeted for effectively. However, none of the enterprises in the sample engaged in dismissals for operational reasons during the

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<sup>23</sup> These are provisions on maternity leave, annual leave, severance pay, notice pay, remuneration for ordinary hours, overtime, night work, public holidays and Sundays.

<sup>24</sup> The SD allows for occasional leave to be taken which may be deducted from the prescribed annual leave days.

period of investigation. Moreover, the micro enterprise seems to have avoided the potentially crippling consequences of this provision by appointing its employees on a fixed term contract. This trend seems to be followed by the very small enterprise and the majority of small enterprises in the sample. The significant concentration of casual employees and those on fixed-term contracts<sup>25</sup> bear evidence of this trend towards the casualisation of jobs among the smaller enterprises. It is this very trend that lends support to the contention by organised labour that the South African labour market is too flexible.

It would therefore appear that neither the owner/manager's claims of compliance nor their perceptions on the impact of labour legislation on the growth of their respective enterprises support the perception that the SD poses a threat to the viability of the enterprises in the sample.



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<sup>25</sup> See Annexure D

## CHAPTER 8

### CONCLUSION AND RECOMMENDATIONS

#### 8.1 CONCLUSION

This study, like many others, is mainly limited to the use of the entrepreneur's perception of the effects of labour market regulations on the growth of their respective enterprises. However, the results of this study, limited as it is, don't seem to advance the perception that labour regulations generally pose a threat to the growth of the SMMEs in the sample, and, to employment creation.

Very little evidence is found in support of calls for more flexible labour markets and for the perception that labour regulations impact negatively on the growth of SMMEs (Lewis, 2001. SACOB, 1999. World Bank, 2004), to the contrary, this sub sector has recorded significant employment growth in spite of the implementation of the SD.

Moreover, the results of this study do not seem to support the arguments advanced that labour regulations raise the cost of doing business and affect the ability of SMMEs to adapt. (Quartey, 2001) SMMEs have responded by avoiding provisions that may have cost implications, such as night work and overtime. They have also found legitimate ways around certain provisions such as annual leave and dismissals.

The reasons advanced by SMMEs in the sample for their non-compliance or claiming that a particular provision has a negative impact on the growth of the enterprise, appear to be mainly related to internal problems such as lack of resources and ineffective management, or, external problems such as unfair competition by bigger competitors and lack of enforcement of the SD. It is for this very reason that legislation is imperative and the monitoring of compliance with and enforcement of the SD are crucial.

Whether government has succeeded in creating a vehicle that ensures flexibility yet sufficient stability in the labour market remains unanswered as no generalisations could be drawn from this study. However, provisions designed to bring greater flexibility into the labour market such as the compressed working week and the averaging of hours of work, are not utilised by the SMMEs in the sample. Furthermore, provisions claimed to have increased labour costs such as overtime, night work and working on public holidays and Sundays, hardly apply to them. This phenomenon certainly calls for further investigation.

## **8.2 RECOMMENDATIONS**

The results of this study do not support a recommendation that a blanket dispensation be made for small business. This is in line with the recommendation by the ECC<sup>26</sup> as well as the Ministerial Task Team on Small Business.<sup>27</sup>

However, considering the labour intensive nature of the industry and the highly competitive environment in which these enterprises operate, it is recommended that the provisions on family responsibility leave, sick leave and severance pay be revisited.

Moreover, the Department of Labour's programme of action and strategic plan 2004-2009 has as one of its strategic objectives the monitoring of the impact of labour legislation. In view of the aforementioned, it is imperative that government departments, in this instance, the Department of Labour and the South African Revenue Services, should establish partnerships with academic institutions to facilitate the access for researchers to secondary data.

Unions should also engage in more effective recordkeeping in order for such records to be used as a source of secondary data.

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<sup>26</sup> See Chapter 4 section 4.4 above

<sup>27</sup> See Chapter 3 section 3.1 above

A final recommendation is made that supply side-measures, in particular, investment in human capital to promote entrepreneurship, should form an integral part of government's action plan to assist SMMEs in reaching their employment potential.



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# **ANNEXURES**

Annexure A	Covering letter
Annexure B	Questionnaire
Annexure C	Table 4: Summary of CCMA results
Annexure D	Table 5: Summary of employment statistics of individual enterprises





# Annexure A

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### FACULTY OF LAW

#### Dear Participant

The growth and development of the small, medium and micro-enterprise(SMME) sector is widely regarded as being of critical importance to South Africa's ability to address the problems of unemployment, income inequality, economic concentration, lack of international competitiveness, and low socio-economic growth that currently confront it.

Labour market regulations have the potential to increase labour costs and inflexibility, thereby undermining the viability of the business. However, the rhetoric surrounding the implementation of various pieces of labour legislation is mainly centered on the perception that labour legislation constitutes the most significant constraint to small business growth and development.

In order to formulate an informed opinion on the impact of labour legislation on SMMEs it is imperative to investigate its **actual** impact on small businesses.

S51 of the Basic Conditions of Employment Act makes provision for the Minister of Labour, on the advice of the Employment Conditions Commission, to make a Sectoral Determination following an investigation by the Director- General. Such a determination could be regarded as an attempt to secure an appropriate balance between security and flexibility in a sector where small businesses are predominant.

On 14 May 1999 the Sectoral Determination 1: Contract Cleaning Sector, South Africa was promulgated. The question that arises is whether this instrument enabled smmes to comply with its conditions and, in so doing, created an enabling environment for SMMEs to grow. This study therefore seeks to establish the **actual effect** of this Sectoral Determination on a sample of SMMEs in the Contract Cleaning Sector.

In-depth interviews with the owners/managers of the sample SMMEs will be conducted using an interview schedule that seeks to establish whether there is full, partial or no compliance with key conditions of the Sectoral Determination. The interview schedule will also seek to determine the reasons for the level of compliance. In addition, the interview schedule will seek to examine the impact that these key conditions of the Sectoral Determination 1: Contract Cleaning Sector have on the growth of these SMMEs.

The attached interview schedule is confidential and the names of the participants will not be disclosed, neither will the enterprise be identified in any way. I would therefore encourage participants to be as open and forthcoming with the information requested. In return I guarantee complete confidentiality and anonymity.

Yours faithfully

Noleen Leach

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# Annexure B



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## **FACULTY OF LAW**

### **SUBJECT: LABOUR LAW**

Interview schedule for the research project on the impact of Sectoral Determination 1: Contract Cleaning Sector South Africa on the growth of small medium and micro enterprises

Student: Noleen Leach  
Student no. 8319745  
Year of study: 2005

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(021) 959 6814 (Secretary)  
leachN@cput.ac.za

- A. (i) Is the enterprise or the employees subject to a bargaining council agreement in terms of the LRA?

Please tick (✓)	
Yes	No

- (ii) If the answer to the above question is “yes”, which bargaining council agreement?

--

**Do not continue with the questionnaire if the answer to (i) is “yes”**

- (iii) Are you covered by the Sectoral Determination 1: Contract Cleaning Sector?

Please tick (✓)	
Yes	No

- (iv) Do you comply in full with the Sectoral Determination 1: Contract Cleaning Sector?

Please tick (✓)	
Yes	No

- (v) If the answer to (iii) above is “no”, do you comply in full with the Basic Conditions of Employment Act?

Please tick (✓)	
Yes	No

- (vi) If the answer to (i), (iii) and (iv) above is “no”, how do you determine the following:

1. the remuneration of the employees

--

2. the employment conditions of the employees

--

B. How many employees are currently employed by the enterprise?

CATEGORY	NUMBER OF EMPLOYEES
(i) Fulltime	
(ii) Part-time	
(iii) Casual	
(iv) Temporary(fixed term contract)	
<b>TOTAL</b>	

C. ORDINARY HOURS OF WORK

(i) What are the **maximum ordinary hours** worked on average by employees in the past financial year/calendar year?

1. per week?
2. per day(for a 5 day week)
3. per day( for a week exceeding 5 days)


D. OVERTIME

(i) What are the **maximum hours of overtime** worked on average by employees in the past financial year/calendar year?

1. per day
2. per week


(ii) Does the enterprise avail itself of the **compressed working week**? (an agreement whereby the employee works up to 12 hours a day, inclusive of meal intervals without receiving overtime pay)

Please tick (✓)	
Yes	No

1. If it does, is there a written agreement in place with employees regarding a **compressed working week**?

Please tick (✓)	
Yes	No

2. If the answer to (ii) 1. above is Yes, in terms of this agreement, what are the:

2.1 **maximum ordinary hours** worked by such employees

- 2.1.1 per day
- 2.1.2 per week


2.2 **maximum hours of overtime** worked by such employees

2.2.1 per day

2.2.2 per week


3. Does the use of the **compressed working week** arrangement benefit the enterprise?

Please tick (✓)	
Yes	No

4. Provide a reason or reasons for your answer in 3

--

(iii) Does the enterprise avail itself of an **averaging of hours of work** arrangement? (an arrangement whereby the ordinary hours of work and overtime of an employee is averaged over a period of up to 4 months)

Please tick (✓)	
Yes	No

1. If it does, is there a written agreement in place with employees regarding the **averaging of hours of work** arrangement?

Please tick (✓)	
Yes	No

2. If there is a written agreement in place, mention the period over which the averaging of hours takes place.

--



3. In terms of this agreement, what are the **maximum ordinary hours** worked by such employees

- 1.1 per day
- 1.2 per week


4. In terms of this agreement, what are the **maximum hours of overtime** worked by such employees

- 1.1 per day
- 1.2 per week


5. Explain why the enterprise has, or has not availed itself of the averaging of hours arrangement.



6. Does the use of the averaging of hours of work arrangement benefit the enterprise?

**E. NIGHT WORK**

(work performed after 18:00 and before 6:00 the next day)

- (i) Do employees do night work
  - 1. occasionally
  - 2. regularly

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>
<b>Yes</b>	<b>No</b>

(ii) Is this in terms of an agreement between employees and employer?

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

(iii) Is transportation available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift?

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

(iv) Are the employees who are required to do night work on a regular basis informed of:

- 1. health and safety hazards associated with night work.
- 2. the employee's right to undergo a medical examination?

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>
<b>Yes</b>	<b>No</b>

(v) If the answer to (iv) is NO, provide a reason.

--

(vi) If employees do night work regularly, did it benefit the enterprise?

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

(vii) Give a reason/s for your answer in (vi)

--

## F. REMUNERATION

1. Ordinary hours

(i) What is the current hourly wage paid to employees working ordinary hours?

<b>CATEGORY</b>	<b>HOURLY WAGE</b>
(i) Fulltime	
(ii) Part-time	
(iii) Casual	
(iv) Temporary(fixed term contract)	

2. Overtime

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

(i) Do employees work overtime?

<b>Yes</b>	<b>No</b>
------------	-----------

(ii) Do employees get paid for the overtime worked?

(ii) If they do, how is remuneration for overtime calculated?

--

- (iii) If employees do not get paid an overtime rate, provide a reason(eg. compressed working week/averaging of hours/etc)

--

3. Night work

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

- (i) Do employees receive an allowance for night work?

- (ii) If they do, how is the allowance calculated?

--

- (iii) If such employees do not receive an allowance, provide a reason.

--

4. Sunday work

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

- (i) Do employees work on Sundays?

- (ii) If they do, do they receive remuneration for Sunday work?

<b>Yes</b>	<b>No</b>
------------	-----------

- (iii) If the answer to (ii) is “yes”, how is this remuneration calculated for:

1. employees who ordinarily work on Sundays

--

2. employees who don't ordinarily work on Sundays

--

- (iv) If the employees do not receive remuneration at a premium for Sunday work, provide a reason.

--

5. Public Holidays

Please tick (✓)

(i) Do employees work on public holidays?

Yes	No
-----	----

(ii) Do employees receive remuneration for working on Public Holidays?

Yes	No
-----	----

(iii) If they do, how is the remuneration calculated if the public holiday falls on a day on which the employee would not ordinarily work?

(iv) If they do not receive remuneration at a premium, provide a reason.

6. Bonuses

Please tick (✓)

(i) Have employees received a bonus since December 2001?

Yes	No
-----	----

(ii) If they did, how was it calculated?

(iii) If they did not receive a bonus, provide a reason .

G. LEAVE

1. Annual Leave

Please tick (✓)

(i) Do permanent employees receive paid annual leave?

Yes	No
-----	----

(ii) If they do, how many consecutive days per year?

- (iii) If they do not receive paid annual leave, what leave arrangement is in place?

--

- (iv) If employees do not receive 21 days paid annual leave, provide a reason.

--

- (v) Do you require a replacement for the period of time for which the employee is on leave?

<b>Please tick (✓)</b>	
<b>Yes</b>	<b>No</b>

- (vi) If you do not require a replacement, provide a reason.

--

## 2. Maternity Leave

- (i) Have you had any employee on maternity leave in the past financial/calendar year?

<b>Please tick (✓)</b>	
<b>Yes</b>	<b>No</b>

- (ii) If you have,

1. what was the length of the maternity period?

--

2. was the employee remunerated for this period?

<b>Please tick (✓)</b>	
<b>Yes</b>	<b>No</b>

- (iii) Did you require a replacement for such employee?

<b>Yes</b>	<b>No</b>
------------	-----------

- (v) Did he/she require training or other investment in resources before the employee was fully productive?

<b>Please tick (✓)</b>	
<b>Yes</b>	<b>No</b>

- (v) If the answer to (iv) above is “Yes”, give details

--

3. Family Responsibility Leave

(employees working longer than 4 months, 4 days a week or more)

Please tick (✓)

(i) Have you granted paid family responsibility leave in the past financial/calendar year?

Yes	No
-----	----

(ii) If you have, how many days in total of such paid leave was granted?

--

(iii) Did you require a replacement during this period?

Please tick (✓)

Yes	No
-----	----

4. Sick Leave

Please tick (✓)

(i) Have you granted paid sick leave in the past financial year?

Yes	No
-----	----

(ii) If you have, how many days in total have you granted to any one employee

1. during the first six months of employment?

--

2. thereafter?

--

H. TERMINATION OF EMPLOYMENT

(i) Have you terminated the employment of any employee **with or without notice** in the past financial year?

Please tick (✓)

Yes	No
-----	----

1. Did payment accompany the termination of the employment?

Yes	No
-----	----

2. How was this payment calculated?

2.1 during the first 4 weeks of employment

--

2.2 for an employee working longer than 4 weeks

--

3. If payment did not accompany the termination, provide a reason.

--

## I. SEVERANCE PAY

(i) Did you dismiss employees for operational requirements in the past financial/calendar year?

<b>Please tick (√)</b>	
<b>Yes</b>	<b>No</b>

(ii) Did such employees receive severance pay?

<b>Yes</b>	<b>No</b>
------------	-----------

(iii) How did you calculate the severance pay?

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---

(iv) If the employees did not receive severance pay, provide a reason.

--

J. GENERAL

(This part should only be filled in by those enterprises that are in full or partial compliance with the Sectoral Determination or Basic Conditions of Employment Act)

(i) How does compliance with the provisions mentioned below impact on the growth of your enterprise?

1. Remuneration for

1.1 Ordinary hours

Positively	Negatively	No impact
Reason/s		

1.2 Overtime

Positively	Negatively	No impact
Reason/s		

1.3 Night work

Positively	Negatively	No impact
Reason/s		



1.4 Sunday work

Positively	Negatively	No impact
------------	------------	-----------

Reason/s

1.5 Public holidays

Positively	Negatively	No impact
------------	------------	-----------

Reason/s

1.6 Bonuses

Positively	Negatively	No impact
------------	------------	-----------

Reason/s

2. Leave

2.1 Annual leave

Positively	Negatively	No impact
------------	------------	-----------

Reason/s

2.2 Maternity leave

Positively	Negatively	No impact
Reason/s		

2.3 Family responsibility leave

Positively	Negatively	No impact
Reason/s		

2.4 Sick leave

Positively	Negatively	No impact
Reason/s		

3. Termination of employment

Positively	Negatively	No impact
Reason/s		

4. Severance pay

Positively	Negatively	No impact
Reason/s		

K. ESTIMATED COST

**(This part should only be completed where no financial records have been supplied by the enterprise)**

(i) What is the estimated cost of compliance with the provisions mentioned below?

**1. Remuneration for**

1.1 Ordinary hours

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--


1.2 Overtime

--

1.3 Night work

1.4 Sunday work

1.5 Public holidays



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1.6 Bonuses

**2. Leave**

**2.1 Annual leave**

**2.2 Maternity leave**

**2.3 Family responsibility leave**

**2.4 Sick leave**

**3. Termination of employment**

**5. Severance pay**



# Annexure C

**TABLE 4: SUMMARY OF CCMA AWARDS**

<b>ENTERPRISE</b>	<b>NATURE OF DISPUTE</b>	<b>YEAR OF AWARD</b>	<b>OUTCOME</b>
SvW	Unfair dismissal	2004	Dismissal substantively and procedurally unfair
SA	Unfair suspension and demotion	2004	Disciplinary action fair sanction
SM	Unfair dismissal	2005	Dismissal fair
		2005	Dismissal fair
LME	Dismissal	2004	No dismissal
	Severance pay	2005	No severance pay to be paid
	Unfair dismissal	2006	Dismissal fair
LC		2003	Applicant failed to attend the hearing
	Unfair dismissal	2003	Dismissal substantively and procedurally unfair
	Unfair dismissal	2003	Dismissal procedurally unfair
LJM	Unfair labour practice	2001	Fair labour practice
	Unilateral change in terms and conditions of employment	2002	CCMA has no jurisdiction
	Unfair dismissal	2003	Dismissal procedurally unfair
	Unfair dismissal	2004	Dismissal procedurally and substantively unfair
	Unfair dismissal	2004	Dismissal fair

# Annexure D

**TABLE 5: SUMMARY OF EMPLOYMENT STATISTICS OF INDIVIDUAL ENTERPRISES**

ENTEPRISE BY CLASS SIZE	FULL-TIME EMPLOYEES	PART-TIME EMPLOYEES	CASUAL EMPLOYEES	EMPLOYEES ON FIXED TERM CONTRACT
MP	0	0	1	3
VsW	0	0	12	20
SA	45	0	3	9
SS	31	10	15	0
SB	31	0	0	18
SM	45	0	0	0
SJ	30	0	0	0
LC	220	30	0	15
LB	219	55	0	0
LME	300	45	20	0
LJM	300	50	0	0