

Labour legislation that regulates the employment relationship

The employment relationship is based on the common law contract of employment. The common law covers basic contractual rights. It does not give an employee the right to sick leave, maternity leave, minimum standards of safety, etc.

As a result of the gaps in common law, various pieces of labour legislation have been enacted to address the imbalance.

Labour legislation uses a wide range of techniques to achieve its objectives. These include:

- establishing regulatory standards with sanctions in respect of occupational health and safety;
- establishing a floor of minimum rights regulating conditions at work ; and
- promoting workplace organisation through trade unions and collective bargaining.

The Constitution of South Africa

The Constitution is the supreme law of the Republic providing a framework and standards that other laws must follow. All laws that are made by the government must be in line with the provisions of the Constitution and if they are not, they have to be amended.

Labour legislation seeks to give effect to the basic rights in the Constitution, ensuring that everyone has the right to fair labour practices, that employers and trade unions can engage in collective bargaining and that workplaces are free from discrimination.

Each piece of labour legislation has its own focus or theme. Each of these “themes” can be traced back to a basic right contained in Chapter II of the Constitution (the Bill of Rights).

Legislation must be interpreted with reference to the Bill of Rights in the Constitution and international labour standards established by the International Labour Organisation. These are the Conventions which South Africa has approved and which are binding upon it.

Section 23 of the Constitution which is of fundamental importance in shaping labour law in South Africa reads as follows:

- “(1) Everyone has the right to fair labour practices.
- (2) Every worker has the right -
- (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union;
 - and
 - (c) to strike.
- (3) Every employer has the right -



- (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right –
- (a) to determine its own administration, programmes and activities;
 - (b) to organise;
 - (c) to bargain collectively; and
 - (d) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this chapter, the limitation must comply with section 36(1)."

Refer to The South African Constitution

Employers are advised to display summaries of the main pieces of legislation at their workplaces in order for employees and employers to familiarise themselves with the legislation.

The following are some of the main labour statutes.

- Labour Relations Act 66 of 1995 (LRA)
- Employment Equity Act 55 of 1998 (EEA)
- Basic Conditions of Employment Act 75 of 1997 (BCEA)
- Mine Health and Safety Act 29 of 1996 (MHSA)
- Occupational Health and Safety Act 85 of 1993 (OHSA)
- Unemployment Insurance Act 63 of 2001 (UIA)
- Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)

1. The Labour Relations Act, No 66 of 1997 (LRA)

The purpose of the LRA is to advance economic development, social justice, labour peace and the democratisation of the workplace by promoting collective bargaining, to provide a framework for unions and employers' organisations to establish terms and conditions of work at sectoral and enterprise level; to

facilitate employee participation in decision-making in the workplace and the effective resolution of labour disputes. The LRA codifies the law of unfair dismissals and unfair labour practices.

[See The Labour Relations Act](#)

[See summary of The Labour Relations Act \(source Waltons, Government Printing Works\)](#)

2. The Basic Conditions of Employment Act, No 75 of 1997 (BCEA)

The purpose of the BCEA is to advance economic development and social justice by giving effect to the constitutional right to fair labour practices, by establishing and enforcing basic or minimum conditions of employment, such as hours of work, leave, sick leave, notice of termination of employment and setting limits to the variation of these minimum conditions (by ministerial determination, collective and individual agreements).

[See The Basic Conditions of Employment Act](#)

[See summary of The Basic Conditions of Employment Act \(source Waltons, Government Printing Works\)](#)

3. The Employment Equity Act, No 55 of 1998 (EEA)

The purpose of the EEA is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment by the elimination of unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels of the workforce.

[See The Employment Equity Act](#)

[See summary of The Employment Equity Act \(source Waltons, Government Printing Works\)](#)

4. The Mine Health and Safety Act, No 29 of 1996 (MHSA)

The purpose of the MHSA is to provide for the protection of the health and safety of employees and other persons at mines. The MHSA requires employers and employees to identify hazards and to eliminate control and minimize health and safety risks. To enhance this function; greater employee participation is encouraged by the creation of health and safety representatives and committees. Health and safety conditions will be monitored, measures enforced, improvements made, risks investigated and training provided, so as to promote the development of a culture of health and safety in the mining industry.

[See The Mine Health and Safety Act](#)



5. Occupational Health and Safety Act 85 of 1993 (as amended) (OHSA)

The OHSA provides for the health and safety of persons at work and in connection with the use of plant and machinery. The OHSA also provides for the protection of other persons (not at work) against hazards arising out of or in connection with the activities of persons at work. The OHSA proposes to achieve its objectives by the establishment of an advisory council for occupational health and safety.

See Occupational Health and Safety Act

See summary of Occupational Health and Safety Act (source Waltons, Government Printing Works)

6. Unemployment Insurance Act 63 of 2001 (UIA)

The purpose of the UIA is to establish a system to provide temporary and limited relief for workers who have become unemployed. The UIA establishes an unemployment insurance fund to which employers and employees contribute. From this fund, employees who become unemployed, or their beneficiaries, are entitled to receive short term benefits (for up to six months) and limited to no more than 45% of the contributor's remuneration.

The UIA creates the following benefits, which a contributor or the dependants of the contributor, are entitled to claim:

- Unemployment benefits;
- Illness benefits;
- Maternity benefits;
- Adoption benefits;
- Dependant benefits.

See Unemployment Insurance Act

See summary of Unemployment Insurance Act (source Waltons, Government Printing Works)

7. Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)

The purpose of COIDA is to provide for compensation for disablement (inability to work) caused by occupational diseases or injuries sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.

See Compensation for Occupational Injuries and Diseases Act

See summary of Compensation for Occupational Injuries and Diseases Act
(source Waltons, Government Printing Works)

